

# **WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Welfare Reform (Further Provision) (Scotland) Bill introduced in the Scottish Parliament on 22 March 2012:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 11–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

4. The Welfare Reform (Further Provision) (Scotland) Bill will make the provisions required by the Scottish Parliament's partial refusal of legislative consent for the UK Welfare Reform Act 2012 ("the UK Act"). It is an enabling Bill which gives powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes.

5. The Bill largely mirrors relevant clauses of the Bill for the UK Act which were removed during that Bill's Third Reading in the House of Lords. Their removal was the consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. Unlike the relevant clauses of the Bill for the UK Act, however, the provisions in the Bill do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This would have been a necessary express qualification in the UK Act, because the UK legislation could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Bill is unnecessary because in its view all of the powers conferred in the Bill are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Bill is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Bill's provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly. The Scottish Government furthermore considers that the Scottish Ministers will be constrained in exercising these enabling powers within the limits of their devolved competence set out in section 54 of the Scotland Act 1998.

### **OVERVIEW OF THE BILL**

6. Section 1 of the Bill provides powers to make provision in consequence of the introduction in 2013 of universal credit and the abolition of some existing social security benefits by the UK Act.

7. Section 2 of the Bill provides powers to make provision in consequence of the introduction in 2013 of personal independence payments and the accompanying abolition of disability living allowance by the UK Act.

8. Section 3 of the Bill contains general ancillary powers which apply to any regulations made under sections 1 and 2 of the Bill.

### **Section 1: Universal credit: further provision**

9. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in Part 1 of the UK Act which creates universal credit and abolishes certain existing social security benefits, referred to further in paragraph 12. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes and so could be used, for example, to make consequential or supplemental provision in the devolved area of passported benefits where that provision is considered appropriate in light of the abolition of existing social security benefits by the UK Act.

10. “Universal credit” refers to the new, integrated benefit and tax credit which will be rolled out across the UK from April 2013-2017. UK Government policy in respect of universal credit has been set out in the white paper (“Universal Credit: Welfare That Works”<sup>1</sup>) in November 2010 and in subsequent briefing notes<sup>2</sup>. Universal credit will be comprised of a basic award onto which ‘add-ons’ in respect of particular needs such as housing and help with child care costs will be added where appropriate. It will act as a top up benefit for those in work and will be paid to households monthly into a bank account. The intention is that recipients of universal credit will be able to manage their claims online so far as possible and that the amount payable will change automatically to accommodate a change in a household’s circumstances. A “pathfinder” system is due to be introduced in April 2013 with implementation proper due to proceed from October 2013 for new claimants with a four year phase-in period for existing welfare claimants ending in 2017.

11. The power set out in section 1 of the Bill is needed because the existing benefits, which will be abolished, have links to devolved areas, the main one being that they are used as an eligibility hook for a variety of devolved, Scottish “passport benefits”. These include benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance. When the existing benefits are abolished, so too will the current, associated eligibility hooks. The Scottish Ministers may use the power provided by this section to make changes for a devolved purpose such as to refer consequentially to some aspect of the new universal credit or to supplement the gap left by the abolition of the hook benefit, for example by creating new eligibility criteria for certain passported benefits conferred in devolved areas such as health or access to justice. Existing social security benefits also impact on other devolved areas such as pre-action requirements where a landlord’s grounds for possession include rent arrears and cancellation of adoption allowances. The Scottish Ministers could also make free-standing

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<sup>1</sup> <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf>

<sup>2</sup> <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/universal-credit-briefing/>

provision using this power provided it were for a devolved purpose and was required in consequence of provision made by or under Part 1 of the UK Act.

12. The existing social security benefits which will be abolished by section 33 of the UK Act and replaced by universal credit are:

- Income support under section 124 of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”),
- Housing benefit under section 130 of the 1992 Act,
- Jobseeker’s allowance under the Jobseekers Act 1995 (where income-based),
- Employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where income-related),
- Child tax credit under the Tax Credits Act 2002, and
- Working tax credit under the Tax Credits Act 2002.

13. Subsection (2) provides that regulations under this section may modify primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation which relate to devolved matters) for a devolved purpose and subject to the other restrictions on competence in the Scotland Act 1998.

14. Subsection (3) provides that regulations under this section are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and otherwise are subject to the negative procedure.

## **Section 2: Personal independence payment: further provision**

15. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of Part 4 of the UK Act. Part 4 of that Act creates the personal independence payment and abolishes disability living allowance. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes. It could be used, for example, to make supplemental or consequential provision in the devolved area of legal aid where the governing legislation refers to the mobility component of disability living allowance, where consequential or supplemental provision is considered appropriate in light of the abolition of disability living allowance by the UK Act.

16. Further provision in relation to Part 4 is needed because, as with universal credit, the introduction of personal independence payment and the abolition of the disability living allowance have consequences for devolved matters and their associated legislation. The power in this section could be used to make changes for devolved purposes to refer to the personal independence payment instead of the disability living allowance so as, for example, to create new eligibility criteria for certain passported benefits such as ‘blue badge’ parking permits. The Scottish Ministers could also make free-standing provision using this power provided it were for a devolved purpose and in consequence of provision made by or under Part 4 of the UK Act.

17. Subsection (2) provides that regulations under this section may modify primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation) for a devolved purpose and subject to the other restrictions on competence in the Scotland Act 1998.

18. Subsection (3) provides that regulations under this section are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and otherwise are subject to the negative procedure.

### **Section 3: Regulations under this Act: ancillary provision**

19. This section contains general provisions which apply to any regulations made under sections 1 and 2.

20. Subsection (2) provides that the regulations may make provision which is either in direct or indirect consequence of the UK Act. Provision can also be made which is not itself in consequence of the UK Act but concerns a matter which is, or previously was, in consequence of the UK Act. This will allow the Scottish Ministers to make provision required for reasons which are not in direct or indirect consequence of the UK Act. For example, if the powers enabled by this Bill are used to establish an income threshold for entitlement to certain passported benefits then, in future, the Scottish Ministers may wish to vary that income threshold. Such variation may not be in direct or indirect consequence of the UK Act but in consequence of something else, such as a rise in the rate of inflation. It would, however, be linked to a matter which was in consequence of the UK Act.

21. Subsection (3) provides for the regulations to make different provision for different cases or purposes and to include supplemental, incidental, consequential, transitional, transitory or saving provision.

### **Section 4: References to the UK Act**

22. This section defines the term “the UK Act” which is used throughout the Bill.

### **Section 5: Commencement**

23. This Bill will commence the day after it receives Royal Assent.

### **Section 6: Short title**

24. This section gives the short title of the Bill.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

25. This document relates to the Welfare Reform (Further Provision) (Scotland) Bill introduced in the Scottish Parliament on 22 March 2012. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

### **BACKGROUND**

26. The Welfare Reform (Further Provision) (Scotland) Bill is an enabling Bill comprising six sections. It confers on the Scottish Ministers power to make such provision for devolved purposes as they consider appropriate in consequence of changes to the welfare system made by or under Parts 1 and 4 of the UK Welfare Reform Act 2012 ("the UK Act").

27. The Bill largely mirrors relevant clauses of the Bill for the UK Act which were removed during that Bill's Third Reading in the House of Lords. Their removal was the consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. Unlike the relevant clauses of the Bill for the UK Act, however, the provisions in the Bill do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This would have been a necessary express qualification in the UK Act, because the UK legislation could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Bill is unnecessary because in its view all of the powers conferred in the Bill are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Bill is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Bill's provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly. The Scottish Government furthermore considers that the Scottish Ministers will be constrained in exercising these enabling powers within the limits of their devolved competence set out in section 54 of the Scotland Act 1998.

28. Once enacted, the Scottish Ministers will use the powers provided in this Bill to make such supplemental, incidental, consequential, transitional, transitory or saving provision in relation to provisions in Part 1 (universal credit) and Part 4 (personal independence payment) of the UK Act for devolved purposes as they consider appropriate. Provision will be required in respect of primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation) in order to give effect to this devolved purpose.

29. Changes will be made to primary and secondary legislation which, at present, link eligibility for devolved, ‘passport benefits’ to benefits which the UK Act will abolish. Although passport benefits are provided across the UK, the Scottish Government has responsibility in Scotland where these benefits fall within devolved competence. The Scottish Government will use the powers enabled by this Bill to make changes to legislation for devolved purposes to reflect the abolition of UK benefits such as jobseeker’s allowance, employment and support allowance, housing benefit and the disability living allowance, in order to maintain the legislative basis that underpins entitlement to passport benefits. A similar process will also be carried out in England and Wales.

30. Passport benefits can be loosely divided into continuing benefits such as free school lunches or free NHS dental care, which customers can expect to receive for a number of years, and one-off benefits such as legal aid. Passport benefits can be cash benefits, such as the education maintenance allowance, or benefits in kind such as optical vouchers or free NHS dental care. When the existing UK benefits are abolished, so too will the current, associated eligibility hooks. Universal credit (the new, UK integrated benefit and tax credit) will be used to top up income for those in work as well as out of work, which means that receipt of universal credit will not, in and of itself, be sufficiently reliable proof of low income for the purposes of establishing any entitlement to passport benefits. From the information currently available, universal credit does not currently contain obvious points of reference on which to link eligibility for passport benefits.

31. These changes brought forward by the UK Government mean that the Scottish Government now has to re-formulate its policy on devolved entitlement to passport benefits before amending Scottish legislation which falls within its devolved competence. This Bill forms the first part of that process. The Scottish Government is required to work to a timetable which requires changes to Scottish legislation to be commenced ahead of the introduction of the Department for Work and Pensions ‘pathfinder system’ which is due to be rolled-out in April 2013.

32. The devolved policy re-formulation work, which will look at future entitlement to passport benefits and consider what changes will be required, will not be completed in the first half of this year. The reason for this is that many of the practical details as to how the UK Government’s welfare reforms will operate (e.g. conditions for entitlement to universal credit and personal independence payment) remain to be set out in subordinate legislation by the Secretary of State for Work and Pensions. The Scottish Government does not expect the UK Government to be in a position to convey the essential detail of its new benefits to it before June of this year.

33. It is not possible to set out the detail of the likely financial impact of future plans to modify entitlement to passport benefits until the operational detail of the UK Government’s welfare reforms is available. This memorandum therefore sets out the costs of all passport benefits where a legislative link to eligibility has been identified and costs are incurred. The figures set out below are based on the current provision and the existing, associated costs. It is expected that the provision of passport benefits will be retained at the current level and that costs will be met from within existing budgets. Indicative budgets for some passport benefits have already been set as part of the 2011 Spending Review process and these are detailed in the relevant section below. Any attempt to provide an assessment of the financial impact of the

changes in advance of the operational detail of the UK reforms being available would be speculative.

34. The Scottish Government will provide details of how passported benefits will be modified when the necessary subordinate legislation is brought forward later this year, including a full assessment of the financial impact of these changes, alongside the draft subordinate legislation.

35. The Scottish Government believes that this approach carries less risk than the alternative, which would be to wait to bring forward legislation when the design of all the successor arrangements has been completed and the full details of the operation of the new UK benefit system are known. Any delay, at this stage, would have significant implications for the timetabling of subordinate legislation. As a result, the Scottish Government could not provide any guarantee that the devolved statutory basis which underpins some passported benefits would be revised in time to be in place post April 2013.

36. In introducing the Bill, the Scottish Government is seeking to avoid a situation where provision of some passported benefits is put at risk if the necessary devolved legislation is not commenced in time.

## **COSTS ON THE SCOTTISH GOVERNMENT**

37. There will be an administrative cost on the Scottish Government to re-formulate its policy on entitlement to passported benefits during 2012-13 and then to make the necessary changes to subordinate legislation, forms and administrative systems for introduction from April 2013. Within the core Scottish Government, the associated staffing cost is estimated at £300,000, and will be met through the reallocation of existing resources. Over and above this, there will be some one-off costs to the Scottish Government and for those wider Scottish Government bodies affected by this legislation, associated with revising application forms and systems to align with the new arrangements. Until policy on passported benefits is reformulated, it is not possible to estimate what the cost of the associated system changes will be. Where changes to the existing provision are proposed in subordinate legislation, an assessment of the financial impact will be provided.

38. Other than these one-off, transitional administrative costs, the Scottish Government is not expected to incur increases in direct costs as a result of this Bill. The passported benefits which the Scottish Government and health boards currently provide and for which they incur costs are:

- Free NHS dental treatment,
- Optical vouchers,
- Travel costs to NHS Scotland premises,
- Individual learning accounts,
- Educational maintenance allowances,
- Concessionary travel,
- Legal aid,

- Court exemption fees.

39. A summary of the current and projected scale of each of these benefits, together with a list of assumptions on which projection are based, is set out at Table 1 below.

*Free NHS dental treatment, optical vouchers and travel costs to NHS Scotland premises*

40. Health boards are responsible for making arrangements for the provision of free NHS dental treatment, the provision of optical vouchers and for travel costs to NHS Scotland premises. These benefits are available to those in receipt of any of the following benefits or tax credits:

- Income support,
- Income-based jobseeker's allowance,
- Income-related employment and support allowance,
- Working tax credit with a disability or severe disability element (with an income of less than £15,276 taxable gross income per year),
- Child tax credit (with an income of less than £15,276 taxable gross income per year),
- Child tax credit with working tax credit (with an income of less than £15,276 taxable gross income per year),
- Pension credit guarantee.

41. It is not known how many people in receipt of the qualifying benefits or tax credits currently receive free NHS dental treatment, as provision is measured by the number of individual treatment claim forms submitted (and one person may require multiple treatments).

42. Any variation in entitlement to free NHS dental treatment could impact on the estimated current total cost to health boards which, in 2010-11 was approximately £34,100,000 for those in receipt of passported benefits (including pension credit guarantee credit) or entitled to help under the NHS Low Income Scheme. Any increases in the cost of NHS dental treatment are the result of increased patient take up and treatment needs as well as increases in dentists' fees, which are recommended by the independent Doctors and Dentists Review Body (DDRB). Assuming no further increase in dental provision and using the Consumer Price Index (CPI) measure of inflation as a proxy for any increases in fees this would result in costs increasing to approximately £38,000,000 by 2014-15.

43. Optical vouchers are available towards the cost of glasses or contact lenses in Scotland to those who qualify. There were 322,116 optical voucher claims processed in 2010-11 in respect of those in receipt of a passported benefit (this includes those in receipt of pension credit guarantee credit but excludes those in receipt of income-related employment and support allowance). An additional 4,193 optical voucher claims were processed in respect of those in receipt of a passported benefit for the repair or replacement of glasses. A voucher valued at between £36.20 and £200.10 (depending on the person's optical prescription) is provided in respect of each claim. An individual may receive more than one voucher in a year if it is considered clinically necessary. Any variation in entitlement to optical vouchers could impact on

the estimated current total cost to health boards of this provision which, in 2010-11 was approximately £15,000,000.

44. Voucher values in Scotland are uprated in line with increases agreed by the Department of Health. Their values have not increased since 2009 but are set to increase by 2.5% in 2012-13. The choice of indicator used by the Department of Health to guide upratings has in the past varied between the forecast Gross Domestic Product (GDP) deflator, and the all-items Retail Price Index (RPI) now replaced by the Consumer Price Index (CPI). If going forward the CPI measure of inflation is used this would result in a cost of approximately £16,000,000 by 2014-15, assuming patient demand remains constant.

45. Qualifying people, who are in need of health treatment, are entitled to have the cost of their travelling expenses incurred for the purposes of obtaining NHS services paid for them by their local health board. Data on the cost of providing travel to NHS Scotland premises is not collected centrally.

#### *Individual learning accounts*

46. Individual learning accounts (ILA) are available to applicants in Scotland who are 16 or over, have an income of £22,000 a year or less or who are in receipt of one of the following reserved benefits:

- Income-based and contribution-based jobseeker's allowance,
- Income support,
- Carer's allowance,
- Incapacity benefit,
- Maximum rate of child tax credit,
- State pension credit,
- Income-based and contribution-based employment and support allowance.

47. Over 110,000 independent learning accounts were opened in 2010-11 with an average spend per person of approximately £140. In 2010-11, total ILA expenditure was £11,345,000, of which £9,211,000 was learner spend. Separately, work is under way to review the eligibility criteria for ILAs.

#### *Education maintenance allowance*

48. Education maintenance allowances are a continuing cash benefit in the form of means tested payments of £30 per week which are available to young people aged 16-19 who remain in education. Education maintenance allowances in respect of school pupils are payable by local authorities, but funded by the Scottish Government. Pupils attending further education colleges receive education maintenance allowances via the Scottish Funding Council. Entitlement to the education maintenance allowance is based on the age of the student, household income, residential status and validity/level of academic course. A relevant award notice of entitlement to UK reserved benefits is used as proof of income. There are two thresholds for household income: £20,351 for households with one dependent child and £22,403 for households with more than

one dependent child. These thresholds have remained constant since they were introduced from the start of academic year 2009-10. There are no plans to amend them at this time.

49. There were 34,780 young people in Scotland who received an education maintenance allowance in 2010-11. The average claim, based on budget and uptake for 2010-11 was £800 per student with the maximum claim, based on a young person participating in an activity agreement for the whole 52 weeks of the year being £1,560. The total cost of education maintenance allowances for 2010-11 was £33,300,000. The budget for education maintenance allowance has been agreed at £31,200,000 for 2012-13 and is expected to remain at approximately this level for the remainder of the spending review period, including 2014-15.

#### *Concessionary travel*

50. Transport Scotland offers free bus travel for older people, and for disabled people who are in receipt of the higher rate of the mobility component of disability living allowance or the higher or middle rate of the care component of disability living allowance.

51. As of 28 January 2012 there were just over 1.23 million National Entitlement Cardholders in circulation giving access to free bus travel throughout Scotland. Of these 84% are eligible through the age criteria (60 and over) with the remaining 16% eligible through a number of passported benefits.

52. Expenditure for the National Concessionary Travel Scheme in 2010-11 was £174,200,000; the average benefit for an individual eligible to use the scheme was in the region of £215. Expenditure for the National Concessionary Travel Scheme is capped each year and requires to be detailed in the legislation<sup>3</sup>. While the cap has only been agreed up to 2012-13 the budget is expected to remain flat over the forthcoming years. As a result it is expected that the cap in 2014-15 will be approximately £187,000,000.

#### *Legal aid*

53. The Scottish Legal Aid Board (“the Board”) is a non-departmental public body funded by the Scottish Government and by contributions and expenses payable by persons in receipt of legal assistance. The Board is responsible for managing legal aid in Scotland. Applicants for legal assistance can qualify with no contribution payable if they are in receipt of certain benefits. Applicants who are not in receipt of these benefits must complete an application form and show evidence of income and expenditure. The Board will then decide if the person qualifies for legal assistance and whether or not they will have to pay a contribution. The reserved benefits which ‘passport’ a person onto legal assistance include:

- Income support,
- Income-based jobseeker’s allowance,
- Income-related employment and support allowance.

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<sup>3</sup> <http://www.legislation.gov.uk/ssi/2010/140/contents/made>

54. The budget for legal aid is demand-led and is not a fixed amount. The Scottish Government gives the Board the necessary funds to meet the cost of cases. This means that the cost of providing legal aid as a passported benefit will vary from year to year. In 2010-11, there were 271,974 grants for legal aid (both civil and criminal), of which some 52 per cent were made on a passported basis.

55. Total expenditure on the legal aid fund in 2010-2011 was £161,400,000. The Scottish Government's paper, "A Sustainable Future for Legal Aid"<sup>4</sup>, published on 5 October 2011, noted that the Scottish Legal Aid Board was at that point forecasting that, based on savings measures already taken, expenditure would fall to £145,300,000 by 2014-15. However, the Scottish Government budget for legal aid in 2014-15 will be reduced to £132,100,000. A Sustainable Future for Legal Aid' sets out the Government's proposals for meeting this financial challenge.

#### *Court exemption fees*

56. The Scottish Court Service (SCS) is an independent body funded by the Scottish Government which is responsible for providing the staff, buildings and technology to support Scotland's courts. The SCS grants exemptions to fees usually payable for various applications at court to persons in receipt of certain UK benefits. The qualifying reserved benefits are:

- Income support,
- Income-based jobseekers allowance,
- Income-related employment and support allowance,
- Child tax credit, working tax credits – up to gross annual income of £16,642.

57. In 2010-11, the total value of the exemptions amounted to £2,300,000, from 33,500 applications. Around £70,000 of the fees forgone related to means-tested benefits. Court fees were last increased in 2008, after remaining static since around 2002, and are subject to periodic revision. Scottish Government officials are currently in the process of taking forward proposals received from the SCS to increase court fees which will cover a two-year period (from 1 November 2012). This process will be subject to a public consultation which is yet to be published. If the forthcoming Fee Order was to increase court fees by inflation (CPI) over the next period, the total value of exemptions related to means tested benefits may increase to around £75,000 in 2014-15. This, however, would be dependant on other factors such as the number of applications received and the type of applications received.

#### **COSTS ON LOCAL AUTHORITIES**

58. As with the Scottish Government, there will be an administrative cost on local authorities to re-align delivery of passported benefits to the new entitlement criteria. The passported benefit which local authorities currently provide on a statutory basis and for which they incur costs relates to free school lunches.

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<sup>4</sup> <http://www.scotland.gov.uk/Publications/2011/10/04161029/0>

59. School lunches are currently provided free of charge to children and young people who are in school education and whose parents (including persons who have parental responsibilities in relation to or who have care of a child or young person such as a guardian or kinship carer) are in receipt of any of the following reserved UK benefits:

- Income support,
- Income-based jobseeker's allowance,
- Any income-related element of employment and support allowance,
- Child tax credit (but not working tax credit) with an income less than £15,860,
- Both maximum child tax credit and maximum working tax credit with an income under £6,420,
- Support under Part VI of the Immigration and Asylum Act 1999.

60. From the age of 16, young people in school education who receive any of these benefits can also claim free school lunches in their own right.

61. The range of prices charged for school lunches by local authorities is between £1.15 and £2.30 per lunch. The potential benefit in kind for the parents is therefore between £218.50 and £437.00 per child per annum. In 2010, 118,963 pupils in Scotland were registered to receive free school lunches. This represented 17.8% of the total pupil population. In 2010-11, the total local authority net expenditure on school lunches was reported as £92,137,000. This represents expenditure on all school lunches, not just those that were provided free of charge, minus income from lunches that were paid for. The price charged for school lunches is unlikely to cover the full cost of providing them so this figure is likely to be an overestimate of the costs of providing free school lunches alone, as it will include some expenditure associated with paid for lunches. The figure cannot, however, be disaggregated further. Assuming criteria for providing school lunches and the demand were unchanged, and the cost of a lunch increased by inflation (CPI), net expenditure on school lunches would be approximately £103,000,000 in 2014-15.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

62. As with local authorities, there will be an administrative cost on other bodies to re-align delivery of passported benefits to the new entitlement criteria. The passported benefit which is currently provided by another body, and for which it incurs costs, is the energy assistance package.

### *Energy assistance package*

63. The Energy Saving Trust in Scotland is part of a UK-wide non-profit organisation providing impartial information and advice. The Trust manages the delivery of the energy assistance package on behalf of the Scottish Government. The energy assistance package is a four-stage package aimed at helping to reduce fuel bills and improve the energy efficiency of homes in Scotland. Stages 3 and 4 of the package are passported benefits in kind as applicants are entitled to receive this support on the basis of their entitlement to other benefits.

64. Applicants for stage 3 of the package are entitled to receive free or subsidised insulation from an energy supplier on the basis of their existing entitlement to specific benefits. These reserved benefits are:

- Pension credit,
- Child tax credit or working tax credit (where income is less than the qualifying threshold),
- Employment and support allowance (both income related and contribution based),
- Attendance allowance,
- Disability living allowance,
- Income support, income based jobseeker's allowance,
- Housing benefit,
- Council tax benefit.

65. Applicants for stage 4 of the package could be entitled to grants for up to £6,500 worth of improvement work if they fulfil certain criteria. The amount of grant will depend on a number of factors including the energy efficiency of the home at outset and the type of measure installed. Entitlement to one of the qualifying benefits for the stage 3 package is one of the criteria.

66. In 2010-11 expenditure on the energy assistance package was £44,600,000. This covered all stages and it is not possible to identify claims at stages 3 and 4 issued as passported benefits in kind. The current energy assistance package will close to new applicants from 2013. Scottish Ministers have set aside a budget of £65,000,000 in 2013-14 and £66,250,000 in 2014-15 for successor arrangements which will cover fuel poverty and energy efficiency programmes, the criteria for which have not yet been set.

#### *Other passported benefits*

67. There are further devolved passported benefits, such as reduced entry to cinemas, sports facilities and other attractions. They are not, however, provided on a statutory basis and are therefore unrelated to this Bill.

68. Table 1 below summarises information on costs provided in this memorandum:

**Table 1 Passported Benefit Outturn and Forecasts**

£'000	Paragraph	2010-11 (outturn)	2011-12 (forecast)	2012-13 (forecast)	2013-14 (forecast)	2014-15 (forecast)
Free NHS dental treatment <sup>1</sup>	40	34,100	36,000	37,000	37,000	38,000
Optical vouchers <sup>2</sup>	43	15,000	15,000	15,000	16,000	16,000
Travel costs to NHS Scotland premises	45	-	-	-	-	-
Individual learning accounts <sup>3</sup>	46	9,211	8,000	6,000	6,000	6,000
Education maintenance allowance <sup>4</sup>	48	33,300	31,600	31,200	31,200	31,200
Concessionary travel <sup>5</sup>	50	174,200	180,000	187,000	187,000	187,000
Legal aid <sup>6</sup>	53	161,400	142,300	144,100	138,100	132,100
Court exemption fees <sup>7</sup>	56	70	70	72	73	75
Free school lunches <sup>8</sup>	59	92,137	96,000	99,000	101,000	103,000
Energy assistance package <sup>9</sup>	63	44,600	37,750	65,100	65,000	66,250

**Notes:**

- denotes data not available

<sup>1</sup> Any increases in the cost of NHS dental treatment would be as a result of increased patient take up and increase in dentists' fees, which are recommended by the independent Doctors and Dentists Review Body (DDRB). Forecasts assume no further increase in dental provision and using the Consumer Price Index (CPI) measure of inflation as a proxy for any increases in fees

<sup>2</sup> Voucher values in Scotland are uprated in line with increases agreed by the Department of Health and their values have not increased since 2009 but are set to increase by 2.5% in 2012/13. However, in previous years the voucher has increased by either GDP or RPI (now replaced with CPI). For the purposes of the forecasts it is assumed voucher values will be uprated by CPI. The Scottish Ministers are still to decide on whether or not to follow Department of Health uprating for 2012-13.

<sup>3</sup> 2010-11 data refers to learner spend only, 2011-12 and 2012-13 are budget data which is then assumed to roll forward on cash basis.

<sup>4</sup> The budget for education maintenance allowance has been agreed up to 2012-13 via the spending review and is expected to remain at approximately this level for the remainder of the spending review period.

<sup>5</sup> Expenditure for the National Concessionary Travel Scheme is capped each year and requires to be detailed in the legislation following agreement with industry. While the cap has only been agreed up to 2012/13 the budget is expected to remain flat over the forthcoming years.

<sup>6</sup> The Scottish Government budget for Legal Aid for 2011-12 to 2014-15.

<sup>7</sup> Court Exemption fees are not set to increase in 2011-12. Court Fees are subject to periodic revision and Scottish Government Officials are currently in the process of taking forward proposals received from the Scottish Court Service to increase Court Fees which will cover a two year period (from 1 November 2012). It has been assumed the Court Fees will increase by the CPI measure of inflation in line with the Office of Budget Responsibility Projections published at the time of the UK Governments Autumn 2011 Statement.

<sup>8</sup> Forecasts are based on the assumption that demand for school lunches does not change and that the cost of a lunch increases increase by the CPI measure of inflation in line with the Office of Budget Responsibility Projections published at the time of the UK Governments Autumn 2011 Statement.

<sup>9</sup> This benefit closes to new applicants from April 2013. Budget data shown for 2011/12 and forecast spend from 2012-13 are as detailed in the spending review and for 2013-14 onward relate to a successor scheme which will cover fuel poverty and energy efficiency programmes, the criteria for which have not yet been set

*These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012*

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

69. On 22 March 2012, the Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Welfare Reform (Further Provision) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

70. On 22 March 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Welfare Reform (Further Provision) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”



*These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012*

# **WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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