



CAS Submission to the Devolution (Further Powers) Committee: Implementing the Smith Agreement - The UK Government's Draft Legislative Clauses Welfare Benefits

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer service, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Adviceguide provides information on rights and helps people solve their problems.

We are champions for both citizens and consumers and in 2013/14 the Citizens Advice Service in Scotland helped over **330,000 clients** in Scotland and dealt with **over one million issues** overall. In addition, the Scottish zone of our self-help website Adviceguide received approximately **4.2 million** unique page views. In 2013/14, our citizens advice bureaux recorded a financial gain for clients of over **£125 million**.

Our Citizens Advice Bureaux (CAB) network, which includes telephone helpline Citizens Advice Direct, deliver frontline advice services through more than 200 service points across the country, from city centres to rural communities. This network of bureaux is staffed by a team of paid staff and nearly 2500 volunteers.

If we paid our volunteers it would cost the service **£10 million**. Research by the Fraser of Allander Institute into the economic benefits of advice shows that the Scottish CAB Service contributes an annual total benefit to the common good in Scotland of nearly **£170 million**.

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Introduction

As the Committee's focus is primarily on the practicalities of devolving tax, welfare, borrowing and the Crown Estate provisions, this submission will focus on the proposals surrounding the devolution of welfare benefits contained within Chapter Four of the UK Government's Command Paper '*Scotland in the United Kingdom: An enduring settlement*'.

In 2013/14, Scottish Citizens Advice Bureaux (CAB) dealt with over 324,000 benefits and tax credits issues – 36.6% of all CAB advice. In the nine months of April to December 2014, we dealt with a total of 248,000 issues – accounting for 37.2% of all CAB advice. CAB are the leading providers of advice in this area and we provide our service in 30 out of 32 local authority areas reaching 94% of the population.

Citizens Advice Scotland (CAS) welcomed the Smith Commission and much of the Command Paper, and look forward to working with all those involved in the transfer and transition of powers to the Scottish Parliament. We have called for this to be carried out in the best interests of the people of Scotland. Our submission to the Smith Commission focused on three principles – fairness, responsiveness and equality.

When the Command Paper was published by the UK Government on 22 January, CAS welcomed much of the paper, but also expressed our 'deep disappointment' that the migration from Disability Living Allowance (DLA) to Personal Independent Payments (PIP) was to continue when we had called for it to be halted.

Areas we welcomed were the transfer of powers over some benefits which we believe could lead to the Scottish Government setting up new processes and practices that will deliver a more responsive and fair system of benefits for Scotland's people; the joint Ministerial Working Group on Welfare; and for these reasons the joint arrangements for the oversight of DWP development and delivery of Universal Credit between both governments is to be commended.

That said, we believe there are a lot of questions remaining over the process of the transfer of powers and how practically this will take place. Many areas in the legislation also need clarification.

Policy changes and funding decisions

CAS is very concerned that the DWP are continuing to take funding and policy decisions in areas that are to be devolved. We recommend that the UK Government now effectively 'stop the clock' with the areas that are to be devolved outwith decisions on purely operational matters.

No policy decisions should be made to the processes or regulations governing any of the welfare benefit powers that are to be devolved between now and the point of devolution.

Equally, we believe no funding changes should be made to any benefits that are to be devolved between now and the point of devolution. When council tax reduction and the social fund were devolved to the Scottish Parliament they came with effective cuts at the point of devolution. Council tax reduction came with a cut of 10% and in the case of the social fund, there was an effective cut because it had been reduced for three years before the point of devolution through a series of policy changes.

We do not want to see reduced funding for the benefits to be devolved due to policy and funding changes which would result in the Scottish Government having to fill the gaps at the point of devolution. This is also a point we made in the CAS submission to the Smith Commission, in which we stated 'We also firmly believe that any areas that are to be devolved must be alongside the correct funding to allow for those powers to be established and then run.'

Devolution of powers

The effect of the Command Paper is to include the benefits to be devolved (disability and carers benefits and non-contributory benefits for the elderly) within exceptions to the social security section of the Scotland Act (1998, Schedule 5, Head F) and in the case of Universal Credit exceptions within the Welfare Reform Act 2012. Whilst this does absolutely enable these powers to be devolved, the definitions and restrictions within the clauses do not appear to accurately reflect the Smith Commission's recommendations (para 51) that the Scottish Parliament 'will have complete autonomy in determining the structure and value of the benefits or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.' For example, by defining 'disability' in clause 16(4) the legislation would constrain the possibilities for the Scottish Parliament in designing its own system for disability benefits.

CAS would recommend that the legislation allows the Scottish Parliament full autonomy over any current or future benefits in this area rather than include them as exceptions to other Acts.

Whilst powers over disability and carers benefits are to be welcomed, the Smith Commission and Command Paper fell short of what CAS would have preferred to see for Scotland which was the devolution of all benefits (outside the state pension) to allow for fairness, responsiveness, and equality to be built into a new Scottish system of benefits provision. The benefits that are to be devolved account for 14% of Scottish welfare spending and it seems that further could be done to make our benefits more responsive and closer to those it seeks to support. Whilst we accept that none of the major UK parties want to see Universal Credit devolved, we would urge the Committee to call on the post May 2015 UK Government that is established to look again at the areas that remain outside of Universal Credit. These include bereavement and widow/ers payments, Guardian's Allowance, and Maternity Allowance. This would, as stated in our Smith submission, allow for greater responsiveness in the welfare benefits system for Scottish citizens.

Legislation must ensure that no 'parity principle' is applied to Scotland in the case of benefits (as there is in Northern Ireland). Whilst the Northern Ireland Assembly has powers over welfare benefits, the parity principle means the Northern Ireland Executive must in practice operate the same benefits system as the UK Government and if they don't, they may face a corresponding cut to their block grant.

Legislation must also ensure that the Scottish Government can deliver current benefits in a new and different way, combine or separate benefits, or parts of benefits, and change the names of benefits if it wishes to do so after appropriate consultation.

In addition, legislation and practice must ensure that there is no duplication of work and effort from Scottish and UK systems which will result in citizens getting caught between two systems.

Powers to create new benefits and top-up reserved benefits

Since the publication of the Command Paper, various organisations and both the UK and Scottish Governments have sought to clarify exactly what the position is in regard to the power to create new benefits and what the powers are over discretionary payments (top-up of reserved benefits).

Paragraph 54 of the Smith Commission stated 'The Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility... The Scottish Parliament will also have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP'. However the Command Paper seems to have changed this to be within 'areas of welfare responsibility that are devolved'.

The interpretation of the Smith Commission report was that the Scottish Government could craft its own welfare system, outside of Universal Credit, taking into account the needs of Scotland. Whether this is indeed the case needs to be clarified and made clear in legislation. Equally the draft legislation does not make clear how powers to top-up benefits would be created, and this provision needs to be enshrined in legislation.

In addition, as currently drafted, the definition of discretionary payments within clause 18 is too restrictive. It refers to discretionary payments as being made to individuals to meet a short-term need to avoid a risk to their well-being. Our understanding of the Smith Commission agreement is that the Scottish Parliament would have a much broader power to make discretionary payments, where such payments would be 'discretionary' because there is an administrative or governmental decision to make a payment outwith existing entitlements.

Benefit cap

The Smith Commission recommended that the UK Government's Benefit Cap 'be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides'. The Command Paper states that 'while this requires no legislation and so is not covered by draft clauses, the UK Government will ensure that if Scottish Ministers were to increase the amount of payment in relation to any benefit included within the cap, then the additional amount ... would be disregarded for the purposes of the cap'.

It is clear and accepted that if the Scottish Government choose to increase discretionary payments or introduce a new benefit this must be to provide additional income. However, if there is to be no legislation in this area, for the reasons outlined by the UK Government, CAS recommends that there needs to be a clear written agreement or protocol between both Governments to ensure that the UK Government will indeed ensure that additional amounts will be disregarded when a benefit cap is in place.

Passported benefits

The partial devolution of only some benefits means that there are a number of practical solutions and issues that need to be clarified as legislation proceeds – as shown in the Command Paper. One of these is how entitlement to reserved 'passported' benefits, payments or services – those that mean automatic qualification for another - will occur. For example PIP is one of the benefits that will be devolved but entitles claimants to be passported to other reserved benefits and services such as Child Tax Credit, Working Tax Credit, Carer's National Insurance credits, enhanced payments in ESA, JSA and Housing Benefit, and Vehicle Excise Duty. Eligibility for Housing Benefit is also often passported because of receipt of other benefits or tax credits.

Legislation should ensure that passporting of benefits is a simple and effective procedure between two welfare systems. Again data sharing will help with this, but we must ensure both Governments guarantee that benefits are administered fairly and effectively. In addition, there needs to be transparency and clear integration of the administration between different benefits which will allow for clear routes for passporting to other relevant benefits that may fall between two systems.

Halt to Migration of DLA claimants to PIP

Personal Independence Payment (PIP) is the UK Government's new disability benefit, which will eventually replace Disability Living Allowance (DLA) for working age people (aged 16-64). PIP has been rolled out already to new claimants but the migration of existing claimants lies ahead. The majority of existing DLA claimants will be invited to claim PIP after October 2015 and by October 2017. In 2013/14 approximately 343,000 people received DLA in Scotland. Of those, 210,000 were of working age¹.

The UK Government's intention was to create a simpler, more efficient benefit and to provide support to those people facing the greatest challenges to leading independent lives. However, a central assumption of the policy change was that it would reduce forecast working age DLA expenditure by 20%². Those savings are expected to be achieved primarily through the new eligibility criteria for PIP, which should result in a caseload reduction (disabled people losing the benefit entirely) and a reduction in some entitlements (disabled people being moved from higher to lower benefit rates).

CAS wrote to the Secretaries of State for Scotland and DWP on 15 January 2015³ calling for a halt to the migration of all DLA claimants based in Scotland to PIP which is due to take place between October 2015 and October 2017. In addition CAS also called for a halt in the migration which is in place in the current reassessment areas in Scotland – currently in areas around Edinburgh, Galashiels, Dumfries and Galloway, Greater Glasgow, and parts of Highlands. The basis of this request was based on three concerns:

1. Detriment - There will be a major detriment to claimants who have to negotiate two different processes in a short timeframe. As we have already seen from new PIP claimants there are major delays in being assessed and in decisions being made. We could even have a situation where someone is waiting for a decision on PIP as they are being migrated to a new Scottish system. Current claimants have already been awarded DLA so that award should continue until such times as a new Scottish system of PIP is established.
2. Cost - The UK Government will be paying for the migration to a new benefit - and the assessments for this alongside the benefit - within a short time frame of people being moved to another system under the Scottish Government. This seems a waste of time and resources for all concerned.
3. Process - The migration of around 225,000 people from DLA/PIP to a new Scottish system will be a massive undertaking. As we have seen from the transfer of DLA to PIP, from the announcement to final completion of claimant migration, the process will be approximately seven years⁴.

We were therefore very disappointed that the Command Paper effectively shut the door on this call with Section 4.3.2 stating: 'However until such time as devolution has taken place and the Scottish Parliament and Government have put in place any new arrangements, claimants in Scotland, like those in the rest of GB, will continue to receive support through either DLA or PIP in accordance with existing legislation and plans.'

Major problems with the PIP assessment process for claimants have led to considerable delays in arranging a face-to-face medical assessment and then award decisions being made. This should be the priority for the DWP and the migration for existing DLA claimants including those who turn 16 during this time, should be halted. We have more details on PIP delays and the major detriment this causes in our report *Voices from the Frontline: Personal Independence Payment*⁵ published in October 2014. The first independent review of the PIP assessment process, published on 17 December 2014, highlighted that

¹ Scottish Parliament Information Centre. The Smith Commission's Welfare Proposals. January 2015. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-07_The_Smith_Commission_Welfare_Proposals.pdf

² HM Treasury Budget June 2010 policy costings.

³ Citizens Advice Scotland. CAS CEO Calls for a halt to PIP. January 2015. Available at: <http://www.cas.org.uk/news/cas-ceo-calls-halt-pip>

⁴ HM Treasury announced the Government's intention to reform DLA in the June 2010, it was introduced by the Welfare Reform Act in 2012, and process of migration is currently due to finish October 2017

⁵ Citizens Advice Scotland. *Voices from the Frontline: Personal Independence Payment*. October 2014 Available at: <http://www.cas.org.uk/publications/voices-frontline-personal-independence-payment>

the current process 'gives a disjointed experience for claimants' and that the claimant journey 'has been characterised for many by the impact of delays and backlogs'.⁶

We believe the DWP should focus on getting the system right for new claimants and halt the migration of existing DLA claimants to PIP. CAS does not understand the intransigence on this matter and why the issue cannot be discussed to ensure that we have the best outcomes for Scotland's citizens and not put disabled people through two benefit upheavals in a short space of time. CAS remains very concerned that the real reasons behind the forced transition is to reduce the benefit pot before it is transferred to the Scottish Parliament – just as was done with the social fund previously (as mentioned above).

Variances in Universal Credit

The devolution of limited powers over Universal Credit (UC) is welcome though CAS would have preferred if all the elements of UC had been devolved in their entirety to allow for it to be responsive to the needs of Scottish people. However, it does appear that within these limited powers, there is some scope for some policy innovation and to enable policy changes which would benefit Scotland's citizens.

In practice, devolving the abilities for the Scottish Government to vary elements of Universal Credit within a wider system administered by the Department of Work and Pensions will be highly challenging, but possible.

However we believe that further clarity is needed on many elements of this. For example, how can the small parts of Universal Credit that will be devolved to the Scottish Parliament be operated on a UK-wide system? Careful consideration must be given to how the Scottish Government can make their requirements work on a UK Government system. Data sharing and integration of shared systems and services is integral to this running smoothly (further below and we would hope that neither infrastructure nor IT systems could be used as reasons for devolved powers not be enacted.

Regardless of what approach is enshrined in legislation, operating this system in practice will require joint working at an administrative level between the Scottish and UK Governments. CAS recommends that work begins as soon as possible to ensure that the full range of options available for variation in Universal Credit devolved to the Scottish Government will be practically possible to implement with minimal delay should the Scottish Government choose to exercise them.

It would not be acceptable to the public or in the best interests of vulnerable claimants if devolved powers could not be used because of inflexible process, IT systems or disputes over responsibilities. Setting up joint working arrangements on an administrative basis between the two governments at this stage would help to overcome that.

Alternate payment arrangements

Alternate payment arrangements in relation to varying the frequency of payments from the envisaged monthly payment; 'switchback' to direct payments to landlords as opposed to the claimant; and varying the planned single household payments under UC are to be welcomed.

However, these are all areas that have been allowed as these are the areas that have been highlighted as 'problem' areas – including the length of time for first UC payment to be made. The pilot projects, and various research and evidence from a variety of organisations and housing associations have all shown the potential for major problems with the way UC is planned to be paid to claimants and as these are well documented⁷ we will not go into them here.

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/pip-assessment-first-independent-review.pdf (see page 7).

⁷ For example, see <https://www.ipsos-mori.com/researchpublications/researcharchive/3376/One-year-on-The-impact-of-welfare-reforms-on-housing-association-tenants.aspx>; http://www.24dash.com/news/universal_credit/2014-10-24-Official-16-of-universal-credit-renters-in-arrears-after-three-months; and <http://www.independent.co.uk/news/uk/politics/benefit-reforms-one-year-on-universal-credit-is-not-working-9391283.html>

CAS are therefore pleased the Scottish Government has the power to mitigate against all these areas, however would question as to whether this will in fact be a 'devolved' power given only to the Scottish Parliament in practice as when UC is rolled out to all claimants – current pilot projects concentrate mainly on single household JSA claims only – it is highly likely that such variances will need to be built into the scheme across the UK.

Under occupancy charge

The so called bedroom tax has been a huge issue for those housing benefit claimants who have been hit by it so CAS welcomes this power being transferred to the Scottish Parliament.

CAS has appreciated the continuation in Discretionary Housing Payments (DHP) from the UK Government (2013/14 - £15,250,602; 2014/15 - £15,230,343; 2015/16 - £13,331,287) and the Scottish Government's willingness - and now ability – to also provide full funding (2013/14 - £20m (max allowed); 2014/15 - £35m (Cap lifted); 2015/16 - £35m) to ensure the DHP pot in Scotland means no-one has to pay more for their rent due to the bedroom tax.

CAS has consistently called for, at very least, exemptions to be made to this penalty – for example for disabled people, including those whose condition meant they needed more space, or whose homes had been adapted for their use⁸. We remain of this view and we look forward to seeing how this will be taken forward.

However we would like to have full understanding and clarity of what will happen to current DHP payments made available to local authorities from UK Government funding, if Scottish Ministers chose to make exemptions such as those CAS advocate, or indeed choose to remove the Under Occupancy charge altogether.

In particular, we would like clarity over whether the funding from the UK Government currently allocated to Scottish local authorities' DHP pots would remain, to avoid the full £50m burden of mitigating this policy falling entirely on the Scottish Government.

Housing costs

CAS believes that due to constraints within the system, it is unclear as to how varying local housing allowance rates, eligible rent and deductions of non-dependents will work in practice and believe this should be made clear before legislation is passed.

The actual practicalities and the costs that would be incurred by the Scottish Government if they were to choose to have a differing policy when the overall system and infrastructure is controlled by one UK Government department may prove to be disproportional to what could be achieved.

We can envisage problems if there were two Governments with very different views on the policy surrounding housing cost elements and one was reliant on the other to enact the policy through its infrastructure and staff and decide the costs that that would be incurred. Co-operation and transparency would be essential if this power was to be enacted.

Delay in rollout of Universal Credit

As control over certain elements of Universal Credit is proposed to be devolved to the Scottish Parliament, over 50 civic organisations have supported a request to the Work and Pensions Secretary to postpone the rollout of Universal Credit in Scotland until the transition of powers takes place⁹. CAS is supportive of this as it would allow the Scottish Government time to set up systems in areas they can influence, rather than moving claimants from system to system.

⁸ CAS briefing for the Scottish Affairs Committee on the Bedroom Tax - <http://www.cas.org.uk/publications/cas-briefing-scottish-affairs-committee-bedroom-tax>

⁹ Civic Scotland open letter to IDS calls for suspension of Universal Credit roll-out - <http://sfha.co.uk/sfha/news/civic-scotland-open-letter-to-ids-calls-for-suspension-of-roll-out-of-universal-credit>

A Veto?

The Command Paper has caused a great deal of discussion with regard to whether or not the UK Government holds a 'veto' over some of the powers devolved to the Scottish Government and this issue must be resolved and clarified in legislation.

The issue appears to stem from the practical need for joint working where the Scottish Government has power to make regulations in this area, but the UK Government is responsible for ensuring that those regulations are carried out in practice and where the draft legislation says there is a requirement to consult the Secretary of State on 'the practicability of implementing the regulations'.

And this is where, in some ways whether or not there is a veto is a moot point. Whilst UC remains reserved to the UK Government, the Scottish Government cannot introduce changes to delivery or to the housing cost element without the consent of the DWP. As stated above, differing priorities between the Governments could cause this to be a major area of contention in the future.

As drafted, the process does not seem to be equitable. The clauses require the Scottish Government to consult the UK Government and to gain their agreement to the timing of any variance. However, should the UK Government wish to make regulations in this area that affected Scotland; they merely need to consult the Scottish Ministers, but are not required to seek their agreement.

This raises a number of issues. Firstly, enabling the UK Secretary of State to make regulations in an area which is devolved to the Scottish Parliament without its consent does not appear to be consistent with the Smith Commission agreement that the Sewel Convention should be put on a statutory footing. Secondly, whilst the intention appears that the timing of any changes needs to be subject to negotiation on what is practically possible to do so, there is scope for wide interpretation of the circumstances it might be considered 'reasonable' for the Secretary of State to withhold their agreement to the Scottish Government utilising their devolved power to make regulations in this area.

This may have the effect of causing the same stand-off and claimant confusion as if no process were outlined in the clauses. Citizens Advice Scotland believes that this section should be re-drafted to ensure that the Scottish Government can exercise its devolved function, whilst at the same time ensuring that practical considerations are reflected in the legislation.

Employment Support

The Smith Commission and now Command Paper gives the Scottish Parliament legislative competence over the design of employment programmes. CAS welcomes this move which will allow the Scottish Parliament to decide how and who delivers these programmes. Again we would hope that this would ensure a more responsive system can be put in place that will meet the needs of Scottish citizens and can target areas or particular groups where additional support is needed.

But we remain concerned about how this structure will also sit alongside the current discredited sanctions regime which remains reserved to the UK Government and is administered by the DWP. At the moment, Work Programme Providers have to refer ESA and JSA claimants for a possible sanction in every case where they fail to comply with their conditions; they have no discretion and are not able to consider whether the person had good reason for failing to comply – even though they know the claimant and might be sympathetic to, or in agreement about why non-compliance took place – e.g. a sick relative; transport problems; hospital appointments. Work Programme Providers should be there to support people into work rather than monitor conditionality.

In our view, maintaining a requirement on a Scottish Government-devised employment support programme to continue to refer people for sanctions will result in a massive strain between Governments which have a different view of the sanctions and conditionality regimes put in place by the UK Government.

CAS recommends that Work Programme Providers are given discretionary powers over referrals over what is deemed to be non-compliance of the claimant commitment.

Timing and transfer of responsibilities

CAS believe that the best approach for the devolution of welfare powers is for them to be devolved in a staged and structured approach and not in one go at the furthest point in the future.

It is important that the right approach is taken, and full and proper establishment of powers and relevant structures are put in place rather than legislation rushed through which result in holes that need mending in future years. We believe that this is very much the case for powers over benefits which can mean new systems, processes and structures are needed to be put in place and that the Scottish Government must have time and funding to carry out this work in advance of the point of devolving powers.

However we also consider that some powers could come relatively quickly – allowing for the Scottish Government to be fully involved in what time is needed to set up new processes, employ staff etc. These include the regulated Social Fund - cold weather payments; funeral payments, Sure Start maternity grants - and discretionary housing payments.

When parts of the social fund were devolved (now the Scottish Welfare Fund) it was not clear why maternity grants and funeral payments remained reserved. As they are now to be devolved they could be transferred over relatively quickly and integrated into the Scottish Welfare Fund (if that is what is decided by Scottish Government after consultation). If cold weather payments were to be devolved to the Scottish Parliament in time for 2015/16 winter, it would enable the Scottish Government to make decisions as to how they would want that to be responsive to those living in Scotland which is colder than other parts of the UK and make any changes necessary.

Data Sharing

Legislation should ensure there is full and transparent data sharing between the DWP and Scottish Government. This is essential if two welfare systems that will need to interact together and work together are to be built. CAS would recommend that this data sharing happens immediately but also must be included in legislation.

This will reduce any problems of maladministration, duplication of work, and importantly help ensure citizens do not get caught between two systems or slip through the net altogether. When the Scottish Government has set up new systems and processes, both Governments must work hard to ensure that there is full and transparent data sharing and this should be enshrined in legislation.

It is also important that both the Scottish Parliament Welfare Reform and Devolution (Further Powers) Committees have access to, and are able to work with, the DWP during the legislative changes and transition process if they are to truly be able to scrutinise legislation and the transfer of powers. The Joint Ministerial Committee also has an important role to play in ensuring the smooth process of data sharing and coordinated working.

Integration of systems

The Joint Ministerial Committee has an important role to play in ensuring that the social security systems run by both the Scottish and UK Governments will engage with and work with each other. CAS recommends this be made clear and is written into legislation, ensuring both governments are sharing information, processes and, where necessary, systems and infrastructure. It is imperative if people are to navigate the systems that there is clear legislation, guidance, and regulations in place governing the interaction between both systems especially in areas of Universal Credit.

Current systems must be shared across the two governments where that will make systems and processes easier, more effective, and reduce costs for both governments. How the infrastructure and technology work across two systems and how new technology can help the structures is imperative if maladministration is to be reduced.