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The Smith Commission's Welfare Proposals

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The Smith Commission made a range of proposals for the devolution of further welfare powers to Scotland. This briefing provides a background to the UK Government's current welfare reform agenda, details of the main political parties' submissions to the Smith Commission, and details of the proposals made by the Smith Commission.



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Pàrlamaid na h-Alba

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EXECUTIVE SUMMARY

Following the 'no' vote in the Scottish referendum, Lord Smith of Kelvin was appointed by the Prime Minister to take forward the proposals on further powers for the Scottish Parliament. The Smith Commission reported with its recommendations on 27 November 2014.

On welfare, the Commission proposes that a range of disability benefits, including Disability Living Allowance/Personal Independent Payments should be devolved along with discretionary housing payments and the regulated social fund. Under Smith, the Scottish Parliament would have complete autonomy over these benefits. Around 343,000 people receive Disability Living Allowance in Scotland alone, so a relatively substantial number of people may be affected by any future changes to this benefit.

The Smith Commission recommends that the initial devolution of these powers should be accompanied by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. This currently amounts to around £2.5bn per year or around 14% of welfare spend Scotland.

The Smith Commission also proposes that Scotland should have:

- powers to vary the housing element of Universal Credit
- administrative power to change the frequency of Universal Credit payments, vary the existing plans for single household payments and pay landlords direct for housing costs
- powers to create new benefits in devolved areas and to 'top-up' reserved benefits.

If the Scottish Government chooses to use any of these powers to vary reserved benefits or create new benefits it would have to meet any associated costs. Thus, the scope for using these new powers will need to be considered in the context of the Scottish Government's wider budgetary decisions.

The remaining elements of Universal Credit will remain reserved as will the earnings taper, conditionality and sanctions associated with Universal Credit. Pensions, child benefit and a number of other smaller benefits will also remain reserved.

In terms of administering benefits, the Smith Commission refers to the need for some level of joint arrangement or linked services between the Scottish Government and the Department for Work and Pensions.

The Work Programme would also be devolved.

Reaction to the Smith Commission proposals on welfare has been mixed. For example, while some have welcomed the proposals others have suggested they are a piecemeal approach to the devolution of further powers on welfare.

The UK Government will publish a draft Scotland Bill by 25 January 2015. A Scotland Bill will be brought forward by the next UK Government after the General Election on 7 May 2015. The Scottish Parliament elections are scheduled for 5 May 2016.

It is likely to be at least 2017 before new powers are transferred to the Scottish Parliament, given the need for the necessary legislation to pass through both Houses of Parliament and the

time needed to implement changes. Some powers may be transferred sooner, for example, some of the flexibilities on Universal Credit may not require primary legislation.

A joint UK and Scottish Government ministerial working group on welfare has been established and its first meeting should take place in the first week of February 2015. The Scottish Government has said it is keen to work co-operatively with the UK Government to make transition as smooth as possible.

INTRODUCTION

Social security is largely reserved under Schedule 5 of the Scotland Act 1998, although the UK Government's welfare reform agenda has allowed for the 'localisation' of some benefits.

The Smith Commission proposals would result in certain benefits being devolved to Scotland. These are currently worth around £2.5bn or 14% of current welfare spend in Scotland. A bill devolving further powers to Scotland is expected after the UK general election. However, not everything in the Smith Commission report may require legislation; for example, there have been calls to devolve the administration of the work programme immediately (Holyrood 2015).

The UK Government's welfare reform agenda has been controversial and the discussion of the further devolution of welfare in part reflects debates about this reform programme. In order to provide a wider context for the Smith proposals, the first part of this briefing provides a summary of the main UK welfare reforms. The Smith Commission proposals are considered in the second part of the briefing.

UK GOVERNMENT WELFARE REFORM AGENDA

The Department for Work and Pensions (DWP) has stated that public spending needs to be more sustainable and targeted more effectively to ensure that the system is fair to the British taxpayer and to those people who are in genuine need of support. The recent welfare reforms are intended to achieve these aims. However, many elements of welfare reform have proved to be controversial.

The majority of the reforms are provided for by the [Welfare Reform Act 2012](#) (the 2012 Act) which works alongside related legislation, for example, the introduction of the Work Capability Assessment in the Welfare Reform Act 2007 and the Welfare Benefits Up-rating Act 2013. The main elements of the reforms include:

- the move to [Universal Credit \(UC\)](#), (see further explanation below)
- the introduction of a [benefit cap](#) which limits the total amount of benefit a household can receive
- the introduction of a welfare cap which limits the amount the UK Government can spend on certain social security benefits in the five years from 2015/16
- uprating benefits and tax credits by one percent per year (for three years from 2013 to 2015) for working age claimants
- changes to Housing Benefit (see further explanation below)
- the move from Disability Living Allowance (DLA) to [Personal Independence Payments](#) (PIP) for people of working age, which aims to be simpler, more efficient and to provide support to disabled people who face the greatest challenges to leading independent lives (see further explanation below)
- limiting the period for which people in the Work Related Activity Group (WRAG) can receive contribution-based [Employment Support Allowance](#) to 365 days and preventing any new claims for Employment Support Allowance (ESA) on the grounds of youth. Special contribution conditions had previously allowed people aged between 16 and 20 to receive ESA without paying National Insurance contributions.
- the introduction of a Claimant Commitment as part of Universal Credit (which has also been introduced for Jobseeker Allowance claimants under existing legislation)
- the more rigorous [conditionality and sanctions regime](#)
- tougher penalties for people who commit benefit fraud.

Although the stated principles and ideals behind the reforms have been broadly welcomed, critics have challenged their scale, pace and targeting. It has been suggested that the reforms

have had an unforeseen cumulative impact on the most vulnerable in society, for example; those on low income, disabled people and women and children (Social Security Advisory Committee 2014, Beatty and Fothergill 2014).

The reform programme has also experienced a number of delays, for example, the backlog in processing PIPs (BBC News 2014a). Many commentators have argued that the true impact of many of the reforms is yet to be felt as Universal Credit and PIPs are still to be fully rolled out (see for example, Marsh 2014).

Further detail on some of the main reforms is provided below.

UNIVERSAL CREDIT

UC is a means tested benefit for working age people. It is replacing six existing working age benefits¹. The aim of UC is to simplify the benefits system and improve work incentives. It is also designed to increase digital inclusion through a focus on online access and “financial capability” by normally being paid monthly.

Under UC, each claimant has a “standard allowance” to which other elements (e.g. housing and childcare) are added depending on the household circumstances. A key feature of UC is the “single taper” (of 65%) for the withdrawal of UC for those in work. This means that for every extra pound earned over the work allowance (for example, £111 a month for a single person with no children), the claimant keeps 35p. In many cases, this will be an improvement for existing benefits claimants who could face higher combined tapers.

To receive UC, claimants must sign a ‘Claimant Commitment’. This will set out what the claimant has agreed to do to prepare for and look for work, or to increase earnings. Failure to comply with a ‘Claimant Commitment’ could result in a sanction and a reduction in UC award. The sanctions regime for UC, which is largely the same as is currently in place for Jobseekers Allowance, has been subject to criticism (see below).

Administration of UC

The DWP is responsible for administering UC. The UC award is paid to the household on a monthly basis, and as a single payment. A number of concerns have been voiced about the move to single monthly household payments including the challenge for families not used to budgeting on a monthly basis (Kennedy 2012).

Furthermore, some social landlords are concerned that payment of the housing element of UC² direct to the tenant will result in increased rent arrears and impact on their revenue streams (Wilson 2013a). The UK Government set up six Direct Payment Demonstration Projects (DPDPs) in 2012 to test the direct payment of Housing Benefit to tenants living in social housing. Final reports on the evaluation of the DPDPs are available on the DWP [website](#).

In exceptional circumstances, if UC claimants are not coping with monthly payments, alternative payment arrangements can be put in place. These arrangements could include rent paid directly to the landlord, more frequent payments or payment split between partners (DWP (2014a).

Implementation of UC

¹ Income support, Income based Jobseekers Allowance, Housing Benefit, Child Tax Credit, Working Tax Credit, Income based Employment and Support Allowance

² Most social housing tenants currently have their Housing Benefit paid direct to their landlord.

The implementation of UC has been delayed. It is currently only available in one area in Scotland– in the areas covered by the Inverness Job Centre. The most recent statistics show that around 540 people in Scotland receive UC (DWP 2014b) The rollout initially covered only new, single jobseekers without children.

In September 2014, the UK Government announced the acceleration of the rollout of UC. From February 2015, it will be available in more parts of the country, although still mainly aimed at new claims from single people (DWP 2014c) The DWP expects that the last new claims for legacy benefits will be accepted in 2017 with the bulk of existing legacy benefit claimants being migrated to UC by 2019 (DWP 2014d).

CONDITIONALITY AND SANCTIONS

In return for receiving certain benefits, claimants are expected to meet benefit conditions, for example, to show that they are actively seeking work. A new system for Job Seekers Allowance was introduced on 20 October 2012 and for Employment Support Allowance (ESA) on 5 December 2012.

This new regime has been subject to criticism. For example, it has been claimed that sanctions are too harsh and that there is a disproportionately negative effect on lone parents and young people. Furthermore, it is claimed that a lack of flexibility and misapplication of sanctions reduces the likelihood of people finding work (Scottish Parliament Welfare Reform Committee 2014a).

HOUSING BENEFIT REFORM

Housing Benefit is a means-tested benefit that helps low-income tenants, whether in or out of work, to pay their rent. There are around 468,723 Housing Benefit claimants in Scotland, of which around 338,000 are aged 64 and under. The majority of claimants in Scotland (just under 80%) live in the social rented sector (DWP StatXplore3).

In 2010, the UK Government announced a series of reforms to Housing Benefit prior to the roll out of Universal Credit, with the intention of reducing expenditure and maintaining fairness in the system (DWP 2010). These changes included uprating the contributions that non-dependants (for example, adult working children living with their parents) are expected to make to housing costs. Other reforms were specific to private or social rented sector tenants.

Private rented sector reforms

Tenants in the private rented sector have their level of Housing Benefit determined by the local housing allowance (LHA) rules. Generally, the maximum Housing Benefit that will be paid is the LHA rate for the appropriate sized property in one of 18 Broad Market Rental Areas in Scotland.⁴ Reforms included:

- changing the basis for setting LHA rates from the median (50th) to the 30th percentile of local market rents
- capping weekly LHA rates
- raising the age below which the Shared Accommodation Rate (SAR) applies from age under 25 to age under 35. The SAR means that for many single people under age 35 Housing Benefit will only cover the rent for a room in shared accommodation.

³ Online statistical database: <https://stat-xplore.dwp.gov.uk/>

⁴ Minus any non-dependent deductions

Assuming landlords do not reduce their rents, the effect of these measures is to reduce the availability of accommodation that Housing Benefit will fully cover. In July 2014, the DWP published research on the impact of the changes (DWP 2014e).

Social Sector Tenants - Bedroom tax

Since April 2013, the “bedroom tax” has introduced size criteria in the social rented sector. Where a working age tenant occupies a property that is deemed to be too big for their household’s needs, their eligible rent (which is used to calculate the maximum Housing Benefit payable) will be reduced by 14% if they under-occupy by 1 bedroom, or 25% if they under-occupy by 2 or more bedrooms.

The bedroom tax has been highly controversial. In particular, commentators have pointed to: the lack of smaller properties for tenants to move to; the potentially negative impact on disabled tenants; and, the conflict with Scottish housing policy, for example, in relation to homelessness (see Berry 2014 for further information on the bedroom tax).

The Scottish Government is mitigating the impact of the bedroom tax by providing local authorities with additional discretionary housing payment (DHP) funding. DHPs are used to help tenants in financial hardship to pay their rent. The Scottish Government expects that every tenant affected by the bedroom tax (and eligible for a DHP) who applies to their local authority for a DHP should be awarded one to cover their full bedroom tax liability.⁵

DISABILITY BENEFIT REFORM

Disability Living Allowance and Personal Independence Payment

Disability Living Allowance for working age people (16 to 64) is being replaced by Personal Independence Payment under the welfare reforms. Both are non-means tested and payable to people whether in or out of work.

The aim of the reform was to create a benefit that is simpler to administer and easier to understand as well as to reduce numbers and costs (DWP 2011). The UK Government said that, “in just eight years, the number of people claiming DLA has risen from 2.5 million to 3.2 million – an increase of around 30 per cent” (DWP 2011). The DWP expects that there will be 600,000 fewer people receiving PIP by May 2018 compared with the expected trend for DLA (National Audit Office 2014). The intention set out in the 2010 Budget was to reduce projected working-age expenditure and caseload by 20% by 2015/16 (DWP 2011). The National Audit Office (NAO) reports that in the absence of reform the DWP expects that annual spending on DLA could rise to £16.9bn in 2018-19, a 23% increase from 2012-13 in real terms. By introducing PIP, the DWP expects to save £3bn annually from 2018-19 (NAO 2014).

Following delays to the timetable, the majority of DLA working age claimants’ reassessment for PIP is scheduled to start in October 2015, and expected to be completed by December 2018. However, reassessment of DLA claimants with fixed-term awards, or reporting changes in circumstances, has been gradually taking place in different locations since October 2013 (Kennedy 2014a).

There are approximately 343,000 people in Scotland entitled to DLA, 100,000 of whom are over working age (further details in Annexe A). Estimated expenditure on DLA in Scotland is £1.47bn, about 8.3% of total welfare spending in Scotland (see Table 1, p12).

⁵ A small number of tenants may find their bedroom tax reduction is greater than their Housing Benefit award and therefore would no longer receive Housing Benefit. This would mean that they would not be eligible for a DHP as a claimant must be in receipt of Housing Benefit.

Research commissioned by the Welfare Reform Committee on the impact of welfare reform in Scotland estimated that 55,000 people would lose out as a result of the changeover from DLA to PIP with an average loss of £3,000 a year (Beatty and Fothergill 2013). The Scottish Government published its own analysis of the financial impacts of welfare reform on disabled people. It estimated the different financial impacts depending on the rate of PIP an existing DLA claimant is assessed as needing, for example,

“Approximately 47,000 fewer disabled people in Scotland are expected to receive the PIP enhanced rate mobility component than would have received the equivalent DLA component if DLA were not replaced by PIP. If these claimants receive the PIP standard rate mobility component instead, they face a loss of income of around £35 per week (£1,820 per year), while if they lose all eligibility for the mobility component, they face a loss of income of around £57 per week (£2,964 per year)” (Scottish Government 2014a).

Work Capability Assessment

The Work Capability Assessment is the test applied when a claim is made for Employment and Support Allowance, which replaced Incapacity Benefit. It was introduced for new claimants in October 2008 and is therefore a reform made under the previous UK Government. Between October 2010 and Spring 2014, anyone receiving Incapacity Benefit, Severe Disablement Allowance and Income Support paid on the grounds of illness or disability would have had a Work Capability Assessment and a move to Employment Support Allowance or other benefits.

The Work Capability Assessment has proved very controversial and flaws in the system have been well documented. For example, there have been a large number of successful appeals against decisions that claimants are ‘fit for work’. According to the DWP, to date, 40% of all ‘fit for work’ decisions have been appealed against. In the period between July and September 2013, 53% of appealed ‘fit for work’ decisions were upheld, 47% were overturned (DWP 2014f). Various changes have been made to the Work Capability Assessment following internal reviews and recommendations (DWP online a). The House of Commons Work and Pensions Committee published a report in 2014 calling for a redesign of the ‘end-to-end’ process of Work Capability Assessment and Employment and Support Allowance. This has been happening during the roll-out of welfare reforms described above.

In addition, the reassessment programme has been delayed against a backdrop of controversy surrounding the role of Atos Healthcare who were contracted to undertake the assessments. An early exit for Atos was announced in March 2014. Maximus has been awarded the contract to begin in March 2015 (DWP 2014g). The implications for IB reassessments remain unclear (Kennedy 2014b).

The Scottish Government’s Expert Working Group on Welfare described the Work Capability Assessment as “not fit for purpose”, and recommended it be scrapped and replaced with a new approach to assessment (2014b).

CURRENT SCOTTISH WELFARE RESPONSIBILITIES

The UK Government’s welfare reform agenda has allowed for the “localisation” of some benefits. Scotland now has responsibility for:

- The Scottish Welfare Fund. This replaced the Community Care Grant and Crisis Loans abolished in April 2013 under the Welfare Reform Act 2012.

- The Council Tax Reduction Scheme, previously Council Tax Benefit. The Scottish Government has the power to make regulations regarding the scheme while local authorities administer the scheme.
- The power to set a limit on spending on discretionary housing payments (DHPs). DHPs help tenants in financial hardship to meet their housing costs.

The Scottish Government also has existing responsibility for a number of '[passported benefits](#)'. This means that recipients of certain benefits are automatically entitled to receive additional support such as free school meals or blue badge parking.

SCALE OF WELFARE PROVISION IN SCOTLAND

Table 1 gives an indication of the scale of welfare provision in Scotland by considering expenditure and the number of benefit recipients.

In 2013-14, around £17.8bn was spent on welfare in Scotland. Just less than 40% of this spending was on pensions. Tax Credits and Housing Benefit together account for a further 22% of spending.

The State Pension and Winter Fuel Payments are received by the largest numbers of people (just over 1m). Child Benefit, Council Tax Reduction and Housing Benefit are the next biggest areas of welfare, in terms of number of recipients, with approximately 619,000, 538,000 and 475,000 recipients respectively.

Table 1: Welfare Spend in Scotland 2013-14 (estimated) and Number of Recipients

	£m	% of total Scottish spend	No. of Recipients (various dates)
State Pension	7,051	39.6	1,027,270
Tax Credits	2,181	12.3	345,500 (families)
Housing Benefit	1,770	9.9	475,383
Disability Living Allowance	1,473	8.3	343,370
Employment and Support Allowance	1,210	6.8	241,730
Child Benefit	854	4.8	587,115 (families)
Pension Credit	637	3.6	221,560
Attendance Allowance	481	2.7	150,200
Jobseeker's Allowance	409	2.3	96,310
Council Tax Reduction	360	2.0	537,730
Income Support	313	1.8	73,000
Statutory Maternity Pay	213	1.2	N/A
Winter Fuel Payments	186	1.0	1,086,080
Carer's Allowance	182	1.0	*103,760
Incapacity Benefit	99	0.6	11,230
Industrial Injuries Benefits	91	0.5	32,200
Severe Disablement Allowance	91	0.5	18,993
Bereavement benefits	57	0.3	6,390
Over 75 TV licences	49	0.3	N/A
Discretionary Housing Payments	29	0.2	87,362 (awards)
Scottish Welfare Fund	29	0.2	80,380 (awards)
Maternity Allowance	27	0.2	4,100
Funeral Payments	4.4	0.0	N/A
Sure Start Maternity Payments	3.7	0.0	N/A
Cold Weather Payment	0.0275	0.0	**1,100
Total	17,800	100%	

For presentation purposes this table has been replicated in Annexe A with the relevant sources. DHPs are not a benefit as such –they can be made to those eligible for Housing Benefit or the housing element of UC.

*This is total number entitled to Carer's Allowance. Only 59,000 (approx) are in receipt of this benefit due to overlapping benefits (Annexe B). ** There were only 1,100 payments for 2013/14 due to a mild winter (Annexe B).

THE SMITH COMMISSION

Following the “no” vote in the Referendum on Scottish Independence, on 19 September 2014, the [Prime Minister, David Cameron, announced that Lord Smith of Kelvin had agreed to oversee the process](#) to take forward the devolution commitments on further powers for the Scottish Parliament. The specific remit of the Smith Commission was:

“To convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce, by 30 November 2014, Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. This process will be informed by a Command Paper, to be published by 31 October and will result in the publication of draft clauses by 25 January. The recommendations will deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.”

As part of that engagement process, political parties submitted their views, and Lord Smith also sought views from members of the public on what further powers should be devolved to strengthen the Scottish Parliament.

POLITICAL PARTIES SUBMISSIONS TO THE SMITH COMMISSION

Table 2 provides a brief summary of the main political parties' submissions on welfare to the Smith Commission as part of its deliberations.

Table 2: Summary of Political Parties' submission to the Smith Commission

Party	
SNP	<p>All welfare policy and administration should be devolved in order to design a system based on early intervention and individual need. There should be greater coherence across social security, equality, and job creation policies.</p> <p>Any financial consequences would be absorbed by Scottish revenues and policy divergence managed within the Scottish budget.</p> <p>As a priority, the roll out of Universal Credit and Personal Independence Payments in Scotland should be halted.</p>
Scottish Labour	<p>Social security is a key element of the UK social union. The pooling and sharing of resources and risk works to Scotland's advantage. Welfare should remain largely reserved except where there is a close link to devolved policy. Housing Benefit and Attendance Allowance should be devolved</p>
Scottish Conservatives	<p>Social Security should remain largely reserved, except where there is a close link to devolved policy. "It is a key plank of our social union that social security payments are paid according to need, and not geographical region."</p> <p>There is a case for devolving housing benefit if it can be disentangled from UC. Attendance Allowance should be considered for devolution.</p> <p>There is a case for the Scottish Parliament to have the power to supplement welfare benefits legislated for at UK level.</p>
Scottish Greens	<p>Raises concerns about the fragmentation of the social security system and maintaining a coherent approach to social justice and the fair distribution of wealth. It advocates an approach that seeks clear justification for any aspect of the social security system remaining reserved.</p> <p>There may be clear justification for pensions remaining reserved.</p>
Scottish Liberal Democrats	<p>Initially supported the retention of a single UK welfare and pensions system, with a common set of living standards and entitlements. Strategic decisions should be taken on a partnership basis between the Scottish and UK Governments.</p> <p>At the Scottish Liberal Democrats Party Conference on 22 November 2014, party leader, Willie Rennie, said that he had reviewed that position in light of the referendum result and submissions from the Smith Commission. He said, "I have asked the team to explore the transfer of a major package of welfare powers to the Scottish Parliament. (Scottish Liberal Democrats 2014)</p>

Sources: Scottish Labour (2014), SNP (2014) Scottish Liberal Democrats (2012) (2014a,b,c) Scottish Greens (2014) Scottish Conservatives (2014a,b) Scottish Government (2014c)

On the 13 October 2014, the UK Government published a Command Paper (CM 8946) that summarised the 3 main political parties' submissions to the Smith Commission (HM Government 2012). The paper also considered some issues that may be relevant when considering welfare devolution proposals. These included: the complexity of the social security system and the extent to which it is interconnected; the degree to which welfare benefits pool

risk across economic cycles and regions of the UK and the degree to which expenditure on benefits is volatile.

The paper said there could be several approaches to welfare devolution and gave the following examples:

Model 1: devolving a portion of the spending associated with a particular benefit, alongside the power to either vary the rate and rules of the benefit, replace it with a completely separate benefit, or to reallocate that funding to another area

Model 2: devolving a proportion of the expenditure on a specific welfare service delivered to claimants in Scotland, alongside a statutory responsibility to deliver that service in Scotland, potentially with some flexibility over the scale of provision

Model 3: powers to 'top up' benefits above the level set by the UK Government.

The Smith Commission received over 18,000 submissions from individuals and 407 submissions from organisations and groups in response to its call for views. The Scottish Parliament's Welfare Reform Committee also took evidence from a panel of academics on 11 November 2014 (Scottish Parliament Welfare Reform Committee 2014a). Some of the key issues to emerge from the evidence included:

- Many respondents from third sector organisations, such as Citizen's Advice Scotland and SCVO supported the devolution of all welfare benefits, apart from pensions. As SCVO's submission said, "We consider that the interrelated nature of welfare with employability and other public services such as care means that should only be devolved in its entirety" (SCVO 2014a).
- Some submissions were sceptical of the potential of "cherry picking" benefits that should be devolved. Professor David Bell (2014) for example, noted that a "a major practical obstacle to devolving benefits is that many benefits are closely linked; changing the conditions or rates attached to one often has implications for work incentives, or eligibility for others".
- Many respondents highlighted the difficulties, practical, financial or administrative, of devolving either all welfare benefits or specific benefits to the Scottish Government.
- Some commentators suggested that fiscal powers and social security powers need to be dealt with in tandem. Professor Nicola McEwan told the Welfare Reform Committee, "The scope for policy distinctiveness also depends upon the system of financing welfare devolution and the mechanisms for adjusting the block grant. Cyclical benefits, like housing benefit and universal credit, carry greatest financial risks and, if devolved, should be accompanied by a funding formula which takes cyclical effects into account" (McEwan 2014a).

SMITH COMMISSION PROPOSALS

The Smith Commission reported on 27 November 2014 (The Smith Commission 2014). The Smith Report presents the new powers agreed by the five political parties participating in the process under Heads of Agreement divided into three broad 'pillars'. Pillar 2: delivering prosperity, a healthy economy, jobs, and social justice, contains the proposals on welfare benefits.

The Smith Report proposes that the following should be devolved:

- Attendance Allowance

- Disability Living Allowance and Personal Independence Payments
- Carer's Allowance
- Industrial Injuries Disablement Allowance (sic)
- Severe Disablement Allowance
- The Regulated Social Fund
- Discretionary Housing Payments.

This would give the Scottish Government responsibility for around 14% of current welfare spend in Scotland. The Smith Commission also proposes some flexibility over UC, the power to create new benefits in devolved areas and to 'top up' reserved benefits. Following publication of the report, some proposals have been discussed more than others. For example, the proposal to devolve the administration of the employment programmes has attracted a great deal of comment – the regulated social fund, less so.

Before considering these proposals in more detail, the following outlines some of the general reaction to the Smith Commission's proposals on welfare.

GENERAL REACTION TO THE SMITH COMMISSION PROPOSALS

The Scottish Government broadly welcomes the proposed transfer of powers but the First Minister, Nicola Sturgeon, has expressed disappointment that the report fell significantly short of the proposals from the Scottish Government (Scottish Government 2014).

The Scottish Conservatives and Scottish Labour are both supportive of the Smith recommendations in general (BBC 2014b). The Scottish Greens say that the package of powers "...will fall short of many people's expectations, but if used wisely could help protect people from UK austerity and welfare cuts" (Scottish Greens 2014b). Alison McInnes from the Scottish Liberal Democrats, speaking in a Scottish Parliament debate, welcomed the report and said, "...The Smith commission package delivers on the vow and more—it is vow max" (Scottish Parliament 2014a).

Many third sector organisations had been calling for the devolution of all welfare benefits⁶ to Scotland. One such organization, SCVO, expressed disappointment that such an approach was not taken. They said the proposals were a, "...piecemeal devolution of powers which will not make way for the integrated and more efficient approach to welfare..." (SCVO 2014b).

The notion that the recommendations represent a "piecemeal" approach to the devolution of powers has also been raised by Professor Michael Keating from Aberdeen University (2014), in evidence to the Devolution (Further Powers) Committee, he said that the proposals are "...piecemeal and lack coherence", and that "....there is a need to think about taxation, welfare and labour market policy together and at multiple levels. There is no recognition of this."

Despite such expressions of disappointment, there has been some positive comment on the devolution of disability benefits. Quarriers, for example, welcomes the devolution of these powers and said, "...It is now vital that the focus is on using the new powers to create a fairer, more equal and inclusive society to improve the lives of people in Scotland" (Charity News Scotland 2014).

Some commentators suggest that the proposals reflect a reaction to the UK Government's recent changes. Commenting on the Smith Commission's proposals that may allow the repeal of the bedroom tax, Professor Keating (2014) said that this, "...indicates a concern with immediate short-term problems rather than a deeper consideration of welfare."

⁶ In many cases, excluding pensions

Other comments have been made about the complexities of the benefit system. Professor Nicola McEwen (2014b), from the University of Edinburgh, argues that the proposed reforms create interdependencies “...which will have to be managed to avoid new anomalies in the system” She also highlights the need for a change in intergovernmental relations to manage the new powers.

The following sections consider the Smith Commission’s recommendations in more detail and reaction to the recommendations. Where appropriate, background on how each benefit works is provided at Annexe B.

DISABILITY AND CARER BENEFITS

The Smith Commission proposes that:

Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:

Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer’s Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance (para 49(1)).

Prior to the Referendum, the debate on disability benefits focused mainly on devolving Attendance Allowance as a stand-alone benefit. This is because of its connection to the devolved areas of health and social care. However, opinion on such an approach was cautious given the interconnection between Attendance Allowance and other disability related benefits. It was suggested that a better approach might be to focus on the client group concerned and the benefits they might be entitled to as a whole. In particular, reference had been made to the connections between Attendance Allowance, Carer’s Allowance and Disability Living Allowance/Personal Independence Payment.

Attendance Allowance

Party Proposals

Both the Scottish Labour and Scottish Conservative Devolution Commissions argued that Attendance Allowance could be devolved because of the alignment with the existing functions of health and social care (HM Government 2014, Scottish Conservatives 2014a, and Scottish Labour 2014). Neither party provided any further explanation. However, Scottish Labour said it was not in favour of devolving Personal Independence Payment, “as it is not in general matched by devolved services in the same way as Attendance Allowance” (2014)⁷.

Interaction with free personal care

The issue of how Attendance Allowance interacts with devolved policies has arisen before. Those who receive care in their own homes have always been able to claim Attendance Allowance. However, an issue arose for some people in residential care. Prior to the implementation of free personal care on 1 July 2002, people who funded their own care in a care home could apply for Attendance Allowance. However, the UK Government determined

⁷ The original Scottish Labour submission in March 2014 referred to PIP and said it was not in favour of devolving it because “it is not in general matched by devolved services in the same way as Attendance Allowance”. This was quoted in [SPiCe Briefing 14-56](#) and was also mentioned in a [SNP press release](#) from March 2014. It is no longer in either [Scottish Labour’s Devolution Commission](#) report or the report [re-submitted](#) for the Smith Commission.

that personal care payments were a contribution to the resident's accommodation costs and that Attendance Allowance payments should be withdrawn (Kennedy 2009, Robson 2009). As a result, a person in a care home cannot receive both free personal care and Attendance Allowance (Advice on Care online).

If someone in a care home does receive free personal care, then a weekly payment of £169 (rate as at 1 April 2014) will be paid direct to the care provider (Scottish Government online). A person who meets their own costs in a care home, and does not claim the free personal care payment, would still be entitled to Attendance Allowance.⁸

Opinion on devolution of Attendance Allowance

In 2009, the Calman Commission recommended that Attendance Allowance and DLA should not be devolved because of interdependencies with other benefits which could have “knock-on consequences for expenditure on more ‘mainstream’ benefits”.

In a 2014 report for IPPR by Guy Lodge and Alan Trench ‘Devo More and Welfare,’ it was argued that Attendance Allowance could be devolved because of its connection to social care provision. Attendance Allowance is not a cyclical benefit, like JSA, for example, which is subject to fluctuation according to the state of the economy. On this basis, it was argued that Attendance Allowance may be more suitable for devolution as costs can be foreseen and budgeted for.

The Scottish Parliament's Welfare Reform Committee held an [evidence session](#) with six academics⁹ on the further devolution of welfare on 11 November 2014. At this meeting concerns were expressed about the complexities of how Attendance Allowance is linked with other benefits and about funding.

Speaking to the Committee, Professor Spicker described the complexities of devolving one particular benefit, without giving proper thought to related benefits:

“The attendance allowance has a substantial overlap with the disability living allowance and the personal independence payment because of the particular situation of people over retirement age getting extensions when on DLA or PIP. Those sorts of things have to be thought through. Often, people have the idea that a benefit is somehow detachable from other parts of the conditions that are being dealt with, but typically those benefits are not detachable. Either one must look at an entire client group's set of circumstances and consider how the links can be severed, or one must transfer things together—or not transfer them”. (Scottish Parliament Welfare Reform Committee 2014b)

Professor McEwan said in evidence to the Committee that devolving benefits on the grounds that Scotland has responsibility for social care and housing might not be the best approach given that it could be argued that any aspect of social security has a link with social policy (Scottish Parliament Welfare Reform Committee 2014b).

In addition, Professor McEwan said that if the Smith Commission agreed to devolve Attendance Allowance it would make sense to devolve at least the care component of DLA/PIP for those of pensionable age (Scottish Parliament Welfare Reform Committee 2014b). This view was supported by Professor Spicker who said that devolving Attendance Allowance alone, without DLA/PIP, can only, “exacerbate the existing inequalities” present in the current eligibility to these benefits (Spicker 2014).

⁸ See Regulation 7 (1) and 8(6) Social Security (Attendance Allowance) Regulations SI 1991/2740

⁹ Professor David Bell, Professor Ken Gibb, Dr Jim McCormick, Professor Nicola McEwan, Professor Paul Spicker, and Dr David Webster.

Funding options for devolving Attendance Allowance

Professor David Bell said that there is a case for devolving Attendance Allowance and having the benefit paid by local authorities which deliver social services, as has happened with the Council Tax Benefit. Major difficulties with this approach are how to increase funding coming to Scotland to enable the funding of Attendance Allowance, and how this payment might be adjusted each year. Professor Bell (2014) said, “This payment would effectively parallel the Block Grant Adjustment which is being used to reduce Scotland’s Barnett grant in light of the Scottish Rate of Income Tax.”

Professor McEwan (2014a) said that the Scottish Government could opt out of the Attendance Allowance and receive compensation in the form of a supplement to the block grant. This would be subject to an agreement on how it should be adjusted. While such a change might bring about cost savings in the long term, it might prove politically difficult in the short term because it implies, “withdrawing entitlement from those who currently receive both the cash benefit and the social service.”

Disability Living Allowance and Personal Independence Payment

Lodge and Trench argued against devolving Disability Living Allowance on the grounds that a social union should ensure a range of basic rights to all its citizens, including protection for disabled people (2014). It was also suggested that non-cyclical disability benefits are disproportionately paid in Scotland, “with the effect that devolution might well transfer a significant burden there”. Instead, Lodge and Trench suggested the ‘supplementing approach’ which would allow the Scottish Government to ‘top-up’ benefits from its devolved budget. (See page 26 for further discussion of this).

In the White Paper, the Scottish Government (2013) said that an immediate priority following independence would be to halt the further roll out of PIP. The Expert Working Group on Welfare (Scottish Government 2014b) recommended that, following independence, the Scottish Government should commission an independent review of PIP and seek to replace DLA and PIP with a new benefit for disabled people.

Carer’s Allowance

In June 2014, the Scottish Government announced proposals on how it would reform Carer’s Allowance in an independent Scotland (2014e). Based on a recommendation from the Expert Working Group’s report (Scottish Government 2014b), it was proposed that Carer’s Allowance be increased to the same level as Jobseeker’s Allowance. The current level of Carer’s Allowance of £61.35 per week was described as an, ‘unacceptable anomaly’ compared with £72.40 per week for those aged 25 and over on Jobseeker’s Allowance. They recommended Carer’s Allowance should be increased and paid at the same rate as Jobseeker’s Allowance.

In the recent Autumn Statement (December 2014), the UK Government announced that it would be increasing the Carer’s Allowance earnings limit in April 2015, from £102 to £110 per week. Someone applying for Carer’s Allowance would not qualify if they earn more than the earnings limit. The Treasury said that, “the change means more carers will have the opportunity to work part-time and still be eligible for Carer’s Allowance” (HM Treasury 2014).

Submissions to the Smith Commission on benefits for disabled people and carers

Two leading disability organisations in Scotland, Inclusion Scotland (2014) and Capability Scotland (2014), called for the devolution of all social security benefits. This echoed the views about the interdependence of different benefits highlighted above. Both organisations referred to the cumulative impact of welfare reforms on disabled people and cited research from the

Scottish Government (2014a) and the Equality and Human Rights Commission (Landman Economics and NIESR 2014). The report commissioned by the EHRC concluded that the impacts of tax and welfare reforms are more negative for families containing at least one disabled person, particularly a disabled child.

Inclusion Scotland said that:

“disabled people’s lives are not neatly segmented along policy lines...in view of the multiplicity of barriers that disabled people can encounter, the importance of good co-ordination between policy areas becomes accentuated. Failure to do so can completely undermine a positive intervention.”

Capability Scotland called for a:

“...functional principles-led approach to devolution in the interests of disabled people. We would argue that a devolution of powers which fails to address inter-dependence would, almost inevitably, result in policy reforms falling short of that which will be required to address the inequality, poverty and exclusion that far too many disabled people still experience in Scotland.”

Carers Scotland (2014) also called for the devolution of all benefits, arguing that devolving Attendance Allowance on its own, “makes little sense and takes little account of the complex interactions between Attendance Allowance and from our perspective Carers Allowance and wide range of other social security benefits.”

The Child Poverty Action Group (2014a) argued that:

“Devolving attendance allowance in isolation risks making the system more complex than it already is. Already the age at which someone becomes disabled determines whether they are entitled to DLA, PIP or AA in a way that can create apparently arbitrary differences in the source and level of support available based solely on the age at which a person becomes eligible for support as a result of disability. Devolution could create further confusion because it would mean that these different benefits might also be delivered by different agencies”.

There was agreement among these organisations that devolving responsibility for some or all benefits would also require the economic levers to affect change.

Since the Smith Commission published its proposals, Inclusion Scotland said it was disappointed that it did not recommend devolution for the Work Capability Assessment and benefit sanctions. The charity’s director of policy, Bill Scott, said:

“Hundreds of thousands of disabled people have been wrongly deprived of their benefits by being classed as fit for work when that was simply not the case.

They have then found themselves forced to sign on at the Job Centre where they have been unfairly and disproportionately subjected to benefit sanctions that have deprived them of the means to survive.

Disabled people told us about the misery of assessments and sanctions and their hopes that these could be ended but those hopes have been dashed.

As for all the other recommendations we’ll have to wait and see what happens then we’ll know whether the glass is half full or half empty.” (Third Force News 2014)

Industrial Injuries Disablement Benefit and Severe Disablement Allowance

In addition to DLA/PIP, Carer's Allowance and Attendance Allowance, Smith recommends the devolution of two other disability benefits which have not so far been part of the debate. These are Industrial Injuries Disablement Benefit and Severe Disablement Allowance.

Severe Disablement Allowance was abolished in April 2001, although some people who claimed before this date are still receiving it. When Incapacity Benefit reassessment is complete there should be no-one of working age still getting Severe Disablement Allowance. There will be a remaining caseload of Severe Disablement Allowance recipients of pension age, but this will decline over time.

It is unclear from the Smith Commission report whether devolving Industrial Injuries Disablement Benefit would also include devolving Reduced Earnings Allowance and Retirement Allowance which apply to those injured before October 1990.

Reduced Earnings Allowance is paid to those have been disabled through an industrial accident or industrial disease before October 1990 and are incapable of following their regular employment.

Retirement Allowance is paid to those over retirement age who were previously entitled to Reduced Earnings Allowance.

Motability Scheme

The Smith Commission proposes that:

New arrangements for how Motability will operate in Scotland for DLA/PIP claimants will be agreed between the Scottish and UK Governments (para 50).

Smith notes that new arrangements will be required in Scotland for Motability. This is because access to Motability is dependent on DLA/PIP claims. DLA/PIP claimants who receive the higher rate mobility component can either have the benefit paid directly or can use entitlement to this funding to apply for a vehicle through Motability. Applicants for Motability will no longer receive DLA/PIP as a payment. Instead DWP will transfer the DLA/PIP benefit directly to Motability. Motability will then use this funding along with charitable income to provide a vehicle to the benefit recipient. Approximately a third of DLA claimants across the UK do not access the cash benefit, instead using the benefit to finance a vehicle through Motability.

It has recently been reported that new rules introduced in June 2014 by Motability are facing legal challenge, because the rules appear to discriminate against drivers with high support needs (Disability News Service 2014).

UNIVERSAL CREDIT

Administration of UC

The Smith Commission proposes the following should be devolved:

Universal Credit – Administrative Power to change the frequency of Universal Credit payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland (para 44).

Background to UC and its administration arrangements is provided on page 7. The Scottish Government could potentially use this power to make direct payments of the housing element of UC to social landlords the norm rather than the exception. In their White Paper on independence. The Scottish Government (2013) proposed to make separate payments to individuals within a couple rather than a single household payment.

Other options could include, for example, introducing a default position so that all claimants would receive twice monthly payments with the option of moving to monthly payments, as was planned in Northern Ireland.

The Smith report at para 48 says, “Joint arrangements for the oversight of DWP development and delivery of UC, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments” Administrative issues are considered later in the briefing at p 29

The Housing Costs Element of Universal Credit

The Smith Commission proposes that:

The Scottish Parliament will have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents (para 45).

As outlined on page 8, the UK Government made a number of changes to Housing Benefit prior to the rollout of UC and these changes have been broadly carried through into UC. For example, the bedroom tax and the local housing allowance reforms are continued. There are some differences, for example, in the detail of the bedroom tax provisions and in relation to non-dependent deductions (Wilson 2013b).

The proposed power to vary the housing costs element of UC includes the power to vary:

Under-occupancy charge: This could presumably allow the Scottish Government to abolish the bedroom tax. Labour and the SNP have both said they would abolish the bedroom tax if they had the power to do so. The cost implications of abolishing the bedroom tax would depend on the numbers affected at the time of its abolition. At the moment the cost would amount to around £43m.¹⁰ However, the Scottish Government is already effectively mitigating the impact of the bedroom tax in Scotland through providing additional discretionary housing payments funding worth £35m in 2014-15 and 2015-16.

Local Housing Allowance rates: This proposed power could presumably allow the Scottish Government to reverse or change the UK Government’s reforms to the LHA. While the Smith report refers to “local housing allowance rates” it is not clear if the scope of this power would also include, for example, giving the Scottish Government the power to:

- change the Broad Rental Market Areas in which the LHA is calculated
- change the basis on which the LHA is uprated
- vary the size criteria that exists under the LHA arrangements.

¹⁰ At Aug 2014 there were 471,887 tenants with a bedroom tax reduction averaging a loss of £11.73 a week. Source: DWP

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/373108/HB_Summary_-_Aug14.xls

Deductions for Non-Dependents: Under UC, one flat-rate Housing Cost Contribution (HCC) of £68 per month will be deducted from a claimant's entitlement. This differs from the current Housing Benefit regulations where non-dependent deductions are made on a sliding scale (from £14.15 a week to £91.15 a week) depending on the non-dependent's income. There are also exemptions (as there are now) for non-dependents. It is not clear from the Smith proposal if the Scottish Government could vary the level of the HCC and / or specify who should be exempt from the deductions.

Any additional costs directly associated with varying the housing cost element of UC will need to be met by the Scottish Government (Smith Commission recommendation para 47).

Discussion of Housing Element Proposals

As Table 2 illustrates, none of the political parties' submissions to the Smith Commission suggested varying the housing element of UC as a potential option for devolution. The SNP said they would restore Housing Benefit as a separate benefit (Scottish Government 2014c).

Scottish Labour and the Scottish Conservatives both argued that Housing Benefit should be devolved¹¹ (Conservative Party submission 2014, Labour Party submission 2014). Their positions appear to have been influenced by a report for the Institute for Public Policy Research (IPPR) in which Lodge and Trench (2014) suggested there was a case for devolving Housing Benefit on its own, because, for example, the benefit overlaps with devolved housing policy.

Some commentators questioned the approach of devolving Housing Benefit on its own. For example, Professor Kenneth Gibb from the University of Glasgow told the Welfare Reform Committee that, "...Everything that happens in the mortgage market is reserved, which impacts on private renting, which impacts on social renting. The situation is a bit more murky than it appears" (Scottish Parliament Welfare Reform Committee 2014b).

It has been suggested that if Housing Benefit was devolved there could be a more fundamental change in the way that housing costs are supported. Lodge and Trench (2014) refer to another IPPR report that suggested that devolving Housing Benefit could potentially contribute to a change whereby more public money is spent on building homes rather than subsidising rents that are paid to private landlords. Gibb and Kennedy (2012) suggested that if social security as a whole was devolved this could lead to the development of a more efficient form of housing support, such as a housing allowance based on a standard charge, similar to one recently introduced into Germany.

While the Scottish Government will have powers to vary the housing costs element within UC, it is not clear what further scope there would be for more fundamental change to the way housing costs are supported in Scotland. The housing element remains "locked in" within the structure of UC and the Scottish Government will not have the power to change any of the other elements within UC or the taper (Smith recommendation para 46). Furthermore, the Scottish Parliament will not have the power to change how housing costs are supported for pensioners. Eventually, Housing Benefit will be abolished and Pension Credit (which the Scottish Government has no control over) will contain an element to support pensioners housing costs.

How the Scottish Government decides to use its power to vary the housing costs element of UC may also depend on how it chooses to use its new tax raising borrowing powers in relation to the supply of housing.

¹¹ The Scottish Conservatives said that this should only be done if it could be disentangled from UC

Reaction to the proposal has been mixed. The Scottish Federation of Housing Associations (SFHA), which had called for the devolution of all benefits (SFHA 2014a), give a “guarded welcome” to the Smith Commission Report:

“The new powers on varying the housing cost elements of Universal Credit do not mean the abolition of the ‘Bedroom Tax,’ but they could lead to it. The power to allow for rent to be paid directly to social landlords would be significant in tackling the financial difficulties that the Universal Credit system has already been creating in its pilot areas in Scotland.” (SFHA 2014b)

The SFHA also reiterated their previous call for the roll out of UC to be halted and argued, “...a rushed approach puts at risk the incomes of the poorest and most vulnerable in our society, especially if changes subsequently have to be unpicked”.

Professor Gibb (2014) comments that,

“While these benefit changes meet many of the key short run complaints with welfare reform in Scotland – they do not address wider issues with that programme (e.g. conditionality and sanctions) and they do not confront the broader problems arising from the design of Housing Benefit.”

Jim McCormick, from the Joseph Rowntree Foundation, is broadly supportive of the proposals on housing costs as part of UC arrangements. He argues that these powers, combined with the devolution of discretionary housing payments (see further below), will:

“...address major concerns in the Scottish housing sector. Retaining the integrated nature of UC is an important feature of the plan. In time, rebates for a future alternative to Council Tax might be included as well. Increasing the supply of affordable housing should be the first priority when new borrowing and bond-issuing powers come into use” (McCormick 2014)

REGULATED SOCIAL FUND

The Smith Commission proposes that:

Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:

Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment (49 (2)).

There is a discretionary social fund and a regulated social fund. The discretionary social fund has mostly been devolved already (successor arrangements have been made in the Scottish Welfare Fund) with the exception of Budgeting Loans¹². Smith proposes (para 49(2)) that benefits which currently comprise the Regulated Social Fund should also be devolved.

The devolution of the regulated social fund had not formed a large part of previous discussions. The Calman Commission (2009) had suggested devolving only the discretionary fund, mainly because eligibility for most of the regulated social fund is passported from other benefits and also because, “the automatic nature of parts of the regulated fund – dependent on access to GB-wide records held by DWP – provides for administrative simplicity and keeps costs down” (Calman (2009) para 5.250).

On the other hand, CPAG proposed, in their submission to Smith, that, “simple stand alone benefits, such as sure start maternity grants and healthy start vouchers might be successfully devolved”, and considered that take up could be improved through closer alignment to the health service. CPAG also noted that, “Maternity grants have been eroded in recent years so devolution would provide an opportunity to improve benefit levels, or to reinstate the Health in Pregnancy Grant” (CPAG 2014a).

The Joseph Rowntree Foundation proposed devolution of winter fuel payments and cold weather payments, suggesting that winter fuel payments could become taxable, if there was a desire to make it more progressive. JRF suggested that these two benefits could be adapted better to Scottish circumstances, including the longer heating season, households without access to the gas grid and the risk of extreme winter conditions” (Joseph Rowntree Foundation 2014a)

¹² budgeting loans have been replaced by ‘budgeting advances’ for those claiming Universal Credit.

DISCRETIONARY HOUSING PAYMENTS (DHPS)

The Smith Commission proposes that:

Powers over the following will be devolved to the Scottish Parliament:

Discretionary Housing Payments (para 49 (3)).

DHPs help tenants, who are in financial hardship, with their housing costs. Local authorities are responsible for administering DHPs. Within the context of the legislative framework¹³ and DWP [guidance](#) local authorities have relatively wide discretion as to how payments are made.

The DWP provides DHP funding to local authorities which local authorities can top up. Since 2013-14, the Scottish Government has provided local authorities with additional funding to allow them to top up their DHP allocations to mitigate the impact of the bedroom tax. In 2014-15, £50.2m is available for DHPs; £15.2m from the DWP and £35m from the Scottish Government (Scottish Government 2014f). The Scottish Government has also allocated a provisional £35m DHP funding in 2015-16 (Scottish Parliament 2014b). The DWP announcements for funding in 2015-16 have not yet been made.

Legislation had limited the total amount that could be spent on DHPs in any one year. However, recently the power to set the cap on DHP spending was transferred to Scottish Ministers. The Scottish Government has used this power to remove the cap on DHP spending¹⁴.

Devolving all responsibility for DHPs would presumably allow Scottish Ministers to make any changes to the current regulations¹⁵ or guidance that is in place. The financial implications would be to some extent dependent on how the Scottish Government chose to use its power to vary the housing element of UC. For example, if it chose to abolish the bedroom tax then it may choose to provide less DHP funding.

POWER TO TOP UP BENEFITS AND CREATE NEW BENEFITS

The Smith Commission proposes powers for the Scottish Parliament to create new benefits and to make discretionary payment:

The Scottish Parliament will have new powers to create benefits in areas of devolved responsibility, in line with the funding principles set out in paragraph 95 (para 54).

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 (para 54).

The Scottish Parliament may seek agreement with the DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government (para 54).

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 if in employment (para 55).

¹³ The Discretionary Financial Assistance Regulations 2001 made under section 69 of the Child Support, Pensions and Social Security Act 2000

¹⁴ Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014 (SSI 2014/298)

¹⁵ The Discretionary Financial Assistance Regulations 2001 made under section 69 of the Child Support, Pensions and Social Security Act 2000

The UK Government's Benefit Cap will also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides (para 56).

Topping Up Benefits

The idea of supplementing UK benefits had already been recommended by Lodge and Trench (2014). They argued that:

“...devolved governments should be allowed to supplement existing welfare benefits (or indeed introduce new ones). It would then be open to devolved legislatures to provide forms of welfare benefits as they saw fit, subject to funding these from within devolved resources. Any increases would have to be funded from within the overall envelope of devolved resources (whether the block grant or devolved tax powers), so it would be obvious that devolved governments were making the choice either by increasing tax revenues or cutting other services to provide such benefits. This would minimise any political backlash to such variation from outside the devolved territory”.

Lodge and Trench argued that, under such a system, devolved governments would be in a better position to make effective social policy than they are at present. For example, a devolved government, “...might choose to supplement Child Benefit in order to support childcare costs, or boost in-work benefit of particular groups to try and incentivise their return to work” (2014).

Lodge and Trench said it would be comparatively straightforward to fund such a system as it would involve discretionary spending rather than the transfer of existing spending obligations. With this approach, the “level of benefits set by the UK Government would serve as a floor, but not a ceiling, for devolved welfare”.

Prior to the referendum, the Scottish Conservatives were the only party which said there was a case for the Scottish Parliament to have the power to supplement welfare benefits legislated for at UK level (2014a).

In their responses to the Smith Commission, both CPAG (2014a) and the Joseph Rowntree Foundation (2014) referred to the power to supplement UK benefits and cited the potential benefits of this approach. However, CPAG noted that what could be achieved with such a power would depend on political ambition and having the necessary fiscal powers.

Since the Smith Commission report, there has been a focus on the meaning of Paragraph 55. Bruce Crawford MSP, Convener of the Devolution (Further Powers) Committee, raised this with Alistair Carmichael, Secretary of State for Scotland and with John Swinney MSP, Deputy First Minister (Scottish Parliament Devolution (Further Powers) Committee 2014). Reference was made to a SPICe note (Georghiou 2014) which said that if the Scottish Parliament were to top up certain reserved benefits a recipient of Universal Credit would receive a pound for pound reduction in their Universal Credit award (CPAG 2013). This is part of the design of Universal Credit.

The Convener questioned whether the power to supplement benefit was worthwhile if it was possible that such a power could end up reducing a recipient's Universal Credit award. Alistair Carmichael suggested that this may be an unintended consequence of the proposal and said it, “was all the more reason to ensure we have proper scrutiny of the draft clauses when they are brought forward”. John Swinney said it would be a “travesty” were that to be the case, and said that the purpose of paragraph 55 was to:

“...put into the Smith commission report a guarantee that, if the Scottish Parliament decided to do anything on welfare, the intended individual beneficiaries would get the benefit. Paragraph 55 highlights the danger directly. It states that anything that we do ‘must ... not result in an automatic offsetting reduction in their entitlement to other benefits’. That makes it pretty clear that the benefit of anything that we do in the Scottish Parliament should not be undermined or negated in any way as it affects the individual”.

Both agreed to consider the matter and to respond to the Committee.

On this particular point, Professor McEwan has said that:

“Entitlement to some benefits depends upon eligibility for others. If the eligibility criteria for devolved benefits are altered, it could affect entitlement to UK benefits. My reading of para.55 suggests that any additional benefit received by Scottish claimants as a result of devolved benefits or Scottish discretionary payments *should not* adversely affect entitlement to UK benefits or tax credits, but in practice the new complexities generated may be difficult to administer” (McEwan 2014b).

Creating New Benefits

The power to create new benefits in areas of devolved responsibility appears rather broad and could feasibly include new benefits relating to housing or childcare, for example. The breadth of this power will need to be clarified further.

As Professor McEwan has stated:

“The Smith Report includes the power ‘to create new benefits in areas of devolved responsibility’. It is not clear what this means, since the provision of ‘assistance for social security purposes to or in respect of individuals by way of benefits’ (Scotland Act, schedule 5, Head F) will remain reserved matters, save for those specific exceptions identified above. I assume it reinforces the Scottish Parliament’s power to replace those benefits which have, or will be, devolved with new alternative benefits aimed at a similar purpose” (McEwan 2014b).

Benefit Cap

The benefit cap was introduced as part of welfare reform (see Annexe B). The specified benefits which count towards the cap include Carer’s Allowance and Severe Disablement Allowance, both of which the Smith report has proposed for devolution.

The Smith Commission has proposed that the benefit cap will be adjusted to accommodate any additional payment that the Scottish Parliament provides. If the Scottish Parliament increases the payment of a particular benefit affected by the cap, it might be assumed that the cap would also be raised, although this will need to be clarified.

EMPLOYMENT PROGRAMMES

The Smith Commission proposes the devolution of:

All powers over support for unemployed people through the employment programmes currently contracted by DWP (which are presently delivered mainly, but not exclusively, through the Work Programme and Work Choice) on expiry of the current commercial arrangements (para 57).

To date, most discussion has been about the work programme, although employment programmes cover more than this. In their submissions to the Smith Commission, the Labour Party called for the work programme to be devolved, as did the Scottish Government, although they also proposed devolution of all other employability programmes run by the DWP.

While employment services are reserved to the UK Government, training for employment is a shared responsibility between the UK and Scottish Governments. Employment is also affected by a broad range of devolved policy areas, including skills, education, health, regeneration, and childcare. A summary of [Scottish](#) and [UK policy](#) is available (Employability in Scotland online). Current DWP schemes include the Work Programme, Work Choice and various pre-work programmes (see Annexe B). It is not entirely clear from the wording of the Smith report whether or not the pre-work programmes would be included for devolution.

Following the publication of the Smith report, John Swinney said of the work programme,

“It is crucial that the UK and Scottish Governments agree the arrangements that will follow those contracts, and we should explore all the options, including the devolution of responsibility to this Parliament, as soon as it practical” (Scottish Parliament 2014c)

However, the DWP has extended its contracts with work programme providers until 2017 (BBC 2014c). The Scottish Government said this was a “flagrant and wilful breach” of the Smith Commission process. The DWP said it wanted to ensure “continuity of support”. Alistair Carmichael, Secretary of State for Scotland, told the Devolution (Further Powers) Committee (2014) that the decision to extend contracts had been taken in August, before the Smith Commission was established. He said it was, “another area about which the two Governments should be sitting down and talking.” At the same meeting, John Swinney said that he, “sat on the Smith commission in good faith, believing that [contracts would end] in March 2016.” Margaret Curran has also called for the work programme to be devolved immediately (Holyrood 2015). Alex Neil, MSP told the Welfare Reform Committee that:

“An early subject for discussion in the joint ministerial working group to which I referred in my introductory remarks will be to consider how quickly the work programme can be transferred and what flexibility we have in the short term.” (Scottish Parliament Welfare Reform Committee 2015).

The work programme closely links to conditionality and sanctions in benefits such as JSA, which will remain reserved. The Joseph Rowntree Foundation recommended that conditionality and sanctions related to employment programmes should also be devolved. Jim McCormick from the JRF said in a blog that:

“The flaw in the Smith report is the decision to leave conditionality rules with Westminster. These cover the range of carrots and sticks associated with participation. So, the Scottish Government will fund the Work Programme and be accountable for its performance, but providers will be expected to apply the UK sanctions system run by the Department for Work and Pensions. That’s a jagged edge that fails the JRF tests of

alignment and incentives. It should be changed at the legislative stage.” (McCormick 2014)

Professor Nicola McEwan also commented on the links between employability programmes with conditionality saying:

“This is likely to generate operational challenges, political difficulties and accountability issues, given the concerns expressed by the Scottish Government and Parliament about the DWP’s conditionality and sanctions regime” (McEwan 2014b)

DELIVERY, ADMINISTRATION AND APPEALS

The Smith Commission refers to the need for some level of joint arrangement or linked services between the Scottish Government and the Department for Work and Pensions:

Joint arrangements for the oversight of DWP development and delivery of Universal Credit, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments (para 48).

The Scottish Parliament will have complete autonomy in determining the structure and value of the benefits at paragraph 49 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 (para 51).

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 (para 58).

The administration of benefits by the DWP is currently distributed across the UK. Not all Scottish claims are processed in Scotland and some claims that are not from Scotland are processed here. The proposals in Smith will require new or adapted administrative arrangements for:

- those benefits that are to be devolved
- variations to Universal Credit allowed by paras 44-45
- any top ups to reserved benefits
- the creation of any new devolved benefits

Interdependence of benefits

As discussed earlier in this briefing, much of the discussion about the potential for devolution of welfare (both wholly or partly) has referred to the complexity of the interconnectedness between different benefits. Receipt of one benefit can affect entitlement or amounts received for other benefits. This can apply to different reserved benefits and would also apply to the links between any new devolved benefits and existing reserved benefits. For example, CPAG (2014a), in their submission to Smith, said further devolution should include:

“...a clear delivery mechanism and infrastructure to protect minimum entitlements across Scotland, adequate oversight, accountability and administrative efficiency.”

and should:

“...deliver social security in such a way that does not further complicate access to financial support or create further cracks that claimants could fall down”

CPAG note that:

...“it is often in the implementation and delivery that the real problems of new schemes of benefits arise.”

For example, there are 94 Job Centre Plus offices in Scotland and 1 DWP centre for processing disability benefits. Scottish claims are not all processed in Scotland and not all claims processed in Scotland are Scottish. Attendance Allowance, Industrial Injury Disablement Benefit and Carer's Allowance are currently processed only in England and Wales (DWP and Scotland Office 2014). It is likely that new arrangements would be needed to administer the Scottish versions of these benefits following their devolution – it would not necessarily just be a case of using Scottish based UK civil servants to process claims from Scotland.

During the referendum debate, the Lodge and Trench from the IPPR proposed the devolution of some powers over welfare. In terms of administration they suggested that:

“...On the whole, the balance of convenience would favour using the DWP to deliver welfare within Great Britain. However, that would also require changes to how the DWP works, to ensure that it was adequately accountable to devolved governments for what it did on their behalf” (Lodge and Trench 2014).

Also in terms of the independence debate, the Scottish Government had proposed a transitional period of sharing the administration of the benefits system. However, the Scotland Office argued that this would be very difficult:

“...reconfiguring the current system to meet the demands of two governments with different policies would introduce additional costs and risks (DWP and Scotland Office 2014).

After the publication of the Smith Commission report, Professor Nicola McEwan said that, while delivery partnership with DWP would be cost-effective, it:

“...is likely to mean that the autonomy which could be exercised over these benefits would be less than ‘complete’, curtailing the scope for distinctive policy development.” (McEwan 2014b)

In terms of top ups to reserved benefits, she refers to the need for DWP and HMRC to incorporate additional payments into their system and states that:

“...It is not clear whether these systems would have the capacity to distinguish and process claims on the basis of distinct Scottish entitlements.”

Appeals and Tribunals

Social security decisions can be appealed to a First Tier Tribunal (Social Security and Child Support) and, subsequently to the Administrative Appeals Chamber of the Upper Tribunal. These appeals can only be accessed after a person has applied for a revision through DWP. Appeals are currently administered by [HM Courts and Tribunals Service](#), part of the Ministry of Justice.

Smith recommended that:

“All powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.” (para 63)

This would imply that the operation of the benefits tribunals will be devolved, but not the substantive policy. Para 64 states that, "...the laws providing for the underlying reserved substantive rights and duties will continue to remain reserved". There is a new Tribunals service in Scotland (Scottish Government online).

FINANCIAL IMPLICATIONS

Social security benefits are currently financed under Annually Managed Expenditure (AME), which means that the UK Treasury covers the actual costs incurred in meeting social security demand. The Scottish Welfare Fund, and other welfare reform mitigation activity, is managed through Department Expenditure Limits (DEL).¹⁶

Funding of Devolved Benefits

Paragraph 52 of the Smith Commission Report provides for an increase in the Scottish Block Grant to reflect the transfer of benefits, including any savings which accrue to the UK Government as a result of this transfer.

In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland will be transferred to the Scottish Government (para 52)

Table 3 shows the value on the benefits that are proposed for devolution, based on the current spend on these benefits. The value is just over £2.5bn, or around 14% of current welfare spend in Scotland.

¹⁶ The government budget that is allocated to, and spent by, government departments is known as the Departmental Expenditure Limit, or DEL. It covers the running of the services that the departments oversee such as schools or hospitals, and the everyday cost of resources such as staff ([UK Government](#)).

Table 3: Value of Benefits Proposed for Devolution 2013-14

	£000s
Disability Living Allowance	1,473
Attendance Allowance	481
Winter Fuel Payments	186
Carer's Allowance	182
Industrial Injuries Disablement Benefit	91
Severe Disablement Allowance	91
Discretionary Housing Payments *	18
Funeral Payments	4
Sure Start Maternity Grants	3.9
Total	£2,530

Sources: DWP (2014h, 2014i) Funeral payments based on 10% of estimated GB spend in 2013-14 Sure Start based on 10% of GB spend in 2013-14.

*this is the DWP spend, the Scottish Government has also provided DHP funding. The awards data cannot be separated out so the awards data reflects total DWP and Scottish Government funding

It might therefore be assumed that as a result of the devolution of these benefits around £2.5bn will be passed to the Scottish Government via the block grant. Where a benefit is devolved, the Scottish Government would receive an amount for administration costs. One of the principles proposed by the Smith Commission is that, for any new power devolved,

“...a share of the associated implementation and running costs in the policy area being devolved, sufficient to support the functions being transferred, at the point of transfer”.
(para 95 (3)(b))

It is not possible to say at this stage how much this might be or how it would be calculated.

Varying Universal Credit, Create New Benefits and Top-Up Benefits

The Smith Commission Report makes it clear that administration costs associated with the creation of new benefits or of varying the housing element of UC or making other changes to UC, will fall on the Scottish Government.

Powers to Create New Benefits and Top-Up Benefits

[the Scottish Government] may seek agreement from DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government. All administration and programme costs directly associated with the exercise of this power (either as a result of changes to existing systems or the introduction of new systems) will be met by the Scottish Government in line with the funding principles set out in paragraph 95 (para 54).

Powers to vary the housing element of UC and the administration of UC

Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 will be met by the Scottish Government (para 47).

While money will be added to the block grant for any benefits to be devolved, this is not the case for costs associated with the proposed power to 'top up' reserved benefits nor for any Scottish changes to Universal Credit. Therefore, affordability and consideration of the Scottish Parliament's income raising powers would be a crucial part of any decisions to use these powers.

It is not clear what the financial implications arising from administrative changes to UC would be, particularly as there already is some flexibility within the system for alternative payment arrangements to be made to claimants.

As discussed in various sections of this briefing, the financial implications of the proposed new powers would depend on how the Scottish Government chose to use its new powers.

In their submission to the Smith Commission, CPAG commented on the balance between investing in devolved benefits, having the economic levers to do so, managing expectations, and the political will to make changes:

“2.2 Furthermore it is important to recognise the political difficulties that would be faced attempting to invest in devolved social security in line with expectations raised during the referendum campaign, with, for example, only limited income tax levers and without the powers to reduce pressures on the system.

2.3 It is also important to remember that devolution of powers does not in itself mean that the public and political will yet exists to invest in social protection to prevent poverty. The focus on constitutional concerns needs to be matched by efforts to promote support for a new approach to – and investment in – social security, wherever the responsibility for it lies” (CPAG 2014a).

WHAT SHOULD REMAIN RESERVED?

The Smith Commission report recommends that a number of benefits, including pensions and child benefit, remain reserved. A full list is available at Annexe C.

BENEFITS NOT MENTIONED IN SMITH REPORT

There are a number of benefits that are not mentioned in the Smith Report. It is not clear therefore whether the intention is for these to remain reserved or to be devolved. A list of these benefits is provided in Annexe D.

NEXT STEPS

The UK Government will publish a draft Scotland Bill by 25 January 2015. A Scotland Bill will be brought forward by the next UK Government after the General Election on 7 May 2015. The Scottish Parliament elections are scheduled for 5 May 2016.

Alex Neil MSP, the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, gave evidence to the Welfare Reform Committee on 13 January 2014 on the Smith Commission's welfare proposals (Scottish Parliament Welfare Reform Committee 2015). He outlined developments thus far, and how the welfare proposals for devolution might develop:

- A joint ministerial working group on welfare has been established and its first meeting should take place in the first week of February. The group will include:
 - Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and Pensioners' Rights
 - David Mundell MP, Parliamentary Under Secretary of State for Scotland
 - David Gauke MP, Financial Secretary to the Treasury
 - Lord Freud, Parliamentary Under Secretary of State (Minister for Welfare Reform)

- John Swinney MSP, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy
- Rosanna Cunningham MSP Cabinet Secretary for Fair Work, Skills and Training.
- The Scottish Government is keen to work co-operatively with the UK Government to make transition as smooth as possible.
- On the purpose of paragraph 55 (new benefits not to result in offsetting reductions) in the Smith Commission report (see page 27), Alex Neil said he was clear that the “purpose is to provide a guarantee that the benefit of anything that we do in the Scottish Parliament should not be undermined or negated in any way as it affects the individual. That is my interpretation, and I expect the UK Government to honour that in full.”
- The Scottish Government has asked for the full roll-out of Universal Credit and Personal Independence Payment to be halted. On the Personal Independence Payment, it wants to have power transferred before the planned 20% cut in the rate. Alex Neil said, “We have not had an undertaking on either of those; we have not received any positive response from the UK Government.”
- Alex Neil has also had agreement from the Minister of State that the UK Government should not take pre-emptive action on the powers that are to be devolved. He said, “...my interpretation would be that PIP would be transferred before the 20 per cent cut, but I have not had an explicit commitment.”
- Alex Neil MSP said until the draft clauses are published, it is too soon discuss what new additional benefits might look like. He also said, “we need to know the budgets that are being transferred with them.”
- It is likely to be at least 2017 before new powers are transferred to the Scottish Parliament, given the need for the necessary legislation to pass through both Houses of Parliament and the time needed to implement changes. Some powers may be transferred sooner, for example, some of the flexibilities on Universal Credit, “because they will not require primary legislation.”
- During that period, the Scottish Government will consult widely, and Alex Neil said he wants to “maximise consensus” on any changes.

ANNEXE A: WELFARE SPEND IN SCOTLAND 2013-14

Table 1: Welfare Spend in Scotland 2013-14 and Number of Recipients

	£m	% of total Scottish spend	No. of Recipients (various dates)
State Pension	7,051	39.6	1,027,270
Tax Credits	2,181	12.3	345,500 (families)
Housing Benefit	1,770	9.9	475,383
Disability Living Allowance	1,473	8.3	343,370
Employment and Support Allowance	1,210	6.8	241,730
Child Benefit	854	4.8	587,115 (families)
Pension Credit	637	3.6	221,560
Attendance Allowance	481	2.7	150,200
Jobseeker's Allowance	409	2.3	96,310
Council Tax Reduction	360	2.0	537,730
Income Support	313	1.8	73,000
Statutory Maternity Pay	213	1.2	N/A
Winter Fuel Payments	186	1.0	1,086,080
Carer's Allowance	182	1.0	*103,760
Incapacity Benefit	99	0.6	11,230
Industrial Injuries Benefits	91	0.5	32,200
Severe Disablement Allowance	91	0.5	18,993
Bereavement benefits	57	0.3	6,390
Over 75 TV licences	49	0.3	N/A
Discretionary Housing Payments	29	0.2	87,362 (awards)
Scottish Welfare Fund	29	0.2	80,380 (awards)
Maternity Allowance	27	0.2	4,100
Funeral Payments	4.4	0.0	N/A
Sure Start Maternity Payments	3.7	0.0	N/A
Cold Weather Payment	0.0275	0.0	**1,100
Total	17,800	100%	

*This is total number entitled to Carer's Allowance. Only 59,000 (approx) are in receipt of this benefit due to overlapping benefits (see Annexe B).

**There were only 1,100 payments for 2013/14 due to a mild winter (see Annexe B)

Expenditure Data:

DWP *Benefit Expenditure by Region 1996/97 to 2013/2014*:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361362/Expenditure_by_region_201314.xlsx

DWP *Benefit Expenditure and Caseload Tables*: <https://www.gov.uk/government/statistics/benefit-expenditure-and-caseload-tables-2014>

HMRC. (2014) *HMRC tax receipts between England, Wales, Scotland and Northern Ireland*.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267110/disaggregates-1.pdf

Scottish Government *Council Tax Reduction, Caseload and Expenditure 2013-14*. Available at:

<http://www.scotland.gov.uk/Publications/2014/06/5122>

Scottish Government *Scottish Welfare Fund Statistics to June 2014*. Edinburgh: Scottish Government.

Available at: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/swf/SWF30Jun2014>

Note: Sure Start Maternity Payments and Funeral Payments based on 10% of GB spend in 2013-14

Recipients Data

Data obtained from DWP statistics tabulation tool, and Stat-Xplore for Housing Benefit. Other data sources:

- Tax Credit recipients, at Dec 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388746/cwtc-geog-dec14.pdf
- Child Benefit recipients, at Aug 2013: <https://www.gov.uk/government/statistics/child-benefit-statistics-geographical-analysis-august-2013>
- Maternity Allowance, at May 2014 <https://www.gov.uk/government/statistics/maternity-allowance-quarterly-statistics-march-to-may-2014>
- Council Tax Reduction, at June 2014 <http://www.scotland.gov.uk/Publications/2014/09/8746/1>
- Industrial Injuries Benefits, at March 2014 – both Industrial Injuries Disablement Benefit and Reduced Earnings Allowance <https://www.gov.uk/government/statistics/industrial-injuries-disablement-benefit-quarterly-statistics-data-to-march-2014>
- DHPs Number of awards between 1 April 2013 and 31 March 2014
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/dhp/DHP31Mar2014>
- Number of awards by unique household 1 April 2013 to 31 March 2014
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/swf/SWF20132014>
- SDA claimants up to May 2014 http://tabulation-tool.dwp.gov.uk/100pc/ibstda/ccdate/ccbencod/beneficiary/a_carate_r_ccdate_c_ccbencod_p_beneficiary_beneficiary_receiving_payment.html Assumed 10% of caseload at Feb 2014
- Winter Fuel Payments. “Gender and age by La region: recipients of winter fuel payments 2013 to 2014. <https://www.gov.uk/government/statistics/winter-fuel-payment-caseload-and-household-figures-2013-to-2014>

ANNEXE B: BENEFITS – FURTHER DETAIL

The following further detail on a number of benefits, provided in alphabetical order.

Attendance Allowance

Attendance Allowance, first introduced in 1971, is a benefit available to people with a mental or physical disability who are 65 or over, who could benefit from personal care or supervision. It is not means-tested and is disregarded as income for means-tested benefits and tax credits.

Attendance Allowance has links to other benefits, for example, recipients may also be entitled to Pension Credit, Housing Benefit or Council Tax Reduction. Those who care for a disabled person can claim Carer's Allowance, providing the person they care for is in receipt of a disability benefit¹⁷, one of which is Attendance Allowance.

The benefit is paid at two weekly rates depending on the level of care needed, currently (2014-15):

- lower rate is £54.45
- higher rate is £81.30

Attendance Allowance is paid to people even if no one is providing them with care, and they can choose how to spend the money.

In May 2014, there were 150,200 people in Scotland entitled to Attendance Allowance. Of these, 58,110 were at the lower rate and 92,090 at the higher rate (DWP online b 2014). In Scotland, and across Great Britain, women are twice more likely to be entitled to Attendance Allowance than men.

Table 1 Attendance Allowance, entitled cases, May 2014

Attendance Allowance – entitled cases	Men	Women	Total
Higher Rate	31,180	60,910	92,090
Lower Rate	18,680	39,420	58,100
Total	49,860	100,330	150,190

Source: (DWP online c and d 2014)

Attendance Allowance - Expenditure in Scotland

Estimated expenditure on Attendance Allowance in Scotland for 2013-14 was £481m, 2.7% of total benefit spend (see Table 1 on page 12). Attendance Allowance has not formed part of the UK Government's wider welfare reforms because these have focused on benefits for working age people.

Benefit Cap

The benefit cap is part of the UK Government's package of welfare reforms, announced as part of the October 2010 Spending Review. It was introduced in two stages in 2013. The benefit cap limits household benefits at:

- £500 per week for a family

¹⁷ Disability Living Allowance (DLA) care component (highest or middle rate), personal independence payment (PIP) daily living component (either rate), armed forces independence payment or attendance allowance

- £350 per week for a single person with children

Currently the cap is being administered by local authorities and operates by reducing the claimant's Housing Benefit entitlement where their total amount of benefit exceeds the £500 a week for a family or £350 for a single person. Once Universal Credit is fully rolled out, the benefit cap will apply to the combined income from Universal Credit and other specified benefits, although there are exceptions (Wilson 2014).

Carer's Allowance

Carer's Allowance is a non-means tested benefit (although a claimant must not earn more than £100 per week) paid to people who regularly care for someone who is severely disabled and who must be in receipt of certain benefits, e.g. Attendance Allowance (higher or lower rate), DLA care component (highest or middle rate).

Carer's Allowance can be paid in addition to other benefits and tax credits, but the 'overlapping benefit rules' may apply (where a person qualifies for more than one non-means tested benefit the normal rule is that he or she cannot receive the full amount of both benefits, for example, contributory Jobseeker's Allowance, or the State Pension). Carer's Allowance counts as income for means-tested benefits. If a carer, and sometimes the person being cared for, is already in receipt of other means-tested benefits, it may not always be advisable to make a claim for Carer's Allowance (Child Poverty Action Group 2014b p543).

Currently, Carer's Allowance is paid at the weekly rate of £61.35 and is taken into account in full when, for example, Income Support is calculated. An extra amount (called the 'carer premium') will be included in the calculation of the means-tested benefits, currently worth an additional £34.20 a week. A carer who is in receipt of Income Support, for example, is entitled to a personal allowance of £72.40, plus the carer premium of £34.20. Because the Carer's Allowance is less than Income Support, the Carer's Allowance rate of £61.35 would be topped up by Income Support to the personal allowance of £72.40. The claimant would also receive the carer premium of £34.20.

As Table 1 showed around £182m is spent on Carer's Allowance in Scotland, around 1% of welfare spend. As Table 4 shows, of the 103,760 carers in Scotland entitled to Carer's Allowance, only 59,010 receive a Carer's Allowance payment (May 2014). The other 44,750 claimants entitled to Carer's Allowance do not receive it because they have other income, or it is an overlapping benefit. A large number of those not entitled to Carer's Allowance, (36,280) are State Pensioners (DWP online e).

Table 2: Number of claimants entitled to/in receipt of Carer's Allowance in Scotland, by age, May 2014 (thousands)

Age of claimant	Total	Entitlement only	Receiving payment
Under 18	0.15	0.01	0.15
18-24	2.96	0.16	2.8
25-29	4.02	0.25	3.77
30-34	5.73	0.36	5.37
35-39	6.56	0.41	6.14
40-44	8.65	0.62	8.03
45-49	9.9	0.82	9.08
50-54	9.73	1.01	8.73
55-59	9.72	1.13	8.59
60-64	9.08	3.7	5.38
65 and over	37.26	36.28	0.98
Total	103.76	44.75	59.01

Source: (DWP online e and f 2014)

Disability Living Allowance and Personal Independence Payment

Disability Living Allowance for working age people aged 16 to 64 is being replaced by Personal Independence Payment under the welfare reforms. Both are *non*-means tested and payable to people whether in or out of work.

DLA was available to anyone with a disability, under the age of 65, and who needed help getting around and/or with supervision or attention needs. Since June 2013, DLA has been replaced by PIP for all new working age claimants. This new benefit is for those who need help getting around and/or help with daily living activities. It is non-means tested and is payable regardless of employment status. Entitlement to DLA or PIP can also be a passport to other benefits or additional payments in other benefits. It comprises a daily living component and mobility component, payable at different rates:

Table 3: Disability Living Allowance Rates

	Standard weekly rate	Enhanced weekly rate
Daily living component	£54.45	£81.30
Mobility component	£21.55	£56.75

UK Government figures show that estimated expenditure on DLA in Scotland is £1.47bn. This amounts to 8.3% of total welfare spending in Scotland. Over 200,000 claimants of DLA are working age and will be affected by the move to Personal Independence Payment. A further 100,000 claimants are over working age.

Table 4. All entitled DLA Claimants in Scotland, May 2014

Age	DLA claimants, entitled cases (thousands)
Below working age	29.98
Working age (16-64)	209.21
Over working age	104.19
Total	343.37

Source: (DWP online g 2014)

Employment Programmes

Work Programme

The Work Programme is the UK Government's main welfare-to-work programme. It was created under the powers provided by Section 2 of the Employment and Training Act 1973 and sections 17A and 17B of the Jobseekers Act 1995. Ingenus and Working Links had contracts to provide the service in Scotland to take on new referrals until the end of March 2016. [Indicative contract values](#) were Ingeus Deloitte £142m and Working Links £165m (Centre for Economic and Social Inclusion, online). These contracts have been extended to 2017

More information is available in the DWP publication '[The Work Programme](#)' (DWP 2012) and the [House of Commons Standard Note on the Work Programme](#) (Dar and McGuinness, 2014a) A Work and Pensions Committee inquiry '[Can the Work Programme work for all user groups?](#)' also took place in 2013.

Work Choice

The target groups for Work Choice are disabled people with complex employment support needs for whom other DWP provision is not suitable and those who are in work but under threat of losing their job as a result of their disability. [Contractors for Work Choice in Scotland](#) are: Momentum Scotland Ltd, Shaw Trust and Remploy.

More detail on the operation of the scheme is provided in DWP provider guidance which is [available here](#)

Pre-work programme

Pre Work Programmes cover a number of schemes including the Mandatory Work Activity which has been the subject of some controversy. For an overview of this and other work experience programmes see [House of Commons Library Standard Note on Work Experience Schemes](#) (Dar and McGuinness, 2014b)

Industrial Injuries Disablement Benefit

(Information is from CPAG 2014b unless otherwise stated).

This is not means tested and does not require national insurance contributions. It is paid to employees (but, with a few exceptions, not self-employed people) who are disabled as a result of accident at work or disease caused by their job. The benefit is paid and administered by the DWP and involves an assessment of the level of disability.

Rates paid vary from £33.20 to £166.00 per week depending on the level of disability. This counts as income when calculating means tested benefits, but not tax credits.

Additional payments can be made, and these do not count as income when calculating means tested benefits. These are:

- Constant Attendance Allowance is paid if your disablement assessment is 100% and you require constant attendance. It is paid at two rates: £132.80 or £66.40
- Exceptionally Severe Disablement Allowance is at £66.40 if you are entitled to Constant Attendance Allowance and likely to remain so permanently.

Constant Attendance Allowance is different to Attendance Allowance. As Age UK notes:

“Constant Attendance Allowance paid with industrial injuries disablement benefit or a war pension overlaps with Attendance Allowance and if you are entitled to both, you will be paid whichever is higher” (Age UK 2011).

Total payments made in Scotland were £91m in 2013/14 (DWP 2014h).

In general, the overlapping benefits rule does not apply to industrial injuries benefits. So for example, a person could get contribution based Employment and Support Allowance as well as industrial injuries benefit. However, it is income based Employment and Support Allowance it would be reduced in relation to the industrial injuries benefit received.

In some circumstances a Christmas bonus can be paid, and in some cases where an employee cannot get compensation from their employer a one-off payment can be made.

Motability

Motability is available to recipients of Higher Rate of Mobility Component of DLA and the Enhanced Rate of the Mobility Component of PIP. The current allowance is £56.75 per week (as at April 2014). The Attendance Allowance cannot be used to lease a car through Motability.

Regulated Social Fund

Regulated social fund payments are not taxable, nor are they included as income when calculating means tested benefits or tax credits, nor are they included in the ‘benefit cap.’ The information below is based on CPAG 2014b unless otherwise stated.

Cold Weather payments

A sum of £25 is paid for each week of cold weather (7 days of average daily temperature zero or below at the local weather station).

Payments are made to older people receiving Pension Credit, disabled adults and children, and families with children under 5 who are receiving an income-related benefit.

In 2012/13, £8.73m was paid out in cold weather payments in Scotland. (This is based on Scottish weather stations referred to in DWP 2013). The level of spend will vary according to the severity of the winter. For example, in 2013/14 there was only one week in which cold weather payments were triggered and only 1,100 payments were made totally £27,500 (see Kennedy 2014c)

Funeral Expenses Payment

This is available to people who receive certain income related benefits and are responsible for paying for a funeral of a partner, child, parent or close relative. There are rules about what can be claimed for, who can claim and what money can be deducted from the claim (e.g contribution

from a pension scheme for funeral expenses). The Secretary of State is entitled to recover funeral expenses payments from the deceased's estate and normally seeks to do so.

Expenditure for the whole GB in 12/13 was £44m (DWP 2014i).

Sure Start Maternity Grant

This £500 one-off payment is available to people who receive certain income related benefits and are expecting their first child.

Expenditure for the whole GB in 12/13 was £39m (DWP 2014i).

Winter Fuel Payment

This is an annual payment for older people to help with heating bills. The rules are designed to ensure that:

- in a household where the eldest person is between pension credit age and 79, the total amount received is £200, and
- in a household where the eldest person is 80 or over, the total amount is £300

A person cannot get the payment if they have been in hospital for more than a year. Nor can they get it if they are in residential care and also getting certain means tested benefits. However people in residential care who do not receive these benefits are eligible.

In 2013/14, £186m was spent on Winter Fuel Payments in Scotland (DWP 2014h)

Severe Disablement Allowance

This benefit is no longer available to new claimants. No new awards have been made since 2001. Those who retired before April 2014 will continue to get it. For those who have retired or will retire after April 2014 a DWP 'decision maker' will decide whether it can be converted to Employment and Support Allowance. This will also depend on the outcome of a Work Capability Assessment.

The current rate of payment for Severe Disablement Allowance is £73.75 per week with some additions available which are related to age.

In 2013/14, £91m was spent on Severe Disablement Allowance in Scotland (DWP 2014h).

ANNEXE C: BENEFITS SMITH PROPOSED REMAIN RESERVED

- bereavement allowance
- bereavement payment¹⁸
- child benefit
- guardian's allowance
- pension credit (this will include a replacement for housing benefit from 2017).
- legacy pension arrangements
- maternity allowance
- state pension
- statutory maternity pay
- statutory sick pay
- universal credit and by implication the following which it will replace
 - Income-based Job-Seekers Allowance,
 - Income-related Employment and Support Allowance;
 - Income Support;
 - Child Tax Credits;
 - Working Tax Credits and
 - Housing Benefit for those claiming UC
- widowed parent's allowance

Smith did not propose the devolution of Healthy Start Vouchers (i.e welfare foods) but did suggest it should be discussed further. Scottish Ministers already have the power to specify what food can be provided in Scotland under this scheme. (HM Government undated)

¹⁸ bereavement benefits are being replaced by the new Bereavement Support Payment for new claimants from 2016 (Kennedy 2014d)

ANNEXE D: BENEFITS NOT MENTIONED IN SMITH COMMISSION REPORT

- **Contributory JSA and ESA** are available to those who have made sufficient National Insurance contributions and are not being replaced by Universal Credit.
- **Housing Benefit for Pensioners:** UC will replace Housing Benefit for working age people. Eventually, Pension Credit will also include a housing costs element [Age UK online](#)).
- **Housing benefit for those living in “specified accommodation”** even if they claim UC or Pension Credit. This covers:
 - Exempt accommodation’, which is defined as being either: a resettlement place; or accommodation which is provided by a county council, housing association, registered charity or voluntary organisation where that body, or person acting on their behalf, provides the claimant with care, support or supervision.
 - supported accommodation where it isn’t covered by the above definition
 - refuges for those fleeing domestic violence
 - hostels, where the tenant receive care, support or supervision

This is intended as a temporary measure. In the longer term, the UK Government is exploring the feasibility of a localised funding system. The DWP said that, “the aim is to develop a system that is flexible enough to meet the needs of individual providers and their tenants” (DWP, 2014j). It is not clear yet what role the Scottish Government or Scottish local authorities would have in any future “localised” system.

- **Budgeting loans** are what remains of the discretionary social fund following the devolution of the other elements to form the Scottish Welfare Fund. They are currently available to those on certain income based benefits, with the exception of those claiming Universal Credit, where it has been replaced by a ‘budgeting advance’. There are similar plans for those on pension credit coming into effect in 2017. ([Kennedy, S. 2013](#))
- **Statutory paternity pay and statutory adoption pay**, although it might have been the intention to include these, as Smith recommends that statutory maternity pay continues to be reserved.
- **payments under the War Pensions Scheme** where ill health or disablement was caused by service before 5 April 2005. Access to this benefit can be supplemented by other allowances, most importantly: Constant Attendance Allowance and/or Mobility Supplement depending on the severity of the impairment experienced.
- The **Armed Forces Compensation Scheme** (AFCS) has offered a lump sum payment to those who experience ill health or disablement caused by service on or since April 2005. When introduced, this scheme did not offer equivalent payments to supplements available through the WPDB.
- The **Armed Forces Independence Payment** (AFIP) was introduced in April 2013 for those entitled to a guaranteed income payment. It is paid at the equivalent rates to enhanced rates of daily living and mobility components of Personal Independence Payment (PIP).
- **Christmas Bonus** of £10 paid to those on qualifying benefits, which relate to ill-health, disability, bereavement and old age.

- **Over 75 TV licence** all those aged over 75 can get a free TV licence. Disabled people aged over 60 living in supported accommodation or residential care can get a discounted licence ([HM Gov online](#))
- **Vaccine Damage Payment** – is a one-off payment made to someone who has a severe disability as a result of a vaccination against certain diseases. The payment can be up to £120,000. It has an effect on other means tested benefits, such as IS, income based JSA, Universal Credit, Pension Credit and ESA.
- **Payments for asbestos related diseases** There are a number of schemes which provide payments to people diagnosed with certain dust related industrial diseases (Kennedy 2012b)
- **Specialist Vehicles Fund** is a grant that DWP provide to support disabled people through vehicle adaptations. It is administered by Motability so only available to those who have a car/vehicle through this scheme.

Table 1 shows the GB spend on these benefits in 2012/13. (Spend at a Scottish level is not available for all the benefits listed).

Table 1 spend on benefit not mentioned Smith report

Benefit	GB spend 2012/13 £m
Armed Forces Independent Payment	n/a
Budgeting Loans	-£5
Christmas bonus	£156
Contributory ESA	£2,305
Contributory JSA	£662
Mesothelioma 2008	£9
Housing benefit for pensioners	£6,424
Housing benefit for 'specified accommodation'	n/a
Pneumoconiosis 1979	£42
Over 75 TV licence	£596
Specialist Vehicle Fund	£16
Statutory paternity and adoption pay	n/a
Vaccine Damage Payments	£0
War Pensions	£0

Notes: AFIP was not introduced until 2013. Payments for the whole of the GB are projected to be £12m in 2018/19. Budgeting loans is net spend.

Source: DWP (2014i)

ANNEXE E: SMITH COMMISSION REPORT

The following is an extract of the Smith Report proposals on welfare.

State Pension

42. All aspects of the state pension will remain shared across the United Kingdom and reserved to the UK Parliament. This includes the new single-tier pension, any entitlements to legacy state pensions whether in payment or deferred, pension credit and the rules on state pension age.

Universal Credit

43. Universal Credit (UC) will remain a reserved benefit administered and delivered by the Department for Work and Pensions (DWP). Within this framework, the Scottish Parliament will have the powers outlined in paragraphs 44 to 45 in relation to UC.

44. The Scottish Government will be given the administrative power to change the frequency of UC payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland.

45. The Scottish Parliament will have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents.

46. The power to vary the remaining elements of UC and the earnings taper will remain reserved. Conditionality and sanctions within UC will remain reserved.

47. Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 will be met by the Scottish Government.

48. Joint arrangements for the oversight of DWP development and delivery of UC, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments.

Benefits devolved outside Universal Credit

49. Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:

- (1) Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance.
- (2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment.
- (3) Discretionary Housing Payments.

50. New arrangements for how Motability will operate in Scotland for DLA/PIP claimants will be agreed between the Scottish and UK Governments.

51. The Scottish Parliament will have complete autonomy in determining the structure and value of the benefits at paragraph 49 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.

52. In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied set out by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland will be transferred to the Scottish Government.

Benefits reserved outside Universal Credit

53. Responsibility for the following benefits will remain reserved: Bereavement Allowance, Bereavement Payment, Child Benefit, Guardian's Allowance, Maternity Allowance, Statutory Maternity Pay, Statutory Sick Pay and Widowed Parent's Allowance.

Powers to create new benefits and top-up reserved benefits

54. The Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility, in line with the funding principles set out in paragraph 95.

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.

In addition it may seek agreement from DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government. All administration and programme costs directly associated with the exercise of this power (either as a result of changes to existing systems or the introduction of new systems) will be met by the Scottish Government in line with the funding principles set out in paragraph 95.

55. 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 if in employment.

56. The UK Government's Benefit Cap will also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides.

Employment provision

57. The Scottish Parliament will have all powers over support for unemployed people through the employment programmes currently contracted by DWP (which are presently delivered mainly, but not exclusively, through the Work Programme and Work Choice) on expiry of the current commercial arrangements. The Scottish

Parliament will have the power to decide how it operates these core employment support services. Funding for these services will be transferred from the UK

Parliament in line with the principles set out in paragraph 95.

Delivery and Administration

58. 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.

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