

SUBMISSION FROM PROFESSOR PAUL SPICKER

Introduction

I am grateful for the opportunity to submit evidence to the Welfare Reform Committee on the general principles of the Welfare Reform (Further Provision) (Scotland) Bill.

I am Grampian Chair of Public Policy at the Robert Gordon University, Aberdeen, Scotland. My field of activity is social policy, with a particular focus on poverty and social security. My published work on social security includes *Poverty and Social Security* (Routledge, 1993), *Poverty and the welfare state* (Catalyst 2002) and *How Social Security Works* (Policy Press, 2011). In 2007 I served as a special adviser to the House of Commons Work and Pensions Committee for their report on the simplification of social security benefits.

Comments

I wish to confine my remarks to question 10:

"Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?"

In the explanatory notes to the bill, the Cabinet Secretary for Health, Wellbeing and Cities Strategy and the Presiding Officer state that in their view, the provisions of the Welfare Reform (Further Provision) (Scotland) Bill would be within the legislative competence of the Scottish Parliament. I think they are correct in that view, but the proposed legislation has had to be framed within limits prescribed by the 1998 Scotland Act. The restrictions on the powers of the Scottish Parliament are severe, and I am concerned that the powers defined by the Bill may be unduly restricted.

Schedule 5, section F1 of the Scotland Act 1998 reserves to Westminster:

" Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.

Requiring persons to—

- (a) establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or
- (b) make payments to or in respect of such schemes, and to keep records and supply information in connection with such schemes."

Those items which are exempt, and consequently in the competence of the Scottish Parliament, are identified in a list of "exceptions " to section F1. The main exemptions relate to

- social work services
- welfare services for people with disabilities
- promotion of welfare for children in need, and
- assistance for looked after children and young people.

The Welfare Reform Act 2012 makes one significant amendment to this schedule, further exempting "administration and funding of housing benefit and council tax" (schedule 14, repeals).

Any Act of the Scottish Parliament must be read as relating only to those areas where the Scottish Parliament has competence. S.101(2) of the 1998 Scotland Act reads:

"Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly."

However general the powers in this Bill appear to be, then, they can only relate to those areas over which the Scottish Parliament has competence.

With the exceptions noted, no Scottish authority is permitted to give assistance given to individuals "by way of benefits". This restriction necessarily depends on the interpretation of what a "benefit" might be and the status of the legislation by which provision has been developed. The Delegated Powers Memorandum gives examples of "benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance." The proposal to deal with such issues is necessary and appropriate. However, both these examples might reasonably be justified as provision related to education; some other provisions, like fares to hospital, might be represented as part of expenditure on health. That interpretation depends heavily on convention and established practice, and it falls short of general competence to provide support. It is debatable whether local authorities will have any power to deliver benefits formerly developed and delivered at local level, such as assistance with transport, leisure, food vouchers or assistance in job search.

The abolition of crisis and budgeting loans also prompts an immediate concern. The Social Fund is explicitly identified in the Scotland Act (Schedule 5, F1) as an illustration of activity where powers are reserved to Westminster, and it has remained in the illustrations after the passage of the 2012 Welfare Reform Act. The 2012 Act gives the Secretary of State the power to wind up the fund and distribute the money to devolved administrations; it does not give the devolved administrations the right to use the money for the same purpose as it was used for before. Neither the Scottish Parliament nor Scottish local government appear to have the competence to take measures to replace the Social Fund.

In England, local authorities have a general power to make residual or supplementary provision. In Scotland, they do not. This anomalous situation has come about because of the terms of the Scotland Act. In 2000 the UK Parliament devolved additional powers to English and Welsh local government, including a general power to promote well-being (Local Government Act 2000, s 2). The promotion of well-being includes a power to "give financial assistance to any person" (s 2 (4)). In 2003 the Scottish Parliament followed suit (Local Government Scotland Act 2003), using much the same wording as the Act for England and Wales - the power to "give financial assistance to any person" is contained in s.20(2)b. However, if the Scottish Parliament did not itself have the power to give financial assistance to individuals by way of benefits, it could not have directly granted

such a power to local authorities in 2003. The authority for local authorities to deliver financial assistance had to come from the UK Parliament, and has not yet done so.

The Welfare Reform (Further Provision) Bill cannot create new *vires*, or extend the scope of action for Scottish government. The Bill refers only to the consequences of Universal Credit and Personal Independence Payment, contained in parts 1 and 4 of the Welfare Reform Act 2012. The terminology in which the Bill is couched is perhaps confusing: the need to make amendments to existing benefits does not arise mainly from the introduction of the benefits named, but from the abolition of others, such as JSA and DLA. The Bill does not establish powers to deal with the removal of crisis and budgeting loans or restrictions placed on housing support.

Parliament has however, the option to include more general provisions based on its established competences, as recently amended. It should be possible, for example, to regulate the new powers relating to Council Tax or the administration of housing benefits to distribute financial assistance, and to use them in part as the basis for passporting benefits.

This will not resolve all the issues arising from the 2012 Act. The situation that the Scottish Government and Parliament need to deal with suffers from continuing lack of clarity about the scope and impact of the UK reforms, ambiguity and anomalies in the construction of existing powers, and restrictions on the Parliament's scope of action – all in the context of the exposure to risk and vulnerability of some of the poorest people in Scotland.

There needs in particular to be a residual power to promote welfare and to give financial assistance to any person – the same power currently possessed by English local authorities. As things stand, the promotion of welfare, and payments of financial assistance to individuals by way of benefits, are *ultra vires*. This can be rectified only through primary legislation in Westminster. Nothing in the Scotland Bill, currently under consideration, addresses the issues.

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