



The Scottish Parliament
Pàrlamaid na h-Alba

WELFARE REFORM COMMITTEE

AGENDA

6th Meeting, 2012 (Session 4)

Tuesday 1 May 2012

The Committee will meet at 10.00 am in Committee Room 2.

1. **Decision on taking business in private:** The Committee will decide whether its consideration of a draft report on the Welfare Reform (Further Provision) (Scotland) Bill should be taken in private at future meetings.
2. **Welfare Reform (Further Provision) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Dr Stephen Carty, General Practitioner, Black Triangle Campaign;

Dr David Bell, BMA Scotland;

Owen Kelly, Chief Executive, Scottish Financial Enterprise;

Dermot O'Neil, General Manager, Scottish League of Credit Unions;

Laurie Russell, Chief Executive, the Wise Group;

and then from—

Nicola Sturgeon, Cabinet Secretary for Health, Wellbeing and Cities Strategy, Chris Boyland, Policy Executive, Welfare Division, Ann McVie, Team Leader, Welfare Division, and Alison Stewart, Legal Division, Scottish Government.

3. **Welfare Reform (Further Provision) (Scotland) Bill (in private):** The Committee will review the evidence heard earlier in the meeting.

WR/S4/12/6/A

Simon Watkins
Clerk to the Welfare Reform Committee
Room T1.01
The Scottish Parliament
Edinburgh
Tel: 0131 348 5228
Email: simon.watkins@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 2

PRIVATE PAPER	WR/S4/12/6/1 (P)
Written submissions	WR/S4/12/6/2
Report from the Subordinate Legislation Committee	WR/S4/12/6/3
Letter from the Finance Committee	WR/S4/12/6/4
Written submission	WR/S4/12/6/5

Welfare Reform Committee

6th Meeting 2012 (Session 4), Tuesday 1 May 2012

Welfare Reform (Further Provision) (Scotland) Bill: written submissions

Attached are a number of submissions received since the Committee met on 17 April.

	Page no
• Black Triangle Campaign	2
• Carers Scotland	5
• Children in Scotland	12
• Crohn's and Colitis UK (NACC)	14
• Edinburgh Voluntary Organisations Council	18
• Long Term Conditions Alliance Scotland	23
• NHS Lanarkshire	27
• Save the Children	30
• Scottish Association for Mental Health (SAMH)	35
• Scottish Campaign on Welfare Reform (SCoWR)	39
• Scottish Central Branch, National Federation of the Blind	42
• Scottish Independent Advocacy Alliance	45
• Scottish Women's Convention	49

**Welfare Reform Committee
April 2012**

WRITTEN SUBMISSION FROM BLACK TRIANGLE CAMPAIGN

We express our burning concern about the Work Capability Assessment that continues to cause harm on a daily basis.

The GMC in its recent publication on Good Medical Practice states that a doctor must (overriding duty or principle) take prompt action if he thinks that "patient safety is or may be seriously compromised by inadequate... policies or systems.

We are concerned about the contractual arrangements between the DWP and General Practice and it is our view that this contractual arrangement needs to be renegotiated.

The new assessment process, measuring eligibility for about 2.2 million no longer able to access DLA, not only costs government to deliver. It also requires the disabled people being assessed to provide independent medical evidence.

For most disabled people this will be accessed via a GP. GPs are already inundated with ESA tribunal appeal requests. This is at times complicated and time consuming and done through good will - good will which I fear may be in short supply.

The Scottish Government is in a difficult position with Welfare a reserved matter and Health devolved and it is unclear how to mitigate for the changes to come. There exists a nexus between the two areas. The latest report from Disability Rights UK (DRUK) examines the cost of obtaining independent medical evidence from GPs and consultants as part of the new PIP assessment process, and of extra spending on GP appointments and hospital stays as a result of reduced support.

As Cabinet Secretary for Health and Wellbeing, I am sure Mrs. Sturgeon is only too aware of the implications of welfare reform on her brief. #

Through changes to the Quality and Outcomes Framework and local and direct enhanced services, The Scottish Government has worked hard with General practices and the health service as a whole to address the perennial problems of reducing avoidable hospital admissions and preventing unnecessary hospital re-admissions

The Disability Alliance survey of disabled people published last year also suggested 16% would be more reliant on the NHS.

Many disabled people told Disability Alliance that hospitalisation would be required due to an inability to manage health needs through a difficulty attending routine appointments or being unable to meet other health related costs

The Commons Public Accounts Committee has also estimated that 'bed blocking' costs the NHS £170 million per year. If more people need treatment, there is a lower ability to self-manage conditions (as a result of losing financial support under DLA plans), and if less support is available from councils, the risk is also that delayed discharges will rise - resulting in even greater costs for hospitals as a result of DLA plans.

There will be an increase in people requiring council-funded residential care placements

We may be on the brink of a Health and Social care crisis the like of which has not been seen for a generation.

The Black Triangle Campaign would like to insist upon a commitment to establish an Independent Living Fund for Scotland. Independent living is a fundamental human right of disabled persons and must be fully protected.

We will not stand by and see disabled people returned to institutions which will in any event cost a great deal more in the long run than providing the necessary support to disabled people to live in their own homes.

The voice of Scotland's Doctors must be Heeded

General practice in Scotland has called for an end to the WCA "with immediate effect".

The GMC guidelines are clear that a doctor must take prompt action if he thinks that "patient safety is or may be seriously compromised by inadequate... policies or systems"

As a GP I am in a contractual arrangement with the DWP whereby I am *complicit with a process which has been shown to be harmful.*

We are looking upon the Scottish Government and the BMA to take a lead in protecting the safety and the rights of long term sick and disabled persons.

We implore the Scottish Government to halt the implementation of the Welfare Reform Bill until these grave ethical concerns are addressed by the Scotland's health and allied professions.

Wherever it is possible to do so, it is crucial that the assessment system for assessing disability and 'fitness for work' be 'fit for purpose'. We attach an open letter which we prepared to go out to the BMA which sets out our grave concerns in detail.

As Black Triangle, we say with one voice that it is possible to resist Westminster's decrees and that we must if we are not to see more deaths such as Paul Reekie's and the one linked to above.#

This situation is intolerable and we, as Scotland's people must unite across the entire spectrum of our civil society to prevent further harm and maintain our highest ethical standards. UK Welfare 'Reform' threatens to stain with blood our good reputation as a beacon of the progressive values of social solidarity and cohesion.

The Scottish Government must join with the rest of us and the medical profession in fighting back against this barbarism. You have our mandate to do so.

It is possible to withdraw co-operation. The Nuremberg Defence is not an option.

We must insist on a fair and just Scotland. It is our inheritance and birthright and now is the time to stand up for Scotland's sick and disabled people and mobilize a campaign of resistance.

**BLACK TRIANGLE CAMPAIGN
APRIL 2012**

WRITTEN SUBMISSION FROM CARERS SCOTLAND

Carers Scotland is a charity set up to support the thousands of people who care for an elderly partner, sick friend or disabled family member. Carers Scotland is the Scottish nation office of Carers UK. Caring is part of life. Three in five of us will provide unpaid care for someone at some point in our lives. However, without the right support the personal cost of caring can be high with many carers experiencing poor health, poverty and disadvantage. Carers Scotland helps carers and campaigns to make their lives better.

Background

There are 660,000 million carers in Scotland. 72% of are worse off financially as a result of becoming carers¹ because of the combined pressure of low-level benefits, reduced earnings, higher disability related living costs. Many carers' family finances rely on income from carers and disability benefits, changes or reductions to which could have a serious impact on their capacity to carry on caring.

Despite contributing an estimated £10.3 billion to Scotland with the unpaid care they provide, carers receive the lowest benefit of its kind and are often in a financially precarious situation. A Carers Scotland and Carers UK survey of over 1,700 carers showed:

- 79% were struggling to pay essential utility bills
- 53% were cutting back on food to make ends meet.
- 69% were using their own income to pay for care for the person they cared for
- 57% were in debt as a result of caring².

It is clear that carers will be affected directly or, indirectly through the impact of welfare reform on the disabled people for whom they care. This response in its first pages provides background to these impacts.

Carers, Carers Allowance and Universal Credit

There was discussion that Carers Allowance would be wrapped up in Universal Credit and means-tested. However, following campaigning by Carers UK, Carers Scotland and many other organisations, the Government announced last year that Carer's Allowance would be preserved as an independent benefit.

Because Carers Allowance is staying outside Universal Credit, around 49,200³ carers who are in receipt of Carers Allowance in the UK and who receive no means-tested benefits, will be unaffected by Universal Credit.

¹ *Carers in Crisis: Summary results for Scotland*. (2008) Carers Scotland and Carers UK

² Of 1,734 carers responding to the survey *Carers in Crisis* (2008) Carers UK

³ DWP 2008 in *Caring in Scotland: Analysis of Existing Data Sources on Unpaid Carers* (2010) Scottish Government

A further 25,000⁴ carers in the UK receive the carer premium to means-tested benefits like Income Support, as well as their entitlement to Carers Allowance. These carers will be moved onto Universal Credit, but the Government has said that their carer premium will be mirrored by a similar 'additional amount' in Universal Credit, so these carers should not lose out.

However, some carers will lose out. The earnings disregard for carers will not be protected under Universal Credit. This is the amount of money that benefits claimants can earn before their benefits are affected. For Carers Allowance this is £100 a week and this level will not change. But, for carers in receipt of Income Support, the earnings disregard is currently £20 a week. Our analysis showed that, because of the way the earnings disregards are set up in Universal Credit around 50,000 carers in the UK would see their disregard reduced to £13.50 a week if they were able to juggle work and care.

Household benefit cap

Whilst households including a DLA/PIP claimant will be exempt from the proposed household benefit cap this does not protect all carers. The definition of a 'household' in the benefits system includes partners and children under 18, but adult children and other adult relatives are considered to be in a different 'household' for the purposes of the benefits system, even if they live together.

As a result, whilst parents of disabled children and carers caring for a disabled partner would be exempt from the carers caring for adult disabled children or other working-age or older relatives could have their benefits capped. The cap would apply to couples or single parents receiving £500 a week or more, or single people in receipt of £350 or more in benefits. A new impact assessment from the UK Government estimates that 5,000 of around 550,000 carers on benefits in the UK would see their benefits capped, each losing an average of £87 a week.

With Carers UK, we have argued that carers' contribution and the challenges they face in trying to meet the additional costs of caring, set them apart as particularly deserving of exemption from cuts to welfare support. However, whilst acknowledging the contribution made by carers, the UK Government was not willing to accept these amendments, arguing that the number of carers affected would be relatively small and that these reforms were always going to produce 'winners and losers.'

Outstanding issues with Universal Credit

The Welfare Reform Bill states that carers with 'regular and substantial' caring responsibilities will be eligible for the 'additional amount for caring responsibilities' within Universal Credit, and uses the same description when setting out which claimants will be exempt from work-related conditionality. These details will be set out in regulations later this year and Carers UK will be working with the Government and Parliamentarians to ensure that these

⁴ Approximate based on DWP figures for the UK

regulations to not reduce the numbers of carers entitled to the premium or who are protected from conditionality.

In addition, the UK Government has pressed ahead with plans to time-limit claims for the contributory sickness benefit Employment and Support Allowance (ESA). Many people being looked after by carers will be in receipt of ESA as well as DLA. Carers Scotland shares the deep concerns of disability organisations that cutting off support for people recovering from a serious health condition or disability after a year, will not give many people anywhere near enough time to recover sufficiently to start looking for work and will have a significant financial impact on disabled people and carers.

Working Tax Credit

As part of changes to Working Tax Credits, the Government had announced that, from April 2012, couples with children would have to work 24 hours a week between them, rather than the current level of 16 hours a week, in order to qualify for Working Tax Credit. If they were unable to find more work, the benefit would be removed.

At the start of the year, Carers Scotland and Carers campaigned with others to encourage carers to write to the Prime Minister, calling for a rethink on the policy and arguing that carers should be exempt from these changes. Given the unique barriers to work faced by families juggling full-time caring responsibilities for an older or disabled relative along with childcare, we argued many would find it impossible to work the additional eight hours needed and would simply lose the £3,870 tax credit.

In March, the UK Government announced a change to exempt couples with at least one dependent child and where one partner is entitled to Carers Allowance, will continue to be able to receive Working Tax Credit if one parent is working for at least 16 hours a week. This includes people with an 'underlying entitlement' to Carers Allowance. Carers Scotland welcomes this decision but, as the decision was not made until the middle of March many carers will find that they will be required to reclaim if they had not informed the Tax Credits office of their entitlement to Carers Allowance by 6 April 2012.

New entitlement to childcare costs

As well as protecting carers from this change, the Government has announced that couples receiving Working Tax Credit which include someone receiving Carers Allowance will now be able to claim extra tax credits for childcare if they pay for registered/approved childcare. Again this is to be welcomed. However, carers must inform the Tax Credits office by 6 May 2012.

Personal Independence Payment

The UK Government's plans to introduce Personal Independence Payment (PIP) to replace Disability Living Allowance (DLA) are of significant concern. Alongside changes to the structure of the benefit, all existing and new

claimants will be reassessed through a new face-to-face assessment, and there will be significant reductions in the budget as DLA is replaced by PIP. We have deep concerns about the devastating impact of planned cut to the budget which impact assessments show will lead to 500,000 fewer disabled people being entitled to benefits when Personal Independence Payment replaces Disability Living Allowance. We believe this reduction of 23% in the number of people eligible for disability benefits will have a devastating impact on the lives of disabled people and their families. Members of the House of Lords echoed our disappointment at the lack of a carer impact assessment – as there is the risk that people currently in receipt of the higher and middle rate care component of DLA will lose their benefits as PIP is introduced, and that carers looking after them will lose Carer's Allowance as a result.

However, we welcome the decision in December following campaigning from Carers UK and pressure from all parties, to bring forward a decision on how Carer's Allowance would be linked to Personal Independence Payment and that both rates of PIP "daily living" component would act as 'gateways' to Carer's Allowance. Carers UK had raised strong concerns that only the highest rate of Personal Independence Payment would be linked to Carer's Allowance, meaning that fewer carers would be entitled to support. This decision helps to maintain carers' existing rights to Carer's Allowance.

Welfare Reform (Further Provisions) (Scotland) Bill – Stage 1

Carers Scotland welcomes this opportunity to respond to the Bill at Stage 1. In the first instance we recognise the necessity of the Bill and the need to provide Ministers with the relevant powers before comprehensive information is available on Universal Credit and Personal Independence Payment. We believe this is necessary to ensure that families, particularly those with disabled people and carers are not further disadvantaged through losing out on other "passport" benefits by delays beyond the control of the Scottish Parliament.

Carers Scotland has been sought to provide a perspective on the issues that will impact upon carers in the Welfare Reform Scrutiny Group and in its subgroup on disability and has welcomed the partnership approach taken by the Scottish Government, Scottish Parliament and statutory and voluntary partners. The impact on carers and their families has been considered throughout the process and we urge the Scottish Parliament to continue this to mitigate some of the negative effects of welfare reform on carers in the areas where the Scottish Parliament has these powers.

Carers Scotland strongly urges the Scottish Parliament to ensure that Carers Allowance and those with an underlying entitlement to Carers Allowance remains a benefit passport to existing support. This includes support currently available through eligibility to income support (for those carers with an underlying entitlement) which includes legal aid, 100% of approved expense for disability adaptations and help with health costs and for support where receipt of Carers Allowance is the qualifying criteria, for example, individual

learning accounts and a gateway to support in Stages 3 and 4 of the Scottish Energy Assistance Package⁵

Furthermore, in order to support carers to provide care, it is also vital that existing passported benefits available to those receiving Disability Living Allowance whose allowance continues under Personal Independence Payment. Carers Scotland recommends that all current support continues to be passported but in particular, support for transport and mobility (e.g. the blue badge scheme and concessionary travel).

We would also urge the Scottish Government to consider examining the merits and costs of developing transitional arrangements for passported benefits for those disabled people and carers who lose their entitlement through the introduction of Personal Independence Payments.

Successor arrangements for Council Tax

Carers Scotland again would recommend that carers existing entitlements and those of disabled people are protected within successor arrangements. These entitlements are currently linked to caring responsibilities and the disability or disability benefits of the person they care for rather than through the benefit system.

At present, some carers can qualify for a council tax reduction if they live in the same property as the person they care for, provide at least 35 hours of care each week and the person they care for is receiving one of the following:

- higher rate of the care component of Disability Living Allowance
- higher rate of Attendance Allowance
- an increased Disablement Pension
- an increased Constant Attendance Allowance

However, the person they are caring for cannot be their spouse, partner or child under 18 years old.

This can make carers and the person they care for invisible for council tax purposes and be eligible for a reduction of up to 50% of council tax.

In addition, people who are severely mentally impaired can also be deemed invisible for council tax purposes and, if they live alone, would be exempt from paying Council Tax. Furthermore, carers who leave their own property to care for someone, leaving it unoccupied can be exempt from paying Council Tax on the empty property.

The successor arrangements should also incorporate the current disabled band reduction. This is available to disabled people whose home has been adapted to provide an additional room, bathroom or kitchen to meet the needs

⁵ The entitlement to Stages 3 and 4 of the Scottish Energy Assistance Package to those in receipt of Carers Allowance was not included in the list detailed within the Financial Memorandum (para 64).

of that disabled person or where extra space is required to allow for the use of a wheelchair. If one or more of these requirements are in place, the Council Tax Band is reduced in recognition that the person (whether they are a child or an adult) requires a larger property because of their disability.

Successor arrangements for Community Care Grants and the Social Fund

Carers Scotland urges the Scottish Parliament to ensure that successor arrangements continue to provide support and work for disabled people and their carers and, that future regulations developed reflect aim to improve outcomes for both.

As outlined on page one of this response, carers (and often therefore carer/disabled person households) face real financial hardship. These households on low incomes (including those over relevant means tested thresholds) often have little flexibility to be able to purchase disability or household items. Many carers are in debt (57%), with over half (59%) reporting debts between £1,000 and £10,000 and more than a third (34%) having debts of more than £10,000. Most carers (69%) have used savings or income to pay for care and over a third report having difficulty paying for normal household costs including rent or mortgage (34%), the cost of essential repairs (79%) and utility bills (79%).⁶

Moreover, with increasing charges for social care services, this lack of financial flexibility has meant that 48% of carers report cutting back on caring support services or supplies (such as respite or equipment) because they cannot afford them. This does little to prevent crisis or to improve outcomes for carers and disabled people.⁷

With this in mind, Carers Scotland recommends, as outlined as a potential option the Scottish Government consultation “Devolution of Community Care Grants and Crisis Loans” that it would support carers and disabled people more effectively and mitigate the financial impact of caring to extend eligibility to include those in receipt of non-contributory benefits e.g. Carers Allowance and Disability Living Allowance. We recognise that there are financial constraints on the Scottish Government and local authorities and suggest that this recommendation could be particularly focused to those on low incomes that are above the current income support or pension credit guarantee element levels. Consideration should be given to the role of social work departments in delivering support to disabled people and their carers and tightening eligibility criteria. Utilising reformed community care grants could help deliver better outcomes by enabling low level interventions to reduce the likelihood of crisis that currently do not meet authorities eligibility criteria

Conclusion

Carers Scotland hopes that consideration of the Welfare Reform (Further Provisions) (Scotland) Bill at Stage 1 recognises that key role that carers play

⁶ *Carers in Crisis: Summary results for Scotland (2008)*, Carers Scotland and Carers UK

⁷ *ibid*

in supporting disabled and older people to remain in their homes and communities, preventing more costly interventions such as admission to hospital or residential care. In recognising this role, it is essential that devolved provisions seek to mitigate the impact of welfare reform on carers and those they care for by ensuring, at a minimum, that they are not further disadvantaged by loss of support from passported benefits and in successor arrangements for council tax benefit, community care grants and the social fund.

**CARERS SCOTLAND
22 APRIL 2012**

About Carers Scotland

Carers Scotland is a charity set up to support the thousands of people who care for an elderly partner, sick friend or disabled family member. Carers Scotland is the Scottish nation office of Carers UK. Caring is part of life. Three in five of us will provide unpaid care for someone at some point in our lives. However, without the right support the personal cost of caring can be high with many carers experiencing poor health, poverty and disadvantage. Carers Scotland helps carers and campaigns to make their lives better.

Carers Scotland achieves this by:

- campaigning for the changes that make a real difference for carers.
- providing information and advice to carers about their rights and how to get support
- mobilising carers and supporters to influence decision makers.
- gathering hard evidence about what needs to change.
- transforming the understanding of caring so that carers are valued and not discriminated against.
- providing carer awareness and specialist training for staff in health, social care and the voluntary sector
- promoting training for carers to maximise their skills and experience.

WRITTEN SUBMISSION FROM CHILDREN IN SCOTLAND

Children in Scotland welcomes the opportunity to submit further evidence to the Welfare Reform Committee. We are concerned primarily about the impact that the changes to the UK benefits system will have on Scottish children.

We will focus here on the changes to the current passported benefits that will be an inevitable consequence of the introduction of the UK's Universal Credit. Entitlement to many benefits provided through the Scottish Government, the NHS and local authorities has historically been dependent on eligibility for certain UK welfare payments. The Scottish Parliament now has the opportunity to introduce a scheme that effectively meets the needs of children and families in Scotland in a straightforward and accessible way.

Children in Scotland believes that a key principle underpinning the Committee's eventual conclusions should be that no Scottish family should end up being worse off as a consequence of these UK changes.

Most recipients of current benefits are expected to receive Universal Credit (and should transfer seamlessly to the new system). Thus, eligibility for Universal Credit should provide an automatic entitlement to passported benefits under the new system. Any current recipients of a passported benefit should continue to receive it, including those whose entitlement to Universal Credit has not been established at the point of the new system being introduced. The Scottish Campaign on Welfare Reform submitted evidence to the Social Security Advisory Committee in 2011 that sets out a detailed rationale for taking this approach.

Children in Scotland urges the Welfare Reform Committee to ensure that the new system is simple to understand and straightforward to access.

While the Scottish Parliament has made clear its disquiet in respect of the impact of much of the UK Welfare Reform Act, its objective of simplifying the benefits system is one with which few would disagree. The Welfare Reform Committee has the opportunity to develop a simple and accessible system in respect of passported benefits. Again, using Universal Credit as the 'passport' would seem to provide an obvious and manageable way of achieving this end. This has the advantage of not requiring multiple, complex and costly assessments.

Children in Scotland recommends that the Welfare Reform Committee prioritises the needs of children above other considerations.

One in four Scottish children is currently living in poverty, with children under three being the most impoverished group in our society. Poverty is not only a disadvantage in itself; it is highly correlated with other factors that limit children's potential and inhibit their wellbeing. It is not a child's fault that they are part of a family that depends on the welfare system for their income. Key

policies of successive Scottish governments have sought to reduce inequality and support children's healthy development. The rights of children to be brought up in circumstances that help them do as well as possible should be respected and promoted. Any decision made by the Committee should reflect this. Strenuous efforts should be made to look at, and plan for, meeting family needs holistically. Access to benefits should (in line with GIRFEC) facilitate signposting, referral and shared plans in respect of child and family wellbeing. This should include access to services such as childcare that support children's healthy development and enable parents to enter the labour market. The Committee should consider how it might encourage the Scottish Government to invest in such services. The forthcoming Children's Services Bill provides an ideal opportunity to ensure that each Scottish child and family has a specific entitlement to childcare. As well as no family losing out, no Scottish child should be left behind as a result of UK welfare reform.

Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including the majority of Scottish local authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland's largest independent education mediation service.

WRITTEN SUBMISSION FROM CROHN'S AND COLITIS UK (NACC)

Inflammatory Bowel Disease

Approximately 240,000 people in the UK have Crohn's Disease or Ulcerative Colitis, collectively known as Inflammatory Bowel Disease (IBD). Prevalence is higher in Scotland than in other parts of the UK, with latest research suggesting that one in every two hundred people in Scotland live with one of these lifelong conditions. IBD most commonly first presents in the teens and early twenties (mean age a diagnosis is 29.5 years). In IBD the intestines become swollen, ulcerated and inflamed. Symptoms include acute abdominal pain, weight loss, diarrhoea (sometimes with blood and mucus), tenesmus (constant urge to have a bowel movement), and severe fatigue. Symptoms vary in severity from person to person and from time to time and relapses often occur suddenly and unpredictably. Between 50% and 70% of patients with Crohn's Disease will undergo surgery within five years of diagnosis. In Ulcerative Colitis, lifetime surgery rates are approximately 20-30%

Crohn's and Colitis UK

Crohn's and Colitis UK is the leading charity offering information and support to anyone affected by these conditions. Established in 1979 as a partnership between patients, their families and the health professionals caring for them, the charity's services include four helplines, a website, a wide range of accredited information sheets and booklets and a nationwide network of locally-based Groups. The charity raises awareness of these little understood or known conditions, campaigns for improved care for patients, funds vital research and seeks to influence policy to ensure that it reflects and meets the needs of people living with IBD.

Personal Independence Payments

Crohn's and Colitis UK are calling for a fairer assessment which includes a wider range of activities. This is needed to make the system more sensitive to the complex needs of people living with long-term conditions and to ensure the system is able to adequately recognise and measure the additional costs encountered by people with little understood conditions such as IBD.

We are disappointed that draft regulations published by the UK Government appear to include a much narrower range of activities than DLA, which PIP seeks to replace, and are concerned that these focus only on those activities required for the bare essentials of existing.

Range of activities

For people with IBD, participation in social activities can be important in reducing the sense of social isolation, which is known to be a serious problem for some, and help needed to support people to engage in such activities should be recognised in the assessment. Failing to account for activities of

particular importance to the individual, beyond those currently included in the draft descriptors proposed by the UK Government, will lead to a system that is less sensitive to the complex needs of people living with the myriad of disabilities and medical conditions that PIP aims to support. Consequently, the assessment will fail to adequately recognise or measure the additional disability costs and barriers to participation encountered by people with little understood conditions such as IBD.

We know from members of Crohn's and Colitis UK that the fluctuating nature of their condition makes it more difficult for them to establish their entitlement to DLA. The criteria for PIP should recognise the difficulties of people whose abilities may fluctuate within each day, but also others whose abilities may fluctuate over a longer period of time. The nature of IBD means that a person may experience periods of reduced symptoms if their disease is in remission, but the unpredictability of the condition means that they never know when it may flare-up again. We remain concerned that the proposed 12 month rule may have a disproportionate effect on people with conditions such as IBD who may have periods within this time when their symptoms are reduced.

Crohn's and Colitis UK welcome the inclusion of a descriptor which specifically assesses the impact of managing toilet needs or incontinence. However, we believe that this descriptor should account for the impact of the frequency and urgency experienced twenty four hours a day by people living with conditions such as IBD, and that it will be limited in its application if it fails to take into account the difficulties experienced in getting to a toilet (inside or outside the home) and cleaning up after using the toilet or an episode of incontinence. Help with cleaning the toilet or surrounding area is a specific need arising from a medical condition which goes beyond the cleaning that is required in relation to general household duties. We believe that the need for assistance with changing bedding following an episode of incontinence or leakage from a stoma appliance should also be addressed in the assessment.

Mobility Activities

Planning and following a journey:

For people with IBD, what determines whether a journey is achievable or not is often the proximity and availability of publically accessible toilets.

Crohn's and Colitis UK believe that the descriptor which assesses mobility activities should account for the full range of disability-related costs in getting around, including the need to use taxis or the additional fuel and wear and tear on a personal car for those who have rely on these modes of transport because their toilet needs, continence problems and lack of public toilet facilities prohibit the use of public transport.

Moving around:

Crohn's and Colitis UK would like to draw attention to CDLA/217/2009 which considered "the physical and muscular effort involved in trying to control [her] bowels" and "the very real effects of an episode of faecal incontinence" on the appellants mobility.

We believe these factors should be recognised and taken into account in the PIP assessment of this descriptor.

Measuring additional IBD-related costs

Planning and buying food and drink:

People with IBD may experience additional costs associated with buying food and drink. For example, they may need to buy more costly food to increase their intake of certain nutrients to address deficiencies, or modify their diet to avoid certain foods or food additives which exacerbate their symptoms. The need for frequent and urgent access to toilet facilities and the fatigue associated with IBD may necessitate the use of taxis to and from the shops or the use of online shopping facilities. Crohn's and Colitis UK ask that these additional costs of buying food and drink are recognised in the assessment..

Dressing and undressing:

Laundry or high utility costs may be incurred by people with IBD who have to wash their clothes more frequently due to soiling. The need to replace clothes more frequently because of excessive wear and tear arising from frequent washing, or extreme fluctuations in weight due to the condition or the drugs prescribed to treat it, also attracts additional expenditure. Crohn's and Colitis UK believe these extra costs should be recognised in the assessment, in addition to the needs arising from the physical ability to dress.

Other factors

Crohn's and Colitis UK believe that consideration should be given to the additional cost of utilities for people living with disabilities or long-term medical conditions. In particular, we know from calls to our Helplines that people with IBD worry about water bills arising from increased laundry costs and the need flush the toilet more frequently. Higher heating costs also apply to people whose condition means that they spend more time in the house.

Blue Badge

Ineligibility for the blue badge means that, for a substantial number of people with IBD, participation in daily life is a difficult challenge. The sudden and uncontrollable need to use a toilet is a genuine and recognised symptom of IBD, and experiencing an episode on incontinence is each individual's worst nightmare. Such an episode often results in a devastating impact on the individual's ability to engage in activities beyond the home and can lead to social exclusion and poorer health. Many people with IBD apply for the blue

badge, hoping that it will allow them to quickly access parking facilities and find a nearby toilet should they experience a flare in their condition away from the home.

In linking eligibility for a Blue Badge to the receipt of the Mobility Component of PIP, an application made by a person with IBD is likely to be identified as ineligible within the confines of restrictive criteria which continues to ignore how the condition can impact on mobility.

Crohn's and Colitis UK believe the underlying problem to be a fundamental lack of knowledge and understanding of IBD and the impact the condition can have on the mobility of an individual, such as the pain and discomfort experienced by those experiencing a flare when attempting to walk. Any assessment should measure the impact IBD has on the individual's mobility during a flare; more specifically, it must account for the affect that severe diarrhoea, abdominal pains and the urgent and uncontrollable need to access a toilet can have on the individual's capacity to walk (move around). Crohn's and Colitis UK would like to draw attention to CDLA/217/2009 which recognises "the physical and muscular effort involved in trying to control [her] bowels" and "the very real effects of an episode of faecal incontinence" on the appellants mobility.

In conclusion

Crohn's and Colitis UK are concerned that the range of activities covered in regulations which will determine entitlement to PIP is too narrow. This, we suggest, could render it ineffective in its stated aims of supporting participation and contributing to the extra costs associated with living with a disabling condition such as Crohn's or Ulcerative Colitis.

We would be happy to discuss any of the comments or suggestions made in this paper, and look forward to the opportunity to engage further with the Scottish Government in relation to the Welfare Reform agenda in Scotland.

**CROHN'S AND COLITIS UK (NACC)
23 APRIL 2012**

**WRITTEN SUBMISSION FROM EDINBURGH VOLUNTARY
ORGANISATIONS COUNCIL**

On Friday 23 March 2012, the Scottish Parliament's Welfare Reform Committee opened a call for written views on the general principles of the Welfare Reform (Further Provisions) (Scotland) Bill.

This Bill follows from the Scottish Parliament decision in December 2011 to withhold Legislative Consent (in part) to the UK Welfare Reform Act 2012, and is – in that respect – unique in the history of the Scottish Parliament. The Bill itself enables Scottish Ministers to introduce regulations as needed primarily to ensure that people in Scotland are not disadvantaged when Universal Credit and Personal Independence Payment come into force.

The Bill proposes that the Scottish Government be given powers over devolved welfare matters and reserved welfare matters on which the Scottish Parliament voted to accept responsibility itself, rather than agreeing that the UK Parliament do so.

On behalf of Edinburgh's Third Sector – a term which encompasses the breadth of organised voluntary and community activity that enriches the lives of citizens and the social fabric of the city – Edinburgh Voluntary Organisations' Council held an open discussion event on Thursday 5th April to share information about the Scottish Parliament's intentions regarding Welfare Reform, and to gather views from Edinburgh's Third Sector.

Edinburgh Voluntary Organisations' Council (EVOC) is the capital city's CVS (Council for Voluntary Service) and helps to support, develop and promote the interests and the work of voluntary and community organisations in Edinburgh.

We did not attempt to answer the Committee's questions directly, but ourselves posed this set of questions for participants to consider:

- Is the Welfare Reform (Further Provisions) (Scotland) Bill adequate to deal with the impacts of UK Welfare Reform?
- What powers should the Scottish Parliament and Scottish Local Authorities use to minimise the negative impacts of UK Welfare Reform? and, perhaps the 'core' question:
- What principles would you like to see characterise a Scottish response to Welfare Reform?

We have not attempted to reproduce here the full detail of the conversation, but have drawn out the key themes which clearly evoked interest from representatives of Edinburgh's Third Sector.

CONTEXT

Last Summer EVOC led on the development of the Edinburgh Third Sector Manifesto for Council Elections 2012 published in Autumn 2011. This document describes the city's Third Sector as:

- Essential to citizens' Health and Well-Being
- Driven by a desire to co-create a Just Society
- Rooted in communities and Responsive to Need
- Expert in Prevention, Early Intervention and Innovation
- A Voice for people and communities which are least heard
- Vital to the city's Economic, Social and Environmental Sustainability

Broadly, these are the values which drive the Third Sector's work: Mutuality, Equality and Human Rights.

The Third Sector traditionally engages with marginalised and disadvantaged communities who are least often listened to. In many – if not most – cases charities, voluntary groups and social enterprises are founded on a desire to right a wrong, motivated by a thirst for social justice.

Ever since the global recession of 2008 the impacts of fiscal tightening, rising inflation and a dearth of stable jobs paying a living wage have been filtering through the system. There is a sense within the Sector that vulnerable people are running out of options fast. Caught between reducing resources and increasing demand, Third Sector organisations find themselves in an impossible bind. Individuals and organisations report growing levels of stress and anxiety which show few signs of abating.

We do recognise that the vision of a Welfare State which provides a universal 'safety net' for those who need supports which enable the exercise of their inherent capabilities may not be in fashion today, but until our society has a workable alternative we must see welfare as central to a whole-society response to poverty and inequalities.

It is precisely because the Third Sector is rooted in (and because the Sector often feels responsible for) vulnerable communities that we consider it vital to respond to the Welfare Reform Committee's call for written views.

KEY THEMES

Tough Choices:

We understand that the Committee and the Parliament will have to make difficult moral judgments which will impact significantly on Scottish citizens. We recognise that Parliamentarians are elected – in part – precisely for that purpose: to make tough choices on our behalf. We will not, therefore, attempt to make those choices for you – our only

hope is to help provide views which will inform the Committee's and the Parliament's 'moral compass.'

Urgency, not Haste:

We urge the Committee and the Parliament particularly to seek the appropriate balance between the need for urgent action (disadvantaged and vulnerable people are already feeling the impacts of UK Welfare Reform) and the imperative not to take hasty decisions. We would expect the Committee and the Parliament to act decisively, but not too hastily.

That some details of how UK Welfare Reform will play out are still unclear is, in this regard, an added complication. This lack of clarity should not be allowed to prevent the Committee and the Parliament from taking action urgently.

The role of Evidence:

There is currently much interest in and energy around the concept of 'evidence-based policy-making.' Broadly, the drive is to base policy on credible evidence rather than on matters of belief. This way, the argument goes; policies will better stand the test of time and will not be susceptible to a change of heart. Rather, policy will respond to robust, credible and objective evidence. Two points are worth noting at this point: 'evidence' must include both statistical data *and* stories, and 'policy' founded on shared moral values should not be confused with policy based on subjective sentiment.

One trend which clearly concerns observers is the apparent increase in policy-making that is based on 'outlying' evidence rather than on the majority of cases. One example might be the current proposal to cap tax relief from charitable donations. While few would question that there are some wealthy people who avoid tax by making donations which have the semblance of being charitable, most would question whether universally-applicable Government policy ought to be built on the experiences of a tiny minority of people.

We call upon the Scottish Parliament – and particularly the Welfare Reform Committee – to seek out and gather robust and credible evidence on three core themes.

1. The Committee should gather evidence regarding the impacts (immediate, indirect and consequential) both on individuals and on agencies (including Third Sector organisations, Local Authorities, and all Registered Social Landlords.)
2. With experience of preventative approaches, the Committee should gather evidence of what works to prevent what has come to be described as 'failure demand' in the future. Recognising that the Welfare Reform is already under way and the impacts of

these changes are already being felt, the Committee and the Parliament should consider what steps they can take to prevent negative outcomes arising as a result of these changes.

3. The Parliament and the Committee needs to develop a measure of relative benefit to different sections of Scottish society of universally provided 'goods.' Recognising that times are tough and hard choices would have to be made, we think the Committee and the Parliament should develop nuanced analyses of the real benefits to all sections of Scottish society of such 'public goods' as (for example) free prescriptions, free bus travel for pensioners.

Such evidence will – in our opinion - enable the Committee to make *informed* moral choices, based on a robust evidence base. It is worth noting here – in the context of the previous section 'Urgency, not Haste' – that significant evidence of what works is already available. This is *not* an argument for delay.

An Enabling Approach:

We clearly recognise that this Bill will be 'enabling' legislation, and will not spell out the particular changes which will need to be brought in via regulations in due course. Simultaneously, we are mindful that Scotland is a diverse country, where Welfare Reform is likely to impact quite differently on (for example) rural and urban populations.

That being the case, we call on the Committee to take steps to ensure that locally appropriate solutions can be developed, funded and delivered by 'intermediaries' on behalf of the Scottish Parliament. The Committee and the Parliament should empower Local Authorities and Third Sector organisations to trial solutions (to the 'problem' of Welfare Reform which could harm individuals and communities) which work for them and for their communities. If such 'trials' are successful, with robust evidentiary analyses they could then be 'rolled-out' as appropriate.

Obviously, we would expect the Committee and the Parliament to ensure that such 'locally appropriate' solutions meet a minimum standard – avoiding unjustified geographical variations.

An Opportunity instead of a Threat:

Whilst we have little doubt that changes to the Welfare system are very likely to impact negatively on some (perhaps many) people, the optimists among us consider this an opportunity for the Committee and the Parliament to stand up for the values it holds dear. If the Parliament and the Committee believe that it is the role of the State to support the most vulnerable people in our society, then this is an opportunity to make that manifest. If the Committee and the Parliament believe that

enabling and encouraging others to take action where its own powers might have limited reach, then here is an opportunity to unlock the untapped talent that lies in Scottish Civil Society. As the Committee and the Parliament develop the relevant regulations, they must ensure that further consultation takes place, and that any decisions are subject to robust scrutiny. This process must meaningfully include Scotland's Third Sector.

CONCLUSION

We hope that these comments are taken in the constructive spirit in which they are intended. Although we have not submitted these views in time to be considered to give oral evidence to the Committee, we are more than happy to share our thoughts with yourselves by any other means you may think best.

WRITTEN SUBMISSION FROM LONG TERM CONDITIONS ALLIANCE SCOTLAND

The Long Term Conditions Alliance Scotland (LTCAS) strongly welcomes the establishment of a Welfare Reform Committee within the Scottish Parliament and the introduction of the Welfare Reform (Further Provision) (Scotland) Bill.

While the simplification of social security benefits into a Universal Credit is broadly welcome, the drive from the Department for Work and Pensions to reduce spending on disability benefits by 20% from 2013-14 is creating significant concern among many people who are disabled and/or living with long term conditions.

It is essential that the Scottish Government acts to mitigate the negative impacts so that we avoid a legacy of inequality and complex social problems that will be very difficult to reverse.

1. What are the biggest concerns/priorities for your organisation in relation to welfare reform?

People who are disabled and/or living with long term conditions are already far more likely than others to be living in poverty, experiencing debt and be unemployed or in low paid, less secure employment^{8,9,10}. There is a wealth of evidence demonstrating the higher cost of living associated with being disabled¹¹.

The welfare reforms are resulting in a significant drop in income for many people who are disabled/living with long term conditions, accompanied by greater compulsion to enter work. This is compounded by the current context in which cost of living generally is rising, the labour market is becoming more competitive and much of the support and services upon which people rely are being cut (or eligibility criteria and charges raised¹²).

The UK's Joint Committee on Human Rights recently highlighted the threat to independent living as a result of the welfare reform programme. It warned that; *"restrictions in local authority eligibility criteria for social care support, the replacement of the Disability Living Allowance with Personal Independence Payment, the closure of the Independent Living Fund and changes to housing benefit risk interacting in a particularly harmful way for disabled people"*. The

⁸ Wendy Loretto and Matt Taylor, Characteristics of adults in Scotland with long- term health conditions, University of Edinburgh and Scottish Executive Social Research (2007)

⁹ Clare Lardner, Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (July 2006)

¹⁰ A Working Life for All Disabled People The Supported Employment Framework for Scotland – Summary Report, The Scottish Government (2010)

(<http://www.scotland.gov.uk/Resource/Doc/303629/0095168.pdf>)

¹¹ Counting the Cost, DEMOS (2010)

¹² *Commissioning Social Care*, Audit Scotland (March 2012)

report further suggested that people may be forced out of their homes and communities and into residential care.

There is a severe risk that the impact of welfare reform will undermine Scottish policy on public service reform, independent living, preventative spending and reshaping care for older people.

2. What would your organisation want the Committee's focus to be on?

- The Welfare Reform (Further Provision) (Scotland) Bill – LTCAS supports legislation to give powers to Scottish Ministers in relation to certain aspects of welfare reform. We would urge them to focus on protecting incomes and support for disabled people who may be put at risk of poverty and exclusion as a result of the change from current benefits to the new Universal Credit and Personal Independence Payments, devolution of the Social Fund and Council Tax Benefit, and potential changes to eligibility criteria for passported benefits.
- LTCAS would urge the Welfare Reform Committee to undertake robust scrutiny of (1) the impact of welfare reform on particular groups, including people who are disabled and/or live with long term conditions, (2) the interplay between welfare reform and the broader economic climate, including reductions in support and services and (3) the effectiveness of Scottish Government action (working with local government) to mitigate the negative impacts.

3. If you could question the Government about their implementation of the UK Bill what would you be asking?

LTCAS would ask the Scottish Government how it will ensure the welfare reforms do not undermine the key policy agendas in Scotland and how it will work in partnership with local government to achieve this.

If the vision of a Scotland in which people – including older people – enjoy their right to citizenship and independent living, have access to preventative support and services and remain in their homes and communities for as long as possible is to be realised, the trends we are already seeing must be urgently addressed.

About LTCAS

LTCAS' vision is for a Scotland where people with long term conditions enjoy, not endure, full and positive lives, free from discrimination and supported by access to high quality services, information and support.

LTCAS is the national third sector intermediary for a range of health and social care organisations. LTCAS has over 220 members including large, national support providers as well as small, local volunteer-led groups.

Additional Evidence

Poverty, Debt and Cost of Living

- DEMOS offers analysis of the higher cost of living for disabled people and the disproportionate impact of public expenditure reductions on them¹³.
- In Scotland, someone in a deprived area is more than twice as likely as someone in an affluent area to have a long term condition¹⁴
- Disabled people experience additional costs in most areas of life and those who rely on benefits or work part time are likely to have a significant gap between how much they have and how much they require for an 'acceptable, equitable quality of life'¹⁵.
- On average, someone with a long term condition is:¹⁶
 - less likely to be employed, have savings or own their own home
 - more likely to have fewer educational qualifications and a lower household income
 - more likely to live in areas associated with deprivation
 - more likely to experience financial difficulty including debt and inability to meet health related costs¹⁷

Barriers to the labour market (worse as competition for jobs increases)

- Just under half of disabled people in Scotland are in paid employment, compared to around 75% of the general population¹⁸
- A third of employers say they deliberately exclude people with a history of long term sickness or incapacity when recruiting staff¹⁹ and, even in employment, there is an inability to access higher level, desk-based jobs that may offer greater flexibility and support.²⁰
- The economic activity rates of people who live with long term conditions have improved little in recent years. They are amongst those furthest from the labour market and particularly vulnerable to the economic downturn

¹³ Counting the Cost, DEMOS (2010)

¹⁴ Building a Health Service Fit for the Future, A National Framework for Service Change in the NHS in Scotland, Scottish Government (2005)

¹⁵ Disabled People's Cost of Living, JRF (2004) <http://www.jrf.org.uk/publications/disabled-peoples-costs-living>

¹⁶ Wendy Loretto and Matt Taylor, Characteristics of adults in Scotland with long- term health conditions, University of Edinburgh and Scottish Executive Social Research (2007)

¹⁷ Clare Lardner, Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (July 2006)

¹⁸ A Working Life for All Disabled People The Supported Employment Framework for Scotland – Summary Report, The Scottish Government (2010) (<http://www.scotland.gov.uk/Resource/Doc/303629/0095168.pdf>)

¹⁹ Chartered Institute of Personnel and Development via Citizens Advice Bureau

²⁰ Joseph Rowntree Foundation, *Long Term Ill Health, Poverty and Ethnicity* (2007) (<http://www.jrf.org.uk/publications/long-term-ill-health-poverty-and-ethnicity>)

- and contracting economy²¹
- Disabled people are more than twice as likely as non-disabled people to have no qualifications²²
 - Young disabled people aged 16 are twice as likely not to be in any form of education, employment or training as their non-disabled peers, increasing to 3 times as likely by the age of 19²³
 - Joseph Rowntree Foundation recently said: *...the issue is the lack of jobs, not an unwillingness to look for work. Policies that focus solely on changing incentives to find work via benefit reform cannot solve this problem.*²⁴

²¹ The equality impacts of the current recession, Equality and Human Rights Commission (2009) (http://www.equalityhumanrights.com/uploaded_files/research/47_the_equality_impacts_of_the_current_recession.pdf)

²² Disabled People, The Scottish Government (2011) (<http://www.scotland.gov.uk/Topics/People/Equality/disability>)

²³ Disabled People and Employability, DGVoice (<http://new.dgvoice.co.uk/employability.html>)

²⁴ Monitoring Poverty and Social Exclusion 2011 (<http://www.jrf.org.uk/publications/monitoring-poverty-2011>)

WRITTEN SUBMISSION FROM NHS LANARKSHIRE

The Committee invites views on all aspects of the Bill. Responses should address all or any of the following points in turn:

Views on the Bill as a whole 1.

Are you generally in favour of the Bill and its provisions?

NHS Lanarkshire (NHSL) welcomes the opportunity to comment on the proposed Bill. NHSL's comments are based upon the potential impact of the Bill upon the health and wellbeing of residents of Lanarkshire i.e. people living in North and South Lanarkshire Council areas. NHSL is generally in favour of the Bill and its provisions as it provides the Scottish Government with appropriate flexibility to meet some of the health needs that may arise as result of the UK Welfare Reform Act.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

NHSL agrees with this principle as it seems sensible to make provisions to establish links between the devolved and the reserved welfare matters. This should enable the Scottish Government to make appropriate provisions for people living in Scotland with oversight by the Scottish Parliament. For example, NHS Lanarkshire is currently in discussions with representatives of the Local Medical Committee with regard to the issue of patients who independently seek support from their general practitioner with regards to appealing the outcome of a Department of Work and Pensions' Work Capability Assessment carried out by ATOS. This may have a significant impact upon the demands placed upon general practitioners in Lanarkshire. The Scottish Government may wish to consider a Scotland-wide response to this issue. NHSL is also anticipating a greater demand on its mental health services

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

NHSL supports this provision in principle as it will enable the Scottish Government to take appropriate action to try to address issues that arise as a result of the introduction of the Universal Credit.

4. Do you have any other comments on the introduction of Universal Credit?

NHSL does not consider itself expert enough to comment on the pros and cons of the introduction of the Universal Credit, however, there is some concern that the proposed changes to the current payment of Housing Benefits may lead negative impacts upon some of our most vulnerable members of our community. There is the potential that an unintended consequence of the reform may be an increase in numbers of evictions due to rent arrears. Perhaps the introduction of this Bill may enable the Scottish Government to take appropriate action.

Personal Independence Payments

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

NHSL supports this provision in principle as it will enable the Scottish Government to take appropriate action to try to address issues that arise as a result of the introduction of the of Personal Independence Payments.

6. Do you have any other comments on the introduction of Personal Independence Payments?

It is NHSL's understanding that, with the introduction of Personal Independence Payments, there will be greater emphasis on the provision of aids and the adaptation of homes to assist independent living. This emphasis is welcomed however there is concern with regard to the financing of adaptations and of the demands that will be placed on staff.

Subordinate Legislation

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.

Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

7. What are your views on the proposed subordinate legislation powers in the Bill?

These powers are welcomed as they should help to ensure that current benefits, often referred to as 'passported' benefits, can continue to be paid.

8. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

From a health perspective there is a need to ensure that those who need access to 'passported' benefits such as free school meals, Carers Allowance and Motability schemes are able to continue to access them once the new Welfare legislation is introduced.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum 'the timetable being pursued by the UK Government presents limits to the Scottish Parliament's ability to assess the financial implications of legislation it considers.'

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

At this stage, it is not possible for NHSL to accurately assess the financial impact of the reforms on NHSL's ability to deliver services. It would seem that we will need to wait until the Welfare legislation comes into effect before a robust financial impact can be undertaken. That stated, we are concerned about the impact which the reforms may bring on the demands of NHSL staff working in the fields of mental health and long term conditions and general practice.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.

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?

The assessments and the conclusions seem reasonable. How to Submit Your Evidence:

WRITTEN SUBMISSION FROM SAVE THE CHILDREN

The Committee invites views on all aspects of the Bill. Responses should address all or any of the following points in turn:

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

Save the Children supports the Welfare Reform (Further Provision) (Scotland) Bill in principle. Following the Scottish Parliament's rejection of parts of the Legislative Consent Memorandum on the UK Welfare Reform Bill, it is our understanding that the legislation is a technical necessity, to ensure that Scottish Ministers can introduce regulations in order that devolved legislation can take account of changes to the benefits system introduced by the UK Government's Welfare Reform Act 2012.

Save the Children welcomes the Welfare Reform Committee's commitment to engage with stakeholders on the Bill and the wider implications of the UK Government's welfare reform. We therefore support the introduction of the Bill to Parliament at this early stage. This, we hope, will allow detailed consideration of and consultation on the regulations that will follow the enabling legislation itself. It is the detail of the regulations that will have a real impact on families in Scotland. As previously set out in evidence to the Committee, Save the Children is concerned that measures within the Welfare Reform Act 2012 will have a number of negative consequences on families with children and tackling child poverty in Scotland. We hope that the opportunity is taken to not only ameliorate these negative impacts, but to consider how the needs of the poorest families with children can best be met.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

Save the Children recognises the importance and urgency of taking steps to address access to passported benefits when universal credit is introduced. However, we note that the Bill does not include provision to deal with the newly devolved successor arrangements for Council Tax Benefit and parts of the Social Fund. The elements of the Social Fund that are being devolved

play a crucial role in supporting families on the lowest incomes to meet essential costs that may otherwise not be met. The devolution of these areas is a real opportunity to further tackle child poverty and protect and enhance current access and entitlement so that families in Scotland are supported. Save the Children, alongside a number of other organisations including The Poverty Alliance, Child Poverty Action Group and Shelter Scotland, has called for successor arrangements to these elements to have a clear national framework established in law setting out who is eligible for help. Save the Children cannot comment on how this should be done from a legal point of view but would encourage the Scottish Government to take whatever steps are necessary to ensure that they have the powers to put such a scheme in place. Save the Children would support any opportunity to consider these issues as part of this legislation.

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

Save the Children's understanding is that following the rejection of this part of the Legislative Consent Memorandum on the UK Welfare Reform Bill, it is a technical necessity to introduce powers that enable the Scottish Parliament to make secondary legislation that will set out entitlement to passported benefits, which will be linked to universal credit. We are unable to comment from a legal point of view about whether the Bill as introduced does this.

4. Do you have any other comments on the introduction of Universal Credit?

Save the Children would urge the Committee and the Scottish Government to continue to press the Department for Work and Pensions for more detailed information on implementation of universal credit, including a clear timetable for implementation. This would enable robust scrutiny of the impact on devolved areas and arrangements put in place in time for April 2013.

Save the Children supports the stated aims of universal credit - to make work pay and simplify the benefits system. However, we believe that there are some blind spots that could leave some families worse off, pushing some families into poverty and some families further into poverty. Save the Children raised a number of concerns in relation to the introduction of universal credit in oral evidence to the committee earlier this year. Our main concerns are summarised below. These concerns may not have a direct impact in relation to the Bill but are important to consider in relation to the subordinate legislation that will follow the Bill.

In summary, our main concerns in relation to the introduction of universal credit are:

- *The expected increase in child poverty to the level recorded in 1999 – reversing all progress made to date.* Research from the Institute of Fiscal Studies has shown that low income families with children will be significantly worse off and lose more than other household types due to welfare reform. In order to support families living in poverty and to meet the aims of the *Child Poverty Strategy for Scotland* it will be necessary to look at how to mitigate some of these impacts by reducing essential living costs for families e.g. childcare, school meals.
- *Support with school meal costs must be maintained for families currently receiving free school meals* and must not be subject to a 'benefit cliff edge', i.e. families should not suddenly lose all support when earnings increase.
- *The impact on supporting parents, particularly mothers into work.* Insufficient earnings disregards for working mothers, lack of (and reduced) support with the cost of childcare and universal credit payments being withdrawn too quickly will affect parents' ability to take up work and the number of hours they can work. Save the Children's research found that single parents working longer hours (16 hours or more) on low pay and some second earners will be substantially worse off under the new system.
- *Conditionality* placed on parents must take into account whether job offers truly make parents better off. Due regard must be given to the impact of sanctions on children.
- *Practical issues in delivering the new system.* Save the Children's research found that parents' were concerned about what would happen in the event of system (IT) failure or errors being made. It is crucial that elements of the universal credit payment are protected or 'firewalled' through a minimum payment guarantee in order to ensure that claimants receive some income if there is a delay or dispute in calculating any element. In addition, we believe that the child element of the universal credit payment should be made to the main carer or second earner in couple families, to better reflect the realities of low income families' budgeting needs. To meet different budgeting needs, payments should be offered on a weekly as well as monthly basis.

Personal Independence Payments

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

No comment.

6. Do you have any other comments on the introduction of Personal Independence Payments?

No comment.

Subordinate Legislation

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.

Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

7. What are your views on the proposed subordinate legislation powers in the Bill?

In principle, it would appear appropriate and reasonable to include provision for Scottish Ministers to be able to change primary and subordinate legislation that relates to the consequences of the Welfare Reform Act 2012, for example to amend criteria for passported benefits. We are unable to comment from a legal perspective on whether the powers as they are set out in the Bill will achieve these aims. Save the Children would urge the Committee to ensure that the powers allow for robust and appropriate scrutiny of any future changes to primary or subordinate legislation, given the potential impact these could have on low income families with children and tackling child poverty in Scotland.

8. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

Passported benefits provide essential support to low income families with children. We therefore welcome the Scottish Government's commitment to *take whatever steps are necessary, in the timescale required, to ensure that we protect access to passported benefits when universal credit is introduced.*

In designing a new system, there is an opportunity to not only maintain current levels of entitlement but enhance entitlement to ensure more low income families with children can access such benefits. Passported benefits play an important role in enabling the Scottish Government to meet key objectives, particularly in relation to the *Child Poverty Strategy for Scotland*. In considering how devolved passported benefits fit with the new universal credit such considerations and outcomes need to be given as much, if not more, weight than an arbitrary limit on the amount which such entitlements cost. Designing a new system also provides an opportunity to consider how to maximise take up of passported benefits amongst families with children.

Save the Children believes that *any* universal credit entitlement should be enough to establish eligibility to devolved and local benefits such as free school meals, school clothing grants and energy assistance package. Universal credit will be claimed by both working and non working families. Half of all children living in poverty in Scotland live in working families, while the other half live in non working households. We urge the Committee to consider this option as a starting point for designing a new system.

The benefits of such an approach would be to avoid creating a series of cliff edges when people suddenly lose their entitlement as they move into work or increase their earnings. It would reduce administration costs and provide a simple, easy to understand system thus reducing complexity for claimants and the potential to increase take up.

In relation to free school meals, Save the Children believes that support with costs must be maintained for families currently receiving free school meals and must not be subject to a benefit cliff edge.

Save the Children is a member of the Scottish Campaign on Welfare Reform (SCOWR). See SCOWR's response to the Social Security Advisory Committee's consultation on passported benefits in universal credit for further information.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum 'the timetable being pursued by the UK Government presents limits to the Scottish Parliament's ability to assess the financial implications of legislation it considers.'

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The financial memorandum states that *it is expected that provision of passported benefits will be retained at the current level and that the cost will be met from existing budgets*. Save the Children welcomes the Scottish Government's commitment to retain the current level of funding, however we would urge the Scottish Government to go further. Whilst we recognise the challenges in the current financial climate, the new system should be based on need and not on existing budgets. As outlined above, we believe there is an opportunity to further support low income families with children and mitigate against the negative impacts of welfare reforms by helping families to reduce living costs. Committing additional resources to support a new system could support the Scottish Government to meet its aim to maximise household resources and reduce the impact of material deprivation on children.

WRITTEN SUBMISSION FROM SCOTTISH ASSOCIATION FOR MENTAL HEALTH (SAMH)

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

SAMH recognises that the need for this legislation has been driven by the UK Government's reforms of the welfare system. Given the far reaching implications of UK welfare reform for Scotland, it is appropriate that the Scottish Parliament should seek to establish more time to consider these implications and formulate an appropriate response. As such, we are generally in favour of the Bill, which gives powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes. However, it is ultimately the regulatory detail, as opposed to this enabling Bill, which will determine whether the Scottish Parliament has been successful in this regard.

General Principles Underlying the Bill

2. What are your views on this principle?

In our previous evidence to the Health and Sport Committee, we stated that we would only support opposition of legislative consent if it would mean that the Scottish Government could pass its own legislation to mitigate the impact on disabled people²⁵. This remains our position; SAMH supports the principles underlying the Bill in so far as they will enable the Scottish Government to mitigate the impact of the UK welfare reforms on disabled people in Scotland.

Universal Credit

3. What are your views on the proposed powers in relation to Universal Credit?

SAMH agrees that Scottish Ministers require the power to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in the UK Act which create Universal Credit.

4. Do you have any other comments on the introduction of Universal Credit?

SAMH has concerns about various aspects of Universal Credit and the way it may impact upon people experiencing mental ill-health. In particular, we have raised concerns in relation to sanctions, as Universal Credit will bring increased conditionality. This raises the prospect that people with mental health problems may face sanctions when their condition has meant that they

²⁵ Scottish Parliament Health and Sport Committee, 4th Report, 2011 (Session 4): Report on the Legislative Consent Memorandum on the Welfare Reform Bill (UK Parliament legislation) - LCM (S4) 5.1 paragraph 204

are unable to understand or comply with the various demands placed on them.

Changes to housing benefit – especially in terms of sanctions for ‘over-housing’ – could also have serious implications for people experiencing mental ill-health, who may be forced to move or spend more money than they do not have supplementing their housing benefit. Furthermore, the changes do not necessarily take into account the lack of available single bedroom housing stock in parts of Scotland, especially in rural areas.

Personal Independence Payments

5. What are your views on the proposed powers in relation to Personal Independence Payments?

SAMH agrees that Scottish Ministers require the power to make such provision (for devolved purposes) as they consider appropriate in consequence of parts of the UK Act which create Personal Independence Payments (PIP).

6. Do you have any other comments on the introduction of Personal Independence Payments?

The UK has an objective to achieve an overall reduction of 20% in the Disability Living Allowance (DLA) budget, which has formed the basis of DLA reform. SAMH believes that this reform should be based on supporting disabled people to lead fulfilling lives and not primarily concerned with reducing costs. People with mental health problems, particularly those with long-term problems, are among the most socially excluded groups of people in Scotland and should not be further disadvantaged by the effects of welfare reform.

We are concerned about the focus on those with ‘greatest need’ – this may be counterproductive and significantly disadvantage those eligible to lower rates of benefit, who may still have high disability costs. People with high levels of disability do not necessarily have the greatest disability costs. Furthermore, significant numbers of people currently receiving financial support to meet disability related costs may find that they are no longer eligible for support under the new welfare arrangements.

SAMH, in partnership with other leading mental health organisations, undertook a survey to identify how people currently receiving DLA will fare under the new arrangements. The survey asked people to choose the PIP descriptors that reflected their experience of carrying out the relevant activities which will be assessed for the new benefit. 520 people responded to the survey and the results show that, while some people will see an increase in their entitlement, a significant number will lose out. For Daily Living, about 23% of current claimants claiming solely for mental health will see a reduction

in entitlement. For 14% of respondents this means receiving no daily living component at all, where they currently receive the care component.

SAMH believes that the PIP assessment is at serious risk of repeating the mistakes of the current Work Capability Assessment (WCA), which helps decide whether people are entitled to receive Employment and Support Allowance (ESA). Many people have raised concerns that the WCA is not sensitive to mental health needs, and can inaccurately reflect the impact that mental health problems can have on the ability to work. These concerns were also supported by Professor Harrington's Independent Review of the Work Capability Assessment,²⁶ which found that mental health conditions were not being properly assessed by the WCA.

Subordinate Legislation

7. What are your views on the proposed subordinate legislation powers in the Bill?

The Joint Committee on Human Rights published a critical report²⁷ on the UK Welfare Reform Bill which stated:

“The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny.”

The Scottish Parliament has an opportunity to learn lessons from the passing of the UK Welfare Reform Bill, but is in danger of replicating some of the same mistakes. The Scottish Bill states that regulations will only be subject to the affirmative procedure if they add to, replace or omit any part of the text of an existing Act, otherwise they will be subject to the negative procedure. Given the far reaching implications of these regulations, SAMH does not regard such an approach as satisfactory.

Ideally, we would like to see the regulations being subject to the super-affirmative procedure. This procedure provides for a greater degree of parliamentary scrutiny than is the case with instruments subject to ordinary affirmative resolution procedures; giving the Parliament the opportunity to comment on the proposals for a draft instrument before the instrument is formally laid. If time constraints do not allow for this approach then, at the very least, the first regulations made under the new powers should be subject to the affirmative procedure, whether they amend other primary legislation or not.

²⁶ Professor Malcolm Harrington : An Independent Review of the Work Capability Assessment, November 2010

²⁷ Human Rights Joint Committee - Twenty-First Report. Legislative Scrutiny: Welfare Reform Bill, 12 December 2011

It is fundamentally important that the regulations are subject to adequate scrutiny, otherwise the proposals may be implemented in a way which could lead to a risk of incompatibility with international human rights standards.

8. Do you have any other comments on regulations that would follow this Bill on ‘passport’ benefits and eligibility for them?

Disability Living Allowance (DLA) is often used as a passport to other benefits or services. As such, the Scottish Government must introduce ways of ensuring that people who lose their DLA entitlement under the new arrangements do not then suffer a domino effect of further loss. We must also prevent a future postcode lottery of entitlement.

This will be particularly important for people currently receiving DLA on mental health grounds, especially given our findings that a substantial number will not qualify for PIP. The Scottish Government must issue instructions to local authorities, health boards and others on new ways of assessing people for entitlement to services.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

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?

Given that this is an enabling Bill, SAMH is satisfied that the Scottish Government will publish Equalities Impact Assessments as appropriate when it brings forward subordinate legislation under the Bill later in the year.

In relation to human rights, we would refer to our previous point at question 7. It must be ensured that the forthcoming regulations are subject to adequate scrutiny to lay the foundations for a human rights compliant approach. The Joint Committee on Human Rights expressed ²⁸ regret the UK Bill was not accompanied by a full human rights memorandum. The provision of such information strengthens the principle of subsidiarity: as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

²⁸ Human Rights Joint Committee - Twenty-First Report. Legislative Scrutiny: Welfare Reform Bill, 12 December 2011

WRITTEN SUBMISSION FROM SCOTTISH CAMPAIGN ON WELFARE REFORM

The Scottish Campaign on Welfare Reform welcomes the establishment of the Welfare Reform Committee. We recognise that the first priority for the Committee is to scrutinise the Welfare Reform (Scotland) Bill and also the secondary legislation that will follow this bill.

SCoWR also welcomes the recent announcement by the First Minister that the 10% cut in funding for successor arrangements for the replacement for council tax benefit in Scotland will not be passed on to claimants for 1 year. This has been a key SCoWR call and it will benefit many of the poorest individuals and families in Scotland and is therefore very welcome indeed.

Having now had time to consider the submissions made by various organisations to the Bill – many by our own members – and in light of the session you will hold with the Cabinet Secretary for Health, Wellbeing and Cities Strategy, we would like to make some additional comments and highlight areas of concern.

The first relates to modelling the impact of welfare changes on Scotland. SCoWR would very much like to know what stage the Scottish Government are at in this process and what can be shared with the Committee and the third sector at this point. The Committee has asked organisations what impact assessments they have been making but they will of course realise it is not always possible due to resourcing or staffing issues for organisations to carry out such assessment. However as the Scottish Government has committed to sharing modelling and analysis, this would help many organisations in their policy formulation.

SCoWR recognises there is still a lack of detail about much of the welfare reform changes that are to be implemented, and that the Scottish Government has begun analysis of the reforms on different household types. But we also note that the other devolved administrations have taken steps to look at the wider impact of the changes ahead and we would like to see a similar approach taken in Scotland.

In January 2012, the Welsh Government's Minister for Education and Skills announced he had established a ministerial task and finish group for welfare to assess and monitor the impact of the UK Government's welfare reform on the Welsh Government's policies and services. This Group then commissioned a programme of work to analyse the impact. The first stage of this analysis²⁹ was published in February and was drawn in large part from the Institute for Fiscal Studies reports which have assessed the combined

²⁹ Welsh Government. *Analysing the impact of the UK Government's welfare reforms in Wales - Stage 1 Analysis*. February 2012. Available online at: <http://wales.gov.uk/docs/dcells/publications/120228welfarereformen.pdf>

impact of the coming tax and benefit changes. The main aim of this early analysis was to analyse the existing evidence on the broad cumulative impact of the welfare reforms on individuals and households in Wales. Equally in 2010, the Institute of Fiscal Studies was commissioned by the Law Centre of Northern Ireland and the ESRC Centre for the Microeconomic Analysis of Public Policy at IFS to carry out an impact of tax and benefit reforms in Northern Ireland which was subsequently published in December 2010³⁰.

Similar analysis and modelling for Scotland would help the Scottish Government, councils, the third sector and also the public understand further the impact on Scotland's people that the changes ahead will bring; and again as stated above, provide much needed information for policy development. To be able to develop the secondary legislation and regulations on passporting benefits, to develop policy on mitigating the damaging impact of the Welfare Reform Act and for organisations to play a part in this, such modelling is required to be carried out and shared as soon as possible.

Second, as SCoWR has stated previously, we believe that in designing new eligibility criteria for passported benefits, the Scottish Government must ensure that there is a simple structure without too many complicated rules. Such a system must also ensure that all claimants can access clear and timely information. The Scottish Government's approach should avoid introducing a whole raft of new disincentives to moving into employment. It should also play an important role in mitigating some of the wider impacts of the Welfare Reform Act. It should also ensure that these benefits, which can be an important part of a household's budget, remain available to those who need them

We are also keen to ensure that the Scottish Government is aware of the wide range of passported benefits which exist – some of which were not detailed in the information provided to the Committee. These include local authority provided benefits such as free school milk, clothing grants, support for participation in extra-curricular activities and leisure services. They also include health benefits such as healthy start vouchers and free vitamins

What we would also like the Committee to consider however, is that during this process, a big picture view is taken and the development of eligibility criteria is not done without taking into consideration wider policy areas. As Scotland now has free prescriptions, there will be no need to establish the criteria for eligibility for prescriptions; therefore also no need to see if anyone would be disenfranchised through new eligibility rules under the new Universal Credit as will have to be done in England. It is therefore important that work is done to take into account other Scottish Government policy commitments that may impact on passported benefits. For example, if local authorities were to roll out free school meals for P1-3 as a minimum, then what is currently a

³⁰ Institute of Fiscal Studies The Impact of Tax and Benefit Reforms to be Introduced between 2010-11 and 2014-15 in Northern Ireland. December 2010. Available online at: <http://www.ifs.org.uk/bns/bn114.pdf>

passport benefit for those children with parents who meet the current criteria, would be an entitlement for all. Equally providing accessible and affordable childcare in early years and wraparound care in school years, would help lone parents and parents on low incomes in the workplace – including entering the workforce

Third, SCoWR is concerned that the Scottish Government's Spending Review and Scottish Budget 2012-13 did not fully consider the impact of UK welfare reform changes. Given the impact on individuals and families experiencing poverty and exclusion, public and voluntary sector services, and the Scottish economy as a whole, we believe that this needs to be urgently considered. Notwithstanding the recent announcement in on council tax benefit which, as noted above, is very welcome indeed, in general there is a need for decisions relating to welfare impacts to be better embedded within wider policy, including the child poverty strategy and the governments anti poverty strategy, so that both individuals in poverty and those agencies who will be supporting them over the coming period are prioritised, and that this is reflected in budgetary decisions.

Fourth, we would like to know what work is going on to 'future-proof' the eligibility criteria that will be developed. Although we can see what the impact of the changes so far announced will be, we would like the Committee to consider what would happen if the Coalition Government introduce further welfare changes over the next three years that could further reduce who is eligible for benefits, and therefore reduce those who access passported benefits. The Chancellor has already stated he believes a further £10 billion worth of cuts are needed to the welfare budget which means a further cut of approximately £1 billion for Scotland on top of the £2.5 billion cuts we can already expect, so we could well see further changes in the lifetime of the current UK Parliament.

Finally, the evidence submitted by Prof Paul Spicker which raises questions about whether or not Scottish Government have the power and competence to deliver benefits and the replacement Social Fund under current legislation is also of concern. He raises serious points in relation to a lack of clarity about the scope and impact of the UK Welfare Reform Act and we are keen to be assured that the Scottish Government is satisfied that it has the legislative competence it needs to deliver adequate social fund replacement and passported benefit arrangements.

**MAGGIE KELLY,
SCOWR CO-ORDINATOR
APRIL 2012**

**WRITTEN SUBMISSION FROM SCOTTISH CENTRAL BRANCH,
NATIONAL FEDERATION OF THE BLIND**

AUTHORSHIP OF SUBMISSION:

My name is Pauline Topham and I am writing on behalf of the Committee of the Scottish Central Branch of the National Federation of the Blind of which I am secretary. We are all either blind or partially sighted and live in various parts of Scotland, Aberdeen, Moray, Dundee, Angus, Lanarkshire, so we have a range of relevant experience. This submission has been circulated and agreed.

Are you generally in favour of the Bill and its provisions?

A bill is necessary, but I am not sufficiently acquainted with the legislation to comment; We welcome the involvement of the Scottish Parliament and Government because both have consistently shown themselves to be better aware of practicalities of implementation and of the impact of legislation on the people involved.

ASSESSMENT CONCERNS

have comments on the DLA/PIP assessments currently being carried out in Scotland by a company employed by the British Government. These are causing high stress levels and are giving GPs a great deal of work in treating people involved for anxiety and depression. The assessments often show little realism and a high proportion of reversal on appeal (40% we understand), which is a tremendous waste of public money from several agencies.

We also believe that these assessments generally under-estimate the corrosive effects of sight loss on people's ability to perform the simplest of tasks in every aspect of life.

BARRIERS TO EMPLOYMENT

Among the barriers to increased employment of visually impaired people are: the inadequate level of rehabilitation available for adults of working age; the lack of training and equipment for literacy using assistive technology available to unemployed visually impaired adults; employers are expected to assess and claim for assistive technology add the paperwork and effort involved are a disincentive. We believe that maybe visually impaired people of working age cannot afford the assistive computer equipment that would enable them to acquire and maintain secretarial skills and thus be capable of employment, and that if local authorities or NHS boards were encouraged to provide such equipment under the partnership equipment and adaptations schemes, this would make visually impaired people much more employable. We note that there is a promise of support for those on jobseekers allowance, but there is no indication that it will meet the particular needs of visually impaired people, given that the existing framework falls so far short of requirements.

PASSPORTING:

We believe that there are levels of visual impairment that fully merit passporting of certain benefits, and that this would save time and money in repeated assessments of capability. Severe eye conditions are most unlikely to improve. There are other permanent disabilities that could be identified.

SUBSIDIARY LEGISLATION: IMPLEMENTATION AND LOCAL AUTHORITIES:

We note and are grateful for the enlightened attitude of the Scottish Parliament and Government towards disability issues, including those affecting visually impaired people. However the implementation of these intentions is dependent on the competence and the resources available to the local authorities responsible for implementing. There are 2 aspects of the care provisions for people with a sensory impairment: disability specific care and the non-specific social support.

Problems are as follows:

- 1) Local authorities have unrestricted right to interpret any guidelines according to local conditions, so there is neither accountability nor transparency and provision is and no two councils offer the same range or level of service
- 2) There are no agreed standards for the care and rehabilitation of visually impaired people
- 3) Local Authority budgets have already been held at steady levels in spite of inflation, so that services have been reduced in various ways, either by making assessments more stringent or by restricting services to higher levels of need.
- 4) Additionally some councils have used generic staff with no real knowledge of sensory impairment (e.g. a member, registered blind for over 20 years who was informed by a “re-empowerment officer” that she would be able to drive once her broken ankle was healed.
- 5) By the nature of their disability, visually impaired people have difficulty in getting and transmitting information so that few realize that a service is incomplete or are able to complain if they do realize.

These problems mean that most of us do not fulfil our potential and make heavier demands on non-specific social care, but they impact most heavily on those of working age, since you are unlikely to get or hold down a job if you have problems in basic existence.

PAT’S PETITION:

Finally we would like you to consider the English e-petition organised by one of our members , Pat Onions and signed by over 35,000 people so far,(in spite of the web site being difficult of access for visually impaired people):
Text as follows:

Stop and review the cuts to benefits and services which are falling disproportionately on disabled people, their carers and families

Responsible department: Department for Work and Pensions

The government were embarking on wholesale reform of the benefit system when the economic crisis struck. These welfare reforms had not been piloted and the plan was to monitor and assess the impact of the new untried approach as it was introduced in a buoyant economy. Unfortunately since then the economy has gone in to crisis and the government has simultaneously embarked on a massive programme of cuts. This has created a perfect storm and left disabled people/those with ill health, and their carers reeling, confused and afraid.

We ask the government to stop this massive programme of piecemeal change until they can review the impact of all these changes, taken together, on disabled people and their carers. We ask the government to stand by its duty of care to disabled people and their carers. At the moment the covenant seems to be broken and they do not feel safe.

Illness or disability could affect any one of us at any time, while many more of us are potential carers.

WRITTEN SUBMISSION FROM SCOTTISH INDEPENDENT ADVOCACY ALLIANCE

About the Scottish Independent Advocacy Alliance

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation which promotes, supports and defends Independent Advocacy in Scotland. It aims to ensure that Independent Advocacy is available to any vulnerable person in Scotland.

Independent Advocacy organisations do not provide any services other than advocacy. They are separate organisations in their own right, are financially independent, and all those employed in an Independent Advocacy organisation know that they are only limited in what they do by the principles of advocacy, resources and the law. This ensures they are able to assist vulnerable individuals whilst being as free as possible from any conflicts of interest.

1. Are you generally in favour of the Bill and its provisions?

The SIAA shares concerns about the impact of welfare reform in Scotland. Independent Advocates have provided evidence of the problems that reform has already caused with regards to the Work Capability Assessment and the concerns that individuals have expressed about the introduction of further welfare reform. We are therefore in favour of measures to address these concerns including the introduction of this Bill and its provisions. We look forward to seeing further detail about the secondary legislation to this Bill and have made suggestions for what they should include within this evidence to the committee.

2. What are your views on this principle?

Due to concerns about the impact of the Welfare Reform Act on vulnerable people in Scotland, we welcome this principle and are pleased that the Scottish Parliament and Government have taken steps by refusing full legislative consent and by introducing this enabling Bill to address some of the concerns raised around the impact of welfare reform, particularly its impact on passported benefits.

To ensure that any secondary legislation will help address the worst effects of the reforms, we believe more research and modelling is needed to gain a full understanding of the impact that the Welfare Reform Act will have. In addition, we believe that any secondary legislation should be subject to public consultation before it is laid before the Scottish Parliament. This will ensure that all those who will be affected by the changes, including Independent Advocacy organisations and the individuals that advocates support, are given the opportunity to consider and comment on them.

3. What are your views on the proposed powers in relation to Universal Credit?

We welcome the proposed powers to make Secondary Scottish Regulations in relation to Universal Credit. We believe that the secondary legislation for both the Universal Credit and Personal Independence Payment should give all those going through welfare reform a right of access to Independent Advocacy. According to the SIAA research report, '*More for Less?*³¹', 95% of Independent Advocacy organisations have experienced increased demand for their services over the past two year and many organisations referenced benefit changes as a reason for the increase and expect this trend to continue.

'There was an increase in demand from people who were attending interviews to decide whether or not their benefits should be withdrawn – this caused many people a great deal of alarm.'

- An Independent Advocacy Organisation

'We anticipate more people will come to us in relation to benefit appeals. The changes to benefits including medical assessments relating to disability, coupled with increased demand on other organisations such as CAB, mean we will be picking up more cases. We also expect changes to housing benefit to result in increased demand.'

- An Independent Advocacy Organisation

Independent Advocacy is an important source of support for many going through the benefits system. Independent advocates support individuals to understand their rights and empower them to take control over their lives. Independent advocates might, where needed, help people to access welfare and benefits advice and might support people through appeals. We believe that a right to Independent Advocacy will help support individuals through the introduction of welfare reform in Scotland.

The regulations must also include measures to safeguard passported benefits for both new and existing claimants. This is particularly true for those who qualify for benefits under existing arrangements but will lose them under Universal Credit and the Personal Independence Payment and the impact this will have on their access to passported benefits. Appropriate legislation must be in place to ensure that a person who loses their status as a disabled person along with its accompanying benefits and who may be living with a health condition or impairment which impacts on their ability to live as independently as possible will still receive support to allow them to achieve a quality standard of living.

³¹ http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf

4. Do you have any other comments on the introduction of Universal Credit?

We believe that when the final details of the operation of Universal Credit are available the Scottish Government should consult further on what other measures should be introduced in Scotland to ensure that all individuals are given access to the support they need, including the revision of eligibility criteria for existing Scottish benefits. This should include local consultation to take into account the variations between local authorities and the potential impact on the provision of local services. Local and national consultations should engage with existing service user and equality groups and those with an expertise in the needs of the local area including Independent Advocacy organisations. Independent advocacy will also support people who may struggle to have their voices heard to take part in consultations, ensuring that any consultation will take into account the views of all those who will be affected by the changes.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

As with our response to question 3, we welcome the powers in relation to Personal Independence Payments and believe that the secondary legislation should provide a right of access to Independent Advocacy. We also believe this legislation should include safeguards for those who risk losing passported benefits under welfare reform.

6. Do you have any other comments on the introduction of Personal Independence Payments?

At present it is unclear what the full impact of the replacement of the DLA with PIP will be as the criteria, thresholds and other details are still being consulted on. Once the exact nature of the PIP has been finalised the Scottish Government should undertake additional modelling, research and consultation to fully assess the impact of the new benefit and ensure that any secondary regulations established under the Welfare Reform (Further Provision) (Scotland) Bill are appropriate.

7. What are your views on the proposed subordinate legislation powers in the Bill?

See our comments on subordinate legislation in response to previous questions.

8. Do you have any other comments on regulations that would follow this Bill on 'passport' benefits and eligibility for them?

No. See comments on passported benefits and eligibility in previous questions.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We are unable to comment in detail until further information is available about the operation of the PIP and Universal Credit and therefore who and how many will lose access to passported benefits including the Blue Badge Scheme, legal aid, and other essential benefits. It is only when this information is available that we will be able to accurately identify what the resulting financial and social costs of these changes will be.

When this information is available the Scottish Government should assess the impact of the reforms not only on individuals and public authorities, but also on third sector organisations including Independent Advocacy organisations that will be supporting individuals throughout the changes. The introduction of welfare reform in Scotland will place increased pressure on organisations that are already facing funding and capacity issues. The SIAA research, *More for Less*³², found that 85% of Independent Advocacy organisations did not agree that the organisation's current level of funding was sufficient to meet demand for their services. As part of this assessment the Government should consider what funding will be needed to support these organisations.

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?

The Equalities Impact Assessments and consideration of wider human rights issues must have regard to the Convention on the Rights of Persons with Disabilities and be informed by the views of those who will be affected by the changes (see our comments in response to question 4 on the role of Independent Advocacy in supporting effective consultation).

**ERIN TOWNHILL
POLICY AND PARLIAMENTARY OFFICER
SCOTTISH INDEPENDENT ADVOCACY ALLIANCE
APRIL 2012**

³² http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf

WRITTEN SUBMISSION FROM SCOTTISH WOMEN'S CONVENTION

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. This is achieved in a number of different ways – through roadshow, round table, conference and celebratory events. Following each event a report is compiled and issued to women who attend and relevant policy and decision makers. The SWC uses the views of women to respond to Scottish and UK Government consultation papers.

'Satellite' groups of women in geographical areas throughout Scotland meet on a regular basis to discuss gender specific issues. These groups are facilitated by the organisation and provide vital input into the consultation process.

The SWC has discussed Welfare Reform at length with women in all areas of Scotland. There is acknowledgment that women will be adversely affected by proposals outlined in the Welfare Reform Act.

“This is a financial assault on women. All of the cuts are impacting on women more than men due to the economic inequalities we are exposed to in the first place”

“Women are being singled out both as economic targets and casualties in the focus of Coalition Government budget cutbacks.”

Throughout the country assurances have been sought that the Scottish Government will take action to minimise the impact of Westminster policy decisions.

“The Scottish Government must reduce the impact of UK Coalition Government cuts to Housing Benefit and Welfare Payments.”

In proposing the Welfare Reform (Further Provision) (Scotland) Bill, there is real recognition of a need to mitigate the impact of changes to welfare provision.

The Introduction of Universal Credit

Women in Scotland have specific concerns about the introduction of Universal Credit.

Changes to **housing benefit** are opposed. The SWC have already submitted evidence outlining concerns of women in receipt of housing and council tax benefit.

However, many older members of society are worried about a reduction in housing benefit if they are deemed to be 'under-occupying' their homes. Older

women are faced with a great deal of stress at either the prospect of having to move from houses they have raised their families in, or an increased outlay in the cost of remaining in their homes. This is particularly the case for women who live in more remote parts of Scotland, where locally available affordable housing is in critically short supply. This anxiety has the potential to seriously impact on physical and mental health. Women need assurances that the Scottish Government will put safeguards in place to ensure that the effects of this are mitigated as far as possible. It is hoped that the proposed Bill will provide these assurances.

Women in **rural areas** are faced with what can be described as 'double discrimination'. The lack of employment in rural Scotland could have a detrimental effect on women forced to work in order to continue receiving their benefits, who may have to travel great distances in order to do this. This is already a problem.

“Poor transport links and the cost of travelling prevent women sourcing work outwith local communities.”

The added expense of travelling using ***“extremely limited”*** public transport coupled with the severe lack of accessible, affordable childcare in remote areas of Scotland means that women face the real possibility of being worse off through the introduction of Universal Credit than they are at the moment. There is also a danger that the prohibitive costs of attempting to access work will create further barriers for women in the form of sanctions. The SWC has voiced our concerns about the potential impact of sanctions on women in previous evidence.

Welfare Reform Committee

6th Meeting 2012 (Session 4), Tuesday 1 May 2012

Welfare Reform (Further Provision) (Scotland) Bill: - Report from the
Subordinate Legislation Committee

Subordinate Legislation Committee

22nd Report, 2012 (Session 4)

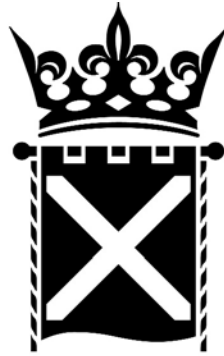
Welfare Reform (Further Provision) (Scotland) Bill

©Parliamentary copyright. Scottish Parliamentary Corporate Body 2012.

Applications for reproduction should be made in writing to the Information Policy team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by e-mail to:
licensing@oqps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
RR Donnelley.



The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

22nd Report, 2012 (Session 4)

Welfare Reform (Further Provision) (Scotland) Bill

Published by the Scottish Parliament on 25 April 2012



The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)

James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt



The Scottish Parliament
Pàrlamaid na h-Alba

Subordinate Legislation Committee

22nd Report, 2012 (Session 4)

Welfare Reform (Further Provision) (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 27 March, 17 April and 24 April 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Welfare Reform (Further Provision) (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Welfare Reform Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).¹
3. Officials from the Scottish Government also provided oral evidence to the Committee at its meeting on 17 April 2012. After this evidence session, the Committee agreed to seek further information in writing. The Committee’s letter and the Scottish Government’s response are reproduced in the Annex.

OVERVIEW OF THE BILL

4. The Welfare Reform (Further Provision) (Scotland) Bill was introduced in the Scottish Parliament on 22 March 2012. It comes into force on the day after Royal Assent.
5. The Bill is required as a consequence of the decision of the Parliament to refuse to agree to powers to make consequential and other provision being conferred on the Scottish Ministers by the United Kingdom Welfare Reform Act 2012 (“the UK Act”)². In short, it broadly replicates the powers which the Parliament rejected in the UK Act. The Bill is therefore purely enabling.

¹ Welfare Reform (Further Provision) (Scotland) Bill. Delegated Powers Memorandum. Available at: http://www.scottish.parliament.uk/S4_Welfare_Reform_Committee/Welfare_reform_bill_DPM.pdf

² Welfare Reform Act 2012. Available at: <http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted>

DELEGATED POWERS PROVISIONS

6. Section 1 of the Bill confers power in consequence of the introduction of universal credit by the UK Act. Section 2 makes similar provision in consequence of personal independence payment introduced by the UK Act. Section 3 expands each of the powers so that the powers may:

- make provision in direct or indirect consequence of the UK Act or instruments made under it;
- make provision which is not of itself in consequence of the UK Act if the provision concerns any matter arising in direct or indirect consequence (or previously arising);
- make different provision for different cases or purposes; and
- include supplemental, incidental, consequential, transitional, transitory or saving provision.

7. There are two important points to highlight by way of introduction which are of particular relevance to the Committee's remit and consideration of the powers which it is proposed to confer on Ministers through this Bill.

8. First, the powers in the Bill go further than those which were originally proposed in the bill for the UK Act and which were not consented to by the Parliament. The Bill does not seek solely to deal with the immediate consequences of the UK Act for devolved matters. The Bill also seeks to use the general powers to allow for the "future-proofing" of changes made in consequence of the UK Act.

9. Second, much of the discussion on the exercise of the powers conducted to date has focused on the primary policy objective of ensuring continued access to devolved benefits which currently accrue to those who receive welfare benefits (the devolved benefits are commonly described as "passport benefits"). However, the bill does not restrict the exercise of the powers to delivery of this objective. The powers conferred allow any provision to be made within devolved competence as Ministers consider appropriate provided there is a link back to the consequences of the UK Act or a link to matters which themselves arose in consequence of that Act. The powers are therefore extensive in their potential effect, which goes beyond the task of embedding the changes to the UK welfare system properly within the current sphere of passported benefits.

10. The Bill provides that where the regulations made under either section 1 or 2 textually amend primary legislation they will be subject to the affirmative procedure. In any other case they will be subject to the negative procedure.

Delegation of the powers in principle

11. The Committee recognises the context within which these powers are to be conferred. A substantial amount of work is required in order to make the changes to legislation relating to devolved matters as a result of the UK Act. The Committee

understands that the roll-out of the UK changes will commence with effect from 1 April 2013, although this will be a process which will continue for a number of years beyond that date. As a Scottish Government official put it, “the bill provides a practical means to a necessary end.”³ The Committee accepts that the timetable and the pace at which the changes need to be made are set by the UK Act and by implementing measures that are still to be made by UK Ministers under that Act. These are matters beyond the control of the Scottish Parliament or the Scottish Government. The Committee also recognises that both the timetable and the current lack of availability of the operational detail set out in instruments to be made under the UK Act mean that it would not be possible to deliver these changes by 1 April 2013 through the standard primary legislation process rather than subordinate legislation.

12. Nevertheless, the Committee also recognises that the changes which these powers could deliver are extremely significant. They are capable of having a profound effect on people in Scotland who currently receive passported benefits or who might in the future expect to be entitled to receive them. Scottish Government officials advised the Committee that the changes made by the UK Act have precipitated the first review of passported benefits “in the round”. This is a matter which is clearly of importance and concern to a wide range of stakeholders.

13. The Committee accepts that it is appropriate in principle to delegate the powers sought in order to achieve the primary objective of ensuring the continued delivery of passported benefits from 1 April 2013. However, the Committee considers that the current context illustrates that the potential reach of ancillary powers of this kind can be of significant impact in practice. The scrutiny of the grant of such powers by the Parliament is therefore an important matter which requires careful consideration in addition to ensuring proper scrutiny of the exercise of the powers themselves. The Committee considers this further below.

Scope and duration of the powers to be conferred

14. As noted above, the powers go further than proposed in the bill for the UK Act and are drafted in terms which permit changes to be made that are wider than is necessary to achieve the primary objective of ensuring the continued delivery of passported benefits to current recipients. In its evidence, the Scottish Government confirmed that a number of these passported benefits are currently regulated through subordinate legislation. Therefore, in a number of cases, Ministers could already have the powers necessary to conduct the exercise of engaging these benefits with the UK Act.

15. As a general principle the Committee considers that it is preferable that subordinate legislation is made using enabling powers which have been conferred for specific purposes where these are available rather than general ancillary powers of the kind proposed in the Bill. Some of those existing specific powers may be subject to additional statutory requirements such as consultation with stakeholders which are not replicated in the general powers proposed in this Bill.

³ Scottish Parliament Subordinate Legislation Committee. *Official Report*, 17 April 2012, Col 348.

16. The Scottish Government indicated that it is currently too early in the process to determine whether the existing powers are sufficient. The full scope of the necessary work is not known and the policy approach to be adopted is not yet sufficiently developed to be clear whether the existing powers are adequate. The Scottish Government's legal adviser explained:

"It is true that some of the powers will be sufficient to make the changes that will ultimately be made. However, at the moment, it is not possible to say exactly what the changes will be to a particular provision, which means that we cannot say whether the power that is available under subordinate legislation will be apt to make the change that we ultimately want to make. Against that background, we are looking to take a general power to allow us to make the changes that we need to make in order to ensure that passported benefits are available."⁴

17. The Committee accepts that, in the particular circumstances, it is necessary to legislate to confer powers at a point at which the scope of the task is unknown. It recognises that this is a challenging task and that it is important to ensure that Ministers have adequate powers at their disposal to ensure that passported benefits continue to be delivered.

18. Where existing powers are available, the Scottish Government has indicated that this may provide Ministers with a choice whether to use those powers or those to be granted under the Bill and consideration will be given to whether it is appropriate to use existing powers and comply with any existing pre-conditions. Ministers will be accountable to the Parliament for the manner in which they exercise that choice. The Committee accepts that the choice will depend on the context of each case.

19. The Committee is reassured by the Scottish Government's comments that consideration would be given to fulfilling any existing consultation requirements if it were considered appropriate to do so and if this would not put the timetable at risk.

20. There may also be other necessary consequential changes such as those where the eligibility for receipt of benefits is used as a criterion for other matters. The Scottish Government provided the examples of eligibility to repay debt under the Bankruptcy (Scotland) Act 1985 and determining the ability of disabled persons to vote on their own account. These are consequential changes of a fairly standard nature. Whether the changes made are controversial in policy terms will depend on future policy decisions. However, the Committee recognises that, were eligibility criteria to be altered using these powers, this could prove controversial.

21. The Committee accepts that in the current circumstances it is not possible to draw the powers to be conferred more narrowly without the risk of possibly impeding the primary objective of ensuring the continued availability of passported benefits with effect from 1 April 2013 and making other necessary consequential changes. Therefore, so far as the powers are

⁴ Scottish Parliament Subordinate Legislation Committee. *Official Report*, 17 April 2012, Cols 352-3.

necessary to enable the UK Act to be fully embedded with devolved matters, the Committee is content with the scope of the powers.

22. The Committee accepts that there is a need for the eligibility criteria for passported benefits which Ministers set out in regulations to remain relevant and up to date. For example, a means should be available so that any financial limits which may be set could be adjusted to retain their real value over time. Future uprating of this kind would not involve any significant policy change. However, the Committee is concerned that these general ancillary powers provide the power to go beyond the ability to future-proof criteria in this manner.

23. In its evidence, the Scottish Government confirmed that the future-proofing element of the powers sought would allow Ministers to introduce very different eligibility criteria from those which are introduced when passporting existing benefits, provided that a link to a change made as a consequence of the UK Act can be established. If such a link is established, the powers permit Ministers to make whatever changes they think fit. If the Bill is passed in this form, the Parliament will have delegated to Ministers the power to make substantial revisions to the criteria by which entitlement to passported benefits is assessed for the foreseeable future.

24. The Committee considers that the Parliament may wish to consider significant revisions to the eligibility criteria for such benefits on a longer timescale and cannot rule out the possibility that the Parliament would prefer to do so using primary legislation rather than through the use of these powers.

25. The Committee accepts that it will be necessary to allow a significant transitional period to encapsulate the time throughout which the UK Act changes are rolled out and to allow for a period of operation during which any practical problems could be identified and rectified. It accepts that it would not be a good use of parliamentary time to revisit the enabling powers during this period. The Committee also recognises that the changes made using the powers would also require to continue in effect.

26. As outlined above, the Committee considers that it is largely the urgency of the current UK welfare reform project and the unknown scope of the current passported benefits which justify the conferral of these broad general powers. The Committee is not satisfied that the delegation of general powers of this kind to permit significant variations once that project is completed, without parameters as to what those variations may comprise, has been justified.

27. The Committee therefore considers that serious consideration should be given to whether the delegated powers should continue to be available indefinitely. The Committee is not in a position to identify a specific period after which the powers should no longer be available. The Committee would expect that a reasonable period should be allowed to ensure full implementation and that some further adjustments may be required beyond 2013 to ensure the system operates effectively and as intended. The Committee therefore recommends that the justification for the continued availability of general powers should be reviewed by the Parliament after the implementation period is complete and that provision to this effect should

be included in the Bill. This would not affect the continued operation of provision made under exercise of the powers.

Parliamentary procedure which should apply to the exercise of the powers

28. It is clear from the evidence submitted to the lead committee to date that stakeholders are more concerned with the content of the regulations which are to be made under the Bill than the terms of the Bill itself. For example, Jeannette Campbell from Citizens Advice Scotland said:

“We are more interested to see the subordinate legislation and regulations, because they are where all the information and detail will be; that is the important bit for CAS. We want to see the eligibility criteria and we want to know exactly what system will need to be in place within a year to 18 months.”⁵

29. Stakeholders are therefore concerned to ensure that the regulations which are to be made under the Bill receive as much scrutiny as, if not more than, the Bill itself. John Dickie, from the Child Poverty Action Group in Scotland, said:

“We therefore seek assurance ... that the committee will give equal scrutiny to the regulations that are still to come, where the meat of the issue will be in relation to passporting”.⁶

30. This concern reflects the Committee’s acknowledgement above that the exercise of the powers will have a significant practical impact and that, until the regulations themselves are available, stakeholders will not have the opportunity to see and comment on what that impact will be.

31. The Bill currently provides that regulations which make textual amendments to primary legislation will require the Parliament’s approval. Regulations which do not make such textual amendments do not require approval but could be annulled by resolution of the Parliament within 40 days of being laid.

32. Stakeholders have given evidence that in their opinion this is not a sufficient level of scrutiny given the importance of the subject matter. Some have suggested that consultation on drafts in addition to the affirmative procedure would be merited given the importance of the regulations (“super-affirmative procedure”). Others have recognised that affirmative procedure is merited, although negative procedure would normally be considered sufficient for changes to subordinate legislation, or suggested that affirmative procedure would be appropriate for the first set of regulations to be made under each section.⁷

33. The Scottish Government explained the approach taken in the Bill as follows:

“with regard to amendments to primary legislation, the Parliament has already voted on the actual wording of that legislation and, instead of allowing certain provisions to be made in secondary legislation, has

⁵ Scottish Parliament Welfare Reform Committee. *Official Report, 17 April 2012*, Col 93.

⁶ Scottish Parliament Welfare Reform Committee. *Official Report, 17 April 2012*, Col 114.

⁷ Scottish Parliament Welfare Reform Committee. *Official Report, 17 April 2012*, Cols 117-8.

determined that particular terms are sufficiently important to be used in primary legislation ... there is a qualitative difference between that kind of amendment and an amendment to secondary legislation.”⁸

34. The Committee endorses the view that where regulations make amendments to primary legislation they should be approved by the Parliament for the reasons set out by the Scottish Government.

35. However, the Committee questioned whether it was possible to say that the changes which Ministers might wish to make to subordinate legislation using these powers differed in content, effect or their financial implications from those to be made to primary legislation. The Scottish Government responded:

“It is difficult to answer your question about the content, effect and financial implications of instruments, because instruments will vary from case to case. Some will have significant effect, in that they will broadly continue to make a passported benefit available to the group that currently receives it; others might have an effect that varies in some way, depending on the policy. At the moment, however, I am unable to draw a distinction between the content, effect and financial implications of changes to primary and secondary legislation.”⁹

36. The Committee concludes that one of the implications of the breadth of the power and the current stage in the programme of this project is that it is not possible to predict at the moment whether the changes to be made to secondary legislation will be less significant, as significant or more significant than those which are to be made to primary legislation. In light of this, and the concerns clearly expressed by stakeholders, it therefore does not appear to the Committee to be appropriate to make a distinction as to the scrutiny to be applied solely on the basis of whether the regulations amend primary legislation or not.

37. The Committee is not attracted to the proposal that the first set of regulations could be subject to a higher level of scrutiny than subsequent regulations for the same reason. It does not necessarily follow that subsequent regulations will have a less significant effect than the first set of regulations.

38. The Committee recognises that, if some distinction is to be made between regulations which are to be subject to the affirmative procedure and those which are to be subject to the negative procedure, that distinction must be made by way of a clear criterion. The current criterion does fulfil the requirement of clarity. A criterion based on an assessment of the significance of the effect of the regulations or something similar would not be sufficiently clear since whether or not something has a significant effect is essentially a subjective matter.

39. The Committee considers that the reason why stakeholders would prefer affirmative or super-affirmative procedure is because these procedures provide the opportunity to consider the proposed regulations in draft before they are made. The Committee welcomes that the Deputy First Minister and Cabinet Secretary for

⁸ Scottish Parliament Subordinate Legislation Committee. *Official Report*, 17 April 2012, Col 361.

⁹ Scottish Parliament Subordinate Legislation Committee. *Official Report*, 17 April 2012, Col 360.

Health, Wellbeing and Cities Strategy has given a written undertaking to the Welfare Reform Committee that the Scottish Government will make available material on the relevant subordinate legislation from the UK Government as it becomes available and to continue to work with stakeholders throughout the process of developing the Scottish regulations. This is an important commitment and goes a considerable way towards the additional expectations that would be imposed through a super-affirmative form of procedure.

40. The Committee recognises that a formal requirement for consultation drafts to be laid for a standstill period or the blanket application of affirmative procedure could have an adverse effect on the timetable for this project, which is set by matters beyond the Scottish Government's control. Given that the timetable is fixed, a balance is to be struck between using the limited time available to work up proposals fully and allowing time for consultation. Formalising the Cabinet Secretary's offer in the legislative process could risk delivery to time if the necessary information from the UK Government is late or there are subsequent changes made as a result of the consultation processes. All of these possibilities are at least foreseeable.

41. The Committee also accepts that affirmative scrutiny of more minor changes would use up valuable committee and parliamentary time which could be better spent on other matters.

42. The Committee considers that in these particular circumstances the pragmatic and collaborative approach already adopted by the Scottish Government, stakeholders and the Welfare Reform Committee is likely to deliver a better solution than a formal requirement for consultation or additional procedure. The Committee encourages all parties to continue to work together in this manner.

43. The Committee recognises that at this point it is not possible to predict whether regulations which modify subordinate legislation will have significant effects or not. The Committee therefore considers that where regulations do not make amendments to primary legislation the Bill should allow the regulations to proceed by either affirmative or negative procedure. The Committee's expectation would be that the Scottish Government would adopt the affirmative procedure unless it is clear that the subject matter is not significant or, where the regulations do have a significant effect, if for reasons beyond the Scottish Government's control there is not enough time to adopt the affirmative procedure.

44. The choice of which procedure to use in any particular case would be one for Ministers to make, in addition to considering whether any existing powers would be more appropriate. However, Ministers would be accountable to the Parliament and to stakeholders for their choice of procedure. Given the close working relationship established with the Welfare Reform Committee, which the Committee expects will continue throughout the implementation of this project, the Committee anticipates that this is a matter which the Welfare Reform Committee could pursue as work on the regulations progresses.

45. In conclusion, the Committee agrees that regulations which amend primary legislation should be subject to the affirmative procedure as the Bill

currently provides. The Committee recommends that regulations which do not amend primary legislation should be capable of being made under either affirmative or negative procedure. The Committee's expectation would be that affirmative procedure would be adopted where the subject matter of those regulations is considered to be significant.

ANNEX

Subordinate Legislation Committee letter to Scottish Government

In considering its conclusions on the Bill, the Committee would appreciate further information from the Scottish Government regarding the inclusion in the Bill of a sunset clause applying to the delegated powers provisions once the changes consequential on the UK Act have been made.

Although the issue was explored at the meeting today, the Committee would welcome further explanation from the Scottish Government as to why it is considered that this is an unnecessary provision. In particular, can you provide justification for these powers being retained and further information on the consequences of such a provision on the operation of the Bill?

The Committee accepts that sufficient time must be given to address fully the consequences of the UK Act and that this may extend over a significant period of time as the UK changes are rolled out. Also changes made using the powers must obviously continue in effect. However the Committee would like clarification of the need to maintain powers of this nature beyond the period of full transition to the new UK Act system. In particular, would it be possible for any future changes to be considered on a longer timeframe and for more specific powers to be taken at that point if they were required?

Scottish Government response to the Subordinate Legislation Committee

Thank you for your letter of 17 April. You have asked, on the Committee's behalf, for a further explanation as to why we consider that a sunset clause would be an unnecessary provision in our Bill. As you acknowledge, this matter was discussed at our meeting with Committee on Tuesday and there will be a limit as to how much further explanation I can provide as I think that discussion covered the salient points. We do not believe that a sunset clause would be appropriate. Furthermore, we consider that if the Bill were to be amended to include such a clause, that this approach would give rise to additional risk as a consequence.

Taking these points in turn, we believe that a sunset clause would be unnecessary because the Bill's provisions are intended for the longer-term, not just the period immediately affected by the transition to Universal Credit and the Personal Independence Payment. We tried to illustrate this point yesterday by citing the example of an income threshold, which might be set to determine eligibility to passported benefits. Whatever figure is set for the income threshold, this is likely to become less useful over time, as a means of accurately identifying low income for the purposes of entitlement to passported benefits.

This is because inflationary pressures on the cost of living mean that, if a household which is currently in receipt of, for example, an income of £16,000 can hypothetically be said to be in relative poverty in comparison with other households in Scotland, this may not be true in 10 years' time. By that time, inflationary pressures may mean that households with an income of above

£16,000 may also be at an equivalent relative level of poverty. We would require to adjust the income threshold, in order to ensure that we could continue to accurately capture households with low, relative incomes over time and not exclude those which are at risk of falling into poverty as the cost of living rises.

As things stand, we would be able to make this adjustment using the powers enabled by the Bill. If these powers ceased, because of a sunset clause, we might then have to recourse to further primary legislation – which we do not consider to be a useful or effective use of government or Parliamentary resources. We believe therefore, that this requirement, to use a term from yesterday, to “futureproof” our eligibility criteria for passported benefits justifies these powers being retained in order to keep the related legislation operating effectively over time. I hope this also clarifies the need to maintain powers of this nature beyond the period of full transition to the new UK Act system.

You also asked for further information on the consequences of a sunset clause for the operation of the Bill. We believe that one consequence would be to give rise to additional risk. This is the risk that - if the UK Government were to decide to amend the welfare system in the future, in a way which in turn, also effected devolved legislation - then Scottish Ministers might need to react quickly in order to deal with the implications of those changes. We would expect UK amendments to be made by way of subordinate legislation, which the UK Government would be able to do, in part because the powers delegated by the UK Welfare Reform Act 2012 are not subject to a sunset clause.

For as long as Scottish Ministers are able to use the enabling powers proposed in our Bill, then they would be able to bring about adjustments to timescales which would likely be equivalent to those undertaken in the UK. Depriving Scottish Ministers of these powers could, at some future point, result in a need for further primary legislation which would in turn, potentially cause delay and a risk to continued provision. We believe that we have been quite explicit thus far, about the Scottish Government’s wish in bringing forward this legislation, to avoid any risk to the provision of passported benefits.

Finally, you asked if it would be possible for any future changes to be considered on a longer timeframe and for more specific powers to be taken at that point if they were required. We do not see any reason why this would not be theoretically possible. However, we do not believe that this approach would be as effective a means of ensuring continued provision as the one taken in the Bill. To reiterate something I said on Tuesday, “the primary policy intent of this Bill is to ensure continued access to passported benefits”. Introducing a sunset clause would not, in our view, ensure continued access – it would ensure access for a fixed period, after which the same issue would have to be addressed again.

We understand, to an extent, Committee’s concern about delegating these powers in perpetuity. However, we feel that the existing Parliamentary procedures for scrutinising regulations, such as those which will be made under the Bill, should provide sufficient assurance that these powers will be used appropriately.

Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

PRICES AND SUBSCRIPTION RATE

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscription: £350.00

WRITTEN ANSWERS TO PARLIAMENT QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Printed and published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:

243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

And through other good booksellers

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries

**0131 622 8283 or
0131 622 8258**

Fax orders

0131 557 8149

E-mail orders, subscriptions and standing orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

All documents are available on the Scottish Parliament website at:

www.Scottish.Parliament.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

Public Information Service

The Scottish Parliament
Edinburgh EH9 1SP

Telephone: 0131 348 5000

Fòn: 0131 348 5395(Gàidhlig)

Textphone users may contact us on
0800 092 7100.

We also welcome calls using the RNID Tynetalk service.

Fax: 0131 248 5601

E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.

ANNEXE: BACKGROUND NOTE ON SUBORDINATE LEGISLATION

Committee members asked for a short note on the different levels of scrutiny applied to different forms of subordinate legislation and the timescales involved.

Key points

- SSIs have the same legal status as primary legislation (Acts) but the process for making this form of law or amending it is quicker and involves less scrutiny.
- Unlike primary legislation, SSIs cannot be amended by the Parliament during the scrutiny process.
- The only way to change subordinate legislation is for a Committee to see it in advance of the formal scrutiny process and for recommended changes to be made by the Government before subordinate legislation is formally laid before Parliament.
- Negative instruments receive less scrutiny than affirmatives, with affirmatives requiring an active decision by Parliament to approve them, whereas negatives come into force unless the Parliaments acts to annul them (for example negatives can come into force during periods when the Parliament isn't sitting).

Types of instrument

1. The primary legislation which delegates the power to make the SSI determines the procedure to which it is subject.
2. By far the most common forms of sub leg are; negatives, affirmatives and super affirmatives—
 - those which can be made and brought into force but which the Parliament can annul by a vote in the Chamber (the most frequent type) are known as **negative** SSIs;
 - those which must be approved by a vote in the Chamber are known as **affirmative** SSIs;
 - those which require to go through a “pre-legislative scrutiny” period involving formal consultation on a draft (or other additional requirements) followed by approval by a vote in the Chamber before they can be made are known as **super-affirmative** SSIs.
3. These are the standard types of SSIs. However, since the level of scrutiny is determined by the Parliament when the power is created, the Parliament can choose to impose a different type of procedure or other pre-conditions such as consultation or the preparation of supporting reports. This must be done within the primary legislation that the subordinate legislation stems

from. For example, if an instrument is subject to super-affirmative procedures, the period for formal consultation on the draft instrument is often specified in the primary legislation.

Timescales for scrutiny and the process for scrutiny of affirmative and negative instruments

4. The timescales for the Subordinate Legislation Committee and then the relevant subject committee to scrutinise instruments are detailed in the tables below. This is followed by two flow charts which set out the process for approval of negative and affirmative instruments.

Affirmative instruments

Timescale	Rule	Consequences
40 days¹⁰ Lead committee must report to the Parliament on the instrument no later than 40 days after the instrument is laid ¹¹ before the Parliament.	<ul style="list-style-type: none"> • rule 10.6.4 of standing orders 	The lead committee would be in breach of standing orders if it did not report within this timescale. This has no direct impact on the instrument coming into force although approval by the Parliament is required for the instrument to be made ¹² /come into force/remain in force beyond a stated period (rule 10.6.1).

Negative instruments

Timescale	Rule	Consequences
40 days The Parliament may annul the instrument up to 40 days after the instrument is laid.	<ul style="list-style-type: none"> • section 28(3) of ILRA • rules 10.4.3 and 10.4.4 of standing orders 	If a motion to annul is agreed to, the instrument cannot come into force or, where it is already in force, it ceases to have effect.

¹⁰ **Calculation of days** – the calculation of the 20/22, 28 and 40 day periods does not include periods during which the Parliament is in recess or dissolved. However this does not apply when calculating the 10 or 14 day period between the laying and coming into force of commencement orders as the primary purpose of this convention is to ensure public awareness of the orders before they come into force.

¹¹ **Laid** – formally presented to the Parliament. In practice instruments are laid when they and any accompanying documents are emailed to the clerk. Notification of an instrument being laid is made in section H of the Business Bulletin. The timescales for parliamentary consideration of an instrument are set out in section J of the BB.

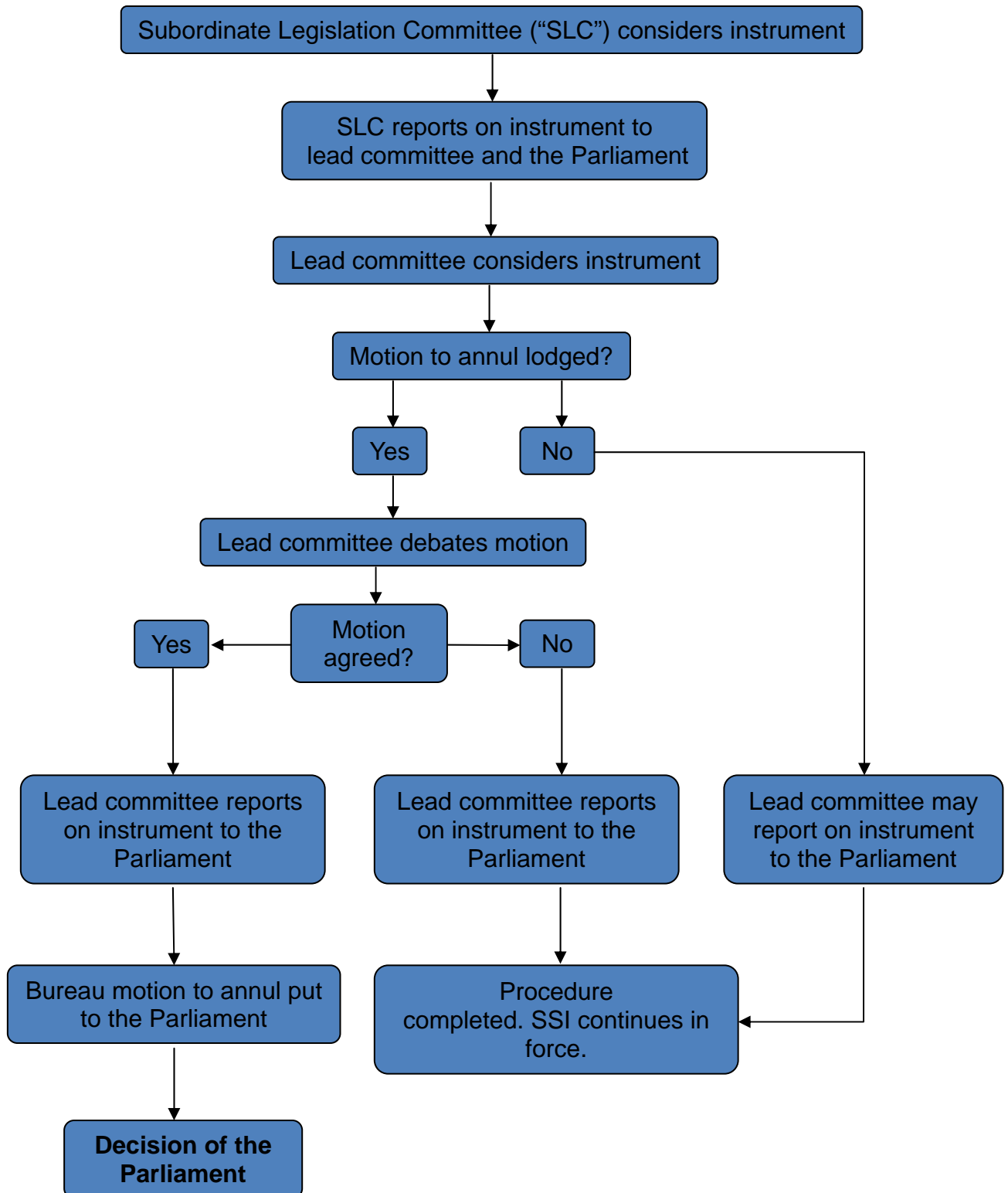
¹² **Made** – instrument is signed by or on behalf of a Scottish Minister (or other responsible authority eg the Lord President). Negative instruments are signed before being laid. Affirmative instruments are laid in draft ie unsigned, and can only be made once parliamentary approval has been given.

<p>28 days The instrument must be laid at least 28 days before coming into force (<i>the 28-day rule</i>)</p>	<ul style="list-style-type: none"> • section 28(2) of ILRA 	<p>The purpose of this rule is to ensure that there is adequate public notice between the law being laid in Parliament and published, and it coming into force. It also ensures that there is sufficient time for parliamentary scrutiny before it comes into force. A letter to the Presiding Officer must be provided at the time of laying setting out the reasons for non-compliance with the rule. The reasons provided in the PO letter will be considered by the SLC and the lead committee. Any non-compliance has no effect on the validity of the instrument.</p>
--	---	---

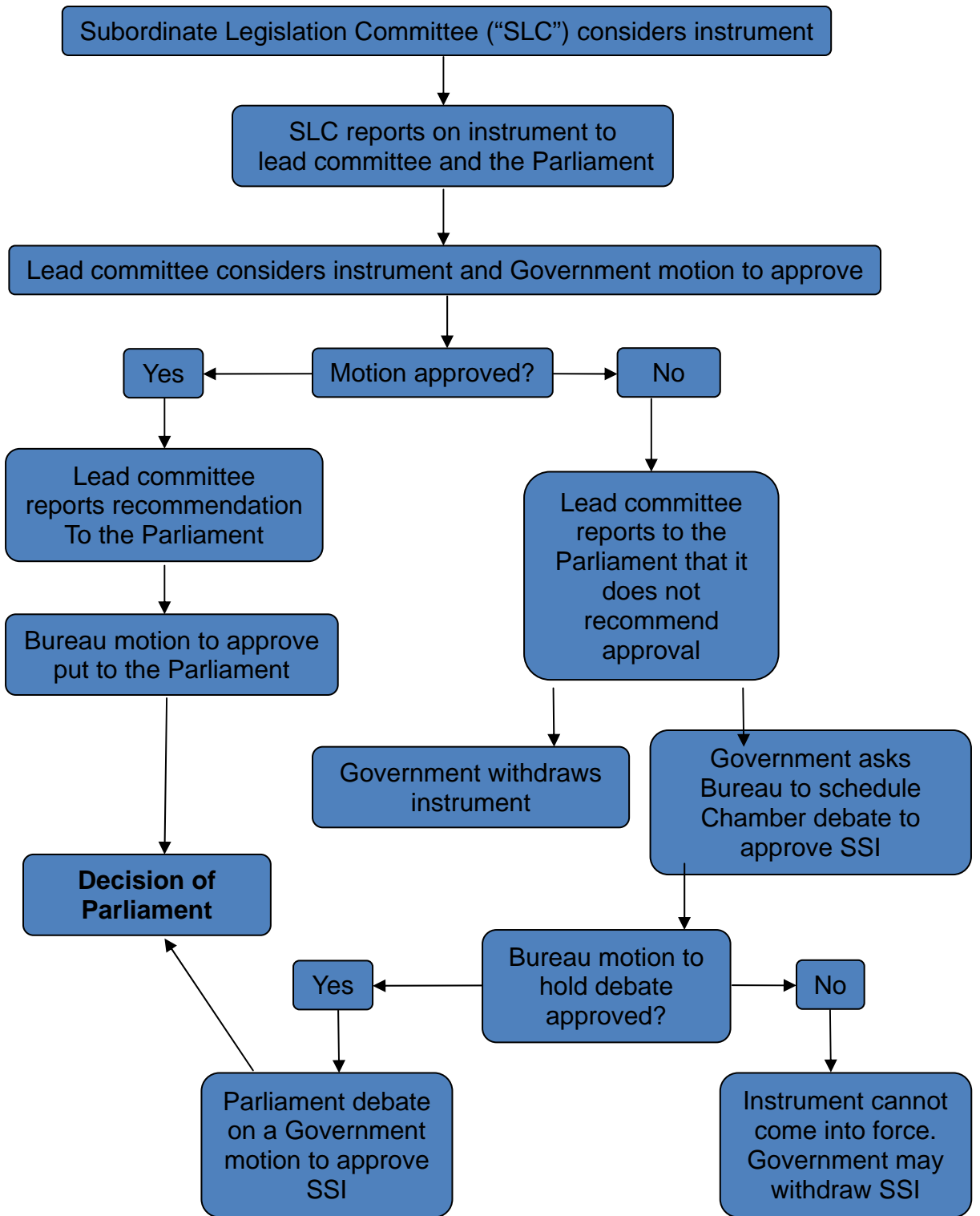
All instruments

Timescale	Rule	Consequences
<p>20 or 22 days The Subordinate Legislation Committee must report its decision on an instrument normally no later than 20 days, and in any event no later than 22 days, after the instrument is laid.</p>	<ul style="list-style-type: none"> • rule 10.3.2 of standing orders 	<p>If it does not report within this timescale, the SLC would be in breach of standing orders. The reason for the rule is to ensure that the lead committee receives the SLC's report on the instrument before it considers the instrument.</p>

Flow Chart for Negative Instruments



Flow Chart for Affirmative Instruments



Welfare Reform Committee

6th Meeting 2012 (Session 4), Tuesday 1 May 2012

Welfare Reform (Further Provision) (Scotland) Bill: Letter from the Finance Committee

**Finance Committee
Convener: Kenneth Gibson MSP**

Michael McMahon MSP
Convener
Welfare Reform Committee

Room T3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

Direct Tel: (0131) 348 5451
(RNID Typetalk calls welcome)
(Central) Textphone: (0131) 348 5600
finance.committee@scottish.parliament.uk

18 April 2012

Dear Michael

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

At its meeting on 28 March 2012 the Finance Committee agreed its approach to its scrutiny of the Financial Memorandum (FM) accompanying the Welfare Reform (Further Provision) (Scotland) Bill.

The Committee agreed to adopt a two stage approach to its scrutiny of the financial implications of the devolved aspects of welfare reform. It agreed that the first stage would focus on the FM accompanying the Bill and that the second stage would focus on the forthcoming subordinate legislation.

As part of its scrutiny of the FM, the Committee sought written evidence from stakeholders and took oral evidence from the Bill team.

In order to report its views in time for your committee's evidence session with the Cabinet Secretary for Health, Wellbeing and Cities Strategy, the Committee has not produced a formal report. Rather it agreed to write to the lead committee referring to the official report of its evidence session with the Bill team, appending the written submissions received and highlighting any specific issues that it considered appropriate.

Paragraph 34 of the FM indicates that the Scottish Government will provide details of how the system of passported benefits will be modified when the necessary

subordinate legislation is brought forward later this year, including an assessment of the financial impact of these changes.

It would be helpful to our future scrutiny if the lead committee could seek clarification from the Cabinet Secretary on the timing, nature and level of detail of the financial information that will be provided by the Scottish Government alongside its subordinate legislation and the format in which it will be provided.

The written submissions are attached. The Official Report (link below) of the evidence session with the Bill team that took place at the Committee's meeting today will be published on its website on 23 April.

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6979&mode=pdf>

I hope this information is helpful to your scrutiny.

Kenneth Gibson MSP
Convener

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

FINANCIAL MEMORANDUM

The Committee received written submissions from—

- Angus Council
- CHILDREN 1ST
- Citizens Advice Scotland
- Clackmannanshire Council
- COSLA
- Glasgow City Council
- Highland Council
- NHS Greater Glasgow and Clyde
- NHS Lanarkshire
- NHS Lothian
- North Ayrshire Council
- North Lanarkshire Council
- Scottish Courts Services
- Scottish Legal Aid Board
- South Lanarkshire Council

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Angus Council

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Response:

Free School Meals

As the entitlement criteria to Free School Meals will have to be realigned to take into account the abolition of the existing passporting benefits there will be financial implications for this council as follows:

- ❖ Software may have to change to accommodate the changed entitlement criteria
- ❖ At the moment the Free School Meals application and assessment process is integrated with the Housing and Council Tax benefit assessment process. Any divergence between the new entitlement criteria for free school meals and the information gathered for HB(until it is fully replaced by Universal Credit) and the new Council Tax Support scheme will put this integrated approach at risk resulting in increased administration costs, poorer customer service etc.

School Clothing Grants

Although these grants are not administered or funded by the Scottish Government the award of a grant is linked to entitlement to benefits which will be abolished from 1 April 2013 and the same issues will apply as are outlined for free school meals above.

Blue Badges and Concessionary Travel (National Entitlement Card)

The award of a blue badge and an NEC is linked to entitlement to benefits, depending on the category of application. Although national schemes, these are administered locally and, therefore, any changes will have an impact on the operation, and potentially resources, in local authorities. We understand that Transport Scotland is currently in talks with DWP regarding the impact of benefit changes on these two schemes.

Rent Arrears

As there is a pre-eviction protocol both locally and nationally we will deal with from within existing resources. We will only pursue eviction action as a very last resort. I do foresee quite a rise in the need for detailed welfare and employment advice.

Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Response:

An assumption is made in the Financial Memorandum that additional costs resulting from the re-alignment of entitlement and service delivery will be met from existing budgets and no estimate of these costs is provided.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Response:

The bulk of additional administrative costs could be met from existing resources. However, there is no budget allocated to meeting the costs of any significant changes required to software and the existing streamlined application process.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Response:

Not applicable

Wider Issues

Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Response:

There will be additional costs associated with re-engineering business processes and documentation and publicising the changes to the public in relation to a number of council services (e.g. leisure concessionary scheme)

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from CHILDREN 1ST

This is the written evidence on the Welfare Reform Bill submitted by CHILDREN 1ST to the Welfare Reform Committee.

Welfare Reform – Call for Evidence Response Form

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

CHILDREN 1ST welcomes the Welfare Reform (Further Provision) (Scotland) Bill and acknowledges the need to pass and enact the bill as quickly as possible. This will allow the introduction of the secondary legislation which is required to ensure provision is in place for the implementation of measures from the UK Welfare Reform Act from 2013.

Moreover, we welcome the Scottish Government's commitment to work closely with the committee and indeed, other stakeholders in relation to the bill process and in particular, sharing information and analysis of the impact of the changes. Given that most of the 5000 vulnerable children, young people and families we work with every year will be directly affected by many changes, CHILDREN 1ST is keen to support the Scottish Government and the Scottish Parliament through information sharing and collaborative working.

We would draw the committee's attention once more to our discovery that take-up of council tax benefit (and indeed, housing benefit) is low, particularly among two parent families. Using the Department of Work and Pensions' own data and analysis, we have estimated that Scots on low incomes may be missing out on up to £340 million annually. Increasing take-up in the next twelve months would provide much needed additional income (or at least offset household costs) for many families who are struggling financially. It would have the additional benefit of ameliorating the 10% cut in council tax benefit monies which forms part of the devolution of this benefit. CHILDREN 1ST would urge the Scottish Government, the committee and indeed, all MSPs to do all they can to increase take-up of council tax and housing benefit in the coming year.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take

responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

The Bill does not include provisions to devolve responsibility for replacement of council tax benefit and administration of elements of the Social Fund (Community Care Grants and Crisis Loans). Yet, the briefing session held by the committee teased out that such primary and/or secondary legislation will be required. While we acknowledge the need to act urgently in relation to passported benefits, we would encourage the Scottish Government to include provision for these two devolved areas of welfare in this bill. To create a separate legislative process for this seems to be an unnecessary duplication of Parliamentary resources. CHILDREN 1ST would welcome amendments to this bill in this regard.

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

**4. Do you have any other comments on the introduction of Universal Credit?
Personal Independence Payments**

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

6. Do you have any other comments on the introduction of Personal Independence Payments?

Subordinate Legislation

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.

Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

7. What are your views on the proposed subordinate legislation powers in the Bill?

Given the extent, scope and importance of these regulations, it is essential that they receive proper and extensive parliamentary scrutiny. CHILDREN 1ST therefore recommends that a super-affirmatory procedure is used when these regulations are first introduced. This would allow for drafts to be considered by the secondary legislation and welfare reform committees before the final regulations are laid for approval, allowing for detailed consideration and potential changes to be made. CHILDREN 1ST recommends that the bill is amended accordingly.

8. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

A number of MSPs in the bill briefing session held on 29 March 2012 asked about eligibility criteria and the use of income thresholds. CHILDREN 1ST was concerned to note the Scottish Government's focus on income being the primary factor in the provision of passported benefits, which suggests a shift from the current universal nature of some passported benefits and also does not acknowledge the very particular needs of some groups, especially families with dependent children, which current criteria fail to acknowledge.

This bill and regulatory process should be driven by two objectives. The first is to make transitional provision on passported benefits so that no one currently receiving one loses out in April 2013. CHILDREN 1ST recognises the urgency required here and supports wholeheartedly the Scottish Government's intentions in this regard.

The second should be to use the opportunity welfare reform presents to fundamentally review our approach to passported benefits - what they are, what their purpose is, to whom they are available, how people qualify for them, how they are accessed and also administered. CHILDREN 1ST has a particular interest in ensuring that all vulnerable families with dependent children are receiving additional supports that help to address poverty but also acknowledge their – like kinship care families – particular needs.

We are concerned to note from the report on the briefing session that the Scottish Government seems minded to limit eligibility criteria to future passported benefits to an income threshold alone and also that there is some indication that people in work on low incomes might be excluded from eligibility. CHILDREN 1ST considers that we need a much wider debate and review involving all stakeholders with an interest in these issues before reaching conclusions on such details. We would hope that the committee will seek assurance from the Scottish Government that this wider review and debate will be conducted with a view to future proofing passported benefits to better meet the needs of vulnerable children and young people, and their families, in Scotland.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum 'the timetable being pursued by the UK Government presents limits to the Scottish Parliament's ability to assess the financial implications of legislation it considers.'

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The financial memorandum that accompanies the Bill states “*it is expected that the provision of passported benefits will be retained at the current level and that costs will be met from within existing budgets*”¹. As the bill manager indicated, it is impossible to gauge currently the full financial impact of changes occasioned by the shift to universal credit. Yet, the very fact that some people currently entitled to passported benefits under existing benefits and criteria will no longer receive universal credit and therefore, fall out of eligibility for some passported benefits, suggests that current expenditure will be affected.

Moreover, while finance is obviously a key driver in the current climate, CHILDREN 1ST is concerned that existing budgetary provision informs the approach to be taken to future provision of passported benefits, rather than designing the system to best meet need. The Scottish Government’s commitment to share modelling – hopefully this will include passported benefits implemented by local authorities and health boards, as well as nationally – will assist the consideration of financial issues greatly

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.

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?

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Citizens Advice Scotland

Citizens Advice Scotland has supplied the Committee with a copy of its submission to the Welfare Reform Committee on the Bill. As detailed in question 9, it does not feel it can comment on the Financial Memorandum accompanying the Bill at this time.

1. Are you generally in favour of the Bill and its provisions?
2. What are your views on this principle?
3. What are your views on the proposed powers in relation to Universal Credit?
4. What are your views on the proposed powers in relation to Personal Independence Payments?
5. What are your views on the proposed subordinate legislation powers in the Bill?
6. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

As the Scottish Parliament rejected aspects of the UK Welfare Reform Bill Legislative Consent Motion, this bill is absolutely necessary to ensure that the citizens of Scotland still have access to passported benefits on 1 April 2013 when a raft of current benefits are effectively abolished and replaced by the new Universal Credit which is for people both in and out of work. CAS also believes there has been a lack of detail about many aspects within the UK Welfare Reform Act with much still being left to regulation or secondary legislation. This is unhelpful in policy and legislative planning. We also believe that there is much work still being done to assess what the impact will be of the UK Welfare Reform Act on Scotland's people and services, including passported benefits.

Therefore CAS agrees that it is right that the Scottish Government now make the necessary provisions as it applies to areas of devolved competence both in terms of primarily legislation and subordinate legislation. CAS agrees the Scottish Government needs the powers to be able to amend legislation and introduce regulations as Universal Credit is introduced and DLA is abolished and replaced by PIP. We are content that the bill will also provide for regulations that directly or indirectly relate to the UK Welfare Reform Act to be changed in the future, as shown in the example from the Scottish Government in relation to varying income thresholds. CAS also welcomes the additional scrutiny that the Scottish Parliament will now have over aspects of the UK Act through the publication of primary and subordinate legislation and regulations tabled by the Scottish Government.

CAS expressed concern over the possible rejection of the LCM on the grounds that we wanted to ensure that the people of Scotland would not be in any way adversely affected by a rejection that could lead to a delay for people accessing passported benefits. CAS already believes that there are very tight timescales for the changes being introduced through the UK Welfare Reform Act, indeed the delay in the Bill becoming an Act, has added to those concerns. The Scottish Government said it was confident that legislation could be enacted in time but we would like to take this

opportunity to remind MSPs that we are now less than a year away from the introduction of Universal Credit and PIP. Therefore there is only a short time to get legislation and processes into place to ensure the smooth transition and delivery of passported benefits by Scottish Government, local authorities, and various other stakeholders. Whilst we absolutely support and recognise that necessary time must be taken to scrutinise this bill fully and adequately, the timescales involved must be borne in mind.

CAS also hopes and assumes that regulations to follow from the Scottish Government along with policy on passported benefits will be scrutinised by the Welfare Reform Committee. Much work will need to be done by the Scottish Government, local authorities, and various other stakeholders in establishing the new eligibility criteria and CAS welcome the opportunity to be part of that process.

For the people who currently access passported benefits, they are a necessary and a vital means of support. They are often an important part of a household's overall income or budgeting and removal would cause hardship. Access to passported benefits such as school meals and those associated with health and education are relied on by hundreds of thousands of individuals and families. Equally passported benefits for areas such as legal aid and court exemption fees are important to ensure people have access to justice.

The new eligibility criteria which will be set up by the Scottish Government is important to ensure that those who were in previous receipt of passported benefits remain eligible under the criteria established within the new Universal Credit benefit and PIP benefits (more below). The most important aspects of the new eligibility system will be to ensure that it is simple, clear and easy to access. The whole process will have to be very carefully managed and co-ordinated and we hope stakeholders will engage in this fully and in a timeous manner. Equally local authorities will also have a role in establishing local eligibility criteria for any passported benefits they have under their discretion such as school uniform grants or access to local facilities such as leisure centres.

We want all citizens who currently access passported benefits to remain franchised in the new system. Passported benefits play an important role in meeting education, health and anti-poverty objectives and targets. In considering how passported benefits fit with the new Universal Credit we hope that such considerations and outcomes will be taken into account. CAS also wants to ensure that the replacement eligibility criteria do not impact on work incentives or impoverish people who want to move into work from welfare.

Therefore, as this new criteria is developed, we would argue that a big picture view be taken. CAS suggests that establishing eligibility be done in conjunction with other policy areas – or at least have a role in recommendations for other policy areas. For example, if local authorities were to roll out free school meals for P1-3 as a minimum, then what is currently a passported benefit for those children with parents who meet the current criteria, would be an entitlement for all (also reducing the perceived stigma of such benefits). Equally providing accessible and affordable childcare in early years and wraparound care in school years, would help lone parents and parents on low incomes in the workplace – including entering the workforce. We can see already how this would work: as Scotland now has free

prescriptions, there will be no need to establish the criteria for eligibility for prescriptions, therefore also no need to see if anyone would be disenfranchised through new eligibility rules under the new Universal Credit.

We are concerned that stricter sanctions and conditionality which could lead people to losing out on aspects of the Universal Credit may also have a major knock on effect on accessing passported benefits and believe this will have to be examined carefully during the drawing up of the new eligibility criteria. Equally during the 2013-17 migration process, we are concerned that any delays or appeals could also lead to delays or missing out on vital passported benefits. As well as being of detriment to adults, CAS would not want to see situations where children were missing out on passported benefits due to parental migration problems or sanctions imposed at the very time they were needed the most.

CAS would also like to point Committee Members to the newly published Report by the Social Security Advisory Committee 'Universal Credit: the impact on passported benefits' which shows the importance of passported benefits. This review found that:

- All passported benefits fulfil important needs, are highly valued by those who receive them, and make a significant contribution to:
 - Children's health and wellbeing and their educational and emotional development
 - The health, wellbeing and quality of life for adults and families who are out of work or living on a low income
 - Reducing child poverty, health inequalities and social exclusion benefits-in-kind are generally regarded as particularly beneficial in helping low-income families and there was little support from review respondents for cashing these up within UC
- There is no rigorous research evidence to show that the provision of passported benefits acts as a work disincentive: when people take decisions about moving into work or increasing working hours, they take a range of factors into account
- The loss of out-of-work passported benefits when people take a job can create an unhelpful cliff-edge and reduce the apparent gains to work
- As the number of passported benefits has increased, so too has the complexity in the system and greater simplicity and better coordination of passported benefits is essential: this should reduce administration costs, render passporting more effective and efficient, improve awareness, understanding and take-up, and ensure better targeting
- Options for the future should not undermine the policy objectives of individual passported benefits, nor undermine the overarching principle that people should be better off in work than they are on benefits
- It is unlikely that one approach will suit all passported benefits in future, and more radical options will need further consideration and may require additional expenditure
- The constraint of cost-neutrality creates tensions which will need to be balanced.

4. Do you have any other comments on the introduction of Universal Credit?

CAS agrees with the principle of simplifying the benefits system into one Universal Credit and to improve work incentives by allowing individuals to keep more of their income as they move into work. However during the passage of the Welfare Reform Bill we expressed our concern over many of the accompanying changes we believe will be to the detriment of the people, services and economy of Scotland. These include the taper rate for Universal Credit and minimum and maximum disregards; cuts in benefit payments which will mean many people receive lower entitlement payments; increased sanctions and conditionality; monthly payments to one member of the household only (including housing benefit which has previously been paid direct to landlords); and entitlement to passported benefits, especially those that are devolved to Scottish or local governments. We would be happy to provide more information on any or all of these issues.

6. Do you have any other comments on the introduction of Personal Independence Payments?

The Scottish Government must introduce new PIP eligibility criteria in relation to accessing the two passported schemes Blue Badge Scheme (BB) and National Concessionary Travel Scheme (NCT) benefits that are currently accessed through DLA Mobility and Care components. Whilst we would argue that again no-one should lose out on these schemes if they received them previously, this could be problematic due the numbers expected to lose DLA and therefore their entitlement to these schemes.

The first thing to note about the change of DLA to PIP is that the UK Government has already determined that they will cut the budget for disability benefits by 20%. The change from DLA to PIP will disenfranchise one in three working age DLA clients in Scotland from their current DLA entitlement. This remains our biggest concern over the move from DLA to PIP. Inclusion Scotland estimate 75,000 people of the 225,000 to be assessed and migrated from DLA to PIP will no longer be entitled to their previous benefit. They will therefore of course, not be eligible for BB or NCT. Therefore as well as losing out on vital DLA, disabled people will also be unable to access these schemes, limiting further access to independent travel.

There are two specific concerns we have over the introduction of PIP. The first is the assessment process. We have seen major problems with the Work Capability Assessment (WCA) as people have applied for Employment and Support Allowance which is the replacement for Incapacity Benefit. In 2010/11 Scottish bureaux saw a 33% increase in the number of new ESA issues which were both time consuming and stressful for both bureaux and clients. In the case of ESA tribunals where a CAB provided representation, 69% found in favour of the claimant. This shows there are inherent flaws in the WCA, an issue we have pressed UK Governments on since 2008 and can provide further information on if required.

CAS is concerned that the assessment process for PIP may also have inherent flaws and lead to a large amount of appeals as we have seen with ESA. This could lead to other problems, for example whilst someone goes through an appeal process will they be able to access BB or NCT? When PIP is decided for an individual, the length of time that person is entitled to it for will also be set. Depending on your circumstances the award could be a short award of up to two years or a longer award lasting up to five or ten years. Therefore people will have to face the stress of continual reassessment for

PIP and the worry of losing it and associated benefits.

Our other area of concern is that it has been suggested that the use of mobility aids and adaptations may be taken into account in the assessment. So for example, an electric wheelchair-user may be assessed as not having restricted mobility and therefore not eligible for the mobility component of PIP.

DLA is already within the top ten most common problems clients present to Scottish bureaux. In 2010/11, DLA (Care) was the third most common problem with 20,222 issues (an increase of 3% on the previous year) and DLA (Mobility) was the seventh most common with 18,216 issues dealt with by bureaux (an increase of 2% on the previous year). We expect to see an increase in demand for advice during the migration of DLA to PIP.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

As stated in the Scottish Government Financial Memorandum, 'it is not possible to set out the detail of the likely financial impact of future plans to modify entitlement to passported benefits until the operational detail of the UK Government's welfare reform is available' and that they will instead provide this when subordinate legislation is tabled later in the year. As such CAS feels we cannot make a comment on the financial implications of this bill. However, to reiterate what was stated earlier, time is of the essence and we agree with the Scottish Government's approach in bringing forward this legislation now rather than waiting to legislate after further successor arrangements and details are brought forward by the UK Government.

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?

We have no comment to make on this question.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Clackmannanshire Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The costs detailed in the financial memorandum does not appear to reflect the considerable work and associated costs that will be borne by Local Government in implementing the content of the Welfare Reform Act. The costs concentrate solely on the operation of free School Meals but misses other key issues that will face Local Government in all other areas affected by the Welfare Reform Act.

The major areas of increased expenditure expected within Clackmannanshire Council include following areas: -

Replacement Scheme for Council Tax Benefit

This is being abolished as of 31/03/2013. The costs for Local Government will be considerable as currently the provision is done on a dual basis with Housing Benefit and partially funded by an administration grant from the Department of Work & Pensions. The total administration Grant in Scotland is Circa £4.5 million per annum. In Clackmannanshire Council the grant is £ 432,000 per annum. As universal credit is introduced this grant will no longer be paid and the costs transferred to Local Government as Housing Benefit will be integrated into Universal Credit. These costs will start to be borne from October 2013 when Universal Credit starts to replace Housing Benefit for new customers. In addition to this is the need to develop a scheme to replace Council Tax Benefit and this also comes with a cost in terms of IT systems etc.

Localisation of Social Fund (Community Care Grants and Crisis Loans)

It is proposed to transfer the functions carried out by the Department of Work and Pensions to Local Government. This will come with associated administrative overheads such as Staff, Estates, IT, etc. Until the new scheme is actually determined, it would be very difficult to accurately quantify the associated costs.

Introduction of Universal Credit

This will have the effect of removing Housing Benefit (see (a) above) from Local Authorities and will have various impacts in terms of costs. The most notable cost will be in the collection of rental income. At present within Clackmannanshire Council, 60% of Council Tenants receive Housing Benefit to meet their rental liability. The Housing Benefit is assessed by Local Authorities and credited direct to the tenants rent account. A feature of Universal Credit is that the tenants will receive their Housing Costs direct and then have to pay their rent. The costs associated with this change mean that Council's will now have to collect rent from all their tenants

and this will mean increases in Staff Costs, Transaction Costs, Accommodation Costs etc. For Clackmannanshire Council this would be a best estimate based on the current cost of collection of around £300,000 (excluding central recharges), if this is based on collecting 40% then it is fair to assume to collect 100% would see these costs rising to £750,000. If this was replicated nationally the estimated cost of collection would be around £3 million rising to £7.5 million. In addition a hidden cost would be that of homelessness. With increased pressure on Household budgets an unidentifiable number of persons will find themselves homeless and Local Government will have statutory duty to find accommodation for these persons. Each homeless application is estimated to cost in the region of £15,000 to process etc.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Please see above.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

No. The additional costs should be met by from DWP or central government

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No

Wider Issues

Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

No, the additional costs that are not captured include:

- Increased demand for advocacy, welfare and money advice due to the above changes and moves to replace DLA with PIP. As the implications of the Welfare cuts take effect, Local Government will face increased pressure to provide these services which are already under severe pressure. I cannot estimate in my current role the potential increase in total costs.
- Increase in other collection costs due to those on Welfare having less disposable income so the costs to collect other debt streams are likely to increase and the collection rates for these streams are likely to decrease.
- For Scottish Government and Local Government there is the prospect of decreases in Non Domestic Rates income as local businesses fail due to the spending power of those on Welfare diminishes.
- Increase in administration of changing concessionary Schemes.

- Increases in payroll costs as a result on introduction of PAYE online system to report to HMRC payroll details in real time.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Convention of Scottish Local Authorities

Introduction

COSLA welcomes the opportunity to respond to the Scottish Parliament Finance Committee's call for evidence in relation to the Welfare Reform (Further Provision) (Scotland) Bill - Financial Memorandum.

COSLA accepts that, since the Scottish Parliament only agreed to a partial Legislative Consent Motion in relation to the UK Welfare Reform Act, it is necessary for the above enabling Bill to confer powers to Scottish Ministers to make changes to devolved matters, primarily passported benefits affected by that Act.

This Bill does not cover new arrangements for example for the administration of Council Tax support, following abolition of Council Tax Benefit and devolved elements of the Social Fund, both of which require to be in place by April 2013. Therefore, whilst we look forward to a future discussion with the Parliament about these critically important areas, in our response we are not making any further comment on these.

The Committee should also take note that it is too early for COSLA to offer anything other than broad comments on the financial implications of the elements contained in the Bill, as the level of detail needed to quantify the impacts is not yet available. Nonetheless the Committee should appreciate that where the response below refers to additional costs these will need to be addressed and, as the detail begins to unfold, COSLA will seek to work in partnership with the Scottish Government to quantify and seek ways to mitigate any financial impacts on Local Government.

Taking account of the caveats provided above, COSLA has set out the following responses to the Finance Committee Questionnaire which was attached with the request for evidence.

Costs

The Financial Memorandum covers the costs of existing statutory passported benefits in Scotland. We do not anticipate the costs of this existing provision changing as a result of the Bill, however any subsequent change to eligibility arising from regulations would have financial implications for Councils and these would need to be understood and quantified.

The Financial Memorandum also refers to possible increases in administration costs for Councils if more complex assessment schemes need to be put in place to maintain existing entitlements, without the same ability to use benefit entitlement as a proxy for income levels.

In response COSLA would wish to draw the Committee's attention to the fact that the costs are very much dependent on whether information on the breakdown of claims for Universal Credit is available and is shared with Councils by the Department of Work and Pensions. Until the position becomes clear as to whether this breakdown will be available it is too early to quantify meaningfully the level of these costs.

Even if a breakdown of benefit information is readily available to Councils there will be costs associated with maintaining the schemes and these could include publicity, devising new assessment forms and procedures, changes to IT systems and electronic claim forms and increased assistance to claimants, but these examples are not exhaustive. We do not consider that Local Government can accommodate these additional administrative costs and therefore further discussion would be required with Scottish Government about how these costs can be addressed. Without the breakdown of Universal Credit, Councils will have to devise much more complex assessment procedures and these could have significant costs attached.

Therefore, whilst COSLA is working closely with the DWP on the implementation of Universal Credit and the issue of having a breakdown of costs is well understood, we would welcome the support of Parliament in pursuing this issue.

Additionally since most claimants will only gradually move on to new benefits between 2013 and 2017, parallel systems of entitlement will need to operate during the transition period and this is likely to further increase the administrative burdens on Councils.

Wider Issues

COSLA understands that the Scottish Government is dependent on further information from the UK Government on how Universal Credit and Personal Independence Payments (PIP) will operate in practice, before it is able to finalise the regulations governing passported benefits. However we would be concerned if sufficient time is not allowed to adjust operational arrangements and to be able to communicate changes. COSLA will however seek to work with the Scottish Government as necessary to ensure the necessary arrangements are put in place timeously.

Councils also provide non statutory passported benefits, for example, school clothing grants which are linked to free school meals, admission to leisure centres and other concessionary entitlements. It is anticipated that additional administration costs may be incurred to continue this provision as a consequence of the move to Universal Credit and PIP but these are not quantifiable at this stage until the detail of the new schemes are available.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Glasgow City Council

Costs

5. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

As the Financial Memorandum notes, there is limited detail available on the changes arising from the UK Act and the potential impact on passported benefits to enable a full estimate of the implications for local authorities. However, the Financial Memorandum correctly highlights at paragraph 58-61 the potential administrative costs to local authorities of changes to passported benefits criteria as they relate to free school lunches.

6. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

As above. There will inevitably be changes required to systems and processes currently in operation within local authorities once the legislation comes into force. A full financial impact assessment will therefore need to be conducted once the details of the Bill are finalised.

7. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

As outlined above, it is not possible to ascertain how the costs of implementation will be funded at this time.

8. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum correctly emphasises the tight timescales involved in the UK Act, and the current lack of detail in a number of areas. It is therefore hoped that stakeholders will be given further opportunities to comment on the Bill as details emerge over the coming 12 months.

Wider Issues

9. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

We are pleased to see the importance of passported benefits recognised within the Bill. It would be beneficial to include aspects of data sharing that will be required between Local Authorities and DWP to effectively administer passported benefits. Without data sharing protocols in place local authorities will incur additional

administration costs through the gathering of information that will already be available to DWP.

Whilst it is still unclear the role that local authorities will play in the delivery of Universal Credit, it is difficult to estimate additional costs that will be incurred going forward. However, it is clear that local authorities will have responsibility for the administration and delivery of the local council tax benefit scheme, where a reduction in funding will impact on council budgets going forward. The current council tax benefit scheme is supported by DWP subsidy payments, which will no longer be applicable with the implementation of the local council tax benefit scheme.

Should the changes to benefits and tax credits result in reductions in payments to individuals, then there will likely be adverse pressures on wider local authority budgets as individuals and households in receipt of benefits react to lower income streams, including the services they purchase from local authorities.

The provision of Education Maintenance Allowances (another passported benefit) is also an important element of education provision within local authority area, and receipt of benefits is used as an eligibility test. This is correctly referred to in paragraph 48.

There are also other non-statutory local provisions that are currently “hooked” onto free school meal statutory provisions (such as footwear and clothing grants).

**Finance Committee
Welfare Reform (Further Provision) (Scotland) Bill**

Submission from Highland Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Yes (but should there be mention of School Clothing Grants?)

1. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Yes

2. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Yes

3. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes, with one caveat. – if the criteria for making awards are unclear at this stage there must be a degree of risk around the total value of payments once UC comes into being.

Wider Issues

4. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Yes

**Finance Committee
Welfare Reform (Further Provision) (Scotland) Bill**

Submission from NHS Greater Glasgow and Clyde Response

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The current assessment of impact for NHS Boards in relation to free NHS dental care, optical vouchers and travel to hospital assumes that costs will rise in line with inflation and agreed upratings only, and that there will be no change to the level of uptake.

Both the move to universal credit and the final agreed eligibility criteria for passported benefits could have significant implications for uptake, either upwards or downwards. We note the lack of information currently available on eligibility criteria for passported benefits and the triggers within universal credit; this is essential to make a full assessment of costs, and we welcome the stated intention to provide a full assessment of the financial impact once this further detail is known. No assessment has been made of potential changes to uptake associated with known or expected changes, for example demographic changes, which could be modelled now.

It would be helpful to explicitly note the risk of additional costs to NHS Boards and other bodies if changes lead to significant increases in uptake.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

See comments above.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

If any additional financial costs are incurred as a result of the Bill, this would cause severe difficulty to the NHS Board in the context of the current financial climate.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum reflects the uncertainty in relation to eligibility for passported benefits and commits to providing further financial assessment as this information becomes available. The potential scale of this uncertainty is not assessed. Some additional areas of uncertainty are also not addressed, including:

- The potential impact of demographic change.
- The potential change in uptake of Universal Credit or other triggers for accessing passported benefits. For example, the impact of the recession and rising unemployment which may result in an increase in benefit claims.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

The financial memorandum does not cover:

- Costs potentially incurred by individuals and families through the loss of passported benefits or increased complexity in accessing these benefits.
- Potential impact on public services such as NHS Boards associated with a rise in demand for services. The changes to welfare benefits have a number of risks associated including potential reduction in income for disabled people, reduction in income for individuals and families already living in poverty, and potential changes to benefits available for those in work which could affect decision and ability to move into work. We note the well documented relationship between poverty and ill health, and the risks of increasing demand on mental health and other NHS services associated with unemployment. These are indirect implications of the Bill but could lead to real additional demand on the public sector in future.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from NHS Lanarkshire

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

- **In the Financial Memorandum it is acknowledged that the true impact of the UK Welfare Reform Act 2012 will not be fully understood until the operational detail of the reforms is available. It is therefore difficult to ascertain what the full financial implications of the Welfare Reform (Further Provision) (Scotland) Bill for NHS Lanarkshire will be.**

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

- **Without having detailed information regarding the calculation of the costings it is difficult to comment the estimates that have been made.**

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

- **In the current financial climate NHS Lanarkshire would not be in a position to incur additional financial costs. If additional costs are incurred, it would seem reasonable to expect that these costs are met by the Scottish Government.**

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- **It is extremely difficult to comment on this due to the lack of information on the operational detail of the UK Welfare Reform Act 2012 and its impact upon individuals.**

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

- **There are concerns that the implementation of the UK Welfare Reform Act 2012 will place additional pressures upon NHS staff, such as those working in the field of mental health, and general practitioners. This could place additional financial burdens upon NHS Lanarkshire.**

**Finance Committee
Welfare Reform (Further Provision) (Scotland) Bill**

Submission from NHS Lothian

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?
2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate? YES
3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met? - YES
4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise? - YES

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

This legislation was introduced on 23 March 2012 and was triggered by the Scottish Parliament's need to consider the implications of the UK Welfare Reform Act on access to "passported" benefits such as optical vouchers, free dental care and travel assistance to meet the healthcare needs of the population of Scotland.

The Scottish Government has provided national estimates of the costs of such passported benefits looking forward from 2013-14, the first full year of implementing the new UK universal credit regime. Details of how the changes will impact rights to access such benefits have still to be worked through and announced by UK government. Therefore the impact on the Scottish Budget can only be determined assuming stable demand and CPI inflation adjustments- as has been presented in the Financial Memorandum.

No estimates were presented for the cost of patient travel that is re-imbursed by NHS Boards out of their core allocations. Preliminary figures suggest that, for 2011-12, Lothian NHS Board spent £210,000 on patient travel re-imburement. The costs to the NHS and the economy of not reimbursing travel for necessary healthcare has not been presented but include non-attendance, delay of elective care and failure of the organisation to comply with equalities duties Article 2, 56 etc.

Since we have, as yet, no idea what changes to rules on eligibility either the UK or Scottish Government will introduce, it would be impractical to suggest how this

baseline figure of cost would change beyond 2013-14. However on the basis that the Lothian figures are reflective of NRAC level of demand it would not be unreasonable to suggest that NHS Scotland would re-imburse approximately £1.5m-£2m per annum on patient travel cost.

The changes, once implemented may necessitate a re-design of the standard claim forms and evidence of eligibility documentation that cashiers typically require when re-imbursing claims. Some training of staff in the nature of the legislative changes and use of the revised forms would be required within financial services. However the costs of this should be limited to under £5,000 and be largely non-recurrent. Staff will also require training in sensitive practice so that the Board is not exposed to charges of failing to comply with its duties under the Equalities and Human Rights Act.

I have also not tried to assess the indirect knock-on effect of such changes on local authority delivery of services; as other passported benefits also affected are school meals, housing benefit, disability living allowance, and concessionary travel. However with services to vulnerable groups being the subject of the integration agenda, there will inevitably be efforts to increase cross-subsidisation of services out of the NHS budget through budgetary integration. Any threat to the universal, publicly owned, free at point of service NHS (of expected integrated budgets with conditionality at the centre of much of the social care) seriously reduces the equity-enhancing elements of our system. We may well introduce inequality in access, availability and utilisation if contingent on receipt of particular benefits or social position. The other benefits mentioned listed, if withdrawn or reduced, may well reduce recipients capability to live a healthy life. We know this leads to future increased health care and other public costs.

Welfare income thresholds also determine households' access to facilities such as legal aid which also plays a role in giving patients the ability to access expert professional advice in cases of non-clinical and medical negligence. Again, only when the nature of the new thresholds is known can any attempt be made to discern the impact of this on the viability and number of future claims against NHS Boards.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from North Ayrshire Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Bill has financial consequences for the Council in the following three areas:

1. Free school lunches
2. Education Maintenance Allowance
3. Blue badge applications

Free School Lunches

The Council has a statutory responsibility to administer free school lunches, which is a passported benefit for those children with parents in receipt of a particular UK reserved benefit or tax credit. The Council charge £1.90 for a free school lunch and this therefore falls within the price range detailed in the Financial Memorandum. The Council has no issue with the projected total local authority net expenditure figure of £103m for 2014-15 contained in paragraph 61 provided the new eligibility criterion doesn't increase demand. As there is limited information available regarding the eligibility criteria under Universal Credit, it is difficult to estimate what the full financial implications for the Council will be. The Financial Memorandum does not reflect the administration costs associated with changing application forms or the potential software costs that may be incurred when the eligibility rules change under Universal Credit. The Council is not in a position to estimate the cost of these changes until more information about the qualifying criteria is known.

Education Maintenance Allowance

Paragraphs 48 and 49 of the Financial Memorandum provide an overview of the income thresholds and the agreed Scottish Government expenditure of £31.2m for 2012-13 and the Council acknowledges this. The Council currently receives a fixed administration fee of £25,000 per annum plus £15 for each Education Maintenance Allowance that is paid. In 2011-12 the Council received 811 applications from which 667 (82.2%) were granted an Education Maintenance Allowance. A customer has to apply for an Education Maintenance Allowance and the Financial Memorandum does not reflect the administration costs associated with changing application forms to request the required proof of income when the eligibility rules change under Universal Credit or the potential software costs that may be incurred. The Council is not in a position to estimate the cost of these changes until more information about the qualifying criteria is known.

Blue badge applications – The Council currently administers the blue badge scheme from its existing budget. If new passporting rules are introduced for individuals in receipt of the Personal Independence Payment then this may have a financial implication for the Council in terms of the administration of the paper applications received, an electronic claim form and the web based software system that is used to record customer details. The Council currently charge each customer £20 to cover the administration costs of a blue badge. A blue badge is currently valid for 3 years from the date of issue and there is a risk that some blue badges will still be valid when the Personal Independence Payment is introduced from 1 April 2013. If customers have to be reassessed under a new scheme then this will increase the Council's administration costs. The customer may also incur an extra administration fee of £20 or part thereof for a replacement badge. However if a current blue badge were to remain valid for the full three years and only change to the new scheme on renewal then this would benefit the customer and also minimise any increase in administration costs of the Council.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

The passported benefit figures contained in the Financial Memorandum are based on current provision and therefore may change once the full operational detail of the UK Government's welfare reform is known. The Council is therefore unable to confirm that the estimated costs and associated timescale are reasonable and accurate.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill, which your organisation will incur? If not, how do you think these costs should be met?

The Council is not in a financial position to meet the cost of any administrative and software system changes that may be required. These costs should be met by the Scottish Government or alternatively the Department for Work and Pensions.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum only reflects the current budget provision for those areas that affect the Council. The Personal Independence Payment and Universal Credit are expected to be implemented around April 2013 and October 2013 respectively. The estimate and timescale of the costs associated with passporting benefit may therefore be subject to change.

Wider Issues

1. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Software suppliers may incur costs for changes to existing systems that record and maintain the likes of free school lunches, education maintenance allowance, blue badge applications and concessionary travel.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from North Lanarkshire Council

In preparing the responses I am aware that the purpose of the bill is primarily to give powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes. As such the financial memorandum addresses the effect on these matters in respect to the 'passport benefits' concerned. A further, and potentially, more significant impact of the Welfare Reform agenda is the cumulative effect upon families and communities of the welfare changes. This may also potentially impact upon Local Authorities and RSL's through difficulties in collection of rents, increased evictions, and greater demand for advice/assistance in dealing with the financial problems, homelessness, advice, etc.

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

A. At this stage the Financial Memorandum has not included any indication of the cost to LA's of preparing and administering changes in the provision of free school lunches as the specifics of welfare reform/Universal Credit is not detailed enough to allow a determination of the system changes needed.

There will certainly be one-off costs associated with the change and redesign of processes and software to prepare for the management of free school meals and UC and there may be additional ongoing costs depending on the detailed operation of UC and how it will interact with the award of free school meals. These are costs that the Government should provide the necessary additional financial support to LA's for.

In addition the LA may find that there is an increase in the eligibility for free school meals once the detail of UC is introduced and any increase in costs should be met by the Government.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

A. The costs presented in the Financial Memorandum reflect the actual award values of the various 'passport benefits' with uplifts for inflation till 2014/15 as appropriate. As the detail of UC is not yet known the proposed Bill does not include any estimate/projections of the costs and is providing the basis for enabling legislation.

Clearly once the details of UC are known then the impact on the costs for the 'passport benefits' should be reviewed and provision made for Government funding of LA's where consequential increases will arise.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

A. The effect of UC upon the eligibility of individual/families may increase the totality of payments made under the respective 'passport benefits' and this consequential cost of introducing UC should be met by the Government in addition to funding the costs associated with implementing administrative costs referred to in (1) above.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A. As indicated in the paper no attempt has been made to estimate the impact other than for an inflationary rise where appropriate, once the detail operation of UC is known and its effect on 'passport benefits' can be projected the award values should then be reviewed and any additional costs for LA should be funded by Government.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

A. As indicated above the Financial Memorandum does not include any costs/estimates pending the notice of the detail underpinning the introduction and operation of UC.

It is very likely that LA's will experience increased demand for advice services and representational services from the public during the transition to UC and the effect on 'passport benefits'. The Government should recompense Local Authorities for any such additional costs incurred in implementing these changes.

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Scottish Courts Service

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Bill is not considered to have an impact on the level of exemptions currently provided and we are happy with the information that has been provided.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Not applicable – see above.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Not applicable – see above.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Not applicable – see above.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

We have a very minor interest in this change so cannot comment on the overall wider issues.

**Finance Committee
Welfare Reform (Further Provision) (Scotland) Bill
Submission from the Scottish Legal Aid Board**

Costs

1.If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Scottish Legal Aid Board (the Board) was set up in 1987 to manage legal aid in Scotland. Legal aid allows people who would not be able to afford it to obtain help for their legal problems. The Board is an independent non-departmental public body responsible to the Scottish Government. The Board's main functions are to manage the Legal Aid Fund and advise Scottish Ministers on the current operation and development of legal aid provisions.

The Board welcomes the opportunity to respond to the Financial Memorandum drafted for the Welfare Reform (Further Provision) (Scotland) Bill. The Board welcomes this enabling Bill, which will give powers to Scottish Ministers to make provisions in consequence of the UK Welfare Reform Act 2012 for devolved purposes.

At present, about 52% of all legal aid applications are made on a passported basis, that is to say, by people who are in receipt of income support, income-based job seekers allowance or income-related employment and support allowance. Total expenditure on the Legal Aid Fund was £161.4 million in 2010/2011, so approximately £84 million of this expenditure is on applicants who were in receipt of these passported benefits. In addition, the Board also has significant resources and procedures set up for assessing and verifying applications for legal aid from applicants in receipt of these benefits. As such, we welcome the commitment that the Scottish Government will establish new criteria for the passporting entitlement of various benefits, including legal aid, although this will be dependant on the UK Government establishing in more detail how the new Universal Credit and Personal Independence Payments will operate in practice.

Paragraph 53 of the Financial Memorandum does contain a number of minor procedural inaccuracies in relation to the legal aid applications process. Firstly, applicants for civil legal aid are automatically passported if they are in receipt of a passported benefit, but applicants in receipt of these benefits who apply for civil advice and assistance or the various different types of criminal legal assistance will only qualify if their level of disposable capital is below certain thresholds. Secondly, all applicants for all types of legal aid have to complete an online application form, but in civil legal aid, there is a more detailed financial application form to be completed by applicants who are not in receipt of passported benefits.

Due to the nature of this enabling Bill, the Board cannot be precise about the financial implications associated with it at this stage. We will be in a better position to do this once it is clear how the Scottish Government proposes to deal with applicants for legal aid under the new Universal Credit arrangements. However, we can confirm that the future legal aid budget figures quoted in paragraph 55 accurately reflect those published in the Scottish Government's paper "A Sustainable Future for Legal Aid".

The table included at paragraph 68 shows the outturn and forecast figures for total legal aid spend from 2010/11 to 2014/2015. These are the actual and forecasted figures for legal aid spend for applicants with all types of financial circumstances. Although this includes the 52% of applicants who are in receipt of passported benefits, the figures obviously also include the remaining 48% of applicants who are either employed or self employed, receive non passported benefits or no income at all.

1. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

As above, we will be in a better position to comment on this once it is clear how the Scottish Government proposes to deal with applicants for legal aid under the new Universal Credit arrangements.

2. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

We will only be able to comment on this once it is clear how the Scottish Government proposes to deal with applicants for legal aid under the new Universal Credit arrangements. If the approach to passporting is removed, then full eligibility assessments will have to be undertaken on the civil and criminal legal aid applications which are currently passported into legal aid. Extra resources will be required to undertake these extra full financial assessments.

We also hope that the arrangements we already have in place to verify applicants' passported benefits with the DWP can be replicated under the new arrangements. This is an automatic computer link from the Board's IS systems to the DWP IS system, via the Legal Services Commission.

3 Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

See the answer to (2) above.

Wider Issues

4. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

See the answer to (2) above.

**Finance Committee
Welfare Reform (Further Provision) (Scotland) Bill**

Submission from South Lanarkshire Council

Costs

1.If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Response - The Bill does not accurately reflect the financial implications to the Council. The Bill mentions that the main implications for Local Authorities surrounds Free School Lunches but does not give any detail as to the specific costs of having to change the eligibility criteria / hook for this passported benefit. There may be an administrative burden on the Council if this changes but this is unquantifiable at this stage as alternative criteria will not be considered until the Bill is passed. The Bill does not consider the changes to Council Tax Benefit and the potential loss of Administration Grant in respect of this. The Bill does not mention the impact of Welfare Reform on Social Work Services, there is a concern that the Welfare changes could result in a loss of income to Local Authorities as clients are deemed to have less ability to pay.

2.Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Response - The calculation for the cost of Free School Lunches includes the costs for all lunches both free and paid, less the income from paid lunches. The estimated cost for Local Authorities of £103m by 2014/15 is likely to be an over estimate of the cost of Free School Lunches. This is because the cost relates to all school meals both free and 'paid for' less the income from the 'paid for' school meals. As mentioned previously there is no detail in the Memorandum regarding the loss of Benefit Administration Grant or the potential reduction in income for Social Work Services, therefore the financial estimates are not deemed accurate.

3.If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Response - If the Council is no longer in receipt of Benefit Administration Grant, yet still expected to provide some form of Support Scheme, then the Council will not be able to meet the financial costs associated with the Bill. No details are provided regarding this in the Memorandum. The Memorandum does not consider any financial burden as a result of changes to passported benefits which could have an administrative impact on the Council. There may be an increased burden on Social Work Services if there is a reduction in income from clients.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Response - The Memorandum does not accurately reflect the financial implications of the Bill as detailed in the responses above.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Response - The Memorandum does not mention any costs to Local Authorities associated with changing the eligibility criteria / hook for Free School Lunches. There may be an administrative burden felt by the Council if there is a change from the current legislation. There are also no details regarding the costs of providing a Council Tax Support Scheme in place of the current Council Tax Benefit Provision. The cost of providing CTB administration is currently met from our Administration Grant. At present it is clear that Councils will require the same level of administrative input and therefore costs, with any revised scheme but to date there is no indication as to where this funding will come from. For South Lanarkshire Council this represents a gap of approximately £2.5m. Further to this the Memorandum makes no mention of the potential loss of income from Social Work clients which may affect Local Authorities.

Welfare Reform Committee

6th Meeting 2012 (Session 4), Tuesday 1 May 2012

Welfare Reform (Further Provision) (Scotland) Bill: written submission

Letter prepared by John McArdle and Dr. Stephen Carty, Black Triangle Anti-Defamation Campaign in Defence of Disability Rights and all of the above organisations together.

To the BMA, GMC, RCGP, RCN, NMC

Dear Doctor Canning,

We are writing to you to express our grave concerns at the injustice, discrimination and subsequent harm occurring to citizens with illness and disability as the result of the Work Capability Assessment and the contractual arrangements between the medical profession, the Department of Work and Pensions (DWP) and ATOS.

The existing contractual arrangements between the medical profession and the DWP are not fit for purpose and we are now lobbying for this to be addressed. There appears to have been a complicity of silence on these matters. We would like to assert the following:

The Work Capability Assessment (WCA) is not fit for purpose

The use of the Logic Integrated Medical Assessment (LIMA) software programme as a method of assessing a patient's "capability for work" is an affront to both the medical and ethical standards of the medical profession. The LIMA assessment has systematically ignored the complex needs of individuals being assessed. It has shown disregard for patients' medical issues and frequently omits assessment of significant problems.

T

There appears to have been a failure to gather sufficient information, particularly with regard to mental health conditions.

It is now undeniable that the assessment process has resulted in direct harm to sick and/or disabled patients and that it has resulted in many tragic cases of self-harm and suicide. The reality of this is felt on a daily basis by all those upon whom the process has an impact: patients, family, friends, carers and the wider community.

Despite encouraging statements from the Government promising action on the findings of the Harrington report, little if anything has changed at the coal face. Why not ask General Practitioners? We have, and the following are some of our findings

Has the WCA and the proposed DLA/PIP reassessment regime been adequately risk-assessed?

Significant Event Analyses (SEA) are required to ascertain if the 'reforms' to Incapacity Benefit (IB) and Employment and Support Allowance (ESA), coupled with the migration from Disability Living Allowance (DLA) to the Personal Independence Payment (PIP) fully comply with the ethical standards of the profession and do not breach equality and human rights legislation as applied to sick and/or disabled patients.

The recent GMC publication of Good Medical Practice 2012 states clearly that a Doctor must (overriding duty or principle) "take prompt action if you think that patient safety is or may be seriously compromised by inadequate premises, equipment or other resources, *policies or systems*."

It is our view that all doctors have an overriding duty to take prompt action to address the inadequate WCA system which has seriously compromised patient safety.

We call upon all medical professionals to engage in Significant Event Analyses of cases where it is perceived that harm may have been done by the assessment process. These could be submitted in confidence and with consent to the GMC for investigation, review and analysis. Doing nothing is not an option: there is an overriding duty to ensure patient safety.

The WCA involves the administration of a battery of questions contained in the LIMA computer programme that comprehensively fails to adequately and accurately assess a patient's 'fitness for work'.

The operation of the assessment system has been universally condemned for failing to take into account the disproportionate medical, social and other barriers that sick and disabled people face in the job market as a direct result of their disabilities.

Disabled people are deprived accurate representation through the assessment process. There is a substantial body of evidence that adverse decisions made by the DWP, based on the administration and outcome of the LIMA assessment, are having a devastating impact on the lives of some of the most vulnerable members of our communities.

In addition to massive cuts to funding for advice agencies that have seen, for example, the Citizens Advice Bureau in Cardiff close; the DWP is now seriously considering suspending all the benefits to patients who launch an appeal to the Tribunals Service: We stand ready to launch a legal challenge to this also.

We submit that the Work Capability Assessment system breaches human rights and equalities legislation prohibiting discrimination as applied to patients. We allege that both the policy and operation of the WCA system discriminates against patients with illnesses and disabilities.

These unethical practices breach all the relevant domestic human rights and equalities legislation and also international treaties and conventions such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Patients are continually hounded by being continually reassessed after having won their appeals; up to three consecutive times See:

<http://blacktrianglecampaign.org/2011/11/21/benefits-appeals-system-on-brink-of-collapse/>

The constant reassessment of disabled people with chronic diseases amounts to an abuse of a patient's fundamental human rights and constitutes a form of psychological torture in breach of human rights and equalities legislation.

We submit that doctors who participate in such a system are complicit in this injustice and are betraying the ethical codes and standards laid down by the GMC. We call upon the GMC to launch an immediate and full inquiry into these decision-making processes and the operation of the assessment system.

We request that the GMC consider withdrawing the status of ATOS 'Medical Assessment' Centres as 'GMC Approved Environments' pending investigation into these gravely serious allegations.

It is our firm and settled view that the proposed reassessment of disabled people currently in receipt of Disability Living Allowance for the new Personal Independence Payment will follow a very similar format to the WCA and will repeat the same very same injustices as we are witnessing now.

Indeed, the government has already stated that it expects the budget for disabled people currently in receipt of DLA to be slashed by 20%. It has offered no empirical scientific, medical evidence on which to base this assumption.

It is our view that these assessment systems are designed specifically to redefine the parameters as to what constitutes a disability for the purposes of qualifying for state support with the effect that many tens, perhaps hundreds of thousands of disabled people will have the reality of their disabilities and needs unethically and unlawfully denied.

The result will be an increasing number of disabled people disproportionately affected by the cuts and will drive them further into poverty, squalor and despair. This is utterly unacceptable.

The assessment process is flawed from start to finish

According to the BMA, "The claimant's GP has a specific role in the process to provide a factual report based on information contained within the patient's medical records." We wish to point out that the contractual obligation GP's are

under is to provide information to the Department of Work and Pensions (DWP) for the purposes of Employment and Support Allowance (ESA) benefit claims free of charge.

We also wish to point out that the ESA form only has one half of a page of A4 allocated for the GP to enter the complete past medical history and include the details of significant diagnoses, investigations and treatment.

According to our research here in Scotland, there is a groundswell of helplessness amongst GP's who have had their reports ignored for too long: they have to deal with the fall out from this at the coalface every day. This has led, we contest, to less effort and detail being provided on the grounds that it will be ignored anyway.

The appeal process is log-jammed and further reports for no fee are constantly sought from GPs from the various voluntary and other support agencies who are the only remaining advocates to put forward the patient's case.

We appeal to the membership of the BMA to boycott this pseudo-scientific assessment pending a resolution of these issues through consultation with its members and formulation of a policy that truly reflects the views of medical practitioners. To our knowledge this has never properly been done and the BMA can hardly claim to represent its members if it has not first sought their views on this issue of grave importance to their patients' health and well-being.

In the first instance do no harm

The BMA states that "It is vital that GP's are not asked to provide an opinion on their patient for the purposes of receiving the ESA – doing so could damage the relationship between patient and doctor."

We submit that far greater harm is at present being done to the future of the doctor-patient relationship in Britain by these existing arrangements, which we assert amount to a relationship of complicity between the medical profession, government and Atos/DWP.

The BMA states that "A key part of our role is to represent our members in negotiations for appropriate terms and conditions of service.": Is it not time for the BMA to take a lead and ask for its GP and Consultant members' views on the evolving relationship between the profession, the state, the private sector and welfare benefit reform?"

This issue is of such importance that it must be put out to full consultation with all medical and allied health professionals. Not to examine these issues by putting them out to consultation would, we assert, constitute an abdication of the BMA and the profession's ethical duties and standards and would form part of a breach of a duty of care to patients.

We submit that the current contractual arrangements between the DWP and General Practitioners are no longer fit for purpose.

If there was a consultation process with GPs before the LIMA system was introduced as a means of assessing claimants fitness for work we have not seen it, and nor we contest, have the majority of GPs.

GPs are now compromised by their indirect association with a profit-driven multinational company which is morally bankrupt but benefiting commercially to the tune of £100 million pounds per year. Appeals to the Tribunals Service are now reaching a cost £50 million a year.

We submit that the evolving relationship between medicine, the state and the private sector has undermined the integrity of the profession and must be addressed as a matter of the utmost urgency.

The forms used, the structure of information provided and the process are inadequate and DWP Decision Makers never request any additional information.

Patients with mental health problems or addiction are frequently assessed by a midwife, physiotherapist or nurse with little or no training in these complex illnesses.

In our opinion, the employment of doctors and other 'medical professionals' to carry out these assessments does little more than lend an aura of medical credibility to what is a thoroughly discredited pseudo-scientific creation of the American insurance industry, which we allege was expressly designed to deny patients of the support to which they are rightfully and lawfully entitled. The vast number of successful lawsuits against decisions made based on this utterly discredited system in the United States attest to this.

We utterly reject any assertion that this process can legitimately be termed "disability assessment medicine". We furthermore firmly oppose and deeply regret its teaching as an academic subject, to be credited as part of nursing degrees in the UK. This may have come about as a result of commercial pressures and arrangements entered into between private companies and academic institutions desperate for cash.

We call on doctors and nurses to join with the University and College Union in condemning this alarming development as an unacceptable attack on the academic and ethical standards of their respective professions

These arrangements, as we understand it, have come about by stealth and without proper debate, due diligence or consultation with the memberships of any of the professional bodies.

Evidence-based medicine

It has just been announced that the government intends to remove the role of the General Practitioner and Consultant from the process of deciding whether a patient is fit for work or not See:

<http://www.independent.co.uk/news/uk/politics/workers-on-longterm-sick-leave-face-tougher-assessment-tests-6264610.html>

“The move was welcomed last night by the British Medical Association.” GPs have a long-term relationship with their patients and it puts them in a difficult situation if they are being asked to tell a patient that they’re wrong and are fit to work,” it said. “GPs are often not best placed to assess what someone can and cannot do. It is far better if a trained occupational health doctor does that.”

<http://blacktrianglecampaign.org/2011/11/20/margaret-mccartney-general-practitioners-and-sickness-absence/>

We join with Dr. Margaret McCartney and express our horror at this statement which the BMA Executive has put out without first consulting with their membership. She has since called for more medical organisations to make their voices heard:

<http://bmj.com/cgi/content/full/bmj.e1114?ijkey=KKaJubnBTOqaO3z&keytype=ref>

Where is the evidence from ATOS that the LIMA system has any scientific rigour?

Modern medicine requires evidence based tools. A valid scientific tool ought to be both sensitive and specific.

This LIMA tool and its application is, we submit, both insensitive (sic) and non-specific.

We would like to see what, if any, evidence there is to support this assessment system having particular regard to consistency, reproducibility and a low-level of inter-observer variability.

We suggest that a cohort of patients be put through two processes in the format of a clinical trial: comparing where the patient goes through a LIMA assessment, on the one hand, and then an independent occupational health assessment by a doctor with proper occupational health training.

We have many documented cases of employees having been declared ‘unfit for work’ by Atos Occupational Health Assessors, only to be declared ‘fit for work’ by Atos “Disability Assessment Advisers” whilst no objective change in their medical condition has been observed.

You will be aware that 70 % of patients appealing these decisions have them overturned at Tribunal when they are represented by a welfare rights adviser. In some areas of the West of Scotland the success rate is as high as 90%.

If there is so much inter-observer variability from initial assessment to appeal: leading to 0 points one day and 25 the next*, does this not demonstrate the subjective and objective weakness of the process?

We have always maintained that assessment companies are working to targeted calculations.

A medical and scientific analysis of the number of people declared 'fit for work' taking into account demographic differences, we submit, would not give rise to the kind of consistency of 'fit for work' decisions based on the findings of the WCA nationwide.

Considerable damage has already been done. The lives of sick and/or disabled patients are being devastated anew every single day. Urgent action is required. We appeal to you, as members of the caring professions, to assist us in arresting this harm immediately and to work with us in repairing this damage.

The motto of the Black Triangle anti- defamation campaign in defence of disability rights is:

"Disabled people fighting for our future, custodians of our past."

It is time for us all to again time to re-learn the lessons of history.

There have been many shameful episodes in our recent modern history as disabled people where the medical profession was either actively complicit in attacks on the lives and welfare of disabled persons or where it failed miserably to react whilst the attacks and oppression was taking place.

As disabled people ourselves we call upon you all directly not to look the other way today.

We have not fought for liberation and equality for 70 years to have it destroyed in one parliamentary term by Ministers who have labelled us as "unsustainable"!

It is now time for the British medical and nursing professions and those of professions allied to medicine to stand Full Square in solidarity with sick and/or disabled people in our communities.

We hope to make further representations, at your earliest convenience.

Yours sincerely,

John McArdle and Dr. Stephen Carty MB, ChB, MRCGP, DRCOG

Copy to:
Pulse
Dr. Margaret McCartney

References

<http://blacktrianglecampaign.org/2011/09/27/atos-open-letter-to-the-bmj-and-rcn/>
<http://blacktrianglecampaign.org/2011/10/05/gps-face-gmc-duty-on-%E2%80%98back-to-work%E2%80%99-drive/>
<http://blacktrianglecampaign.org/2011/10/07/health-and-social-care-bill-must-be-withdrawn-or-substantially-amended-bma-tells-peers/>
<http://blacktrianglecampaign.org/2011/10/03/scrap-nhs-reforms-doctors-tell-lords/>
<http://blacktrianglecampaign.org/2011/09/22/terminally-ill-patients-told-their-benefits-may-be-cut/>
<http://blacktrianglecampaign.org/2011/09/12/nhs-reform-bill-must-be-resisted-leading-doctors-tell-royal-colleges/>
<http://blacktrianglecampaign.org/2011/09/05/citizens-advice-cuts-threaten-the-most-vulnerable/>
<http://blacktrianglecampaign.org/2011/07/26/the-medical-absolute-joke/>
<http://blacktrianglecampaign.org/2011/07/26/work-capability-assessment-assessed-lacking/>
<http://blacktrianglecampaign.org/2011/10/06/through-the-eyes-of-a-benefits-adviser-a-plea-for-a-basic-income/>

Further Information:

Employment Support Allowance & the Work Capability Assessment

Concerns have been mounting about how the Work Capability Assessment (WCA) for Employment Support Allowance (ESA) has been implemented. A Citizens Advice Scotland (CAS) report found that ESA has been the most concerning issue for its advisers over the last 2 years. There have been 400,000 appeals against WCA decisions. Almost 40% of appeals are upheld. The proportion of successful appeals rises to 70% when the disabled person is represented by CAB.

Since the new WCA was introduced around two thirds of new ESA claimants have been found fully fit for work and made to claim JSA or been moved off benefits altogether.

Disability Living Allowance & the Personal Independence Payment

The Government intends to reduce the amount of DLA paid out by 20%. For Scotland this will lead to benefit losses of £268 million p.a. As the new assessment tests are restricted to claimants of working age, at least 1 in 3 disabled people aged 16 – 65 would need to lose ALL of their current entitlement to achieve the necessary savings.

The Personal Independence Payment (PIP) will replace DLA in 2013/14. Under PIP there is no equivalent to the Lower Rate Care component for DLA.

All working age recipients of Lower Rate Care, 60,000 Scottish disabled people are almost certain to lose their entitlement, saving £60 million p.a. This means that many thousands more Scots disabled people currently on higher rates of DLA will also have to lose entitlement to make the additional +£200 million in savings that the Coalition Government wants to make.

Other Potential Losers:

The Mobility component of PIP is to be taken away from all disabled people living in residential care. This will save £135 million a year. The mobility component is: £18.95 (lower rate); £49.85 (higher rate).