



Scottish Parliament Welfare Reform Committee

Welfare Interdependence and Intergovernmental Relations after Further Devolution

*Evidence to Inquiry into the Future Delivery of Social Security in Scotland submitted by
Professor Nicola McEwen, University of Edinburgh
Associate Director, Centre on Constitutional Change*

1. Forms of social security devolution

The Scotland Bill, once implemented, will represent a marked increase in the Scottish Parliament's responsibilities over social security. The new responsibilities come in various forms:

Devolved benefits (clause 19 and 20) include benefits for people with disabilities and industrial injuries, carer's allowance and the 'Regulated Social Fund'. The Scottish Parliament will have the legislative autonomy to alter the level and scope of these benefits, to withdraw them, or to replace them with an alternative benefit or benefits serving a similar purpose. Allocated spending on these benefits at the point of implementation of the legislation (currently around £2.6bn) will be added to the Scottish block grant, with annual adjustments according to whatever formula is agreed as part of the fiscal framework negotiations.

Flexibilities within Universal Credit (clauses 24 and 25) will enable the Scottish Parliament to pass regulations to effect changes to its delivery (to whom and how frequently it is paid) or to the level of the housing component. The Scottish Government will be required to consult the UK Secretary of State on the "practicability" of implementing these regulations. Following a UK Government Report Stage amendment, the Secretary of State will not be able to veto Scottish regulations, but could postpone their date of implementation. To do so, he/she would be required to amend the regulations by Statutory Instrument, specifying the new date of implementation.

Discretionary payments (clause 21 and 22) enable the Scottish Parliament to provide additional financial assistance (by way of top-ups or discretionary housing payments) to those already entitled to receive a reserved benefit, so long as that assistance is for at least one of the purposes served by the benefit and is not compensation for benefit sanctions.

The power to create new benefits (new clause 34) is set out in a UK Government report stage amendment. This clause is much broader in scope than the 'top-up' clause. It opens up the opportunity for the Scottish Parliament to occupy space vacated by the UK Parliament (e.g. as a result of entitlement constraints) and to maintain it, even if a future UK Government reinstates the benefit. The Scottish Parliament could also create new benefits not currently on offer among the package of reserved benefits. The longer term would be to establish social security (excluding pensions) as a concurrent competence, enabling the UK and Scottish Governments to legislate in the same social security space, and for similar purposes. It implies that the Scottish Government, were it to introduce new benefits, may require the development of its own welfare bureaucracy to process and deliver them. All costs would have to be borne by the Scottish Consolidated Fund (the Scottish Government's budget).

2. New welfare interdependencies

There have always been jagged edges between devolved and reserved competence in the social sphere, and these will increase as a result of the Scotland Bill 2015. The Welfare Reform Committee has already dealt with the impact of changes in the eligibility criteria of reserved benefits having a knock-on effect for those passported benefits and services under the control of the Scottish Parliament. Likewise, entitlement to some benefits which are to be devolved serve as a passport to other benefits and services, many of which are reserved. Personal Independence Payments, for example, act as a passport to a range of reserved benefits and services, including disability premiums in Housing Benefit, disability elements of Working Tax Credits and exemptions from or deductions to Vehicle Excise Duty, among others. Any changes in eligibility criteria for PIP after devolution, or a change in the nature of the benefit, would therefore have a knock-on effect for UK Government spending on reserved benefits. Some reserved benefits are paid net of income tax. If the Scottish Government changed income tax rates or bands which led to increased (or decreased) individual or household income after tax, this could decrease (or increase) UK Government spending on means-tested benefits. These interactions are likely to augment the complexities of the benefit system over time if, as expected, the two systems diverge. Managing these interdependencies will require ongoing intergovernmental cooperation.

No Detriment

The no detriment principles are intended to ensure that (i) neither government suffers financial detriment as a result of the decision to transfer new powers and responsibilities; and (ii) neither government suffers financial detriment as a result of the policy decisions of the other after devolution. The reverse should also hold; each government should get the full benefit from its own policy decisions. The fiscal framework is expected to set out how these principles are to be observed, for example, through block grant adjustment, but the operation of any no detriment rules would require careful auditing and oversight. Even then, intergovernmental disputes seem likely. Whatever arrangements are set out in the fiscal framework, inherent policy interdependencies suggest that some, potentially detrimental, policy overspill is unavoidable.

Welfare bureaucracy

The institutions for the delivery of welfare will shape the level of autonomy and interdependence. The Smith Report left open the option of whether the Scottish Government should develop its own welfare bureaucracy to deliver new devolved benefits, such as PIP and Attendance Allowance, or whether it should negotiate a contract with the Department of Work and Pensions to act as an agent to deliver devolved benefits on its behalf. Both options would incur a cost, though the former can be expected to be more costly and require more time to set up new systems. The latter would make it difficult technically (given IT infrastructure, personnel and delivery systems) to develop benefits for Scotland that were markedly different from the benefits which DWP deliver for England and Wales. Over the longer term, any policy changes that could be accommodated within UK-wide systems may require a longer implementation period as they would be unlikely to be top priority.

Utilising some of the other forms of welfare devolution may also require negotiation with the DWP or the establishment of new welfare bureaucracies. For example, if the Scottish Government decided to 'top-up' reserved benefits, there is no statutory obligation on the part of the UK Government to process these payments on behalf of the Scottish Government, and they may not be inclined to do so. The political incentive may also be for the Scottish Government to ensure that recipients of such top-up benefits were aware of their original source (so the appropriate government can be credited and held accountable for its policy and spending

decisions). If this level of transparency cannot be achieved through partnership arrangements with DWP, it may require establishing separate delivery arrangements within Scotland.

3. Intergovernmental Relations

The Scottish Government is only required, by statute, to cooperate with the UK government in relation to the Universal Credit provisions, but reserved UK benefits and Scottish devolved benefits will create a need for more extensive cooperation between the two governments. The Joint Ministerial Group on Welfare was established in February 2015 to provide a forum for discussion and decision-making to support the implementation of the welfare-related aspects of the Smith Commission Report and the Scotland Bill. It has met four times to date, and is supported by regular communication between officials in the Scottish Government and the DWP.

The Joint Ministerial Group on Welfare is modelled on the Joint Exchequer Committee, and like the JEC, its focus is on managing the transfer of new powers. It is not clear whether it will be fit for the purpose of managing intergovernmental interdependence in welfare on an ongoing basis. The JEC, set up to oversee implementation of the Scotland Act 2012, did not meet at all between 2013 and 2015, and was viewed from the perspective of the Deputy First Minister as having served 'no useful function' in securing the eventual agreement on the block grant adjustment.¹ Although the JEC has been meeting regularly this year to negotiate the fiscal framework, its longer-term role also remains unclear.

One option for formalising intergovernmental interaction in the social security sphere and to provide a mechanism for dispute resolution would be to bring welfare into the ambit of the multi-lateral Joint Ministerial Committee, in addition to an ongoing bilateral forum between the Scottish and UK Governments.

¹ Finance Committee, *Scotland's Fiscal Framework*, 12th Report, 2015 (Session 4)