



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

WELFARE REFORM COMMITTEE

Tuesday 5 March 2013

Session 4

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WELFARE REFORM COMMITTEE

4th Meeting 2013, Session 4

CONVENER

Michael McMahon (Uddingston and Bellshill) (Lab)

DEPUTY CONVENER

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

COMMITTEE MEMBERS

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

*Linda Fabiani (East Kilbride) (SNP)

*Iain Gray (East Lothian) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab) (Committee Substitute)

Jenny Brough (Scottish Government)

Thomas Davy (Scottish Government)

Catherine Fergusson (Clerk)

Stuart Foubister (Scottish Government)

Sharon Grant (Scottish Government)

Robin Haynes (Scottish Government)

Ann McVie (Scottish Government)

Jill Mulholland (Scottish Government)

Matt Perkins (Scottish Government)

Colin Spivey (Scottish Government)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

Committee Room 2

Scottish Parliament

Welfare Reform Committee

Tuesday 5 March 2013

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

Decisions on Taking Business in Private

The Deputy Convener (Jamie Hepburn): Good morning, everyone, and welcome to the fourth meeting in 2013 of the Welfare Reform Committee. The observant among you will notice that I am in the chair today. Sadly, the convener is at a funeral and is unable to attend the meeting. He has sent his apologies. I welcome Jackie Baillie, who is substituting for him on behalf of the Labour Party.

I remind everyone to either switch off their mobile phones and other electronic devices or switch them to airplane mode. I am not quite sure what “airplane mode” is, but if you know what it is, feel free to utilise it.

First, we have two items of administrative business to consider. Under agenda item 1, I invite members to consider whether we should take item 5 in private.

Kevin Stewart (Aberdeen Central) (SNP): I have a question, convener. We got the private paper for committee members only, but I think that I saw it online in *Holyrood* magazine. Was it online in *Holyrood* magazine? Are the clerks aware of that?

The Deputy Convener: Yes. We discussed the matter with the clerks the other day. I think that the paper was inadvertently published online and that *Holyrood* magazine picked up on it.

Kevin Stewart: As the paper has been made public, is it right that we should discuss its contents in private?

The Deputy Convener: I am relaxed either way, but I am happy to ask for views from other members.

Alex Johnstone (North East Scotland) (Con): I understand exactly the point that Kevin Stewart has made, but I would reverse it. It would be inappropriate for us to change our decisions as a result of a paper that may have been published accidentally, or a paper that is perhaps leaked in future in similar circumstances. We should stick to the plan rather than have circumstances dictate to us.

The Deputy Convener: Okay. I remind members that we have not yet made a decision, but I appreciate Alex Johnstone’s perspective.

Do other members have anything that they want to say on the matter?

Linda Fabiani (East Kilbride) (SNP): I want to pick up on something that Alex Johnstone said. Can it be clarified how the paper ended up in the public domain? The word “leaked” has just been used.

Alex Johnstone: I did not say—

The Deputy Convener: Hold on, Alex. To be clear, there was simply an administrative error.

Linda Fabiani: Okay. Fair enough.

Kevin Stewart: Probably everybody knows the committee’s view that it would rather have a formal session than an informal session with Mr Iain Duncan Smith but, unfortunately, Westminster ministers continue to fail to come forward and give evidence in public. I am sure that the people of Scotland would want to see that, too.

On this occasion, having heard that an administrative error was made, I hope that every other body, including the media, will have access to the private paper, as it went out inadvertently. I am happy to have the discussion in private on this occasion, but I feel that, if something has been in the public domain, it should go to every organisation, not just one, if it went to it inadvertently.

The Deputy Convener: Okay. The clerks can correct me if I am wrong about this, but I do not think that the paper went to *Holyrood* magazine inadvertently. I think that it was inadvertently published online, and *Holyrood* magazine was eagle-eyed and happened to notice it. Therefore, it was available universally, albeit briefly.

What is the feeling among members on whether we should take item 5 in private? I am relaxed either way.

Linda Fabiani: Based on the discussion that we have just had, I do not think that there is any need to have the discussion in private.

Iain Gray (East Lothian) (Lab): Like the convener, I am pretty relaxed either way.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I am relaxed, too, but I would probably err on the side of having the discussion in public, as the document is in the public domain. I do not see what the logical point would be of discussing a document in private that has already been published.

The Deputy Convener: Okay. I sense that the feeling is that we should take the discussion in

public. Is the committee relaxed about that approach, notwithstanding Alex Johnstone's comments?

Members *indicated agreement.*

The Deputy Convener: Agenda item 2 is a decision on whether to take in private our future consideration of the evidence that we hear at the next few meetings on the regulations on passported benefits and any draft report on the regulations. Do members agree to take those discussions in private?

Members *indicated agreement.*

Subordinate Legislation

Council Tax Reduction (Amendment) Regulations 2013 (SSI 2013/48)

Council Tax Reduction (State Pension Credit) (Amendment) Regulations 2013 (SSI 2013/49)

10:05

The Deputy Convener: Item 3 is consideration of two Scottish statutory instruments, which will amend the principal regulations on the council tax reduction scheme. Paper 1 briefly sets out the background to the regulations.

The observant among you will notice that we have with us Robin Haynes and Jenny Brough from the Scottish Government, who are here to answer any questions that members might have. They are not here to make a statement or provide evidence per se, but if anyone has any questions, they will answer them. Do members have any comments or questions on the regulations?

Iain Gray: The further correspondence that we have seen around the appeals procedure—

The Deputy Convener: I am sorry. May I stop you there? We will move on to that issue—it is the very next thing that we will discuss. I want to deal with the regulations first.

Iain Gray: I am sorry—my mistake.

The Deputy Convener: I will come to you first on the correspondence, Iain. Are there any comments on the regulations?

Jackie Baillie (Dumbarton) (Lab): I apologise, convener. I was told only late last night that I was coming to the meeting today, otherwise I would have checked this for myself. I am curious—

The Deputy Convener: That is funny, Jackie, because I was told earlier in the day that you were coming, so I must have known something that you did not.

Jackie Baillie: You certainly must have, because I did not know until last night.

The regulations were considered by the Subordinate Legislation Committee. I do not have the report of that committee's discussion, but I notice that the regulations were agreed to after a division. Perhaps we should not ask the Government what happened at the Subordinate Legislation Committee, but would it be appropriate for you to advise us about that committee's discussion?

The Deputy Convener: My understanding is that there was a division, which I think was four to

three in favour of the regulations being competent. I am not aware of the detail of the discussion at the committee, but if you have questions about the vires nature of the regulations, you should by all means feel free to ask the Government officials.

Jackie Baillie: Okay. On that basis, my understanding, from what the convener has just said, is that there might be some question over the Scottish Government's powers in relation to the regulations. Could you perhaps expand on your view of the situation?

Robin Haynes (Scottish Government): I was not at either meeting of the Subordinate Legislation Committee, but I understand that it had a very similar discussion when it considered the much longer regulations that set out the council tax reduction scheme and, again, the committee divided on them.

The Scottish Government has been very clear that these regulations are made under section 80 of the Local Government Finance Act 1992. In essence they are about filling the hole that was created by the United Kingdom Government's abolition of council tax benefit, which is a fundamental part of the benefits system and therefore absolutely reserved, and moving assistance to the vulnerable in meeting their council tax liability away from the social security system to the local taxation system. Therefore, the Scottish Government is quite comfortable that the matter is absolutely within the competence of the Parliament.

The Deputy Convener: Is that satisfactory, Jackie?

Jackie Baillie: It remains the case that the Subordinate Legislation Committee's legal advisers were not satisfied. Can you tell me on what precise basis they were not satisfied, given that you will have considered their argument, too?

Robin Haynes: I think that the Government's position was made clear in our response to the committee's questions at the time the original regulations were made.

Jackie Baillie: Sorry, but that was not my question.

The Deputy Convener: To be fair, Jackie, you are asking the witnesses to comment on someone else's precise legal position, which it is legitimate to do, but—

Jackie Baillie: I checked with you first, convener, and you told me to go ahead and question them, so—

The Deputy Convener: I did not know what your question was going to be. I am not psychic.

Jackie Baillie: I asked the question on the basis that any Government would have considered

what was being said against its proposition. I am asking precisely what the arguments were and how the Government overcame them. I have heard the Government's side of it, but I have not heard the precise nature of the arguments.

Robin Haynes: I regret that I do not have our response to the committee to hand. If I did, I would be able to read it out. We will be happy to ensure that it is copied to the committee again if that would be helpful.

Jackie Baillie: Okay.

Annabelle Ewing: I am trying to recall, but did we not have a brief discussion on the matter with regard to the underlying, more comprehensive regulations? I am looking at the clerks, as they might be able to help. I seem to recall that the committee had such a discussion.

The Deputy Convener: My recollection is that it was specifically about this, but—

Annabelle Ewing: I may be wrong, but I think that the matter was flagged up in one of our papers with respect to the 2012 council tax reduction regulations, and the committee had a brief discussion about it. I think that we agreed that there was no issue.

Simon Watkins (Clerk): The issue was flagged up in relation to the parent regulation, if I can call it that. At that time, we had both the officials before us briefly, although I do not think that there were any questions at that stage, from what I remember.

Annabelle Ewing: The issue here is that a benefit is the provision of public money to meet a liability, and council tax reduction is a reduction of the liability. That is my understanding of the legal position. In the light of what Westminster is doing in taking away the benefit, what the Scottish Government has done—I believe successfully—is to find a mechanism to fill the gap and help vulnerable people in Scotland, as one of the officials said. That is my understanding of what the Government is doing. The mechanism reduces the liability, further to the Scottish Government's powers in relation to council tax. For me as a lawyer, the issue is quite clear.

The Deputy Convener: For clarification, if the regulations were not put through, what would be the practical effect on people on the ground?

Robin Haynes: Sorry. Did you say if they were, or were not, put through?

The Deputy Convener: If they were not put through. If the regulations were not agreed to, what would be the effect?

Robin Haynes: If the amending regulations were not put through, there would be a number of practical effects. First, they address a number of

specific points that the Subordinate Legislation Committee raised. Secondly, they reflect the United Kingdom Government's social security benefit uplift, which was announced just before Christmas. Although council tax reduction is not a benefit, that is important in as much as entitlement to council tax reduction, which replicates existing entitlement to council tax benefit, is a function of the applicant's deemed income less their living expenses, and not every benefit is disregarded in that calculation of income. If some benefits increase but we do not increase the allowable living expenses, it could result in some individuals' council tax reduction being less than it would otherwise have been, so while the UK Government is increasing some incomes, we are also increasing some of the deemed living expenses.

The Deputy Convener: I hope that you do not take this in the wrong way, Mr Haynes, but that was quite a technical answer. What I really meant was this—if I was in receipt of council tax benefit and the amending regulations did not go through, what would be the effect on me as an individual?

Robin Haynes: You would potentially have to pay, because of the rather complicated thing that I tried to describe, obviously not very well—

The Deputy Convener: No, you described it perfectly well, but I think that—

Robin Haynes: Your council tax liability would be greater than it would otherwise have been.

The Deputy Convener: Do you have any figures on that? What might be the average for individuals who are in receipt of council tax benefit?

Robin Haynes: I do not have figures, but it has been put to us by practitioners in local authorities and indeed the Convention of Scottish Local Authorities that, if the regulations did not go through and the benefits uprating was not applied, local authorities would find themselves chasing trivial amounts of council tax in a large number of cases. There would be a considerable administrative burden on local authorities, and indeed a compliance burden on a large proportion of the 560,000 people who will receive council tax reduction.

The Deputy Convener: So that would impact negatively not only on the individual, but on local authorities.

10:15

Robin Haynes: It would. The burden on local authorities would be particularly acute, in that the timing has been rather less than ideal throughout the development of the regulations. The

timescales were very much imposed upon us and not of our own design.

The original regulations were laid just before Christmas and came into force in January, so there was a slightly uncomfortable situation whereby the people who developed the software that local authorities use to administer the scheme were developing that software before the regulations came into force. For about the first six weeks of this year, local authorities were testing and installing the software and training people. My understanding is that the software releases reflect the benefits uplift figures that are in these regulations. Again, that is not an ideal circumstance but it reflects the timescales that have been imposed upon us. If the regulations were not to go through, local authorities would have to unpick the changes that they have adopted for the time being, revert to the original figures and, in effect, run council tax billing again in very short order.

Kevin Stewart: Mr Haynes stated that there would be an effect on 560,000 individuals if the regulations did not go through. Will he confirm that 560,000 figure and indicate how many working families would be affected if the regulations did not go through?

Robin Haynes: The 560,000 figure that I used is very much shorthand—it fluctuates each month and there is a degree of seasonality. The last actual figure that I saw was slightly more than 560,000; it was about 565,000. I do not have the figure to hand for the number of working adults, but I am happy to investigate that and report back to the committee.

Kevin Stewart: Even though the figure fluctuates, would it be fair to say that more than half a million working and non-working individuals would be affected if the reduction did not go through?

Robin Haynes: Yes.

The Deputy Convener: Is everyone satisfied? Iain Gray hinted at the other issue. We have a paper before us on the appeals mechanism for the council tax reduction scheme. If members have any questions, they should feel free to ask them. However, I turn to Iain Gray first.

Iain Gray: Everyone on the committee appreciates how important it is that the regulations are in place, that they work and that they are legal. Part of that, in my understanding, would be an appeals process to enable decisions on council tax reduction to be appealed. It is extremely unfortunate that we have reached the position in which, as I understand it from the cabinet secretary's letter, no such appeals procedure is in place. What are the European convention on human rights compliance implications of the

regulations if they include within them a decision against which, as we stand, there is no system of appeals?

Robin Haynes: First, the law as it stands means that an appeal would be against somebody's council tax liability and therefore that should go to a valuation appeal committee. However, we are where we are.

On the commencement of the scheme, if somebody wished to contest their council tax reduction assessment, they should do exactly what they would do at the moment under council tax benefit. Their first port of call should be their local authority, and the decision or determination would be reviewed by different officials within that local authority. If council tax benefit were not to be abolished and were to roll forward from 1 April, and if that individual still wished to contest their claim, they would, at present, take their appeal to Her Majesty's Courts and Tribunals Service and have it heard in the social entitlement chamber. Having read some of the service's literature on its website, I understand that it would expect to deal with an appeal in between three and eight months.

First, it is highly unlikely that appeals about council tax benefit, if it were to continue, or the new council tax reduction scheme, would be made on 1 April; however, if such an appeal were to be made and council tax benefit were to be rolled forward, that appeal might not be heard until November. As a result, although we are in the position that is set out in the cabinet secretary's letter, we would be confident that we could get something in place on a timescale that, I hope, would be better.

To an extent, that position is informed by the likely number of appeals, which again is set out in the cabinet secretary's letter. If memory serves, I think that, last year in Scotland, there were 459 appeals against council tax benefit determinations, something like 380 of which were joint appeals against council tax and housing benefit determinations. Rolling forward entitlement to a council tax reduction very much replicates entitlement to housing benefit and both will be administered by the same people. As a result, there is a very good chance that anyone who appeals against their council tax reduction will also be appealing their housing benefit and, given that such appeals will have due process through HM Courts and Tribunals Service, we are exploring the idea of local authorities adopting very much as a backstop a protocol by which if a housing benefit appeal is heard the local authority will agree to abide by that in the council tax reduction. We are exploring that and other options with Jim McCafferty and the Administrative Justice and Tribunals Council.

Iain Gray: I appreciate that options are being explored and I do not think that anyone doubts the Scottish Government's desire to have an appeals process in place. Nevertheless, as of today, no such process will be in place. Mr Haynes said that he was confident that it could be in place in time to deal with appeals but the legislation abolishing council tax benefit, which has led to our being in this position, was passed in early 2011. I just wonder why we should have such confidence, given that we have had 18 months and now do not have any appeals process in place. Why should we believe this second attempt—

Robin Haynes: The legislation that abolishes council tax—

The Deputy Convener: Please let Mr Gray finish, Mr Haynes.

Iain Gray: Why should we believe that this second attempt will deliver in a matter of months?

Robin Haynes: I should correct something that you have just said. The legislation that abolished council tax benefit was the UK Government Welfare Reform Act 2012, which, as I understand it, received royal assent only last March, not in 2011.

Iain Gray: It might have received royal assent in March, but we knew that this was coming before then. We are still talking about a year. You are asking us to have confidence that a system can be put in place in a matter of months.

In any case, my more fundamental question is: if the subordinate legislation that is before us puts in place a process that, when the Parliament agrees it, will not come with a properly compliant appeals procedure, is there not a problem with its competence? I realise that that is not a happy position, but is that not the position that we are in?

Robin Haynes: I would contest that interpretation. The appeals procedure is set out in the Local Government Finance Act 1992 and the alternative arrangements, which we are now exploring with great haste because of the situation in which we find ourselves, would also be subject to secondary legislation made under the same act.

Iain Gray: So are you saying that although previous legislation contains an appeals procedure for council tax reduction, that procedure will not exist until these regulations are agreed? I do not follow that.

Robin Haynes: I was trying to say that we can no longer use the appeals procedure that is set out in primary legislation that we anticipated using. Alternative arrangements will require further secondary legislation to be laid using powers under sections 80 and 81 of the Local Government Finance Act 1992.

The Deputy Convener: That legislation will be laid in the usual fashion and subject to scrutiny.

Robin Haynes: Absolutely.

Kevin Stewart: Mr Haynes, you said that you were in great haste to ensure that an alternative is in place. How long will that take? Will the alternative be in place before November, which is before the time when many of the appeals would be held should they go to a UK tribunal?

Robin Haynes: That is our ambition. We very much hope to better that, but I would be reluctant to commit to a specific date lest we slipped by a couple of days, for example. Work is proceeding with great haste. We have the greater part of the scheme away from our desks, and we are turning our absolute attention to ensuring that an appeals mechanism is put in place. The person who is probably the most experienced practitioner in Scotland is working with us to identify solutions; we have also engaged the statutory adviser on administrative justice to ensure that people's rights will be protected under whatever arrangements are introduced.

Kevin Stewart: I think that you said that 459 appeals took place last year, of which 380 were joint appeals on council tax and housing benefit. Is that right?

Robin Haynes: I recognise those numbers. The absolute figures may be laid out in Mr Swinney's letter of 26 February.

Kevin Stewart: We are talking about 79 cases each year relating to council tax appeals only. Is that about right?

Robin Haynes: Yes.

Kevin Stewart: Stalling the regulations would affect about 560,000 individuals for a situation in which there may be some difficulty in finding an appeal mechanism in the near future for about only 79 cases. Is that about right?

Robin Haynes: That is a reasonable thing to say.

Kevin Stewart: That is fair.

Linda Fabiani: I want to ensure that we do not, as far as possible, disadvantage people who have had welfare reform imposed on them against the will of the Scottish people and the Scottish Government. We need to get this right.

We are talking about—even if we do not finesse the different joint appeals and other things—less than 0.1 per cent of those who could get council tax reductions who might appeal, judging by previous figures.

Robin Haynes: Yes—if that is what 80 divided by 560,000 comes out at—

The Deputy Convener: We will not test your maths.

Linda Fabiani: I was referring to the original 459 appeals, which is still less than 0.1 per cent. I want that figure to be on the record, because I do not want us to make people think that they will be very disadvantaged.

You say that you are working with others to look for a system that properly addresses the issues. Perhaps it might even be possible to improve how such things are dealt with through your discussions with—I presume—the Convention of Scottish Local Authorities, the appeals tribunal and so on.

Robin Haynes: You make an interesting point. I have seen the letter from the Scottish campaign on welfare reform in which reservations are expressed about the original appeals mechanism that was identified. Although we find ourselves in an uncomfortable position, it may ultimately prove to be serendipitous.

The Deputy Convener: I do not wish to put my maths to the test, but I think that the figure is closer to 0.01 per cent.

Jackie Baillie: You make the point for me, convener. At the end of the day, irrespective of the numbers, the issue is whether or not there is an appeals mechanism at the point at which the benefit transitions to being dealt with in Scotland. In practice, there is nothing on the ground from 1 April.

Robin Haynes: As I said earlier, on 1 April, somebody who wishes to contest a decision about their deemed entitlement to the council tax reduction should do exactly what they do at present under council tax benefit, in that their first port of call is the local authority and they can ask for their case to be reviewed.

10:30

Jackie Baillie: Absolutely, but the point that I am making is that the review mechanism is yet to be determined.

Robin Haynes: No. There would be an internal review within the local authority—a different administrator would look at it. That is exactly what happens at present.

Jackie Baillie: Okay. Does the person then go to the tribunal, or do you still have to put in place the appeals mechanism?

Robin Haynes: Sorry, but are you talking about the situation under council tax benefit or the future council tax reduction scheme?

Jackie Baillie: The future—that is what we are considering.

Robin Haynes: At present, there is no appeals mechanism—that is what we seek to address.

Jackie Baillie: Okay. So, in practice, beyond the internal review, the kind of appeals mechanism that we are discussing will not be on the ground on 1 April. I just want to be clear about that. You anticipate that it will be on the ground to hear first appeals by November.

Robin Haynes: That is not quite what I said.

Jackie Baillie: Oh. Okay.

Robin Haynes: I said that if the UK Tribunals Service was in receipt of an appeal, it may not be able to determine that appeal until November. We have ambitions to get something in place that could better that.

Jackie Baillie: Fine. What timescale do your ambitions relate to? If you are not talking about November and the UK Tribunals Service, what timescale do you anticipate?

Robin Haynes: Again, I would not like to commit myself to a particular date, but in our rough working estimates we are looking to something in the summer.

Jackie Baillie: Okay. That is helpful to know.

If somebody lodges an appeal on 1 April or at some point thereafter, will their existing entitlement continue until the appeal is heard, or will people be parked on their new entitlement until their appeal is heard?

Robin Haynes: I will perhaps look to my colleague to clarify that, but my understanding is that their deemed entitlement would prevail.

Jackie Baillie: Okay.

Robin Haynes: As I said, I would be very concerned if people were to appeal on 1 April.

Jackie Baillie: Indeed.

Robin Haynes: I suspect that the situation that you described is hypothetical.

Jackie Baillie: Sure, but I think that you would share my concern about people being delayed by an appeals process and not retaining their existing entitlement. I am checking whether that backstop will still be there until an appeal is heard.

Jenny Brough (Scottish Government): Can I clarify the question of previous entitlement? If somebody does not agree with what is determined for their entitlement for CTR, they can ask for that to be reviewed. However, that is their entitlement for council tax reduction. Was that what you were referring to?

Jackie Baillie: Someone's existing entitlement is normally preserved while they go through an appeal. If people are financially disadvantaged,

any delay in an appeal will compound that disadvantage. I am interested in protection for the individual and the speed of the process.

Jenny Brough: We will take that away and get back to you on it.

Jackie Baillie: That is helpful. Thank you.

Robin Haynes: Let me see whether I have understood your question. Supposing that we were to apply the timetable that the UK Tribunals Service suggests could be applied and somebody applied for their council tax reduction on 1 April, with the local authority making a particular determination that went through internal review. The individual could appeal that and the appeal could be heard, but in November they could be told, "Ah, no. In point of fact, the entitlement to a reduction was greater." The local authority would therefore re-bill backwards.

Jackie Baillie: Okay, but would it seek to—

The Deputy Convener: I am sorry, Jackie, but Kevin Stewart has a brief supplementary question. I will come back to you.

Kevin Stewart: On average how long would it take a local authority to complete an internal review?

Robin Haynes: I am sorry, but I genuinely do not know.

Kevin Stewart: Does Ms Brough have any idea?

Jenny Brough: I could only speculate.

Kevin Stewart: I think that it would be interesting for us to know that, convener. I know from my local authority background that such processes often take a very long time indeed. I would have to go back a number of years to find a case that I was involved in, but if my memory serves me right, it may take upwards of three months. It is important that we get that information; the position needs to be checked.

The Deputy Convener: Okay. We can reflect on that when we consider the regulations.

Jackie Baillie: I will move us on very quickly. When we pass legislation we need to ensure that it is ECHR compliant and that it is adequate for the job at hand. My genuine concern is that, despite what has been said about the primary legislation, in practice an appeals mechanism is not on the ground, and provision for it is not contained in secondary legislation. I am not suggesting that we do not approve the regulations, but I am concerned that they are not ECHR-compliant and that we may run into difficulties as a consequence. What can you say to reassure me that I am entirely wrong?

Robin Haynes: As a humble official, I am probably not best placed to provide that reassurance. I point you towards the assurance in the cabinet secretary's letter of 26 February, which I hope conveys his commitment to ensuring that something is in place.

Jackie Baillie: I suppose that I am not asking you as a politician. Let us say that I am asking you as an official or a lawyer. I am concerned with the legislation that is before us, not with your intentions, which both you and the cabinet secretary have made clear. I am asking whether we are in danger of passing legislation that is inadequate because arrangements are not in place. It is not ECHR-compliant because there is no appeals mechanism, irrespective of the number of appeals that may come forward.

Robin Haynes: The best reply I can give is that the regulations that are in front of you were never intended to create or establish an appeals mechanism. That is not their purpose.

Alex Johnstone: I am basically looking for the same reassurance that Jackie Baillie is looking for. Having heard the discussion, I see no alternative but to approve the regulations. So many people are dependent on them and the timescales are such that it would be inappropriate for us to do anything else. However, I am looking for the same reassurance that we will have an appeals mechanism that will protect individuals from any disadvantage that they may experience because that mechanism will not be in place on 1 April.

Robin Haynes: Perhaps I could offer a different assurance by demonstrating that we are now working on this almost full time. For example, I spent two hours with Jim McCafferty yesterday, and we are scheduled to meet the UK Tribunals Service at the beginning of next week. We are continually engaging with COSLA and with the profession, and we have other engagements with the Ministry of Justice to explore particular avenues there. As I said earlier, now that our desks are clear of the main rump of the regulations, this issue is the absolute focus of our attention.

Alex Johnstone: And timescale is the significant factor.

Robin Haynes: Some of your colleagues have tried to make me commit to a date. The best I can do at present is repeat the ambition I expressed earlier, which is that we hope to be able to come forward with something in the summer.

Annabelle Ewing: I will pick up on a couple of points. First, I note that in his letter of 26 February, the cabinet secretary provides background as to discussions with the Scottish valuation appeals committee forum. He said that his officials

"met representatives from the Scottish Valuation Appeals Committee Forum on April 3 2012 to discuss ... intentions and the implications for Valuation Appeals Committees".

Those discussions continued and there were several exchanges during the summer of 2012, culminating in representatives of the forum

"engaging on number of detailed points and identifying a likely training need for VAC members and secretaries 'around the time of implementation'.

The cabinet secretary goes on to state:

"Having reached agreement on a way to proceed, it was therefore disappointing that it was not until 22 November 2012 that the VACs first expressed a very different view of their ability or indeed willingness to take on CTR appeals."

That is important in understanding some of the background.

The timing has already been discussed. As I understand it, the legislation has derived from the Scottish Government's determination to ensure that people do not lose out as a result of the Westminster Government's welfare reform proposals in this area. Therefore, the timing has not been of the Scottish Government's making and it has tried to do its utmost to have everything in place, in the form of the supplementary regulations that we are considering today. It is important to bear that in mind.

I understand that, as with all legislation that comes before our committees, the regulations have already been proof-tested for ECHR compliance in terms of the Parliament's legal advisers' role. I assume that the regulations are not an exception to that rule. I also note what has been said about the fact that the regulations do not provide an appeal mechanism per se. However, an appeal mechanism for something that the UK Government is in effect taking away is now being considered. I hope, as Mr Haynes said, that that will provide something better than what was in place before.

I take on board the cabinet secretary's letter of 26 February 2013, in which he said that he is determined to ensure that there will be a system in place as soon as possible. From what we have heard this morning, I hope that that will be a better and more timeous system. Taking into account all that has been said this morning, that is what we should rely on, and I am happy to do so. The situation is not ideal, but it is not of the Scottish Government's making.

The key point is to ensure that the vulnerable individuals whom we have talked about this morning will not see any cuts as a result of UK Government action on this issue. That is not to say that the potential 79 appeals are not important, but it is also important to take into account the practical timing of any appeals.

It has been quite clearly stated that, taking an extreme hypothetical example, even if someone was to lodge an appeal on 1 April 2013 it seems highly unlikely that there would be any date when there was no alternative mechanism in place, given the processes that we know would have to be gone through at the local authority level.

I speak from years of practical experience as a lawyer. We have to look at the legal position against the provisions that are in place, but also in relation to the practicalities of what is involved in invoking those provisions. That is important.

Having listened to the debate, I agree that the position is not ideal. Nonetheless, for the reasons that I have stated, I am keen to ensure that the regulations come into force on the date intended, which is 18 March 2013.

Iain Gray: I will be brief. I want to follow up the discussion that we have had, which I started with my initial questions. I agree with Alex Johnstone that there is little alternative except to approve the regulations, for the reasons that Annabelle Ewing has outlined.

I remain concerned about the principle of the requirement on us to pass legislation on the basis that it is ECHR compliant, and a little disturbed that Mr Haynes is not able to give us his assurance that the Scottish Government believes that to be the case in this instance.

My question is in two parts. First, is it possible for Mr Haynes to consult his colleagues and to correspond with the committee in order to provide us with the assurance that the regulations are, in the view of the Scottish Government, ECHR compliant? That will be after the fact but we are not in an ideal position—that is for sure.

Secondly, if the regulations were never intended to introduce a new appeals system, does that mean that, when the appeals system is designed, further regulations will be laid before the committee in order to put that system in place?

The Deputy Convener: On the latter point, I think that Mr Haynes has already given that commitment, but I invite him to clarify that.

Robin Haynes: The answer to Mr Gray's second question is yes. We already know that we will need to bring forward regulations, under sections 80 and 81 of the Local Government Finance Act 1992, to create a different appeals mechanism. I can tell you now that it will be called a "review" rather than an "appeal".

The Deputy Convener: Thank you. Can you also answer Mr Gray's other question about ECHR compliance?

Robin Haynes: The best answer that I can give is that we are happy to come back on that point.

My initial feeling is that our response will say that, in strict legal terms, there is an appeals mechanism in place called the valuation appeals committee. However, we all know that, with the position that we are now in, in practical terms that will not work. In strict legal terms, there is an appeals mechanism.

Iain Gray: However, we can receive that further assurance after the fact.

The Deputy Convener: Okay. If everyone is satisfied that they have had a chance to have a say thus far, I ask members whether they are content to note these instruments.

Members indicated agreement.

The Deputy Convener: I thank Robin Haynes and Jenny Brough for their attendance. We will have a short four-minute break—we will come back at 10 minutes to 11—to allow for a change of witnesses.

10:46

Meeting suspended.

10:50

On resuming—

The Deputy Convener: Item 4 concerns passported benefits regulations. I thank the witnesses for their forbearance. I think that they were told that they would be starting a little earlier, but the last agenda item took longer than planned.

We will hear oral evidence from the Scottish Government officials on the statutory instruments that have been laid in connection with making provision for access to passported benefits in light of welfare reforms. I hope that the witnesses will forgive me but, because there are so many of them, I will not introduce them all.

I suggest that we deal with each instrument in turn, inviting the officials to give us an explanation of the effect of the instrument, after which members can ask any questions that they might have.

Are members content with that approach?

Annabelle Ewing: Given that the officials are sitting in a particular order, it would be helpful if they could introduce themselves.

The Deputy Convener: They can do that when they speak about the instruments.

Education (Free School Lunches) (Scotland) (Amendment) Regulations 2013 (SSI 2013/64)

The Deputy Convener: We will deal first with the Education (Free School Lunches) (Scotland)

(Amendment) Regulations 2013 (SSI 2013/64). The officials who are going to deal with this instrument will have to leave the meeting earlier than the others, which is why they are speaking first.

Ann McVie (Scottish Government): First I will set the context for the regulations.

I am Ann McVie, and sitting beside me is Stuart Foubister, from the legal directorate. Next to him are colleagues who deal with concessionary bus travel and colleagues who deal with blue badge parking. That is the order in which we are sitting. They will speak when we come to the relevant regulations.

When the Deputy First Minister was at the committee on 8 January, she outlined her intention to introduce legislation to allow universal credit to be used as a qualifying criterion for income-based passported benefits during the universal credit pathfinder period, to include criteria for disability-related passported benefits to account for the introduction of personal independence payments and to make changes to other, non-passported, benefits that need to be amended as a consequence of the United Kingdom Government welfare reforms. That has led to the three instruments that are before the committee this morning.

We are conscious that the legislation is pretty much a list of amendments and that it is, therefore, quite hard to understand what the practical effect of the instruments is. To help with that, we produced the papers that are included in the papers for today's meeting, to try to make clearer what the effect of the individual regulations will be. As the convener has said, we intend to go through each instrument in turn so that there is an opportunity to review each regulation within each piece of legislation and take questions from the committee.

On the changes in relation to universal credit concerning passported benefits, that legislation is only to protect access for anyone who leaves the universal credit pathfinder area in greater Manchester and comes to Scotland. The probability of that happening is quite low. The Department for Work and Pensions estimates that there will be around 5,000 people in receipt of universal credit in the pathfinder area, and those claimants have to meet specific characteristics, which the DWP has set out in its transitional provisions regulations. Basically, they have to be single, over 18, unemployed and fit for work and must not be a householder. It is a small group of people. As I say, the probability of people leaving Manchester and coming to Scotland during that period is low. Nevertheless, the Deputy First Minister decided that it would be better to make provision for that eventuality during the pathfinder

period. That goes along with the commitment to introduce further legislation to set out more fully the criteria for income-related passported benefits before universal credit starts to roll out in Scotland.

The changes in relation to PIP are a little more substantial: they effectively set out the passporting arrangements for disability-related passported benefits. The criteria for that were set out in the Deputy First Minister's letter to the committee dated 22 February. We thought that there might be more questions from the committee about this issue. That is why I have brought along colleagues from Transport Scotland this morning, so that they can respond to any queries. Not to be outdone, I have brought along my colleagues who deal with free school lunches for good measure. Despite the fact that there are quite a lot of us here this morning, we might not be able to respond to every question about these three pieces of legislation. In that case we will come back to you in writing. However, we will do what we can to deal with any queries you have this morning.

The Deputy Convener: Thank you for that opening statement. You indicated that Mr Spivey and Ms Barrie are going to speak to free school meals.

Ann McVie: We were going to ask Mr Foubister to lead on the legal side of things. We can then pick up any policy questions.

Stuart Foubister (Scottish Government): I will explain briefly why we have a separate instrument in this case. The other two instruments are made under the Welfare Reform (Further Provision) (Scotland) Act 2012. The Education (Scotland) Act 1980 already had a tailor-made mechanism for adding qualifying benefits, which was added in the past when it was found that benefit changes in the UK gave rise to the need for changes in Scottish primary legislation about free school lunches. The mechanism is there and we thought that it was the most appropriate route to use to do what is needed now.

Very briefly, according to the explanatory note,

"These Regulations amend the Education (School Lunches) (Scotland) Regulations 2009 so as to prescribe universal credit (payable under Part 1 of the Welfare Reform Act 2012) for the purposes of paragraphs (a)(iv) and (b)(iii) of section 53(3) of the Education (Scotland) Act 1980. The effect is that where a pupil is, or the pupil's parents are, in receipt of universal credit and the pupil is receiving school lunches, the education authority must not charge for the lunches".

The Deputy Convener: Okay. Is there any supplementary comment? Are there any questions?

Jackie Baillie: I suppose that the instrument is straightforward; my question is more general. The committee shares the cabinet secretary's

aspiration that all those who currently receive passported benefits should continue to receive them. Is that completely covered by the school meals regulations, or have some people dropped out of eligibility?

Colin Spivey (Scottish Government): Yes, people who are currently eligible will remain eligible under this regulation.

Jackie Baillie: So even if the conversion from DLA to PIP means that they lose entitlement, they will still be eligible?

Ann McVie: The free school meals entitlement is predicated on income-related passported benefits, so the transition from DLA to PIP is not material here. This is about people transferring to universal credit. The answer to that question is yes.

The Deputy Convener: Thank you.

Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 (SSI 2013/65)

The Deputy Convener: The officials who have been here to deal with all our questions about free school meals, which they have been waiting for, have to head off now, so I invite the officials who are here to speak to the instrument relating to PIP to do so.

Stuart Foubister: We are dealing here with the Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 (SSI 2013/65). The instrument involves the amendment of eight separate pieces of subordinate legislation. I do not know whether the committee would find it useful to go through them regulation by regulation.

The Deputy Convener: On my right, Mr Johnstone is saying yes; that may be a general view.

Stuart Foubister: The simplest thing may be for me to read for the record what is on the table that was issued to committee members. It gives a brief description of what each regulation does.

Regulation 2 deals with the Council Tax (Discounts) (Scotland) Regulations 1992, which provide for care workers to be disregarded for council tax—that is, to be effectively treated as if they do not live in the property, incurring no liability and not affecting any claim for single person's discount by another resident, for example. That treatment is conditional, and a number of factors are to be taken into account. Those include the fact that the individual in question is providing care to a person who is in receipt of

“the highest rate of the care component of a disability living allowance”.

The amendment adds to regulation 2(3)(c) of the 1992 regulations a reference to the daily living component of personal independence payment at the enhanced rate, so that a care worker will be disregarded if caring for a person in receipt of such an allowance.

Shall I simply move on to the next regulation, convener?

The Deputy Convener: You can just run through them, rather than stopping for questions after each one.

11:00

Stuart Foubister: Okay.

Regulation 3 deals with the National Assistance (Assessment of Resources) Regulations 1992. The amendments that are proposed to those regulations allow for the disregard of income respectively from the mobility component and the daily living component of personal independence payment in the calculation of income other than earnings. The intention of these amendments is that those who currently receive either the mobility or the care component of disability living allowance will not have their income from personal independence payment treated differently for the calculation of income following the introduction of PIP.

Regulation 4 concerns the Advice and Assistance (Scotland) Regulations 1996. Regulation 16 of those regulations makes provision as to exceptions from the general rule that a solicitor who is providing advice and assistance must first recover fees from property recovered or preserved before seeking any payment from the Scottish Legal Aid Board. That regulation is amended so that, if the advice and assistance that is given leads to the mobility component of personal independence being paid, any payments of that allowance are excepted from the rule that is referred to.

Regulation 5 is slightly more substantial and deals with blue badge matters. It amends the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000. There are three basic groups of amendments.

First, the amendment to regulation 4(2) will create a new category of person who is entitled to obtain a blue badge. The category covers certain personal independence payment recipients, thus allowing that benefit to be used as a passport to obtain a blue badge.

The amendments to regulation 6 of the 2000 regulations concern the period for which a blue badge may be issued. Those who are passporting from the personal independence payment will get

a badge for three years or, if for a shorter time, until the date on which their PIP award expires.

The amendments to regulation 9 of the 2000 regulations will allow a person who, following assessment, does not receive a relevant PIP award to continue to use their blue badge until its expiry date.

Do members want to discuss that issue now, or should I just move on to the next regulation?

The Deputy Convener: We will go through them first. Members will no doubt want to discuss that issue, but we will go through the rest of the list and then come back to it—I am sure that they will not forget.

Stuart Foubister: Okay.

Regulation 6 amends the Repayment of Student Loans (Scotland) Regulations 2000. The definition of “disability related benefit” in regulation 2 of those regulations is amended so as to include personal independence payment. The result is that someone in receipt of PIP may have student loan liability cancelled out if they are permanently unfit for work.

Regulation 7 amends the Civil Legal Aid (Scotland) Regulations 2002. Schedule 2 to those regulations makes provision concerning the computing of an individual’s disposable income in connection with an application for civil legal aid. Paragraph 7 of that schedule provides for certain allowances and benefits to be disregarded when carrying out that exercise. The amendment as it is currently drafted adds the mobility component of personal independence payment to that list of allowances and benefits. However, after studying the regulations we have ascertained that that is in fact an error, and that we should be taking out of account the total personal independence payment and not just the mobility component. A fresh instrument will be introduced in due course to deal with that.

Regulation 8 amends the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003. Article 4 of that order sets out conditions that must be fulfilled before a person can be disregarded for council tax purposes—that is, effectively treated as if they do not live in the property—on the basis that the person is “severely mentally impaired”. At present, a person fulfils the condition of being in receipt of a qualifying benefit if they are in receipt of the highest or middle rates of disability living allowance care component. The amendment introduces a reference to the daily living component of personal independence payment.

Regulation 9, which is a bit more substantial, amends the National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible

Persons and Eligible Services) (Scotland) Order 2006. The amendments to the 2006 order will enable all those who receive personal independence payment, at either the standard or the enhanced rate, to be eligible for a concessionary travel card, and those who receive the daily living component of PIP, at either the standard or the enhanced rate, to be eligible for a companion card.

Those criteria have been assessed as being the most likely to mitigate the impact of the UK Government’s welfare reforms on the concessionary travel scheme, as they are closest to the current eligibility criteria for those in receipt of disability living allowance.

In addition, transitional arrangements are being put in place to allow those who have been in receipt of a concessionary travel card or companion card but who, following assessment, do not qualify for PIP to continue to be eligible under the scheme until the expiry of the card.

The Deputy Convener: Thank you—that was comprehensive, and we appreciate that.

Jackie Baillie: I welcome the clarification on the Civil Legal Aid (Scotland) Regulations 2002, and I look forward to the new instrument being made.

I return to where I started: the aspiration and ambition of both the cabinet secretary and the committee, which is that everybody who lost benefit in the migration from DLA to PIP would still be eligible for passported benefits. If my reading is correct, that has not been achieved. We can start with blue badges; the concessionary travel scheme operates on a similar basis. According to the documentation, there is coverage for people who move from DLA to PIP, and there is scope for including more people by widening the criteria.

Nevertheless, as regards the blue badge scheme,

“27% may not receive a PIP award and will therefore not qualify for a Blue Badge through the passporting process.”

Potentially, 27 per cent of people will not qualify once their blue badge expires. I am trying to tease out the point that that does not meet the ambition that we had. Was there a particular problem? I understand that it would be a complex matter to continue eligibility for that group of people.

Jill Mulholland (Scottish Government): That group of people will also be able to apply through the normal eligibility criteria, so they may be able to acquire a blue badge through that route. Our main aspiration was to put in place passporting equivalent to what we had under the higher rate mobility component of DLA, and that is what we believe we have done.

If we had considered any of the other criteria under the new PIP arrangements, we might have had equivalent numbers but, we believe, the people concerned might not have been the same people who are currently receiving the higher rate mobility component of DLA.

We believe that the criteria that we have put in place offer us the best solution to protect most of the people who were formerly receiving the equivalent in DLA. Once their blue badge expires, they also have the ability to apply through the eligibility criteria for the blue badge.

Jackie Baillie: But they might not be eligible if one of their key passported benefits is PIP, as DLA will not exist any more.

Jill Mulholland: DLA will not exist any more for working-age people—that is correct. They may not get a passport, because they do not come under the PIP criteria, which we believe are equivalent to the higher rate mobility component. That is purely because, on reassessment, the DWP may assess them out of that category, and that is something that we cannot mitigate. However, we believe that they have a separate route in that they can meet the eligibility criteria for the blue badge.

The Deputy Convener: So they might not be passported on, but they are still eligible under alternative criteria.

Jill Mulholland: They can still apply under the eligibility criteria. They then go through a local authority assessment, which is a desk-based process, and there is a further tier of process with occupational therapists, who assess the person's mobility. The person will be able to apply through that route.

Jackie Baillie: Are the criteria for the blue badge the same across the 32 local authorities?

Jill Mulholland: They are now, yes. We have undergone a reform process, which has standardised the process across all 32 local authorities.

Jackie Baillie: Given that you think that 27 per cent of people may not make it through the passporting process, how many do you think might not be captured, despite your best efforts?

Jill Mulholland: That is something that we can only estimate. I am not sure whether we have some figures relating to the third tier.

Ann McVie: I have a point to make while my colleagues are looking for the figures. In the coming months, we want to work quite closely with stakeholders to make sure that people understand what the new criteria are for the new passporting arrangements and that there is greater awareness of the alternative criteria under which people may

apply so that we reduce the risk of people falling out of receiving passported benefits.

Jackie Baillie: That is very helpful.

Jill Mulholland: When the DWP is doing reassessments, it believes that it will reassess 100,000 people. Of those, 60 per cent who receive the higher rate mobility component of DLA go on to apply for a blue badge. Drilling down into those figures, we see that possibly 27 per cent would not be able to passport but they would still be able to apply through the eligibility criteria. However, we do not know how many would succeed.

Jackie Baillie: So we will fall short of the aspiration of achieving 100 per cent because of the complexity of the system that we are operating.

Sharon Grant (Scottish Government): That is one aspect of it, but the other is that we have no control over DWP decisions.

Jackie Baillie: I understand that. I am defaulting to the committee's aspiration and the cabinet secretary's helpful aspiration that, even if someone falls out of receiving benefits as a result of the DWP, we would ensure that they are covered. I am trying to explore the extent to which that is possible given the complexities of the system.

Convener, might I ask the same question about concessionary travel?

The Deputy Convener: Before you do that, I have a question about the blue badge scheme. What is happening elsewhere in the UK? How does it compare with the arrangements that have been put in place in Scotland?

Sharon Grant: Wales is passporting under the same criteria as Scotland. In England, the Department for Transport has decided to tighten its criteria and it will passport only on the moving around component. It has actively excluded those who have a sensory impairment who would have come through the higher rate mobility component of DLA, and who could possibly still come through PIP. In effect, Scotland and Wales have reached a better position in trying to maintain equivalent criteria wherever possible.

The Deputy Convener: So the schemes in Wales and Scotland will encompass a wider set of people. Jackie, I am sorry to have interrupted you.

Jackie Baillie: No, it is okay. I just want to ask a similar set of questions of those who are responsible for concessionary travel. How many would qualify, and how many might drop out? You are offering continuation of the transport card until its expiry date—is that normally three years?

Thomas Davy (Scottish Government): Three years is a function of the time limits that are put on

disability-linked cards. They normally have a time limit after which they come up for reassessment. The effect of the regulation is that if a card issued by virtue of DLA is reassessed for PIP and the individual comes out of DLA, they will still have the card but only until it expires. After that point—or indeed before it—if the individual is in receipt of PIP, they will qualify for a card. If they are not in receipt of PIP, they could apply on the basis of the basic eligibility grounds.

Those grounds are somewhat different from those for the blue badge. There is a longish list of grounds and they are fairly well defined and objective. For example, the applicant has to bring proof, and if they have lost one or both lower limbs or if they are profoundly deaf, they will qualify for the card on those grounds. I stand to be corrected, but I do not think that we have a detailed understanding of how many people have a DLA-linked card at the moment who would qualify under some of the other, more specific grounds.

Matt Perkins (Scottish Government): It is the same as with the blue badge in that we know who will qualify because we have the criteria that the DWP has provided. What we do not know is what are the characteristics of the individuals who will lose out as a result of the move to PIP. We are not able to say whether they will definitely qualify under other criteria.

Thomas Davy: Historically, we have not collected in any great detail the specific grounds of disability on which applicants were given a card. Since, I think, February, we have been collecting that information, which should help us to monitor the impact of the changes as they come in over the next couple of years. That should give us an indication of whether there is any systematic change in eligibility that might need to be addressed.

11:15

Jackie Baillie: If you are making the same assumption as your colleagues who are responsible for blue badges, you will assume that 60 per cent of people who are currently eligible would qualify under the change from DLA to PIP but 40 per cent would fall out. If I heard you correctly, you are doing a piece of work to establish the underlying characteristics of applicants and, therefore, determine whether they would be eligible. Basically, the gap is as much as 40 per cent. If you are monitoring those characteristics, do you plan to be flexible about the eligibility criteria in the future?

Matt Perkins: We have been able to do some work based on the information that we have received from the DWP. Using the information that it has provided on outcomes of reassessment, we

think that up to 40,000 people who are currently eligible for concessionary travel as a result of DLA would receive no PIP award.

That is a maximum figure, and at least 50 per cent of those who are eligible take up concessionary travel, so around 20,000 people might lose out. However, there are some assumptions in the figures that mean that the number will probably be lower than that. We know only the proportion of all DLA recipients who will get no award, so we have to assume that people with a higher rate award will have the same chance of losing their award completely as those on a lower rate. That is why we think that the 40,000 is a top-end estimate and the actual figure is likely to be below that.

Jackie Baillie: Is the intention to afford flexibility in the criteria in future once you identify the characteristics of applicants?

Thomas Davy: The intention is to review the criteria in the light of experience over the next couple of years. The criteria are specific and well defined, so it will be more a question of whether the Government wishes to introduce changes to them if a pattern emerges of people dropping out of eligibility and not managing to get in by virtue of one of the other grounds. However, we will have to see that in action. We cannot model that degree of detail at this stage.

Kevin Stewart: It would be good if we could clarify that no one who currently has a blue badge or national concessionary travel card will have that taken away from them. Is it correct that it will run until its expiry?

Jill Mulholland: Yes.

Kevin Stewart: Is that correct for both?

Jill Mulholland: Yes.

Kevin Stewart: It would therefore be fair to say that, in many cases, we will have a period in which to consider how many folk fall out of eligibility from passporting.

Ms Mulholland said that all 32 local authorities now operate the blue badge scheme on the same basis. Is that the case when it comes to eligibility criteria, or do some local authorities still have some of their own? Is it a matter of interpretation?

Jill Mulholland: There is a national scheme and we have a set of eligibility criteria that are consistent across that scheme. That was introduced in legislation last March, I believe. We also introduced in legislation an independent mobility assessment with occupational therapists from September 2012. The scheme should be consistent. I cannot comment about whether local authorities are all abiding by that, but that is the intention.

Linda Fabiani: For the record, interpretation matters on such regulations. That is the case even within a local authority. Different parts of a local authority can interpret regulations differently.

Kevin Stewart: On that point about interpretation, Aberdeen City Council has a green badge scheme as well as the blue badge scheme.

Jill Mulholland: Really? *[Laughter.]*

Kevin Stewart: I believe it is the only local authority that has such a scheme. Where does that fit in?

Jill Mulholland: It does not and should not. *[Laughter.]* It is not officially recognised.

Kevin Stewart: Okay. I knew that that was going to be the answer, but I thought it wise to ask. That comes back to the point that local authorities sometimes do their own thing. Interpretation is a great thing in terms of leeway.

You said that work is being done on the eligibility criteria. What factors are being considered?

Sharon Grant: Last year, we redefined part of the eligibility criteria for the blue badge scheme to make it consistent across local authorities. Slightly ironically, we redefined it in line with the higher rate mobility component of DLA. However, we still think that that offers a more consistent approach. We redefined the mobility aspect of the eligibility criteria to bring in persons who are

“unable to walk, or virtually unable to walk”.

We believe that that has brought greater consistency across local authorities.

That has, in tandem with the independent mobility assessments, allowed occupational therapists to work to a model that can be applied across all local authorities, whereas previously the arrangements were very much down to what happened in local areas, so we saw great inconsistency in awarding of badges and the types of mobility impairment that were being awarded badges. I hope that over the next two to three years we will see consistency across the local authorities.

Kevin Stewart: Thank you. I want to move on to the national bus travel concessions scheme. It has been suggested that some of the changes that we have in front of us today may result in an increase in eligibility. Has that been analysed?

Thomas Davy: The expected headline increase in the number of individuals eligible to apply for cards is from around 171,000 now, moving up to 174,000 by 2018. That is the long-run expected change, all other things being equal. In that total are a number of people who are eligible to apply for companion cards. The forecast increase in the

number who are eligible for that is from 125,000 to 134,000. That is the number who are eligible to apply; about half of those who are eligible do so. The costs then depend on usage.

Annabelle Ewing: Going back to the blue badge scheme, I want to clarify one point in annex A in the letter from the cabinet secretary. The following statistic was given in relation to the scheme:

“29% may receive a decreased award. However we have mitigated for this by setting the criteria for passporting at 8 points or more for the “moving around” activity. This is comparable to the current arrangement and will ensure that the majority will continue to passport.”

Can someone clarify the position on that? Excuse my ignorance, but how does putting the threshold at eight points equate with the current situation and therefore mitigate for this group of people?

Sharon Grant: Under the higher rate mobility component of DLA, the criteria for mobility seemed to be wider. When we looked at the threshold for PIP, we saw that a lot of people would have been removed from the enhanced rate of PIP. The DWP’s intention was to remove a lot of people from the enhanced rate of PIP and to reduce their payment to the standard rate of PIP at 8 points. We wanted to mitigate the effects of that and to protect a number of people on the higher rate mobility component who had perhaps not lost their award through PIP, but who may have had a reduced payment, so we included the standard rate at 8 points or more.

Annabelle Ewing: Okay. Is it correct to say that the percentage of people whom the Scottish Government anticipates will benefit from that is not clear?

Sharon Grant: We cannot anticipate the percentage because we do not know what is going to happen. We know that the DWP has publicly intimated the intention to reduce awards under PIP, so all that we can do is try to mitigate the effects of that for passporting. We cannot say how many people will be affected because the DWP has not told us how many or at what levels.

The Deputy Convener: For clarification, are those the people about whom we talked earlier, who are covered by the initiative that is being taken by the Scottish Government and the Welsh Assembly Government?

Annabelle Ewing: I was going to ask what the other nations of the UK have done. It seems that Wales has taken the same approach—or that we have taken the same approach as Wales. What is happening in England on the specific mitigatory measures?

Sharon Grant: On the specific mitigating factor, England agrees. That is the way that England is going.

Annabelle Ewing: Sorry?

Sharon Grant: It is following the 8 points or more measure for the criteria.

Annabelle Ewing: What about Wales?

Sharon Grant: Yes.

Annabelle Ewing: What is England doing?

Sharon Grant: England is doing that as well.

Annabelle Ewing: There seems to be a general measure based on the benefit that can still be passported from, but when we get into the territory of there being no underlying benefit, that passporting becomes a bit moot in strict legal terms because there is nothing to passport from. I guess that you have been wrestling with that for some time.

Jill Mulholland: Yes—you mean for someone who is not getting benefit at all. On the difference between ourselves and Wales and England, Sharon Grant has been describing the “moving around” mobility activities. Scotland and Wales have included one other criterion—planning and following a journey. We believe that that fully reflects the intention of the higher rate mobility component of DLA, but the DFT has not followed that.

Kevin Stewart: I have a final question. The changes will have a major effect. I commend you for doing the best that you can, but some folk who would previously have directly passported will have to enter through eligibility criteria. Will there be a campaign telling folk that they can still apply through the eligibility criteria method, to ensure that as many people as possible still get access to the blue badge scheme and national concessionary car schemes?

Sharon Grant: We are working with the DWP to put pointers in award letters and no-award letters saying that people can contact their local authority to apply for blue badges. The DWP is also issuing a leaflet covering frequently asked questions on the personal independence payment, which will also have pointers on blue badge schemes and other concessionary schemes that are available across the country. We are considering how we get the information to local authorities through our guidance pack and how we can work with local authorities to get that information out to current blue badge holders who may be affected—without causing fear and alarm.

Kevin Stewart: Has the DWP agreed to do that in all the literature that it is putting out?

Sharon Grant: Yes. The DWP has been quite proactive in that regard.

Kevin Stewart: I suppose that that is the least that it can do, considering the slash-and-burn approach of the Westminster Government when it comes to these benefits.

11:30

The Deputy Convener: Witnesses are not necessarily expected to comment on Kevin Stewart's last point. That has exhausted questions in relation to the PIP instrument.

Welfare Reform (Consequential Amendments) (Scotland) (No 2) Regulations 2013 [Draft]

The Deputy Convener: There were eight specific regulations in the previous instrument; there are 21 in the draft Welfare Reform (Consequential Amendments) (Scotland) (No 2) Regulations 2013, on universal credit, so rather than deal with each and every one of them—I hope that you take this the right way, Mr Foubister—could you just summarise them and deal with any on which we may need additional information? We have the relevant information in front of us, so members will still be able to ask questions about any of the regulations.

Stuart Foubister: As Ann McVie said at the outset about universal credit, the intention of the instrument is to provide what we might call a stopgap measure. A pilot scheme is being run before universal credit is rolled out more widely in Scotland and in other places in the United Kingdom. The instrument deals with the possibility of someone from the pilot area ending up in Scotland. That is about all that it does, so there is nothing of any great controversy in it. I cannot pick out anything that is particularly noteworthy. Annex B of the letter from the Cabinet Secretary for Infrastructure, Investment and Cities indicates the effect of each and every change. I am happy to take questions, but it would not be of huge benefit to go into much more detail.

The Deputy Convener: That is helpful. Do members have any questions?

Kevin Stewart: I do not have a question, but I have a comment. The instrument is about being ultra-careful. It demonstrates that the way the UK Government is handling the entire process is causing even more bureaucracy in order to deal with what may happen but probably will not. It is better to be safe than sorry, but the reality is that the UK Government, with its welfare reform set-up, is adding to the bureaucracy that it says it is trying to get rid of.

Jackie Baillie: I always get worried about whether something is being missed out when there is a long list. It just occurred to me, but what will we do—I am sure that you have a wonderful answer to this—as regards the school clothing grant entitlement?

Stuart Foubister: I do not have a wonderful answer. We did a fairly extensive trawl around the Scottish Government to try to find all statutory references. I simply cannot tell you whether the school clothing grant is delivered through a statutory scheme.

Jackie Baillie: Neither can I.

Kevin Stewart: Did Ms McVie not say at the start that the pilot involves single people?

Ann McVie: It does. It involves only single unemployed people who do not have a household income, so it is unlikely that anyone who moved from Manchester to Scotland would acquire children.

Stuart Foubister: That said, we did go to the length of considering free school lunches.

Ann McVie: I can clarify the position in relation to school clothing grants. It is not a Scottish Government passported benefit—it is at the discretion of local authorities. I am not sure what legislation underpins those clothing grants, but I am happy to take that point away and to clarify it.

The Deputy Convener: That would be helpful.

Ann McVie: We are aware that other areas of legislation will need to be amended. There are some specific examples in relation to benefits for police and fire officers, but because a broader suite of regulatory changes are happening in association with the police and fire service reforms, those examples are being considered in that context. What we have presented today is not the end of the story—it is the start of the story as regards ensuring that we pick up all the consequential amendments. There are more to come.

The Deputy Convener: We look forward to that. As members have no more questions, I thank officials for attending and for their evidence. I remind members that we will hear more evidence on these matters at our next meeting.

11:34

Meeting suspended.

11:40

On resuming—

Secretary of State for Work and Pensions (Informal Meeting)

The Deputy Convener: We move to agenda item 5, which we have decided to take in public. Before we discuss the paper that is before us, do members agree that, given that we are about to discuss it in public, it should be made public?

Members *indicated agreement.*

The Deputy Convener: Do members have any comments on the paper that has been prepared in advance of our informal meeting with the Secretary of State for Work and Pensions?

Annabelle Ewing: How long do we have with the secretary of state? Am I right in thinking that we have 30 minutes of his time?

The Deputy Convener: He is coming at half-past 3 on 27 March. The time constraints are actually on both sides, because we will need to keep an eye on decision time. I am not sure precisely how long we will have with him.

Catherine Fergusson (Clerk): There has been no clear indication of time as yet.

Linda Fabiani: So, he might stay with us until decision time.

The Deputy Convener: He might. You never know.

Linda Fabiani: Yeah, right.

Alex Johnstone: It might help you to make some decisions.

The Deputy Convener: I think that we will avoid commenting on that.

Do members have any other comments?

Linda Fabiani: The paper certainly reflects the committee's discussion about how we would deal with the matter. The important point is that although the meeting will not be on the record we have made it quite clear—and apparently it has been accepted—that anything that comes out of it will be put in the public domain as clarification and to allow us to write our letter.

The Deputy Convener: We took the same approach to similar meetings with UK ministers.

Jackie Baillie: The amount of time that we have will be critical in determining priority areas for questioning. Now that the paper is in the public domain, I am sure that the secretary of state's officials will be swarming all over it. I suggest that, if a genuine time issue emerges, we should attempt to prioritise our areas of questioning. I am

happy to leave that to the convener and deputy convener but suggest that we invite written responses to the questions that we might not have time to ask.

The Deputy Convener: That suggestion is helpful. All I would say is that we do not want to limit the range of questions that members might want to raise.

Kevin Stewart: I thank the clerks for their paper, which has been quite good for guidance. It would be useful to know what time we will have for this informal, off-the-record meeting. I reiterate my view that it should have been a formal meeting without time limits so that we could get to grips with the questions about the welfare changes that the people out there are asking us.

That said, I agree with Jackie Baillie that ideally we should have some indication of the time that we will get to ensure that we can prioritise our lines of questioning. We could pick the topics for discussion today, but the reality is that they might well change between now and Mr Duncan Smith's appearance. As we know, something else seems to come up every day. Again, I agree with Jackie Baillie that any questions that we do not get to ask should be followed up by the secretary of state.

The Deputy Convener: In fairness, that last point has been more or less agreed and it has been made clear that we will follow up on any areas that need to be clarified. On the question of time, I am sure that the clerks will seek to clarify with DWP officials how long the secretary of state will be with us. Finally, the committee's position about having an on-the-record discussion has been well made and I am sure that it will continue to reflect on that and proceed as it sees fit.

Alex Johnstone: I, too, agree with Jackie Baillie. Even if we have a lot of time, we need to prioritise issues and ensure that we address them in a structured way and get the most important points dealt with.

I very much welcome the fact that Iain Duncan Smith has agreed to this informal meeting, because it is important that we have an open dialogue with him and develop constructive engagement and a positive relationship. This will be a vital step in building that relationship and demonstrating to Mr Duncan Smith that we are not confrontational and that we wish to engage positively.

The Deputy Convener: I am sure that that goes for the whole committee.

Linda Fabiani: You have left us all stunned, Alex.

The Deputy Convener: I am sure that the clerks will reflect on what has been said. I close the meeting.

Meeting closed at 11:45.

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