



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# WELFARE REFORM COMMITTEE

Thursday 29 March 2012

Session 4

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**WELFARE REFORM COMMITTEE**

**3<sup>rd</sup> Meeting 2012, Session 4**

**CONVENER**

Michael McMahon (Uddingston and Bellshill) (Lab)

**DEPUTY CONVENER**

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

**COMMITTEE MEMBERS**

\*Margaret Burgess (Cunninghame South) (SNP)

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

\*Alex Johnstone (North East Scotland) (Con)

\*Drew Smith (Glasgow) (Lab)

\*Kevin Stewart (Aberdeen Central) (SNP)

**COMMITTEE SUBSTITUTES**

Linda Fabiani (East Kilbride) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Susan Anton (Scottish Government)

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

Chris Boyland (Scottish Government)

Beverley Francis (Scottish Government)

Ann McVie (Scottish Government)

John Paterson (Scottish Government)

Alison Stewart (Scottish Government)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

Committee Room 5



## Scottish Parliament

### Welfare Reform Committee

Thursday 29 March 2012

[The Deputy Convener *opened the meeting at 13:00*]

### Decision on Taking Business in Private

**The Deputy Convener (Jamie Hepburn):** I welcome witnesses and members of the public to the third meeting of the Welfare Reform Committee and remind everyone to switch off all mobile phones and other electronic devices as they tend to interfere with the sound system.

We have received apologies from Michael McMahon, who cannot attend because of a family bereavement. I am sure that we all send him our best wishes. As his substitute, Jackie Baillie is required to declare any relevant interests before she can take part in committee proceedings.

However, before we get on to all that, I propose that we take the agenda items out of order and consider items 2 and 3 before we move into private for agenda item 1. Are members agreed?

**Members indicated agreement.**

**The Deputy Convener:** I welcome Jackie Baillie to the committee. As this is her first appearance as substitute, I invite her to declare any relevant interests.

**Jackie Baillie (Dumbarton) (Lab):** I do not think that I have any interests that are relevant to the committee's work. However, I refer members to my entry in the register of members' interests.

**The Deputy Convener:** Thank you. I now invite the committee to agree to take in private at future meetings certain items in relation to the Welfare Reform (Further Provision) (Scotland) Bill, specifically all reviews of evidence and all consideration of draft reports. Are members agreed?

**Members indicated agreement.**

## Welfare Reform (Further Provision) (Scotland) Bill

13:01

**The Deputy Convener:** The next item on the agenda is an evidence-taking session with Scottish Government officials on the newly introduced Welfare Reform (Further Provision) (Scotland) Bill. This is the first of a number of such sessions in advance of our producing a stage 1 report on the bill's general principles later in the spring, and it gives us an opportunity for the bill team to brief us and for members to seek clarification.

I welcome to the meeting Beverley Francis, head of the welfare reform team; Chris Boyland, bill manager—at this point I should probably declare an interest, as Mr Boyland is one of my constituents; Ann McVie, team leader, welfare division; Susan Anton, analytical services division; and Alison Stewart and John Paterson from the legal division. Thank you for coming to the meeting.

I invite Chris Boyland to make some opening comments to outline the bill's content and other associated contexts that it might be useful to share with the committee.

**Chris Boyland (Scottish Government):** Thank you, deputy convener, and we thank the committee for inviting us to give evidence this afternoon.

I should say by way of overall introduction that the Scottish Government sees today as another step on the journey towards full implementation of the United Kingdom Government's welfare reforms. Some of us have been on this journey for a while now; indeed, officials at the table took part in the legislative consent process for the UK Welfare Reform Act 2012, a process in which MSPs played a decisive part on 22 December 2011. On that day, Parliament made its decision to partially refuse legislative consent to provisions in the UK act that contained enabling powers for Scottish ministers to make provision with regard to the UK Government's universal credit and personal independence payment reforms on the basis that

"necessary provision should be made instead by an Act of the Scottish Parliament".

Before you is a bill that does nothing more and nothing less than make the "necessary provision" that would have been made by the UK act had Parliament not refused consent.

The bill provides practical means to a necessary end; it gives Scottish ministers powers to make changes to Scottish legislation in consequence of

the UK act. Those powers are needed mostly, though not exclusively, to ensure that the legislative basis for devolved passported benefits, such as free school lunches and disabled persons' blue-badge parking permits, can be safely adjusted to take account of the new UK system and that there will be no unfortunate consequences for provision of those important benefits in Scotland.

The new arrangements need to be in place by April 2013. It is worth putting on record that this timetable is not of the Scottish Government's making, but is driven by the pace of the UK Government's changes. We are very grateful to the committee for its willingness so far to work within that timetable. We appreciate that it places restrictions on the timetable for committee scrutiny but hope that, in turn, members appreciate that that is being done for sound reasons of risk management. The greater part of the work to make the changes enabled by the bill will come at the subordinate legislation stage; that is when the practical, operational adjustments will be made. The bill's tight timetable has been set in order to allow as much time as possible to carry out that practical work and, again, we are grateful to the committee for its forbearance in pursuing it.

It is also worth putting on record that in setting this timetable we are seeking to manage risks around the availability or otherwise of information on the new UK system. As the adjustments that we need to make to subordinate legislation depend on that information being available, we have tried to set aside as much time as possible for that part of the process. The UK Government has indicated that the information will not be available before June, which is why the bill that is before the committee is essentially a piece of enabling legislation. The detail of our adjustments will be set out later, once we have the information on the UK system that we need. We appreciate the committee's desire to have that detail and will do our best to provide it with what we can as soon as we can. Again, however, we will have to ask for the committee's forbearance, because we do not control the availability of that necessary detail.

The bill has three substantive sections that deal with further provision as a consequence of the introduction of universal credit and personal independence payments and with ancillary provision in respect of regulations made under the first two sections.

With regard to section 1, on universal credit, I have always found it helpful to visualise its purpose by thinking of a statute book that contains all the primary and secondary legislation referring to benefits to be abolished by the UK act, including jobseekers allowance, income-based employment support allowance, income support and others.

The bill enables Scottish ministers to strike out those references and replace them. Where the references to existing benefits appear as part of the entitlement criteria for passported benefits, they will be replaced with a new formula to determine entitlement.

That cannot be a simple, like-for-like replacement; for example, we cannot simply insert the phrase "universal credit" in place of, say, "jobseekers allowance". As its name suggests, universal credit will have a much broader recipient group than the benefits that it will replace and will incorporate in-work as well as out-of-work benefits. Crucially, that means that receipt of universal credit will not in and of itself provide the same evidence of low income as the existing benefits and will not serve as a means of determining entitlement to other passported benefits, as it will be awarded to a much larger group of people.

Section 2 makes similar provision in respect of the personal independence payment.

With regard to the final substantive section, which deals with ancillary provision, of key importance is section 3(2)(b). Members will have read the explanatory notes for that section, which say:

"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."

It is quite possible that, in future, an income threshold might be used to determine eligibility for some passported benefits. If that happens, Scottish ministers will, over time, be required to adjust that threshold to keep pace with rises in the cost of living, inflation and similar factors and section 3 enables them to make such adjustments without having recourse to further primary legislation.

That is all I have to say by way of introduction. We are very happy to take members' questions.

**The Deputy Convener:** Thank you very much, Mr Boyland, for that very comprehensive and helpful introduction. I have a number of questions, but I am quite happy for colleagues to ask any questions that they might have first.

**Kevin Stewart (Aberdeen Central) (SNP):** I understand that the civil servants are finding it difficult to get detail from Westminster, but we need some of the detail as soon as we can get it. This is not really a matter for the guys before us, but I wonder whether we can write to the lead minister at Westminster to tell him that we are working in a bit of vacuum.

**The Deputy Convener:** We can discuss that reasonable proposition later; indeed, it leads on to

a question that I wanted to ask the officials. Chris Boyland made it very clear that the scant detail coming from officials south of the border will have implications for the legislative agenda up here. Can you expand on that a little? What problems is that likely to cause?

**Chris Boyland:** Put simply, I think that it will cause problems with, for example, the setting of income thresholds to decide entitlement to specific passported benefits. The income of many of the people involved will be determined by the amount of benefit that they receive. At the moment, we do not have the entitlement criteria for universal credit, so we do not know who exactly will receive it or the amount of benefit that will be paid out. Without some understanding of the amount of money that the system will provide, it is hard to set an income threshold that will accurately describe the group we wish to receive those benefits.

**Jackie Baillie:** I would be interested to find out the current criteria for passported benefits. Usually, they come down to receipt of a particular benefit rather than an income threshold and it would be useful if you could tease that out a bit more. If ministers now favour the setting of an income threshold, which would be a departure from the current system, will the same approach apply to all passported benefits? Will capital be taken into consideration? The issue invites a number of other questions about detail, and I wonder whether you can also tease out some of that.

**Chris Boyland:** I can certainly help with the first question. Universal credit replaces a number of different benefits. Many of the key benefits that entitle people to passported benefits—for example, income-based employment support allowance or income-based jobseekers allowance—indicate that the person in receipt of them is on a low income. Universal credit is an in-work benefit that covers aspects of the working tax credit system, so it does not give the same indication. The fact that a person receives universal credit does not mean that their income is necessarily below the threshold that we might want to set for passported benefits.

**Beverley Francis (Scottish Government):** Universal credit will have a very significant taper. For example, we understand that the minimum award could be as low as 10p—thereafter rising to significant sums—and that it will operate in largely the same way as the current tax credit system. In other words, people could receive very small amounts of universal credit in order to top up their income. However, we have no information on the final taper, the income disregards, the treatment of savings and so on. Although the Department for Work and Pensions is gradually making such policy decisions, the totality is not yet known in full,

and without those final details it is very difficult for us to design successor systems for passporting and other things.

We can share with the committee any details that we can share and can continue to update members as and when we get that information. However, it is coming to us fairly gradually. We do not expect to have full details until possibly the beginning of the summer and might well not have the final design of the package of measures until after that.

13:15

**The Deputy Convener:** We appreciate the offer to keep us up to date, which we readily accept.

**Jackie Baillie:** I will pursue that slightly further. I understand what you say about the taper. There comes a point at which an income threshold is picked and if people are a penny the wrong side of that, unfortunately, they will fail to meet the eligibility criteria.

I asked about other income, from capital or other sources. Will such income be taken into account? I do not think that I got an answer to that.

**Ann McVie (Scottish Government):** It is quite early days. On passported benefits, we have been mapping out the existing benefits and the range of eligibility criteria that are in place at the moment. That has been much harder than it might sound, because passported benefits have evolved over quite a long period to meet a variety of needs. They are not a homogeneous group that has been put together at one time—far from it. There is a range of eligibility criteria, which serve different purposes. That is the background.

As far as income from capital and other types of income are concerned, as my colleagues have said, we are still slightly in the dark about what the detail of universal credit will be. However, it is clear from some of the material that is available to us that there will be minimum and maximum capital thresholds for universal credit. Other types of income such as child benefit and income that is not related to earnings will be considered. How that information will be used in relation to universal credit will become clearer over time, which will enable us to think about what hooks we might use in the future for passported benefits in Scotland.

**Jackie Baillie:** Would it be possible for the committee to have that complex list of existing passported benefits and the criteria, given that you are working on that? That would be interesting to have.

**Ann McVie:** Yes, I would be happy to share that with the committee.

**Drew Smith (Glasgow) (Lab):** I appreciate that you are having problems with the detail. Given that some of those problems may need to be worked out in the longer term, is there a case for having a two-stage process, with previous eligibility criteria being used in the immediate term? I am aware that with free prescriptions, for example, the previous criteria are still used to access some community pharmacy services. Although that is a very imperfect and not particularly desirable solution, do you anticipate that a solution along those lines might be part of what you come up with in the early days of the new system?

**Ann McVie:** It is quite early days, and I should stress that these are matters for ministers, on which a lot of work will have to be done over the coming months.

Given that universal credit will start to be implemented from April 2013 and the roll-out is envisaged to go on until 2017, it is likely that there will be some transitional arrangements and that not everything will be complete by 1 April 2013. It is possible that there might be some form of interim arrangements for passported benefits, which could evolve over time as we become clearer about how universal credit pans out in practice. However, as I said, it is early days as far as our thinking along those lines is concerned.

**The Deputy Convener:** Do you have a question, Margaret?

**Margaret Burgess (Cunninghame South) (SNP):** I was going to ask the question that Drew Smith asked.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** It is interesting to get notice of the complexities of the work that the committee has ahead of it.

As far as I understand it from our previous discussions, because the Scottish Parliament voted not to pass the legislative consent motion, the Welfare Reform (Further Provision) (Scotland) Bill is primary legislation that is designed to allow the Parliament to introduce the necessary subordinate legislation. I would like to clarify that that is the case because, although the committee will be thrashing out that debate week in, week out for many months to come, as far as I understand it, our task at the moment is to deal with the bill that we have in front of us, which is a piece of enabling legislation. Please correct me if I have misunderstood that.

**Beverley Francis:** Annabelle Ewing is absolutely correct. The bill is required because of the Parliament's decision on the LCM. If the Parliament had chosen to support the LCM, the UK act would have given us the necessary powers to do what we needed to do.

There is obviously a broad agenda, I know that the committee has already heard from some stakeholders about the broad nature of the welfare reforms and some of the implications of the changes. I also know that the committee will, in due course, want to talk to us and ministers about our response to a range of the changes.

However, you are right that the bill plugs the gap that was created as a result of the decision not to agree to the LCM. It simply gives the Scottish ministers the powers that they need to introduce primary or secondary legislation in due course and make the necessary changes to allow us to fulfil our obligations under existing policy and legislation.

**Alison Stewart (Scottish Government):** I will add a point of clarification. Annabelle Ewing is right that the bill is primary legislation that gives the Scottish ministers enabling powers. Those powers are limited to enabling ministers to make subordinate legislation. That subordinate legislation would be regulations and would be subject to negative or affirmative procedure in the Parliament, depending on what it did.

**The Deputy Convener:** The UK Welfare Reform Act 2012 will impact on the social fund and council tax benefit, but there is no mention of that in the bill because—clearly—it is an enabling bill. Are those matters likely to be dealt with through subordinate legislation or through other means?

**Ann McVie:** We are in the early stages of discussion about the social fund, which is not in the bill. If it would be helpful to the committee, I can give a short update on where we are in relation to the successor arrangements to the social fund. It is being dealt with separately from this enabling legislation.

**The Deputy Convener:** Feel free to update us.

**Ann McVie:** As members may know, we have announced that we will work with local government to introduce a successor scheme and have it in place for April 2013. That scheme will be subject to review.

At the end of last year, we had a consultation that suggested that there is support for local delivery of a successor scheme with a framework of eligibility criteria set at national level. We will set up a joint design group with the Convention of Scottish Local Authorities and with practitioners from local authorities to work out the detail of how the scheme might be implemented. The first meeting of that group will be on 26 April.

**The Deputy Convener:** Obviously, the committee will have an interest in the work of that group.

**Margaret Burgess:** Jackie Baillie asked earlier about whether there would be an income threshold



for all benefits. Currently, there is an income threshold for some benefits, based on the child tax credit. I presume that the bill will enable us to set our own income threshold, if we choose to go that way. The rest of the UK will go through a similar process, because universal credit will cause the same problems for passported benefits in the rest of the UK.

**Chris Boyland:** It is worth saying two things in general response to that point. First, the list of affected passported benefits is broad and diffuse. We can draw a rough line between a continuing benefit that is paid out regularly and a one-off benefit, such as legal aid, so we would not, at this point, suggest that one set of criteria be applied across the board. Different arrangements will be needed in order to take into account differences between benefits.

Secondly, my understanding is that because the benefits concerned are devolved, the level of any income threshold that may be set is a decision for the Scottish ministers to make. You are entirely correct that that is a problem—if you wish to call it a problem—that faces all the UK Administrations, and not only us. However, the opportunity to make a specifically Scottish decision exists.

**Drew Smith:** I will ask a specific question about the social fund and council tax benefit and then make a general point, but I will be guided by the convener as to whether the two flow into each other.

Ann McVie said that the successor scheme for the social fund is not in the bill. What will be the statutory authority for devising a successor scheme for the social fund and the council tax benefit? Will it come from subordinate legislation under the bill or will it sit somewhere else?

**Ann McVie:** We have not taken a view on that. We are still working that up in conjunction with ministers.

**John Paterson (Scottish Government):** The powers that are taken in the bill are not powers to implement change in the social fund. To do that, we would consider use of provisions that are already on the statute book or the introduction of primary legislation.

**The Deputy Convener:** I do not want to narrow down conversations, but I want us to focus on the bill.

**Jackie Baillie:** I will clarify the point and I will tag on another wee issue, if I can.

**The Deputy Convener:** We will see.

**Jackie Baillie:** I am less than clear about the statutory provision for council tax benefit and the social fund. You appear to say that, because that was not part of the enabling legislation in the UK

Welfare Reform Act 2012, you will have to make subordinate legislation, or introduce primary legislation.

**John Paterson:** That is right. One option is to make subordinate legislation under existing primary legislation.

**Jackie Baillie:** The current bill presents such an option.

**John Paterson:** This bill or another bill would allow such provision, but the current options are to use existing primary legislation or to use the opportunity to introduce other primary legislation that is separate from the current bill and from which secondary legislation would flow.

**Jackie Baillie:** Why not just add a section to the enabling bill that we are discussing? That strikes me as being the simple thing to do, given that the bill is all about welfare reform.

**John Paterson:** The decision on that is for ministers.

**Jackie Baillie:** Okay. Would adding such a section be possible?

**John Paterson:** Yes.

**The Deputy Convener:** Of course, we are hoping to deal with the bill quickly.

**Annabelle Ewing:** Jackie Baillie has not had the benefit of being at our previous meetings—

**Jackie Baillie:** I read the *Official Reports*.

**Annabelle Ewing:** The thrust of the previous discussions, to which everybody seemed to sign up, was that there is a need for speed. The social fund and council tax benefit are substantial issues. It was felt that, in the interests of speed, the most helpful way forward would be to proceed as has been suggested, because we have a very tight timetable. I say that to be helpful to the committee. That is what we discussed, although people can—obviously—change their minds.

**The Deputy Convener:** Members are starting to talk to each other. Perhaps we can continue our discussion later; we have officials to take evidence from now.

The officials have provided a helpful briefing note on the bill, which says:

“Going forward, the Scottish Government will continue to develop its analysis of the impact of the reforms on Scottish individuals and households, carrying out a detailed examination of specific reforms as and when further detail becomes available.”

That issue was raised with us in evidence—I do not know whether you have seen that in the *Official Report*. Will that analysis be comparable to what was talked about?

**Susan Anton (Scottish Government):** I think so.

**The Deputy Convener:** That is helpful and will probably reassure some of the stakeholders who have engaged with us.

Do members want to raise anything else?

**Drew Smith:** I will follow up that point. People have talked about the analysis that the Welsh Assembly Government has done. Is that comparable to what you plan to do? What might be the timescales for the work?

**Susan Anton:** The Scottish Government has published several papers on the analysis that we have done to date, which is broadly comparable to the recent publication from Wales. It is difficult to give a precise timetable for presenting the analysis, because the timetable will be driven by when the UK Government publishes its regulations. When the regulations come out, which I hope will be in June, I will carry out further analysis in five areas: the impact of the reforms on individuals and households; tracking and responding to the roll out of universal credit; analytical support in relation to the bill; successor arrangements for social fund and council tax benefit; and the impact of the reforms on Scottish Government targets and measures. The timetable for that work will be developed as more information becomes available.

13:30

**Chris Boyland:** It is worth pointing out that we will not be analysing the changes ourselves and that we hope to draw on a considerable amount of stakeholder expertise and knowledge. For example, there is the welfare reform scrutiny group, with which we have been meeting since February last year and which comprises expert stakeholders. We expect to continue to draw on its expertise as well as on more ad hoc work with, for example, Citizens Advice Scotland and the Child Poverty Action Group.

At the same time, a great deal of independent work has been carried out by the Joseph Rowntree Foundation and the Institute for Fiscal Studies, which undertook some of the earliest analysis of the UK Government's overall proposals, and we intend to bring all that together and make it available to the committee and other interested parties.

**Beverley Francis:** As Chris Boyland indicated, we have placed our analyses in the public domain and have sought to do so in collaboration with stakeholders. In the absence of much detail about how the future benefits system might look, some of that work has had to be fairly speculative. However, we have tried—we will share this with

the committee in due course—to put together a number of case studies that allow us to overlay what we know about the impacts on particular household or family circumstances. As more detail becomes available on universal credit, PIP and other benefit changes, we can overlay that information to build a better picture of what the reforms will mean. It has been—for us and for stakeholders—a challenge to grapple with the possible impacts. We will develop the case-studies approach with stakeholders and we will undertake further analysis, which we will—as far as is possible—place in the public domain.

**The Deputy Convener:** We appreciate the offer to be kept abreast of developments.

**Jackie Baillie:** I have two tiny questions, convener.

**The Deputy Convener:** Ask them as long as they are very tiny.

**Jackie Baillie:** The questions are tiny, but the answers might not be.

It has been some time since I was a member of the Subordinate Legislation Committee, so you must forgive me for asking this question. You have said that affirmative procedure will be used; however, I seem to recall a super-affirmative procedure that gives committee more scrutiny, in particular with regard to fairly substantial issues in draft regulations. Is the process that has been described not super-affirmative procedure? I am sure that someone will give me a clear answer to that.

Finally, I know that this will be an extremely difficult exercise, but I want to share the pain. I realise that the financial memorandum quantifies existing costs, but have you done any scoping work on the potential increased costs?

**Alison Stewart:** In response to the first question, I must point out that the bill as drafted provides for use of both affirmative and negative procedures, but it does not allow for use of super-affirmative procedure. Affirmative procedure is provided for where regulations that will be made under the bill will add to, replace or delete any part of the text of primary legislation; in all other cases, regulations would be subject to negative procedure.

**Chris Boyland:** On the cost envelope that has been identified in the financial memorandum, we have no substantive basis on which to proceed other than an assumption that we will as far as we can maintain the existing recipient groups for passported benefits. The financial memorandum refers to costs increasing in line with inflation and to how much more it would cost to provide the benefits to roughly the same groups of people. Given that there has been no policy decision or

design to suggest that the groups will change, we have no means to reflect any such move.

**Drew Smith:** It would be useful if the witnesses could say for the record the extent to which, in introducing this bill, the Government is seeking to mitigate effects of the UK legislation. I accept that under the Scottish Parliament's current powers the bill cannot rewrite the benefits system, but to what extent is mitigation one of its objectives and to what extent is the bill team taking the cumulative impact into account? After all, the bill is necessarily drawn very narrow.

**Beverley Francis:** I understand the point. It is very much an enabling bill. Mitigation is a wider issue that relates to how the Scottish Government and other stakeholder groups in Scotland might have to respond to the cumulative impact, once we know what that is. We and local authorities are already considering some of the potential impacts in the light of the analytical outcomes, but essentially it is not within the power of this bill to mitigate any effects. Indeed, mitigation is not the legislative basis of this bill or any other legislation on welfare reform of which I am aware.

**The Deputy Convener:** We are back in the chamber at 2.15 pm. Bearing that in mind, do members have any other questions? If not, I thank the witnesses for their helpful responses. I am sure that we will see some, if not all, of them in due course and we look forward to working with them down the line.

That concludes the public part of our business. Before we move into private session, I say that at the committee's next meeting, which will be after the Easter recess, on 17 April, we will take further evidence on the bill.

13:37

*Meeting continued in private until 13:46.*



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