

# Using new powers to reform benefits in Scotland

## Submission to the Welfare Reform Committee

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1. This is a personal submission by Professor Paul Spicker, written in an individual capacity. Professor Spicker is the author of several works on social security policy including *How Social Security Works* (Policy Press, 2011). He also advises the Scottish Federation of Housing Associations on welfare reform, but this paper is not written in their behalf.

The call for submissions identifies four distinct areas for consideration, and the comments here are ordered accordingly.

### **Personal Independence Payments, Disability Living Allowance Attendance Allowance and Carer's Allowance**

2. Benefits to support people with disability are given on a wide range of criteria, for many reasons. They include, amongst others:

- compensation for disability
- support for persistently low incomes
- support to meet the extra costs of disability
- assistance for rehabilitation
- support for carers
- help to meet specific needs, particularly mobility
- income smoothing, including interruption of earnings and redistribution of income between different periods of people's lives.

A [report from the IPPR](#) in 2014 argued for the devolution of Attendance Allowance, so that it could be integrated with social care for older people. Social care assessments do not depend on the same criteria as benefits for disability, and the problem with seeking closer integration is that it would probably lead to the sacrifice of other important objectives.

3. Attendance Allowance cannot be considered in isolation; there is a substantial overlap between Attendance Allowance and DLA/PIP. Currently a third of the claims for DLA come from older people, who obtain extensions of previous entitlements. The reason why claimants follow this route is that DLA (and PIP) make allowance for mobility needs, and Attendance Allowance does not. That means, however, that a person who has a stroke at age 63 may qualify for the mobility component, but a person another person who has the stroke at 66 may not - regardless of the severity of the need. It is not going to be possible to achieve any sort of equity between DLA/PIP and AA claims unless mobility needs are taken into account. However, by any reasonable test, most people with mobility needs are older than the current limit of 65. If budgets are held constant, it will be possible to increase allowances for the mobility of older people only by redistributing money currently allocated to other people on benefit.

4. Many of the current problems of PIP are due to the assessment process. It was originally anticipated that three-quarters of all applicants would be assessed; according to the [National Audit Office](#), because of discrepancies between personal circumstances and information held, 98% of claimants have been receiving face to face assessments. This is a slow, intrusive and expensive requirement. It is presumptuous, because face-to-face assessments are being used to over-rule extensive medical evidence about people's circumstances over time. The process could be simply and fairly improved, without sacrificing any part of the principle of personalisation, by accepting medical evidence from senior doctors if they have previously examined the applicant.

5. The powers being devolved to Scotland will also mean that Scotland is responsible for most systems governing compensation for disability. It is open to Scotland to integrate several of these systems, including industrial injuries and decisions made by the courts, with no-fault compensation for disability. The approach was pioneered in New Zealand, which replaced court actions with a no-fault assessment of disability in relation to accidents of all kinds (see e.g. M Bismark, R Paterson, 2006, [No fault compensation in New Zealand](#), Health Affairs, Jan./Feb. 2006 25(1):278–83.). However, some other compensatory systems, such as Vaccine Damage Tribunals and War Pensions, are not set to be devolved and consequently could not be incorporated on the same terms.

### **Universal Credit (housing element and administrative arrangements) and Discretionary Housing Payments**

6. Many of the problems of Universal Credit are intrinsic to its design, and the Scottish Parliament can do little to set them right. The problems include

- the poverty trap, and the incompatibility of withdrawing benefits with maintaining financial incentives
- the inherent difficulty of assessing fluctuating incomes
- a central focus on work, for a classification of claimants where millions are not part of the labour market
- the hubris of trying to personalise benefits for 7-8 million people, and
- the impossibility of trying to respond to changes in 'real time'.

7. There are in principle some ways in which the scheme might be modified. The Scottish Parliament will have the power to alter the timing and the frequency of payments, and it may be able to take some measures to mitigate the consequences of the scheme. This will be difficult, partly because any changes rely on the co-operation of a government that is committed to operating the scheme in a particular way, and partly because of the staggering expense of the administration, currently estimated to reach [£15.84 billion](#) by 2021. Proportionate costs may prove prohibitive.

8. If the expense of implementation is not too great, there are some small ways in which the operation of UC might be moderated.

- *Paydays.* The current intention is for UC to be paid to claimants on monthly on the anniversary of their claim. This promises to be chaotic. The date of the original claim will lose relevance as soon as people's circumstances change; it also means that no-one external, such as an adviser, a social housing provider or a local authority, can tell the claimant when the benefit is actually due. It will also mean, as the pilots have already shown, that people cannot be certain when their benefit is actually going to be paid. All claimants should have the same pay-day.
- *Waiting days.* Claimants will be required under the UC system to wait a long time before their first payment. The Scottish Parliament is gaining the power to vary that, and a right to make such payments where it considers there is a need. If this power was used to provide an initial payment during the first month - or on the first uniform pay day - it would reduce the subsequent entitlement to Universal Credit. This should be recoverable from the UK government under the no detriment principle.
- *Income smoothing.* The growth of payday loans has demonstrated the vulnerability of many people on very low incomes to disruption of their income, and the high costs associated with it. The Scotland Bill proposes to remove existing powers to make loans (s.20.3.c), but the power to vary the schedule of payments offers a small opportunity for flexibility; the option of making advance payments, recoverable from eventual entitlement, could help to smooth the income flow of people in difficult circumstances.

## **The Work Programme and Work Choice**

9. Although the terms in which the Work Programme is being devolved are restrictive, there is nevertheless some opportunity to extend its scope. The Scotland Bill allows for 'topping up' benefits to people in need (s.21). If the Scottish Parliament wished to introduce supplementary programmes, for example a support programme of short duration, it could do so. The French *Revenu de Solidarité Active* undertakes activation in this way, offering individual contracts for social inclusion ([\*Contrat Unique d'Insertion\*](#)), which might stretch to courses e.g. in literacy, cookery or driving, in order to enhance skills. A Scottish programme could usefully assist people to gain, e.g., a driving licence, a Food Hygiene certificate or the Construction Skills Certification Scheme card needed for construction work.

10. This would have a further implication. Under the terms of the 'no detriment' principle, if one Parliament undertakes an activity which costs or relieves costs from another Parliament, those consequences should be compensated. If the Scottish Parliament were to institute a process which led to people returning more rapidly to work than would happen otherwise, it would be saving the UK government money and in line with the Smith report's approach such savings should be returned to Scotland.

## **The Regulated Social Fund, new benefits, top-ups and delivery of benefits overall**

11. *Topping up benefits.* The power to 'top up' benefits has been tested in practice: Discretionary Housing Payments have been used to top up entitlements of Housing Benefit, compensating for the bedroom tax. Housing Benefit, however, is administered and delivered locally - this is not a model that can be extended to many other benefits. If, for example, the Scottish Parliament decided in the same way to top up State Pension, which in administrative terms is one of the simplest benefits, it would require information about every eligible recipient in Scotland, and consequent revision of all computer programmes.

12. It would be more practical to deliver a topping-up benefit separately. Topping up in this way would depend on proof of entitlement to the benefit being topped up. Child Benefit could be topped up by asking claimants for their Child Benefit number or for other proof of the presence of a child; State Pension, by asking for proof that a State Pension is in payment or of age and residence. (It would be much more difficult to top up a benefit like Universal Credit on this model, because of the rapidly fluctuating entitlements.)

13. Topping up of reserved benefits is subject to two key rules, though neither of these has been included directly in the Scotland Bill. The first is the 'no detriment' principle, which means that actions taken by one government should not have the effect of exporting expenses to another. The examples given in the White Paper, *An enduring settlement*, refer to passporting and Vehicle Excise Duty (para 2.4.16); this suggests a complex and potentially pettyfoggling system of cross-charging. The second principle is that "Any new benefits or discretionary payments introduced by the Scottish Parliament 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." (*Smith*, para 55)

14. There is no certainty as to how these principles would be interpreted in practice, but they do seem to offer the scope to undertake major changes in the delivery of benefits and services. One small example, considered above in paragraph 9, would be to offer extra support to benefit claimants seeking employment. The examples given in paragraph 12, of Child Benefit and State Pension, are much more radical. The 'discretionary' nature of payments under s.21 of the Scotland Bill would not preclude regular payments (compare the use of discretion in the former Supplementary Benefit scheme).

15. In the case of Child Benefit, it would be open to the Scottish Government substantially to increase its value. Child Benefit in Scotland cost £926m in 2012/13. A 50% increase would cost about £465 million. Child Benefit does not affect other benefits and has no disincentive effect related to transitions to work. Taken in tandem with the substantial increases forthcoming in the minimum wage, this could reduce child poverty.

With a sufficiently large increase, it would also be possible to consider different treatment of Child Benefit in the Scottish tax system. Child Benefit is not taxed for most recipients, with the exception of higher-rate taxpayers who have it clawed back in its entirety. Making all Child Benefit taxable would mean that families with incomes above the tax threshold would gain less than families below it, and so that the benefits will be targeted more on lower incomes. The net cost of a 50% increase in Child Benefit, worth 20% to those who were taxed and 50% to those who were not, should then be in the region of £325m rather than £465m; a 25% increase in Child Benefit should cost about £115m. This does not violate the principle of adding value, or the principle of no detriment, because no family would actually receive less money than they presently get from the UK government. However, any increase in the value of Child Benefit would have to be at least 25%, or the conditions would not be satisfied. (That is because, assuming a 20% basic tax rate,  $125\% - [20\% \text{ of } 125\%] = 100\%$ .)

16. In relation to pensions, the UK government has decided to maintain a contributory principle, and to pay Pension Credit to those pensioners whose work record is insufficient to make up a full State Pension. Pension Credit is complex and confusing; one might also note that nearly 5% of Pension Credit payments are currently [made in error](#) and that it [fails to reach](#) something in the region of 35% of all the people it is intended for. Within the limits of the Scotland Bill, Scotland could introduce a Citizens' Pension for all, payable on the basis of age and residence, deducting only the entitlement to State Pension. The approach has been pioneered in New Zealand through their '[Superannuation](#)' scheme. This extra income would immediately mean that most people would not then be entitled to the means-tested Pensions Credit, and under the no-detriment principle, Scotland could then reclaim that money from the UK government. The cost of such a scheme would be the difference between the amounts paid to top up the basic pension for all and the reduction in entitlement to Pension Credit. The costs could be substantial, and are difficult to predict, because several hundred thousand pensioners in the UK, and probably more than 50,000 in Scotland, do not currently receive the means-tested benefits they are entitled to. The advantage of a Citizens Pension would be improved coverage, enhanced dignity, and a reduction in bureaucratic intrusion.

17. *The delivery of benefits overall.* Benefit service delivery is currently the subject of a review by the House of Commons Work and Pensions Committee. They have pointed to problems of delays and underpayment. The reservations mean that the potential role of the Scottish Parliament is limited, but there may be some scope for mitigating some of the delivery problems. Examples might include PO boxes for claimants, welfare rights support, and computer access including scanning, photocopying and document certification. In France and Belgium, local authority centres (*Centres communaux d'action sociale*) prepare and verify benefit claims, for which by agreement they are paid a fee by the benefits authorities. This could be extended to trusted third sector providers.

18. All public agencies are subject ultimately to judicial review of administrative action, but recourse can only be given when other mechanisms have been exhausted. The effect of recent reductions in service users' rights in social security, including Mandatory Reconsideration, is not to deny rights of review, but to alter the balance between internal review and judicial intervention. Action to remedy administrative delay, misjudgement or maladministration is not a reserved matter. It should not be beyond Scots Law (and so the powers of the Scottish Parliament) to offer enhanced methods of redress, making timeous and effective legal intervention more accessible.