Further devolution of powers to Scotland: devolved benefits and additional discretionary payments

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Author: Steven Kennedy

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On 27 November 2014 the Smith Commission published its report detailing "Heads of Agreement" on further devolution of powers to the Scottish Parliament.

Under the proposals, State Pensions and Pension Credit would remain reserved. Universal Credit (UC) would also remain reserved, but the Scottish Parliament would have the power to vary the housing element of UC in Scotland, and powers to vary UC payment arrangements.

The Commission proposed devolving responsibility for certain benefits outside UC:

- Disability Living Allowance, Attendance Allowance, Personal Independence Payment, Carer's Allowance, "Industrial Injuries Disablement Allowance" and Severe Disablement Allowance
- Benefits which currently comprise the Regulated Social Fund - Winter Fuel Payments, Cold Weather Payments, Funeral Payments and the Sure Start Maternity Grant
- Discretionary Housing Payments

The Scottish Parliament would have "complete autonomy" over these benefits, or over any benefits or services which might replace them. Devolution of these powers would be accompanied by an increase in the block grant equivalent to the existing level of spending in Scotland on the benefits (currently around £2.5 billion a year).

In addition to having the power to create new benefits in the areas of devolved responsibility, the Scottish Parliament would have new powers to make additional discretionary payments at its expense in any area of welfare. Prior permission from DWP would not be required, although the agreement of DWP would have to be sought to deliver any additional payments on behalf of the Scottish Government. The Commission stated that any new benefits or discretionary payments to top-up reserved benefits "must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other

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benefits or post-tax earnings if in employment."

The Commission also proposed giving the Scottish Parliament "all powers over support for unemployed people through the employment programmes currently contracted by DWP."

This note gives general background on the devolution of further powers in the area of welfare, and looks more closely at the Smith Commission's proposals for devolving responsibility for certain benefits and for additional discretionary payments. It also looks at the Draft Scotland Clauses on these areas in the Command Paper *Scotland and the United Kingdom: An enduring settlement*, published by the UK Government on 22 January. Some have suggested that the powers in the Draft Clauses are more narrowly defined than they had been led to expected, based on their interpretation of the Smith proposals.

A separate Library briefing covers the further devolution proposals regarding Universal Credit:

Further devolution of powers to Scotland: Universal Credit housing element and payment arrangements (SN07095).

In addition, a Library briefing will be published in due course on: *Further devolution of powers to Scotland: employment programmes*.

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1 Introduction

UK Government expenditure on 'welfare' – social security benefits, state pensions and tax credits[1] – in Great Britain and overseas (i.e. not including Northern Ireland) is forecast to be around £208 billion in 2014-15, equivalent to 28.3% of total public expenditure or 11.4% of UK GDP. Department for Work and Pensions (DWP) benefits account for the lion's share of welfare spending – forecast at £168 billion for 2014-15 – with HM Revenue and Customs accounting for the remaining £40.3 billion (tax credits and Child Benefit).[2]

Almost all strands of outturn expenditure on welfare (i.e. prior to the current financial year) can be identified in terms of the recipients' location (GB constituent country or overseas). Of the £203.8 billion spent in Great Britain and overseas in financial year 2013-14, £203.0 billion can be geographically attributed, of which:

- £3.7 billion went overseas (the State Pension accounts for £3.5 billion of this);
- £199.3 billion was spent in Great Britain;
- £17.5 billion was spent in Scotland.[3]

Scotland accounted for 8.8% of all identifiable welfare expenditure paid in Great Britain in 2013-14 and 8.6% of Great Britain's resident population (5.3 million out of 62.3 million).[4]

Table 1: Overview of Great Britain welfare spend and population

DWP & HMRC social security and tax credit expenditure					**2009/10**	**2010/11**	**2011/12**	**2012/13**	**2013/14**
Great Britain and overseas: total				£ million	186,603	193,447	199,617	207,207	203,773
of which:	geographically identifiable spend			£ million	185,353	192,133	198,546	206,190	202,985
	of which:	Overseas (non-UK)		£ million	2,946	3,205	3,373	3,615	3,685
		Great Britain		£ million	182,406	188,928	195,172	202,574	199,300
		of which:	Scotland	£ million	16,324	16,813	17,152	17,744	17,480
				% of GB	*8.9%*	*8.9%*	*8.8%*	*8.8%*	*8.8%*
			England & Wales	£ million	166,082	172,115	178,020	184,830	181,821
				% of GB	*91.1%*	*91.1%*	*91.2%*	*91.2%*	*91.2%*
ONS population estimates					**mid-2009**	**mid-2010**	**mid-2011**	**mid-2012**	**mid-2013**
Great Britain: total				thousands	60,467	60,955	61,471	61,881	62,276
of which:	Scotland			thousands	5,232	5,262	5,300	5,314	5,328
				% of GB	*8.7%*	*8.6%*	*8.6%*	*8.6%*	*8.6%*
	England & Wales			thousands	55,235	55,692	56,171	56,568	56,948
				% of GB	*91.3%*	*91.4%*	*91.4%*	*91.4%*	*91.4%*

Sources: HoC Library calculations based on DWP Benefit Expenditure and Caseload Tables 2014 and Social security expenditure in the United Kingdom, including Scotland (DWP ad-hoc analysis published 24 April 2014); ONS mid-year population estimates. More detail in notes to tables 2a and 2b.

Note: Council Tax Benefit included up to and including 2012/13 – abolished in 2013/14 (denoted by dashed line).

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1 i.e. in line with the Office for Budget Responsibility's (OBR) definition of 'welfare' as set out for example in the OBR Welfare Trends report.

2 See Social security expenditure: Commons Library Note SN02656 (updated 8 Jan 2015) and DWP Benefit Expenditure and Caseload Tables 2014 – Autumn Statement edition

3 HoC Library calculations based on DWP Benefit Expenditure and Caseload Tables 2014 – Autumn Statement edition and Social security expenditure in the United Kingdom, including Scotland, DWP ad-hoc analysis published 24 April 2014.

4 ONS Population Estimates for UK, England and Wales, Scotland and Northern Ireland, Mid-2013

1.1 Recent and forthcoming welfare reforms

Major changes to the benefits system are currently underway as a result of reforms begun by the Labour Government, and as policies introduced by the current Government are implemented.

Employment and Support Allowance (ESA) replaced incapacity benefits for people making new claims from October 2008. The introduction of the new benefit did not initially affect people already getting **incapacity benefits**, but reassessment of most of the remaining incapacity benefit claimants (around 1.5 million people) began in late 2010. Those who satisfy the Work Capability Assessment are migrated to ESA. Those who fail the WCA are deemed "fit for work" and may claim Jobseeker's Allowance instead (unless they can claim Income Support on other grounds, eg as carers).[5] The reassessment programme was to have been completed by April 2014 but the target was missed.[6]

As a result of the *Welfare Reform Act 2012* and other measures introduced by the current Government, there will be further substantial reforms to the benefits system over the next few years. The main changes are as follows.

Universal Credit will provide a single integrated system of in- and out-of-work support for working-age individuals and families. Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Working Tax Credit, Child Tax Credit and Housing Benefit will all eventually be abolished. UC was introduced for a small subset of new claimants in selected "pathfinder" areas starting from April 2013, and is gradually being extended to further areas and to new groups. The precise timetable for the full national roll-out is uncertain, but the DWP's current assumption is that the last new claims for the above "legacy benefits" will be accepted in 2017, and that most legacy benefit claimants will have been "migrated" to UC by 2019.[7]

In advance of the introduction of UC, the Government introduced from late 2012 **new, stricter "conditionality and sanctions" regimes** for both Jobseeker's Allowance and ESA claimants.[8]

Receipt of **contributory ESA** for claimants in the "work Related Activity Group" is now limited to 12 months. Those still on benefit at that point may then claim income-based (ie means-tested) ESA, but they may not be entitled to any benefit if they or their partner has other income or capital above a certain level.[9]

Council Tax Benefit was abolished and replaced by localised/devolved support, from April 2013.[10]

Personal Independence Payment (PIP) is replacing Disability Living Allowance for people of working age, between April 2013 and 2018. PIP has two components: a daily living

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[5] GOV.UK website, *Incapacity benefits – reassessing claims*, updated April 2013

[6] See Library briefing SN06855, *Incapacity benefit reassessments*

[7] DWP, *Welfare revolution rolls out to families: Universal Credit to be in a third of Jobcentres by spring*, 25 November 2014

[8] See DWP, *Jobseeker's Allowance: overview of revised sanctions regime*, September 2003 (also covers ESA sanctions)

[9] See Library briefing SN06305, *Time limiting of contributory Employment and Support Allowance from 30 April 2012*; see also DWP website, *Changes to contribution-based Employment and Support Allowance*, last updated 21 May 2012; and for information on ESA more generally, see DWP website*, Employment and Support Allowance claimant journey*, updated 19 November 2012

[10] See Library briefing SN06101, *Localising support for Council Tax*

component and a mobility component, both with "standard" and "enhanced" rates. As with DLA, PIP is non-means-tested. The Government is to consider extending Personal Independence Payment to children and pensioners once the migration of the working age DLA population has been assessed.[11] The Government estimates that by 2018, 607,000 fewer people in Great Britain will receive PIP than would have got DLA under the existing rules, saving £2.5 billion.[12]

From 1 April 2013 **Social Fund Community Care Grants and Crisis Loans** (other than loans to tide people over pending their first payment of benefit) were abolished and funding was made available to local authorities in England and to the devolved administrations in Scotland and in Wales to provide such assistance in their areas as they see fit.

The total amount of welfare benefits a claimant receives is now subject to a **benefit cap**, set by reference to the average earnings of households in work. Some groups of claimants, including those receiving PIP, are exempt from the cap.[13]

There have also been major changes to the rules on **benefit uprating** – firstly, the change to annual uprating by reference to the Consumer Price Index (CPI), and secondly the 1% uprating of working age benefits for three years announced in the 2012 Autumn Statement Taken together, these measures were expected to yield savings of £9 billion a year by 2014-15.

Further measures are aimed at controlling expenditure on Housing Benefit including limiting payments for tenants living in social rented housing that is deemed too large for their needs from April 2013 (sometimes referred to as the "**bedroom tax**" or the "**removal of the spare room subsidy**").[14]

From January 2013, **Child Benefit** has been clawed back from families with a taxpayer with an income in excess of £50,000 a year.[15]

2 Devolution and welfare

2.1 The case for reserving welfare powers

Following the creation of the Scottish Parliament and the National Assembly for Wales, welfare[16] remained one of the few areas of domestic policy wholly reserved to the United Kingdom Parliament. Although social security is devolved in Northern Ireland, the long standing "parity principle" - now reflected in the Northern Ireland Act 1998 - is intended to ensure that, as far as possible, a single system of social security, pensions and child support operates throughout the UK (recent developments in Northern Ireland are covered below).

Maintaining a single UK-wide welfare system has been justified on various grounds. Uniformity of entitlements and obligations is said to be in line with the principle of ensuring broadly common "social citizenship." A unified system enables the pooling of risks and

[11] See Library briefing SN06538, *Draft Social Security (Personal Independence Payment) Regulations 2013*; and SN06861, *Introduction of Personal Independence Payment*

[12] DWP, *Personal Independence Payment: Reassessment and Impacts*, 13 December 2012

[13] See Library briefing SN06294, *The Household Benefit Cap*

[14] Further Library briefings can be found via the Housing benefits topic page on the parliamentary internet site.

[15] See Library briefing SN06299, *Child Benefit for higher income families*

[16] "Welfare" is used here as shorthand for social security benefits (and associated policies including welfare to work schemes), state pensions and tax credits.

resources, guaranteeing the same levels of social protection regardless of local economic or demographic conditions.

The DWP's *Scotland Analysis* published in the run-up to the referendum on Scottish independence emphasised the advantages of pooling risks across a larger economy:

> If one area of the UK sees an increase in social security expenditure at a particular time, the costs are shared over a wider taxpayer base and mitigated where other parts of the UK do not see the same increase at the same time. A smaller economy might see a heavier impact, especially if the same factors causing the higher spending also impacted negatively on receipts from taxation.[17]

There are also said to be strong practical and administrative reasons for maintaining a single welfare system: aligning rules, processes and procedures allows entitlements to be more readily transferable throughout the UK. In addition, economies of scale mean that services may be delivered more efficiently and effectively at the national level.[18]

2.2 Areas already devolved

As a result of the UK Government's welfare reform programme, some aspects of welfare have been devolved to Scotland:

- From 1 April 2013 Social Fund Community Care Grants and Crisis Loans (other than loans to tide people over pending their first payment of benefit) were abolished and funding was made available (for 2013-14 and 2014-15) to local authorities in England and to the devolved administrations in Scotland and in Wales to provide such assistance in their areas as they saw fit.[19] The Scottish Government established a national scheme – the Scottish Welfare Fund – which is administered by local authorities.

- Council Tax Benefit was abolished and replaced by localised/devolved support, from April 2013.[20] The Scottish Government and Scottish Local Authorities are now responsible for assisting those who need help to pay their Council Tax in Scotland. A single Council Tax Reduction scheme exists in Scotland, which is administered by local authorities.

- With effect from 6 November 2014, the power to set the statutory cap on expenditure on Discretionary Housing Payments (DHPs) was devolved to Scotland.[21] DHPs may be made to tenants experiencing a shortfall between their Housing Benefit entitlement and the rent. The Scottish Government is using the new powers to enable local authorities to provide additional assistance to people affected by Housing Benefit "under-occupation" measures.[22]

Total spending in Scotland on the Scottish Welfare Fund, Council Tax Reduction and DHPs amounted to £422 million in 2013-14, or less than 2.4% of the total welfare spend (covering

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[17] Cm 8849 April 2014, para 2.14

[18] See the final report of the Calman Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009, Part 5-L; HM Government, *Scotland analysis: Work and pensions*, Cm 8849, April 2014, Annex A, para A.14

[19] See Library briefing SN06413, *Localisation of the Social Fund*

[20] See Library briefing SN06101, *Localising support for Council Tax*

[21] *The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2014*; SI 2014/2918

[22] See Library briefing SN06899, *Housing Benefit: Discretionary Housing Payments (DHPs)*, section 4

both reserved and devolved benefits).[23] The Council Tax Reduction scheme accounted for most spending - £360 million.

2.3 Welfare in Northern Ireland

Social security is devolved in Northern Ireland but there is a long-standing policy of maintaining "parity" with Great Britain (now enshrined in Section 87 of the *Northern Ireland Act 1998*). A *Welfare Reform Bill* making equivalent provision to the *Welfare Reform Act 2012* in Great Britain was introduced in the Northern Ireland Assembly but progress stalled following completion of the Bill's Committee Stage in February 2013, due to disagreement between the parties. The Westminster Government responded by announcing a financial penalty on the Northern Ireland Executive totalling £87 million this year, rising to £114 million next year, reflecting the reduction in expenditure which would have occurred had welfare reform in Northern Ireland been implemented according to the original timetable.[24]

On 22 October 2012 the then Minister for Social Development in Northern Ireland, Nelson McCausland, announced that agreement had been reached with the UK government on "changes to the way Universal Credit can be paid to protect the most vulnerable in our society and reflect Northern Ireland's unique circumstances."[25] Further details of the welfare reform "flexibilities" secured for Northern Ireland were given in a letter from Mr McCausland's successor, Mervyn Storey, to church leaders in October 2014.

As part of the Stormont House Agreement on 23 December 2014 it was announced that legislation would be brought before the Assembly in January 2015 "to give effect to welfare changes alongside further work to develop and implement flexibilities and top-ups from the block grant as part of a package of measures to address local need." Implementation of the welfare changes would begin to take place in the financial year 2015-16 and would be completed by 2016-17.[26]

The Financial Annex to the Agreement states:

> The Government welcomes the progress made by party leaders in developing proposals for a local welfare regime which meets local requirements. It also welcomes the fact that the party leaders recognise that the Executive will be responsible for the costs associated with the welfare regime where it differs from that in GB (including AME savings foregone, changes in claimant behaviour and further administrative costs).
>
> Consistent with this understanding the savings foregone will continue to accrue until welfare changes are implemented. This means the deduction from the block grant of £114m for 2015-16 remains due. To help ease the pressure on the resource budget, the Government is willing to provide flexibility on how this deduction is taken and will allow capital funds to be used, freeing up £114m of resource funding for the other priorities.

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[23] *Scottish Welfare Fund Statistics 2013-14*, 18 July 2014; *Council Tax Reduction: Caseloads and Expenditure 2013-14*, 17 June 20014; *Discretionary Housing Payments in Scotland: 1 April 2013 to 31 March 2014*, 21 May 2014. All available via the Scottish Government's Social and Welfare Statistics website

[24] HL Deb 19 June 2014 c108WA

[25] Northern Ireland Executive press release, *Tailoring Welfare Reforms for Northern Ireland: McCausland*, 22 October 2012

[26] *Stormont House Agreement*, p2

> If the implementation of welfare reform is completed during 2015-16 (including the relevant secondary legislation) the £114m deduction will be reduced to reflect the proportion of the year prior to implementation of the measures.
>
> This financial package is subject to the Welfare Bill being reintroduced in January, progressing through Consideration Stage by the end of February, and full implementation of Executive led measures by 2016-17.[27]

2.4 Previous consideration of further devolution of welfare powers

Calman Commission

The case for devolving further powers to Scotland in relation to welfare was examined by the Calman Commission on Scottish Devolution.[28] In its final report published in June 2009, the Commission acknowledged the "common social citizenship" enjoyed by people across the UK as a result of key elements of the welfare state being reserved to the UK, and the "strong practical arguments for maintaining a single, Great Britain-wide model for key parts of the welfare state." It added:

> There are, however, elements of the social security system which are closely aligned to areas of responsibility already devolved to Scotland and which represent levers that could potentially usefully be exercised by the Scottish Ministers to achieve its objectives in key areas of domestic policy, thereby increasing the ability of the Scottish Parliament to serves its people better.[29]

These included Housing and Council Tax Benefit (given the Scottish Government's responsibilities for housing and homelessness), Disability Living Allowance and Attendance Allowance (linking to health and social care), parts of the Social Fund and welfare to work programmes (linking to responsibilities to promote general well being).

In relation to Housing and Council Tax Benefit however, the Commission concluded that disentangling them from the wider benefits system would be difficult and that the Scottish Government could be exposed to budgetary risk:

> Because of the integration of these benefits within the wider social security system and the role it plays in maintaining a common social union across Great Britain, and the risks involved in bringing cyclical expenditure into the Scottish Budget, the Commission has concluded that the potential disadvantages of devolution outweigh the advantages, certainly at the present time.[30]

The Commission proposed that there should be scope for Scottish Ministers to propose changes to HB or CTB in Scotland, but that any changes would "have to fit in with the general structure and interconnected nature of the benefit system", which would remain a UK responsibility. It recommended:

> There should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing Benefit and Council Tax Benefit systems (as they apply in Scotland) when these are connected to devolved policy

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[27] *The Stormont House Agreement - Financial Annex*, p4

[28] See the final report of the Calman Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009, Part 5-L

[29] Ibid. para 5.222

[30] Ibid. para 5.229

> changes, and for the UK Government – if it agrees – to make those changes by suitable regulation.[31]

On DLA and Attendance Allowance, the Commission observed that "To an even greater degree than for HB and CTB, interdependencies with other parts of the social security and tax credit systems mean that it would be extremely difficult to devolve policy responsibility for these benefits."[32] It therefore recommended retaining both DLA and AA as reserved benefits.[33]

The Commission also felt that the linkages between reserved benefits and payments under the regulated Social Fund meant there would be "practical implications" involved in devolution. It was however less convinced by the rationale for a UK-wide approach to the discretionary Social Fund, noting that "The purpose of payments from the Fund fits reasonably neatly with the Scottish Government's responsibilities for wellbeing, social work and tackling homelessness as well as the responsibility that local authorities have for families."[34] It recommended that:

> As part of its considerations as to future reform of the Social Fund, the UK Government should explore devolving the discretionary elements of the Fund to the Scottish Parliament.[35]

As noted above, from April 2013 most elements of the discretionary Social Fund were abolished and replaced by local/devolved welfare assistance schemes.

IPPR research

In a report published by the Institute for Public Policy Research in March 2014, *Devo more and welfare: Devolving benefits and policy for a stronger union*, Guy Lodge and Alan Trench proposed a set of criteria to help determine whether it might be appropriate to devolve responsibility for a particular benefit or welfare programme :

- **Whether the benefit is cyclical in nature or not** – ones which are cyclical are less suitable for devolution, given the financial strains these can impose on devolved resources. In particular, benefits which function as countercyclical stabilisers are unsuitable for devolution. From a risk pooling and UK social union perspective it is also important that such benefits (for example jobseeker's allowance) remain UK-wide. Conversely, benefits which relate to predictable indicators (such as demographic ones) may be more suitable for devolution as the costs of these can be foreseen and budgeted for, though that depends on other factors.

- **Whether the benefit relates to, or overlaps with, devolved functions** – ones which have a connection with devolved functions are more suitable for devolution, as this will enable devolved governments to deal with their responsibilities better.

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31 Ibid. Recommendation 5.19

32 Ibid. para 5.243

33 At the time, access to disability premiums/additions payable with means-tested benefits was largely determined by receipt of certain DLA or AA components. However, with the introduction of Universal Credit access to additional amounts for disabled adults is instead to be determined by the Work Capability Assessment, rather than receipt of disability benefits. See section 6 of Library briefing SN06548, *Draft Universal Credit Regulations 2013*

34 Ibid. para 5.251

35 Ibid. Recommendation 5.22

- **Whether devolving benefits and/or related welfare programmes will help boost growth and economic performance** – in line with the social investment approach described above.

- **Whether the factors that affect the benefit are place-related or not** – those which show strong connections to particular locations such as housing markets are more suitable for devolution than those which are not.

- **Whether devolving the benefit would undermine the social union** – major benefits which are redistributive in nature or contributory in character are core to the social union and are not suitable for devolution.

- **Whether devolving the benefit would materially undermine the UK's single market.**[36]

With these considerations in mind, the authors recommended that:

- Housing Benefit should be devolved, given its close link to other aspects of social housing (and the housing element of Universal Credit should be "disapplied" in devolved territories, with a transfer of funding to each devolved government to enable it "to develop social housing policies and use those resources as it sees fit."

- The Work Programme should be devolved, again with appropriate funding. JSA and ESA should however remain UK-wide benefits, with levels and conditions set by the UK government.

- Devolved governments should be able to take on a stronger role regarding childcare, with devolution of the childcare element of Working Tax Credit An option.

- "Small benefits that have a direct interface with devolved social services" – in particular Attendance Allowance – should be devolved.

The authors also recommended that:

> Devolved governments should be given a **general power to supplement UK levels of welfare**, so that they can use cash payments as well as other policy levers to deliver social policy. In this approach, the level of benefits set by the UK government would serve as a floor, but not a ceiling, for devolved welfare payments. Any increase in a particular benefit would have to be funded exclusively from devolved budgets. Such a model is therefore compatible with both the social union – since all UK citizens would continue to be entitled to a set of defined benefits that comprise social citizenship – and the principles of decentralisation.[37]

A more recent IPPR report, *Poverty and devolution: The role of devolved governments in a strong national social security system*, explores similar themes.[38]

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[36] Ibid. pp7-8, original emphasis

[37] Ibid. p1

[38] Guy Lodge, Graeme Henderson and Bill Davies, *Poverty and devolution: The role of devolved governments in a strong national social security system*, IPPR, 22 January 2015

3 The Smith Commission

3.1 The parties' positions

In its submission to the Smith Commission, the SNP said that all welfare policy and administration should be devolved to Scotland and that, as a priority, the roll-out of Universal Credit and Personal Independence Payment should be halted.

Scottish Labour said that social security should remain largely reserved, except where there was a close link to devolved policy. It believed Housing and Benefit and Attendance Allowance should be devolved.

The Scottish Conservatives also said that social security should remain largely reserved, but that Attendance Allowance should be considered for devolution. It also said there was a case for devolving Housing Benefit (if it could be "disentangled" from Universal Credit), and for giving the Scottish Parliament the power to supplement reserved benefits.

The Scottish Liberal Democrats initially supported the retention of a single, UK-wide welfare and pensions system (albeit with strategic decision being taken on a "partnership" basis between the Scottish and UK Governments), but it was subsequently announced that the party was exploring the transfer of a "major package of welfare powers" to the Scottish Parliament.

Further information on the parties' positions can be found in the Scottish Parliament Information Centre's briefing on *The Smith Commission's Welfare Proposals*[39]; and in HM Government, *The parties' published proposals on further devolution for Scotland*.[40]

3.2 Criteria for further devolution of welfare powers

The UK Government's Command Paper on *The parties' published proposals on further devolution for Scotland*, published on 13 October 2014, set out a number of issues that could be relevant when considering devolution of welfare powers:

> When considering welfare devolution proposals, the following issues may be relevant:
>
> - the complexity of the social security system and the extent to which it is interconnected means that decisions in one area can often have significant repercussions elsewhere in the system. In particular, ensuring that devolved or reserved power bears the full costs of the impact of its own decisions (including the cost to its counterpart) is complex and costly to achieve;
> - the degree to which welfare benefits and services pool risk across economic cycles and regions of the UK, for example by acting as automatic stabilisers;
> - the degree to which expenditure on benefits or services is volatile in that it is difficult to forecast accurately, and forecast variations impose costs elsewhere in the budget;
> - the degree to which a service or benefit is linked to a local area; and
> - how a commensurate level of funding should be transferred to Scotland, both in the short and long term.

[39] SPICe Briefing 15/07, 21 January 2015, p13

[40] Cm 8946, October 2014

> Another important consideration is the potential cost implications when building social security systems. For example, previous analysis by the Department for Work and Pensions (DWP) estimated that one-off IT costs to develop a new system for the delivery of social security in the event of an independent Scotland could be between £300 million and £400 million.5 Based on DWP's experience of developing and introducing large and complex IT systems, building a new benefit system and supporting infrastructure would also be a major challenge, requiring expertise, substantial upfront investment and a lengthy lead-in time while the system is designed, built and tested.[41]

The Command Paper stated that there were a number of different approaches to welfare devolution, including:

> 1. devolving a portion of the expenditure relating to claimants in Scotland of a particular benefit, alongside the power to either vary the rate and rules or operate a separate benefit with a different rate and eligibility criteria, or alternatively to reallocate that funding to another area;
>
> 2. devolving a proportion of the expenditure on a specific welfare service that relates to claimants in Scotland, alongside a statutory responsibility to deliver that service in Scotland, and potentially further powers to either increase or scale back provision of that service; or
>
> 3. powers to 'top up' benefits above the level set by the UK Government.[42]

3.3 The Commission's proposals

On 27 November 2014 the Smith Commission published its report detailing "Heads of Agreement" on further devolution of powers to the Scottish Parliament.[43]

The Commission proposed that state pensions and Pension Credit should remain reserved. Universal Credit – which is replacing means-tested benefits and tax credits for people of working age – would also remain reserved, but the Scottish Parliament would have the power to vary the housing element of UC, and powers to vary the manner and frequency of UC payments.

The Commission also proposed devolving responsibility for certain benefits outside UC:

- Certain benefits for disabled people and carers including Disability Living Allowance, Attendance Allowance, Personal Independence Payment, Carer's Allowance, "Industrial Injuries Disablement Allowance" and Severe Disablement Allowance
- Benefits which currently comprise the Regulated Social Fund - Winter Fuel Payments, Cold Weather Payments, Funeral Payments and the Sure Start Maternity Grant
- Discretionary Housing Payments

The Scottish Parliament would have "complete autonomy" over these benefits, or over any benefits or services which might replace them. Devolution of these powers would be accompanied by an increase in the block grant equivalent to the existing level of spending on

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[41] Cm 8946 October 2014, pp33-34

[42] Ibid. p34

[43] *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014

these benefits in Scotland (currently around £2.5 billion[44], or 14% of total spending on benefits, state pensions and tax credits in Scotland (£17.8 billion in 2013-14)).

In addition to having the power to create new benefits in the areas of devolved responsibility, the Scottish Parliament would have new powers to make additional discretionary payments at its expense in any area of welfare. Prior permission from DWP would not be required, although the agreement of DWP would have to be sought to deliver any additional payments on behalf of the Scottish Government. The Commission stated that any new benefits or discretionary payments to top-up reserved benefits "must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment."[45]

The Commission also proposed giving the Scottish Parliament "all powers over support for unemployed people through the employment programmes currently contracted by DWP."

On delivery and administration of welfare, the Commission's report stated:

> As the single face-to-face channel for citizens to access all benefits delivered by DWP, Jobcentre Plus will remain reserved. However, the UK and Scottish Government will identify ways to further link services through methods such as co-location wherever possible and establish more formal mechanisms to govern the Jobcentre Plus network in Scotland.[46]

Reactions to the Smith Commission's welfare proposals were mixed. Labour, the Conservatives and the Liberal Democrats welcomed the proposals, but the Scottish Government believes they do not go far enough. Others have criticised the overall package as being somewhat piecemeal, reflecting current concerns about the impact of welfare reform rather than a detailed consideration of the appropriate powers to devolve.[47]

3.4 The benefits to be devolved

The benefits to be devolved fall into three broad categories:

- Disability and carers' benefits
- Benefits currently comprising the regulated Social Fund
- Discretionary Housing Payments

Discretionary Housing Payments are covered in Library briefing SN07095, *Further devolution of powers to Scotland: Universal Credit housing element and payment arrangements*.

Disability and carers' benefits

Disability Living Allowance (DLA) is a non-means-tested, non-taxable benefit for people who need help with mobility and/or personal care. It does not depend upon the person having paid National Insurance contributions, and is payable to people whether in or out of work. DLA has a mobility component and a care component. The mobility component – for

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[44] HM Government, *Scotland in the United Kingdom: An enduring settlement*, Cm 8990, 22 January 2015, para 4.1.2

[45] *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014, para 55

[46] Ibid. para 58

[47] See SPICe Briefing 15/07, *The Smith Commission's Welfare Proposals*, 21 January 2015, pp15-16

help with walking difficulties – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels.[48]

Attendance Allowance (AA) is a social security benefit for people aged 65 or over who need help with personal care because of physical or mental disability. Like DLA, it is non-contributory, non-means-tested and tax free. AA has no mobility component, but the disability tests are the same as for the middle and higher rate care components of DLA.[49]

A September 2010 impact assessment produced by the Department for Work and Pensions set out the rationale for DLA and Attendance Allowance as follows:

> The purpose of Disability Living Allowance and Attendance Allowance is to provide a financial contribution towards the generality of extra costs experienced by severely disabled people as a direct result of their disabilities. The benefits are part of the wider package of help available to support disabled people and help maintain their independence.
>
> ...Both benefits were introduced as a policy response to the evidence that disabled people and their families suffered greater disadvantage and poverty than their non-disabled peers and preceded the opening up of the disability rights framework, including the introduction of measures to tackle discrimination against disabled people.[50]

Personal Independence Payment (PIP) is replacing Disability Living Allowance for people of working age. Like DLA and AA, PIP is non-means-tested and is intended to help with the extra costs arising from ill health or disability. There are two components: a mobility component, based on an individual's ability to get around; and a "daily living" component, based on their ability to carry out other key activities necessary to be able to participate in daily life. Each component has two rates.

PIP was introduced for new claims in part on Northern England from April 2013 and throughout Great Britain from June 2013. Reassessment of some existing DLA claimants for PIP started in October 2013, but for most existing DLA claimants reassessment will not begin until October 2015, with the exercise expected to be completed by October 2018. When fully introduced, it is expected that around 600,000 fewer people in Great Britain will receive PIP than would have got DLA, and expenditure will be £2.5 billion a year lower than it would otherwise have been.[51]

When PIP is fully introduced, "extra costs" benefits for disabled people will comprise (assuming no further policy developments):

- DLA for children and young people up to the age of 16 (and the remaining DLA recipients who were over 65 when PIP was introduced, who were exempt from reassessment);
- PIP for adults aged 16-64 (and for those aged 65 and over who first claimed PIP when they were under 65); and

[48] For further information see Library briefing SN05869, *Disability Living Allowance reform*

[49] See Library briefing SN/SP/5136, *The future of Attendance Allowance and other disability benefits for older people*

[50] DWP, *Attendance Allowance, Disability Living Allowance and Carer's Allowance: Retrospective equality impact assessment*, September 2010, paras 2.1-2.2

[51] See Library briefing SN06861, *Introduction of Personal Independence Payment*

- Attendance Allowance for people aged 65 and over

Carer's Allowance is an "income replacement" benefit for people who are unable to work because they are caring full-time for a disabled person who receives a PIP daily living component, the middle or higher rate DLA care component or Attendance Allowance. Carer's Allowance is payable to people aged 65 or over. However, it cannot be paid in addition to the Retirement Pension, due to the "overlapping benefits rule".[52]

Industrial Injuries Disablement Benefit (IIDB) is a benefit payable to former employees suffering disablement as a result of an industrial accident or a prescribed industrial disease. The amount payable varies according to the degree of disablement. IIDB is non-means-tested, and non-contributory. Further additions may be payable to claimants with care needs.

Severe Disablement Allowance (SDA) is a non-means-tested, non-contributory "income replacement" benefit for people who are incapable of work. The Smith Commission's reasons for deciding SDA should be devolved are unclear, since SDA was abolished for new claims from 6 April 2001. Some people who were receiving SDA before then continue to receive it, but most of the existing SDA claimants have been reassessed for Employment and Support Allowance. The incapacity benefits reassessment programme was to have been completed by Spring 2014, but was delayed.[53] Nevertheless, by the time any further devolution measures are implemented, it seems likely only a small number of SDA claimants – all over State Pension age – will remain.[54]

Regulated Social Fund payments

The **Winter Fuel Payment** is a tax-free annual payment to help older people meet the cost of their winter fuel bills. The "standard" rates are £200 per eligible household where the oldest person is under 80, and £300 for households containing a person aged 80 or over. To be eligible for a Winter Fuel Payment, a person must have reached the relevant age threshold before the end of the "qualifying week" (the third week in September preceding the winter in question). The qualifying age is linked to the State Pension age for women, which is increasing gradually.[55]

Cold Weather Payments are made to certain recipients of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit or Pension Credit during periods of very cold weather. To "trigger" the payments, the average temperature at a specified weather station must be recorded as, or forecast to be, 0°C or below for seven consecutive days. The payment is a fixed amount for each week of cold weather. For many years this was set at £8.50 a week but the Labour Government increased the rate to £25 a week as a temporary measure for winters 2008/2009 and 2009/2010. The 2010 Government made the £25 rate permanent.

Funeral Payments are made from the Social Fund to certain claimants of means-tested benefits and tax credits to help meet the costs of a funeral. Under the scheme, full help may be given with certain funeral expenses including burial or cremation. Other expenses – such

[52] See Library briefing SN06349, *Carer's Allowance and the Retirement Pension*
[53] See Library briefing SN06855, *Incapacity benefit reassessments*
[54] SDA "overlaps" with the Retirement Pension, meaning that a person cannot receive both SDA and the Retirement Pension at the same time.
[55] See Library briefing SN06019, *Winter Fuel Payments update*

as funeral directors' fees, the cost of a coffin, church fees and flowers – may be covered but only up to a maximum of £700.

The adequacy of Funeral Payments, in light of actual funeral costs, has long been a source of complaint. Other problems that have been highlighted include confusion about the rules on eligibility and the amount paid to successful claimants, the order in which funerals are organised and claims administered, and the way in which family relationships are assessed and decisions regarding responsibility for funeral costs are made.[56]

The **Sure Start Maternity Grant** is a lump sum payment worth £500 per child paid to low income families to assist with the cost of maternity and baby items. It is payable to recipients, or partners of recipients, of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit, Child Tax Credit (at a rate higher than the family element), or Working Tax Credit (which includes a disability or severe disability element). Following an announcement in the June 2010 Budget, from April 2011 the Sure Start Maternity Grant has been restricted to the first child only in a family.[57]

3.5 Expenditure on benefits to be devolved

Expenditure in Scotland on the benefits included in the scope of the Smith Commission's proposals – set out in table 2a – came to just under £2.6 billion in 2013-14, of which:

- Disability, carers' and illness benefits: £2.3 billion
- Regulated social fund benefits: £0.2 billion (predominantly Winter Fuel Payment)
- Discretionary Housing Payments: £29 million.

Together, these categories of benefit accounted for 14.7% of all identifiable DWP and HMRC welfare spend in Scotland (25% if the State Pension is excluded).

Although Scotland accounts for 8.6% of Great Britain's population and 8.8% of total domestic welfare spend, it accounts for just over 10% of total spend on the 'Smith Commission' benefits – this is due to disproportionately large expenditure on disability benefits in Scotland.

However, Scotland's share of total disability benefit spend in Great Britain has been gradually declining in recent years – falling from 10.5% in 2009-10 to 10.1% in 2013-14. A similar trend of gradual convergence can be seen in Wales (see table 2c).

[56] See Library briefing SN01419, *Social Fund Funeral Payments*

[57] See Library briefing SN05860, *Restriction of the Sure Start Maternity Grant*

Table 2a: Detailed breakdown of DWP & HMRC welfare spend - Scotland

	Scotland									
	Expenditure (£ million)					Expenditure as % of GB resident total (excluding overseas)				
	2009/10	2010/11	2011/12	2012/13	2013/14	2009/10	2010/11	2011/12	2012/13	2013/14
Smith Commission benefits:	**2,383**	**2,476**	**2,397**	**2,506**	**2,563**	**10.4%**	**10.4%**	**10.1%**	**10.0%**	**10.1%**
Heading 1: disability, carers and illness benefits: total	**2,073**	**2,123**	**2,194**	**2,298**	**2,339**	**10.5%**	**10.4%**	**10.3%**	**10.2%**	**10.1%**
of which:										
Attendance Allowance	**475**	**481**	**481**	**489**	**481**	**9.3%**	**9.2%**	**9.0%**	**8.9%**	**9.0%**
Disability Living Allowance	**1,276**	**1,312**	**1,372**	**1,450**	**1,473**	**11.1%**	**11.1%**	**10.9%**	**10.8%**	**10.7%**
of which children	103	103	109	114	118	8.6%	8.5%	8.3%	8.2%	8.1%
of which working age	720	734	774	821	826	11.5%	11.4%	11.2%	11.1%	11.0%
of which pensioners	454	475	488	515	529	11.4%	11.3%	11.2%	11.2%	11.1%
Personal Independence Payment	**0**	**0**	**0**	**0**	**20**	**..**	**..**	**..**	**..**	**12.5%**
Carer's Allowance	**135**	**141**	**153**	**169**	**182**	**9.1%**	**8.9%**	**8.8%**	**8.8%**	**8.7%**
of which working age	132	137	151	167	180	9.1%	9.0%	8.9%	8.9%	8.8%
of which pensioners	4	3	3	3	3	7.2%	6.9%	6.5%	6.3%	5.9%
Industrial Injuries Benefits	**86**	**92**	**91**	**92**	**91**	**10.5%**	**10.5%**	**10.5%**	**10.4%**	**10.4%**
Severe Disablement Allowance	**100**	**98**	**97**	**97**	**91**	**11.1%**	**11.0%**	**11.0%**	**10.9%**	**10.6%**
of which working age	80	80	79	80	75	11.1%	11.1%	11.1%	11.0%	10.6%
of which pensioners	20	18	18	17	16	10.8%	10.6%	10.5%	10.5%	10.5%
Heading 2: Regulated Social Fund	**308**	**350**	**200**	**204**	**195**	**9.6%**	**10.4%**	**8.5%**	**8.7%**	**8.9%**
Winter Fuel Payments	240	240	188	187	186	8.8%	8.7%	8.8%	8.8%	8.8%
Cold Weather Payments (a)	51	95	2	8	1	17.2%	21.8%	1.7%	6.0%	6.3%
Funeral Expenses Payments (a)	7	6	6	6	6	13.8%	13.3%	13.3%	13.3%	13.3%
Sure Start Maternity Grant (a)	10	9	4	3	3	7.1%	7.1%	8.4%	8.4%	8.4%
Heading 3: Discretionary Housing Payments	**3**	**3**	**3**	**4**	**29**	**11.9%**	**12.6%**	**11.5%**	**7.2%**	**16.3%**
Other geo-identified expenditure	**13,941**	**14,337**	**14,755**	**15,238**	**14,917**	**8.7%**	**8.7%**	**8.6%**	**8.6%**	**8.6%**
State Pension	5,745	5,966	6,318	6,783	7,051	9.0%	8.9%	8.9%	8.9%	8.9%
Housing Benefit	1,556	1,661	1,728	1,789	1,770	7.8%	7.8%	7.6%	7.5%	7.3%
Out-of-work (JSA, IS, IB, ESA)	2,060	2,048	2,083	2,098	2,031	10.1%	10.2%	10.2%	10.2%	10.4%
Other DWP spend: geo-identifiable **(b)**	1,486	1,495	1,472	1,417	983	9.1%	8.9%	8.8%	8.7%	9.0%
HMRC Child Benefit	913	931	926	925	869	8.0%	7.9%	7.9%	7.9%	7.9%
HMRC Child and Working Tax Credit	2,141	2,203	2,222	2,225	2,212	8.1%	7.9%	7.7%	7.7%	7.7%
HMRC other	39	34	6	0	0	7.9%	7.8%	7.8%	..	..
Total geographically identified expenditure	**16,324**	**16,813**	**17,152**	**17,744**	**17,480**	**8.9%**	**8.9%**	**8.8%**	**8.8%**	**8.8%**
Memo: Scotland's share of GB population										
All ages						**8.7%**	**8.6%**	**8.6%**	**8.6%**	**8.6%**
Aged 0-15						8.1%	8.0%	8.0%	7.9%	7.8%
Aged 16-64						8.8%	8.8%	8.8%	8.7%	8.7%
Aged 65 and over						8.9%	8.8%	8.8%	8.8%	8.7%

Sources: DWP Benefit Expenditure and Caseload Tables 2014, plus HoC Library calculations based on these and on Social security expenditure in the United Kingdom, including Scotland (DWP ad-hoc analysis published 24 April 2014), DWP Stat-xplore and DWP tabulation tool. Population shares are ONS mid-year population estimates.

Note (a) Expenditure on Cold Weather Payments, Funeral Payments and Sure Start Maternity Grant in Scotland: HoC Library estimates based on GB totals in DWP Benefit Expenditure and Caseload Tables 2014 adjusted in line with Scotland figures from HC Deb 6 Dec 2012 col 822-4W | PQ 131816 and DWP Cold Weather Payment statistics.

Note (b): Council Tax Benefit included in 'Other DWP spend: geo-identifiable' up to and including 2012/13 – abolished in 2013/14.

n/a denotes not available.

Table 2b: Detailed breakdown of DWP & HMRC welfare spend – Great Britain and overseas

	Great Britain					Overseas					Great Britain and overseas: total				
	Expenditure (£ million)					Expenditure (£ million)					Expenditure (£ million)				
	2009/10	2010/11	2011/12	2012/13	2013/14	2009/10	2010/11	2011/12	2012/13	2013/14	2009/10	2010/11	2011/12	2012/13	2013/14
Smith Commission benefits:	**23,004**	**23,796**	**23,751**	**24,990**	**25,476**	**47**	**49**	**48**	**60**	**62**	**23,051**	**23,845**	**23,799**	**25,050**	**25,538**
Heading 1: disability, carers and illness benefits: total	**19,778**	**20,420**	**21,371**	**22,586**	**23,092**	**32**	**33**	**35**	**39**	**40**	**19,810**	**20,453**	**21,406**	**22,625**	**23,132**
of which:															
Attendance Allowance	**5,104**	**5,225**	**5,336**	**5,471**	**5,354**	**3**	**3**	**4**	**5**	**6**	**5,106**	**5,228**	**5,339**	**5,476**	**5,360**
Disability Living Allowance	**11,448**	**11,866**	**12,554**	**13,417**	**13,749**	**10**	**11**	**12**	**13**	**13**	**11,459**	**11,877**	**12,566**	**13,430**	**13,763**
of which children	1,191	1,219	1,314	1,390	1,463	1	1	1	1	1	1,192	1,220	1,315	1,391	1,463
of which working age	6,273	6,452	6,895	7,414	7,523	5	5	5	5	5	6,277	6,456	6,900	7,419	7,528
of which pensioners	3,984	4,195	4,345	4,613	4,764	5	5	6	7	7	3,989	4,200	4,351	4,620	4,771
Personal Independence Payment	**0**	**0**	**0**	**0**	**160**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**161**
Carer's Allowance	**1,495**	**1,572**	**1,732**	**1,926**	**2,087**	**0**	**0**	**1**	**1**	**1**	**1,495**	**1,572**	**1,733**	**1,927**	**2,088**
of which working age	1446	1526	1691	1881	2041	0	0	1	1	1	1,446	1,526	1,691	1,882	2,042
of which pensioners	49	46	42	45	46	0	0	0	0	0	49	46	42	45	46
Industrial Injuries Benefits	**827**	**871**	**870**	**887**	**882**	**17**	**17**	**17**	**18**	**18**	**844**	**888**	**888**	**905**	**901**
Severe Disablement Allowance	**905**	**886**	**879**	**885**	**858**	**2**	**2**	**2**	**2**	**1**	**907**	**888**	**881**	**887**	**860**
of which working age	722	717	710	726	708	2	2	2	2	1	723	718	711	727	709
of which pensioners	183	170	169	159	151	0	0	0	0	0	183	170	169	159	151
Heading 2: Regulated Social	**3,204**	**3,355**	**2,358**	**2,347**	**2,208**	**15**	**16**	**13**	**21**	**22**	**3,219**	**3,370**	**2,371**	**2,369**	**2,230**
Winter Fuel Payments	2,720	2,744	2,136	2,123	2,118	15	16	13	21	22	2,735	2,759	2,149	2,144	2,140
Cold Weather Payments (a)	298	435	129	142	8	0	0	0	0	0	298	435	129	142	8
Funeral Expenses Payments (a)	48	45	47	44	44	0	0	0	0	0	48	45	47	44	44
Sure Start Maternity Grant (a)	139	131	46	39	37	0	0	0	0	0	139	131	46	39	37
Heading 3: Discretionary Housing Payments	**22**	**21**	**22**	**57**	**176**	**0**	**0**	**0**	**0**	**0**	**22**	**21**	**22**	**57**	**176**
Other geo-identified expenditure	**159,402**	**165,132**	**171,421**	**177,584**	**173,824**	**2,899**	**3,156**	**3,325**	**3,555**	**3,623**	**162,301**	**168,288**	**174,746**	**181,139**	**177,447**
Total geographically identified expenditure	**182,406**	**188,928**	**195,172**	**202,574**	**199,300**	**2,946**	**3,205**	**3,373**	**3,615**	**3,685**	**185,353**	**192,133**	**198,546**	**206,190**	**202,985**

Sources and notes: see table 2a

Table 2c: Disability, carers' and illness benefits included in Smith Commission devolution proposals: Scottish, English and Welsh shares of Great Britain total (excluding overseas)

	Scotland					England					Wales				
	Share of Great Britain total (%)					Share of Great Britain total (%)					Share of Great Britain total (%)				
	2009/ 10	2010/ 11	2011/ 12	2012/ 13	2013/ 14	2009/ 10	2010/ 11	2011/ 12	2012/ 13	2013/ 14	2009/ 10	2010/ 11	2011/ 12	2012/ 13	2013/ 14
Smith Commission : disability, carers and illness benefits: total	**10.5%**	**10.4%**	**10.3%**	**10.2%**	**10.1%**	**81.9%**	**82.1%**	**82.3%**	**82.5%**	**82.6%**	**7.6%**	**7.5%**	**7.4%**	**7.3%**	**7.2%**
of which:															
Attendance Allowance	**9.3%**	**9.2%**	**9.0%**	**8.9%**	**9.0%**	**83.1%**	**83.4%**	**83.6%**	**83.8%**	**83.8%**	**7.6%**	**7.4%**	**7.3%**	**7.3%**	**7.2%**
Disability Living Allowance	**11.1%**	**11.1%**	**10.9%**	**10.8%**	**10.7%**	**81.0%**	**81.2%**	**81.4%**	**81.6%**	**81.8%**	**7.9%**	**7.8%**	**7.7%**	**7.6%**	**7.5%**
of which children	8.6%	8.5%	8.3%	8.2%	8.1%	85.4%	85.6%	85.9%	86.1%	86.3%	6.0%	5.9%	5.8%	5.7%	5.6%
of which working age	11.5%	11.4%	11.2%	11.1%	11.0%	81.4%	81.6%	81.9%	82.2%	82.3%	7.1%	7.0%	6.9%	6.7%	6.7%
of which pensioners	11.4%	11.3%	11.2%	11.2%	11.1%	79.0%	79.1%	79.3%	79.4%	79.5%	9.6%	9.6%	9.5%	9.4%	9.3%
Personal Independence Payment	**..**	**..**	**..**	**..**	**12.5%**	**..**	**..**	**..**	**..**	**82.3%**	**..**	**..**	**..**	**..**	**5.2%**
Carer's Allowance	**9.1%**	**8.9%**	**8.8%**	**8.8%**	**8.7%**	**84.4%**	**84.7%**	**84.9%**	**85.0%**	**85.1%**	**6.5%**	**6.4%**	**6.3%**	**6.2%**	**6.2%**
of which working age	9.1%	9.0%	8.9%	8.9%	8.8%	84.4%	84.6%	84.8%	84.9%	85.0%	6.5%	6.4%	6.3%	6.3%	6.2%
of which pensioners	7.2%	6.9%	6.5%	6.3%	5.9%	86.8%	87.5%	88.1%	88.8%	89.4%	6.0%	5.6%	5.4%	4.9%	4.8%
Industrial Injuries Benefits	**10.5%**	**10.5%**	**10.5%**	**10.4%**	**10.4%**	**82.4%**	**82.3%**	**82.4%**	**82.5%**	**82.6%**	**7.1%**	**7.2%**	**7.1%**	**7.1%**	**7.1%**
Severe Disablement Allowance	**11.1%**	**11.0%**	**11.0%**	**10.9%**	**10.6%**	**82.3%**	**82.3%**	**82.3%**	**82.4%**	**82.8%**	**6.7%**	**6.7%**	**6.7%**	**6.6%**	**6.6%**
of which working age	11.1%	11.1%	11.1%	11.0%	10.6%	82.6%	82.6%	82.6%	82.6%	83.0%	6.3%	6.3%	6.3%	6.3%	6.3%
of which pensioners	10.8%	10.6%	10.5%	10.5%	10.5%	81.1%	81.2%	81.4%	81.5%	81.4%	8.1%	8.1%	8.1%	8.1%	8.1%
Memo: Population as share of GB total															
All ages	**8.7%**	**8.6%**	**8.6%**	**8.6%**	**8.6%**	**86.3%**	**86.4%**	**86.4%**	**86.4%**	**86.5%**	**5.0%**	**5.0%**	**5.0%**	**5.0%**	**4.9%**
Aged 0-15	8.1%	8.0%	8.0%	7.9%	7.8%	87.0%	87.1%	87.2%	87.3%	87.4%	4.9%	4.9%	4.8%	4.8%	4.8%
Aged 16-64	8.8%	8.8%	8.8%	8.7%	8.7%	86.3%	86.3%	86.4%	86.4%	86.4%	4.9%	4.9%	4.9%	4.9%	4.8%
Aged 65 and over	8.9%	8.8%	8.8%	8.8%	8.7%	85.6%	85.6%	85.6%	85.7%	85.7%	5.6%	5.6%	5.6%	5.5%	5.5%

Sources: DWP Benefit Expenditure and Caseload Tables 2014, plus HoC Library calculations based on these and on DWP Stat-xplore and DWP tabulation tool. Population shares are ONS mid-year population estimates.

Cold Weather Payments

As explained above, Cold Weather Payments are temperature-dependent. Because Scotland's climate is colder than that of England and Wales, qualifying periods of sub-zero weather are more likely to be recorded in Scottish weather station areas.

Also, Scotland accounts for 10% of all those who are theoretically eligible for a Cold Weather Payment based on their benefit claimant status, despite having only 8.6% of Great Britain's population.

However, the most active Scottish weather station areas (such as those covering the Highlands and Cairngorms) tend to be relatively sparsely populated and have few residents who are eligible for Cold Weather Payments. This means that expenditure on Cold Weather Payments in Scotland is low.

Summary data on cold weather payments triggers, eligible individuals and expenditure in the last three winters are shown in the table below.

Winter 2013/2014 was exceptionally mild and payments were "triggered" in one area only in Great Britain (postcodes linked to the Braemar weather station) in one week. Only 1,100 payments were made, totalling £27,500. This compares with 5.8 million separate payments in 2012/2013, totalling £146 million.[58]

Table 3: Cold Weather Payments in Great Britain, 2011-12 to 2013-14

	Number eligible for a payment (based on benefit claimant status)		**Triggers**		**Number of payments**	**Total expenditure**	
	number	% of GB total	number	% of GB total	number	£	% of GB total
2011-12							
Great Britain: total	**4,240,200**	**100%**	**105**	**100%**	**5,166,900**	**£129,172,500**	**100%**
of which:							
Scotland	423,000	10%	22	21%	89,200	£2,230,000	2%
England and Wales	3,817,200	90%	83	79%	5,077,700	£126,942,500	98%
2012-13							
Great Britain: total	**4,044,000**	**100%**	**173**	**100%**	**5,845,000**	**£146,125,000**	**100%**
of which:							
Scotland	399,200	10%	60	35%	347,800	£8,695,000	6%
England and Wales	3,644,800	90%	113	65%	5,497,200	£137,430,000	94%
2013-14							
Great Britain: total	**3,919,500**	**100%**	**1**	**100%**	**1,100**	**£27,500**	**100%**
of which:							
Scotland	384,300	10%	1	100%	1,100	£27,500	100%
England and Wales	3,535,200	90%	0	0%	0	0	0%

Sources: DWP Cold Weather Payment statistics and HC Deb 06 Jan 2014 vol 573 c46W | PQ 180998.

Note: expenditure data in this table relates to the financial year in which the payment is triggered, not the year in which it is paid. As a result the expenditure figures in this table are not consistent with those shown in table 2a and 2b.

[58] See Library briefing SN06855, *Cold Weather Payments for winter 2014/2015*

4 Draft Scotland Clauses and Command Paper

Welfare is covered in draft clauses 16-22 and Chapter 4 of *Scotland in the United Kingdom: An enduring settlement*.[59]

4.1 Devolved benefits

Draft clauses 16, 17 and 19 give the Scottish Parliament legislative competence for selected disability and carer benefits, payments which currently comprise the regulated Social Fund, and Discretionary Housing Payments, respectively.

Draft clause 16 confirms that the disability benefits to be devolved include Industrial Injuries Disablement Benefit (IIDB) and Severe Disablement Allowance (SDA). The rationale for devolving the latter benefit is unclear since SDA has been closed to new claims since 2001 and the remaining working-age SDA claimants have been, or are being reassessed for Employment and Support Allowance.[60]

The Command Paper confirms that current welfare reforms – including the introduction of Personal Independence Payment (PIP)[61] – will not be postponed pending further devolution of powers.[62] The Smith Commission's report did not address this issue, but Citizens Advice Scotland says it is "disappointed and bewildered" by the announcement that migration of DLA claimants to PIP will not be postponed. It is concerned that the real reason is "to reduce the benefit pot before it is transferred to the Scottish Parliament."[63]

The Smith Commission's report stated that the Scottish Parliament would have powers to create new benefits "in areas of devolved responsibility."[64] This was interpreted by some as meaning that new benefits could be created in any devolved area, for example housing or education. The Command Paper states however that the power to create new benefits applies only to "devolved areas of **welfare** responsibility."[65] Citizens Advice Scotland believes that this "effectively ensures that the Scottish Government can do little more than mirror the welfare provision determined by the UK Government."[66] The specific descriptions of the benefits to be devolved may also limit the scope for variation.

4.2 Additional discretionary payments

The Smith Commission stated that that Scottish Parliament would have "new powers to make discretionary payments in any area of welfare."[67] This was interpreted by many as a general power to "top-up" existing UK benefits. However, **draft clause 18** provides that any such payments must be for "a short-term need that requires to be met to avoid a risk to the well-being of the individual." The Command Paper states that this means the Scottish Parliament will be able to make payments to individuals on a case-by-case basis, "but will not have the

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59 Cm 8990, 22 January 2015
60 See Library briefing SN06855, *Incapacity benefit reassessments*
61 See Library briefing SN06861, *Introduction of Personal Independence Payment*
62 *Scotland in the United Kingdom: An enduring settlement*, para 4.3.2
63 Citizens Advice Scotland, *CAS "disappointed and bewildered" by UK Government response to Smith*, 22 January 2015
64 *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014, para 54
65 *Scotland in the United Kingdom: An enduring settlement*, para 4.1.5
66 Citizens Advice Scotland, *CAS "disappointed and bewildered" by UK Government response to Smith*, 22 January 2015
67 *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014,

power to create permanent entitlement to any new payments beyond the scope of the devolved benefits."[68]

4.3 Additonality and offsetting

The Command Paper confirms that any new benefits or discretionary payments introduced "must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment."[69] This is not covered in the draft clauses, but the UK Government would consider any new benefits or discretionary payments "on an individual basis" to ensure there is no offsetting. Presumably this means that how a new type benefit/payment is to be treated will be considered before it is introduced, rather than an examination of the circumstances of each individual recipient.

4.4 Household benefit cap

Any additional benefit payments provided by the Scottish Government are to be disregarded for the purposes of the Household Benefit Cap. This is not covered in the draft clauses and the Command Paper states that no legislation is required. It states that any additional amount of devolved benefit included within the cap would be disregarded, and that "only the amount of the payment equivalent to that provided by the UK Government would be subject to the cap."[70] It is not entirely clear how this would work, eg where a devolved benefit which is subject to the cap is replaced by a new benefit in Scotland which has different eligibility criteria.

4.5 Funding

The Command Paper gives some additional clarity on the funding arrangements for devolved welfare:[71] For expenditure to be devolved which currently falls within **Departmental Expenditure Limits (DEL)**, the block grant in year one would be increased by the amount of spending on that benefit/service in Scotland at that point (plus an amount for associated administration costs). For subsequent years, changes in funding will be determined through the Barnett Formula.

For **spending outside DEL** (the majority of benefits spending), there would again be an adjustment to the block grant in year one equivalent to the existing level of spending, but the Command Paper states that "the UK and Scottish Governments will need to work together to determine how this funding changes in subsequent years to dynamically and mechanically reflect changes in the welfare spending that would have been undertaken by the UK Government over time."[72] The Smith Commission merely stated that the amount would need to be "indexed appropriately."

4.6 "No detriment" principle

As proposed by the Smith Commission, financial relations between the Scottish Government and the UK Government are to be based on a **"no detriment principle."** If decisions by one government affect the tax/spending of the other then the decision-making government will meet the cost (or retain the saving).[73] Examples could include where an increase in income

68 *Scotland in the United Kingdom: An enduring settlement*, para 4.3.11
69 Ibid. para 4.3.12
70 Ibid. para 4.3.13
71 Ibid. Chapter 2
72 Ibid. para 2.4.10
73 Ibid. para 2.4.16

tax in Scotland leads to higher spending on Universal Credit, where changes to devolved benefits impact on spending on "passported benefits" which are reserved, or decisions regarding employment programmes influence how quickly people move into work (with resulting implications for the UK benefit bill). It has been suggested that a mechanism to provide compensation in such situations could be "hideously complicated" and a potential source of disagreement between the administrations.[74]

[74] See Professor Paul Spicker's blog of 23 January, *The commitment to devolution has been watered down still further*, and the subsequent exchange between Professor Spicker and David Phillips of the Institute for Fiscal Studies