Health and Sport Committee

4th Report, 2011 (Session 4)

Report on the Legislative Consent Memorandum on the Welfare Reform Bill (UK Parliament legislation) - LCM (S4) 5.1

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The Scottish Parliament
Pàrlamaid na h-Alba

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Remit and membership

The Scottish Parliament
Pàrlamaid na h-Alba

Health and Sport Committee

Remit and membership

Remit:

To consider and report on health policy, the NHS in Scotland, anti poverty measures, equalities, sport and other matters falling within the responsibility of the Cabinet Secretary for Health, Wellbeing and Cities Strategy apart from those covered by the remit of the Economy, Energy and Tourism Committee.

Membership:

Jackson Carlaw
Bob Doris (Deputy Convener)
Jim Eadie
Mary Fee
Richard Lyle
Fiona McLeod
Duncan McNeil (Convener)
Gil Paterson
Dr Richard Simpson

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The Scottish Parliament
Pàrlamaid na h-Alba

Health and Sport Committee

4th Report, 2011 (Session 4)

Report on the Legislative Consent Memorandum on the Welfare Reform Bill (UK Parliament legislation) - LCM (S4) 5.1

The Committee reports to the Parliament as follows—

INTRODUCTION

Glossary

1. The following abbreviations are used in this report—

CTB – Council Tax Benefit

DLA – Disability Living Allowance

DWP – Department for Work and Pensions

ESA – Employment and Support Allowance

HB – Housing Benefit

IS – Income Support

JSA – Jobseeker's Allowance

LHA – Local Housing Allowance

PIP – Personal Independence Payment

UC – Universal Credit

BACKGROUND

Welfare Reform Bill

2. The Welfare Reform Bill ("the Bill") was introduced in the House of Commons on 16 February 2011. The latest version of the Bill and additional information can be found on the UK Parliament website at—

http://services.parliament.uk/bills/2010-11/welfarereform.html

3. The major proposal for reform is the introduction of a new benefit, to be known as Universal Credit, which will replace existing in and out of work benefits. The Bill also makes provision for a new benefit, Personal Independence Payment, which will replace the existing Disability Living Allowance.[1]

4. The Bill is currently at committee stage in the House of Lords. It may be subject to further amendment prior to receiving Royal Assent.

UK Government consultation

5. In July 2010, the UK Government published a consultation document *21st Century Welfare*.[2] This set out a range of options for reform of the welfare system. At the end of the consultation period, in November 2010, a White Paper *Universal Credit: welfare that works*[3] was published, alongside the Government's responses to the consultation (*Consultation responses to 21st Century Welfare*).[4] The White Paper set out the UK Government's proposals for welfare reform, which aim to improve work incentives, simplify the benefits system and make it less costly to administer. Not all the measures in the White Paper required primary legislation; the Bill gives effect to those proposals that do.

Legislative consent memorandum

6. On 3 March 2011, the Scottish Government lodged a legislative consent memorandum, as required by Rule 9.B.3.1(a) of the Parliament's Standing Orders.[5] At that time, the Scottish Government stated that it would not bring forward a legislative consent motion prior to the Scottish Parliament elections in May 2011 as—

> "the full policy implications are not yet clear and any Legislative Consent Motion would therefore necessarily be framed too generally. Delay in bringing forward a motion would allow time for the policy implications of the Bill to be considered more fully whilst still complying with the desired legislative timetable".[6]

7. On 31 October 2011, the Scottish Government lodged a supplementary memorandum setting out the Scottish Government's advice to the Parliament and its position on the Bill's proposals, both legislative and where these proposals may have an impact on devolved policy and services.[7] It does not include a draft legislative consent motion. However, the memorandum does set out the five areas where the Bill, as it is now, triggers the need for legislative consent—

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[1] Welfare Reform Bill Explanatory Notes [HL Bill 75]. Available at: http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0075/en/12075en.htm [Accessed November 2011]
[2] Available at: http://www.dwp.gov.uk/consultations/2010/21st-century-welfare/
[3] Available at: http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/universal-credit/
[4] Available at: http://www.dwp.gov.uk/consultations/2010/21st-century-welfare/
[5] Scottish Government. Legislative consent memorandum LCM(S3)35.1. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25202.aspx
[6] Scottish Government. Legislative consent memorandum LCM(S3)35.1.
[7] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25202.aspx

- introduction of Universal Credit (Specifically; clauses 33, 42 and 43);
- data sharing (clauses 120 and 126);
- introduction of Personal Independence Payment (clauses 75, 89 and 91);
- changes to Industrial Injuries Disablement Benefit (clause 65); and
- establishment of the Social Mobility and Child Poverty Commission (clause 135 and schedule 13).

SCOTTISH PARLIAMENT SCRUTINY

Parliamentary Bureau

8. At its meeting on 27 September 2011, the Parliamentary Bureau considered how scrutiny should be managed. The Bureau agreed to refer the Legislative Consent Memorandum on the Welfare Reform Bill to the Health and Sport Committee, as lead committee, for consideration of the wider policy issues; and to designate the Local Government and Regeneration Committee and the Infrastructure and Capital Investment Committee as secondary committees.[8]

Chamber debate

9. On 5 October 2011, a Scottish Government debate was held in the Chamber on the subject of welfare reform. At the conclusion of the debate, the Parliament passed the Scottish Government motion, as amended—

> "That the Parliament notes the Welfare Reform Bill that is currently being considered by the UK Parliament; regrets that the far-reaching proposals contained in the bill are being pursued against the backdrop of substantial cuts to welfare benefits announced in the June and October 2010 UK budgets; further regrets the impact that these cuts will have on some of the most vulnerable individuals and families in society and on the local authority and third-sector organisations committed to supporting vulnerable people, and calls on the UK Government to pursue a welfare system that is properly financed, simple to understand, lifts people out of poverty and makes work pay, and is otherwise minded, subject to consideration by the appropriate committees, to oppose the forthcoming legislative consent motion pertaining to the Welfare Reform Bill."[9]

Health and Sport Committee

10. The Health and Sport Committee agreed a programme of oral evidence sessions with—

[8] Scottish Parliament Parliamentary Bureau. Minutes of meeting 27 September 2011. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/25098.aspx
[9] Scottish Parliament. Minute of Proceedings 5 October 2011. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/42447.aspx

David Griffiths, Chief Executive, Ecas, and elected member of the Scottish Council for Voluntary Organisations Policy Committee;

John Dickie, Head of Child Poverty Action Group in Scotland;

Maggie Kelly, Policy and Campaigns Officer, The Poverty Alliance;

Matt Lancashire, Social Policy Officer, Citizens Advice Scotland;

Robert McGeachy, Policy and Public Affairs Manager, Action for Children Scotland;

Kate Higgins, Policy Manager, CHILDREN 1ST;

Mark Ballard, Head of Policy, Barnardo's Scotland;

Marion Macleod, Senior Policy and Parliamentary Officer, Children in Scotland;

Marion Davis, Senior Manager, Policy & Development, One Parent Families Scotland;

Douglas Hamilton, Head of Save the Children in Scotland;

Pam Duncan, Director, Inclusion Scotland;

Richard Hamer, Director of External Affairs, Capability Scotland;

Carolyn Roberts, Head of Policy and Campaigns, SAMH;

Keith Robertson, Access Development Officer & Manager, Scottish Disability Equality Forum;

Neil Couling, Working Age Benefits Director and Senior Responsible Officer for the Welfare Reform Bill, Department for Work and Pensions;

Nicola Sturgeon MSP, Cabinet Secretary for Health, Wellbeing and Cities Strategy.

11. The minutes of all of the Committee's meetings are attached at Annexe A. Where written submissions were made in support of oral evidence, they are reproduced, together with the extracts from the *Official Report* of each of the relevant meetings, at Annexe B. All other written submissions and correspondence are included at Annexe C.

12. The Committee thanks all the witnesses and the many organisations that made written submissions.

Evidence from the UK Government

13. In considering its approach to scrutiny of the legislative consent memorandum, the Committee agreed that it was important to hear directly from UK Government Ministers about the policy underlying the Welfare Reform Bill.

Following a decision by the Committee, the Convener wrote to the Secretary of State for Work and Pensions, Ian Duncan Smith MP, to invite him to give oral evidence to the Committee. In a response, Lord Freud, Minister for Welfare Reform, declined the invitation, citing other diary commitments, and offered, instead, evidence from a senior official. The Convener then proposed holding an evidence session via video conference, but this too was declined.

14. Copies of the correspondence can be accessed on the Scottish Parliament website at—

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/43319.aspx

15. On 22 November 2011, Neil Couling, Working Age Benefits Director and Senior Responsible Officer for the Welfare Reform Bill, provided oral evidence to the Committee on behalf of the Department for Work and Pensions.

16. **The Committee was concerned that it was not afforded the opportunity to take evidence directly from DWP Ministers. Although Mr Couling was able to provide a response to many of the questions raised with him by the Committee, this was no substitute for Ministerial evidence which would have allowed the Committee to explore fully the policy underpinning the Bill. Even at the eleventh hour, the Committee was willing to facilitate a video conference with Ministers.**

17. **Looking ahead, the Committee considers that UK Ministers must appear before committees of the Scottish Parliament whenever UK policy decisions have significant ramifications for areas of devolved policy.**

Secondary committees

18. The Infrastructure and Capital Investment Committee ("the ICI Committee") conducted an oral evidence session on the Welfare Reform Bill on 26 October 2011 and considered the memorandum at its meeting on 16 November 2011. Its report to the Health and Sport Committee is included at Annexe D.

19. The Local Government and Regeneration Committee ("the LGR Committee") considered the memorandum and took oral evidence at its meeting on 9 November 2011. A copy of its report is included at Annexe E.

20. The conclusions and recommendations of the secondary committees are referred to later in this report.

Subordinate Legislation Committee

21. As required by Rule 9B.3.6 of Standing Orders, at its meeting on 8 November 2011, the Subordinate Legislation Committee considered the provisions in the Welfare Reform Bill which confer on the Scottish Ministers powers to make subordinate legislation. A copy of its report is available on the Scottish Parliament website at—

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/43875.aspx

22. The Subordinate Legislation Committee reported that it considered the delegated powers contained in clauses 33 and 89(2) to be acceptable in principle and that they should be subject to affirmative procedure when used to amend or repeal primary legislation, and should be otherwise subject to negative procedure.[10]

Scotland Bill Committee

23. The Scotland Bill Committee was not a formal secondary committee and did not scrutinise the legislative consent memorandum, but at its meeting on 5 October 2011, it heard evidence on the subject of welfare and benefits from Ecas, Scottish Campaign on Welfare Reform, CAS, SCVO and the Wise Group.[11]

WELFARE REFORM BILL

Background

24. The Health and Sport Committee and the secondary committees jointly received a significant volume of written evidence from stakeholder organisations highlighting the potential implications arising from the changes to welfare benefits proposed in the Welfare Reform Bill.

Economic impact

25. A Fraser of Allander Institute report estimated that welfare cuts will take out nearly £2 billion of demand from Scottish households by 2014-15.[12] Inclusion Scotland estimated that £1 billion of this will be from disabled people and their families.[13]

26. In oral evidence, Neil Couling, Department of Work and Pensions, stated that in total, welfare benefit receipts in Scotland would be reduced by "about £2.5 billion" by 2015.[14]

27. The Scottish Government also acknowledged that there were economic implications to consider. In its supplementary memorandum, in relation to UC, it stated that—

> "UC will have a positive impact on Scotland's overall economy if it does what the UK Government claim it will and creates a greater incentive for more people to move from unemployment into work. However, this depends on a number of factors which UC does not directly address, not least the availability of sustainable jobs and the likelihood of quite widespread behavioural change, in terms of benefits claimants' relationship with the job market. The Scottish Government is in no doubt that some people in Scotland will be better off under UC. However, others will be worse off and it

[10] Scottish Parliament Subordinate Legislation Committee. *13th Report, 2011(Session 4) Legislative Consent Memorandum on the Welfare Reform Bill*.
[11] Scottish Parliament Scotland Bill Committee. Minute of Proceedings of Meeting 5 October 2011.
[12] The Fraser of Allander Institute. *Economic commentary Vol 34 No 2 November 2010*. Available at: http://www.strath.ac.uk/media/departments/economics/fairse/backissues/Fraser_of_Allander_Economic_Commentary,_Vol_34_No_2.pdf [Accessed November 2011].
[13] Inclusion Scotland. Written submission to the Health and Sport Committee.
[14] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 651.

> is this balance, between the "winners" and the "losers" that will determine the eventual impact on the Scottish economy. It is by no means clear on which side the scales will eventually tip."[15]

28. Presented with the evidence given by Neil Couling, the Cabinet Secretary reflected on the extent of the challenge facing Scotland—

> "In a fixed budget—members all know that it is about £30 billion—the challenge is significant. The total benefit bill in Scotland, including state pensions, is about £12 billion, so £2.5 billion is a big chunk off that. The Scottish Government has devolved responsibilities and it will be our responsibility to work with stakeholders to do whatever we can to mitigate unintended or unwanted consequences of the changes. However, I would be remiss if I did not readily acknowledge the challenges that they pose for us."[16]

29. The Committee notes that the Cabinet Secretary had not had an opportunity to reflect on the evidence given by Mr Couling earlier in the day. **The Committee looks forward to receiving additional information from the Cabinet Secretary about the challenges presented by the cuts to benefits in due course.**

30. **The Committee does not underestimate the challenge which the £2.5 billion cut to benefits presents. The Committee will continue to scrutinise the response of the Scottish Government to mitigate unintended or unwanted consequences where it can.**

Universal Credit

31. Part 1 of the Bill creates the legislative framework for Universal Credit, a social security benefit available to people in and out of work.

32. UC may include, depending on the claimant's circumstances, a standard allowance, an amount for responsibility for children or young persons, an amount for housing costs and amounts for other particular needs or circumstances.[17]

Housing

33. In its supplementary memorandum, the Scottish Government drew attention to continuing inter-governmental discussions regarding the housing component of UC.[18]

34. Analysis undertaken by the Scottish Government for the Housing Benefit Reform Stakeholder Advisory Group shows that the changes to Housing Benefit will have a significant negative impact in Scotland.[19] The Scottish Government

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[15] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 45. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25202.aspx
[16] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 680.
[17] Welfare Reform Bill Explanatory Notes [HL Bill 75], paragraph 30.
[18] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 16.
[19] Scottish Government (2011) *Housing Benefit changes: Scottish Impact Assessment.* Available at: http://www.scotland.gov.uk/Topics/Built-Environment/Housing/supply-demand/chma/marketcontextmaterials/hbchangesscottishimpact/ [Accessed November 2011]

estimated that around 60,000 tenants in Scotland face the prospect of losing on average £40 per month due to the changes to be introduced in 2011. Nearly all of those claiming Local Housing Allowance (LHA), around 97 per cent, will be affected by the reforms.[20]

35. The ICI Committee considered the Bill's potential impact on devolved housing policy.

36. The ICI Committee agreed, in principle, with the introduction of a new Universal Credit. It recognised that the current welfare system is generally too complicated and is in need of reform. However, the ICI Committee heard concerns expressed by several organisations about the housing component of UC. These concerns centred around: the calculation of housing costs; the introduction of an under-occupation penalty; direct payments; a benefit cap; and the potential impact on the 2012 Homelessness Commitment.

37. In relation to the under-occupancy penalty, the ICI Committee drew attention to regulations which will flow from the Bill which would restrict Housing Benefit entitlement for social housing tenants of working age whose accommodation is larger than they need. The Scottish Federation of Housing Associations reported—

> "Just under a third of working-age tenants under-occupy their tenancies by at least one bedroom. These households will lose an average of £11 a week in Housing Benefit according to DWP estimates." [21]

38. The Scottish Government confirmed this figure and stated that the introduction, from April 2013, of benefit penalties for those of working age who are over occupying local authority or housing association housing will affect over 94,000 social housing tenants of working age.[22]

39. The ICI Committee, therefore, supported any flexibility in this area that would avoid tenants being penalised through no fault of their own. It also drew attention to the assertion of the SFHA that the implementation of these provisions could result in particular problems emerging in Scotland due to the significant lack of one-bedroom properties.

40. In relation to Housing Benefit direct payments to claimants, the ICI Committee considered that payment to claimants could be offered in certain circumstances, but flexibility both to protect certain groups of tenants and avoid disruption to the income streams of landlords was essential. The ICI Committee took the view that the current system, of direct payments of housing benefit to social landlords, works and is to the benefit of tenants and landlords, and sought consideration of its retention.

41. The ICI Committee also highlighted the fact that the provisions in the Bill will potentially impact on a Scottish legislative commitment under the Homelessness etc. (Scotland) Act 2003. This commitment means that from 31 December 2012 all

[20] Scottish Government. Written submission.
[21] SFHA. Written submission, page 5, paragraph 3.4
[22] Scottish Government. Written submission.

homeless applicants who are assessed as unintentionally homeless will be entitled to settled accommodation.

42. The LGR Committee also noted, with concern, that it appeared likely that the Bill, as currently drafted, would result in significant increases in rent arrears and council tax arrears and associated rises in costs incurred by local authorities in pursuing these debts. The Committee also stated that it believed investment in new social housing could be liable to be considered as riskier by private sector investors and this, in turn, would be likely to impact on the ability of councils and registered social landlords to continue to grow and develop their public housing stock. The LGR Committee considered that this would be "very unfortunate at a time when new housing is needed more than ever to meet the 2012 homelessness target and to provide the smaller homes that are likely to be needed, once the Bill has been enacted, to enable people who are considered to be over-occupying to move to smaller homes".

43. Although not strictly within its remit, the Health and Sport Committee also heard evidence about the potential impact of the welfare reform proposals in relation to housing.

44. Citizens Advice Scotland called for more flexibility in the payment of the universal credit's housing component "to help people to budget appropriately and to ensure that rent arrears do not build up". Matt Lancashire continued—

> "We are also concerned about underoccupation proposals because of their impact on people and services, and because of the lack of suitable one-bedroomed properties. In short, if you are 50 or 60 years old and your family has moved out, you might be told that your rent will go up unless you move to another community, village or city: we are very much concerned about the effect of the loss of that community and family support."[23]

45. CAS also explained to the Committee that part of the proposals would result in single people losing entitlement to claim Housing Benefit for single occupancy until age 35. This would require more people to share accommodation.[24]

46. In its own impact assessment of Housing Benefit changes, the Scottish Government stated that the increase from age 25 to age 35, below which a single person LHA claimant is entitled only to HB to cover a room in accommodation with shared facilities, will apply to new claimants from April 2012 and to existing customers on their review after April 2012. It concluded—

> "Amounts vary considerabl[y] across the country from £17.31 to £54.23 but all are significantly large enough to severely restrict, if not eliminate, the possibility of the use of non-shared accommodation for the under 35s. Currently around 7,500 would be impacted with the vast majority being in

[23] Scottish Parliament Health and Sport Committee. *Official Report 15 November 2011*, Col 546.
[24] Scottish Parliament Health and Sport Committee. *Official Report 15 November 2011*, Col 557.

> Edinburgh and Glasgow. The change would restrict the options of this group."[25]

47. Asked about the potential impact of the proposed changes to Housing Benefit on claimants living in Scotland's old industrial areas where social housing supply is severely constrained, Neil Couling replied—

> "If we were to look narrowly at the social sector and not to consider the private rented sector, the policy would struggle, in a theoretical sense, because we have a situation in which there are people in the private rented sector who want social sector housing, particularly families with children, and we have a bunch of claimants overoccupying their social rented sector properties. We must look at the whole housing market to understand how such a policy might work.
>
> It is very difficult to provide figures on the number of housing units and what might happen because there is a huge behavioural response possibility. People could respond to this policy in a number of ways: by taking in a lodger to make good the drop in their housing benefit, by moving or by going into work. There are a whole series of responses—it is just not possible to develop an impact assessment in and around that."[26]

Impact on disabled people

48. The Committee received evidence from representatives of disability organisations that the potential impact on disabled people from HB changes was more significant, in part because many required adaptations to their homes. Pam Duncan, Inclusion Scotland, told the Committee that many disabled people were already housed in unsuitable homes.[27] Richard Hamer, Capability Scotland, told the Committee that there were very few accessible houses available for rental in Scotland and that "requiring people either to accept a significant cut in their housing benefit or to move not only impacts on them but has a knock-on impact on the local authority, which has a duty in relation to social care assistance or through adaptations".[28]

49. Keith Robertson, Scottish Disability Equality Forum, argued that forcing disabled people to live in a one-bedroom property would restrict the level of any future care or any increase in care—for example, a need for a live-in carer or an extra room for equipment such as oxygen tanks or for hoists or other adaptations. He concluded—

> "The suggestion that disabled people who live on their own should be limited to one-bedroom properties is short-sighted to say the least."[29]

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[25] Scottish Government (2011) Housing Benefit Changes: Scottish Impact Assessment, March 2011. Available at: http://www.scotland.gov.uk/Topics/Built-Environment/Housing/supply-demand/chma/BenefitChangeAssessment [Accessed November 2011]
[26] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 636.
[27] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 607.
[28] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 608.
[29] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 609.

50. In response, Neil Couling, DWP, explained the UK Government's policy position on the issue—

> "The Government is looking at the issue of adaptations to property in respect of disabled people, because it clearly does not make sense to move people out of homes that have been adapted extensively at great cost to another authority. It is not the UK Government that would meet those costs; it would be the Scottish Government in Scotland and local authorities in England and Wales. We do not want that to happen, so we are looking at what we can do in and around that aspect of the reforms."[30]

51. He also stated—

> "Defining an adaptation to a property is proving extraordinarily difficult, because the range of adaptations is huge—it goes from fitting handrails to putting on the ground floor all that a disabled person might need. We would not want to move an individual who has everything on the ground floor, but do we really want to keep people in oversized homes because they have had a handrail fitted, when a handrail could be fitted in a smaller property? The answer is probably not."[31]

52. The Cabinet Secretary gave a commitment to the Committee that, once she had considered the *Official Report* of the oral evidence provided by Mr Couling, she would be happy to write to UK Ministers to raise specific points about the treatment of vulnerable people as a consequence of the Housing Benefit reforms.

Committee conclusion

53. **The Committee notes that the changes to Housing Benefit, both before and after the introduction of Universal Credit, will have a significant impact on many claimants in Scotland. The changes will also impact directly on devolved policy areas such as homelessness and social care, increasing the pressure on services provided by local authorities and housing associations.**

54. **The Committee was particularly concerned about the potential impact on thousands of single people and disabled people who may be required to move home as a result of the changes proposed to Housing Benefit. The Committee notes that the UK Government is giving consideration to the specific issue of whether the over-occupancy policy should apply to disabled people living in homes with significant levels of adaptation. The Committee urges it to reach a solution which will avert the need for disabled people to move home unnecessarily and thus avoid significant additional expenditure by local authorities.**

55. **It is unclear to this Committee, from the evidence presented by Mr Couling, whether the policy intention of the UK Government is to stimulate movement within the rented housing market, to reduce the Housing Benefit bill or both.**

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[30] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 636.
[31] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 639.

56. **In areas of the country with little or no availability of private sector rented accommodation and lengthy waiting lists for social housing, the Committee considers that dispensation should be given to tenants who find that they are unable to move to a smaller property even if they would wish to do so.**

57. **The Committee also notes the conclusions of the Infrastructure and Capital Investment Committee in this regard and draws them to the attention of the Parliament.**

Employment and Support Allowance

58. Employment and Support Allowance (ESA) replaced Incapacity Benefit and Income Support paid on incapacity grounds for new claimants from October 2008.[32]

59. As part of the process of simplifying the benefits system prior to the introduction of UC, the DWP is reassessing existing contributory Incapacity Benefit and Severe Disablement Allowance claimants, below pension age, for eligibility for contributory ESA. A DWP briefing note on this subject stated—

> "This process, involving some 1.5 million customers, will take three years and is expected to be completed in spring 2014. On completion we will have reduced the number of benefits payable to people who claim benefit as a result of a health condition or disability. We will also have taken a major step to ensuring that disabled people get the same level of financial support and support to return to work."[33]

60. DWP has also stated that once the reassessment of existing incapacity benefit awards is completed, arrangements will be made to migrate people claiming ESA on to the same system as UC.[34]

61. Some witnesses raised with the Committee concerns about these forthcoming changes to ESA. Carolyn Roberts, SAMH told the Committee—

> "It is important to emphasise that the one-year limit to contributory ESA will take effect from next April; it is not one of the 2013-14 changes. Attempts are still being made, by the Disability Benefits Consortium, to change that in the Welfare Reform Bill. We have been lobbying to get the proposal changed and, in particular, to change the time limit to an initial two years with a subsequent assessment."[35]

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[32] Department for Work and Pensions website. Available at: http://www.dwp.gov.uk/employment-and-support/ [Accessed November 2011]
[33] Department for Work and Pensions. Universal Credit Policy Briefing Note 4. Available at: http://www.dwp.gov.uk/docs/ucpbn-4-contributory-benefits.pdf [Accessed November 2011]
[34] Department for Work and Pensions. *Universal Credit Policy Briefing Note 4*. Available at: http://www.dwp.gov.uk/docs/ucpbn-4-contributory-benefits.pdf [Accessed November 2011]
[35] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 607.

62. Pam Duncan, Inclusion Scotland, estimated that, on the basis of DWP statistics, 22,000 disabled people in Scotland could lose ESA in April 2012.[36]

Disability Living Allowance and replacement with Personal Independence Payment

63. Disability Living Allowance (DLA) is a benefit that provides a cash contribution towards the extra costs of needs arising from an impairment or health condition. It is a non-means-tested benefit, and it is payable regardless of employment status. The UK Government held a public consultation on DLA reform from 6 December 2010 to 18 February 2011. It proposed replacing DLA with a new benefit, Personal Independence Payment (PIP) to "support disabled people who face the greatest barriers to leading full and independent lives". The new benefit is planned to be introduced for new claimants from 2013-14. Existing working age (16-64) recipients will begin to be reassessed form 2013-14.[37]

64. According to DWP figures, there are now 3.2 million people receiving DLA in the UK and forecast expenditure on the benefit for 2011-12 is £12.6 billion. In eight years, the number of people claiming DLA has risen from 2.5 million to 3.2 million – an increase of around 30%.[38]

65. DWP stated that the objectives of the new PIP policy are to—

- create a new, more active and enabling benefit that supports disabled people to overcome the barriers they face to leading full and independent lives;
- ensure that support is focussed on those with the greatest barriers and that expenditure is sustainable; and
- assess more accurately, objectively and transparently those people who would benefit most from additional support.[39]

66. In its supplementary legislative consent memorandum, the Scottish Government expressed concerns that the introduction of PIP would not lead to greater simplification in Scotland, but instead—

> "… because of a failure to take into account the complex interaction between UK disabled benefits provision and devolved social care policy, will result in vulnerable people being subjected to separate regimes with qualifying periods and assessment criteria that are at variance with each other, in order to access the care and support they need."[40]

[36] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 606.
[37] Department for Work and Pensions. Disability Living Allowance Reform Impact assessment. Available at: http://www.dwp.gov.uk/docs/dla-reform-wr2011-ia.pdf [Accessed November 2011]
[38] Department for Work and Pensions. Disability Living Allowance Reform Impact assessment.
[39] Department for Work and Pensions. Disability Living Allowance Reform Impact assessment.
[40] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 52.

DLA mobility component

67. In its impact assessment of DLA reform, the DWP stated that the DLA mobility component for those in care homes will be retained until March 2013, and any subsequent changes will be rolled into the design of the new PIP. It explained that its policy objective in respect of this measure is to "identify and remove any overlaps in the way in which the mobility needs of people in residential care homes are met". It continued—

> "The Department will review the support given by DLA against the responsibilities of care homes, and reflect the outcomes from this review in the Personal Independence Payment eligibility criteria for people in residential care homes."[41]

68. Inclusion Scotland called for those living in residential care to continue to be allowed to claim the mobility component of PIP.[42]

69. The Cabinet Secretary responded to the issue in her oral evidence—

> "People in care homes might rely on the mobility element of their benefit to get their weekly trip out of the care home, which can be their only way of connecting with the outside world. I agree with the importance of that and I am happy to look further at what we can do to raise the profile of the issue."[43]

70. On 1 December 2011, Maria Miller MP, Minister for Disabled People, announced that disabled people living in residential care homes would continue to have their additional mobility needs met through DLA and PIP. When DLA is replaced with PIP in 2013, disabled people in residential care will continue to receive any mobility component of PIP to which they are entitled.[44]

Carers allowance

71. The Scottish Government raised particular concerns about the interaction between entitlement to disability support through PIP and Carers Allowance—

> "If the qualifying benefit is withheld and Carers Allowance is no longer paid, some carers could be faced with the difficult decision; either to leave the benefits system, because their care commitments might mean their being unable to comply with the terms of a Claimant Commitment, in order to qualify for UC, or to suffer the punitive financial consequences of paying for care. In the event that carers did seek employment, it is still unlikely that they would be able to meet the costs of replacement care. In many cases local authorities would have to meet these costs."[45]

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[41] Department for Work and Pensions. Disability Living Allowance Reform Impact assessment. Available at: http://www.dwp.gov.uk/docs/dla-reform-wr2011-ia.pdf [Accessed November 2011]
[42] Inclusion Scotland. Written evidence.
[43] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 681.
[44] Department for Work and Pensions press release. 1 December 2011. Available at: http://www.dwp.gov.uk/newsroom/press-releases/2011/dec-2011/dwp136-11.shtml
[45] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 53.

72. Richard Hamer, Capability Scotland, told the Committee about the potential impact of the change from DLA to PIP for disabled people. He explained that if disabled people lose benefits, they would be less able to pay towards their care package and might, therefore, need to rely on local authority support.[46] Mr Hamer also stated that wheelchair users might need particular assistance if they could no longer use DLA to pay for wheelchairs in future.[47]

DWP response

73. In oral evidence, Neil Couling, DWP, stated that there were 350,000 people in Scotland claiming DLA, 230,000 of whom are aged between 16 and 64 and will be impacted on by the move to PIP.[48]

74. Asked to clarify whether the projected cut to DLA of 20 per cent related to the budget or the number of claimants, Mr Couling stated that there would be "a 20 per cent reduction in expenditure on working age claimants to disability living allowance".[49] He provided further information about the approach that had been taken—

> "Although when we forecast the effects of the reform for the emergency budget announcement in June 2010 we said that we expected to make a 20 per cent saving on working age DLA expenditure, we are not drawing the line of entitlement there. We will draw it at a place that we think is reasonable after consultation with groups. Throughout the design process we have worked with organisations of and for disabled people to try to set the lines at a reasonable point. That is not to say that everybody who is entitled to DLA today will be entitled to a PIP—clearly that will not be the case—but we are not pursuing a monetary objective. We think that by redesigning the assessment there is a level of savings to be made, but we are not pursuing the savings as such. That is not a target for us."[50]

Scottish Government

75. Responding to this evidence, the Cabinet Secretary said—

> "This is not meant as a criticism, but given everything that I know about the UK Government's deficit reduction plans, my strong feeling is that there is a budget reduction driver in all this."[51]

IMPACT ON LOCAL GOVERNMENT

76. The LGR Committee considered the potential impact of the Bill on local authorities in Scotland. In its report, it discussed direct and indirect impacts.

[46] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Cols 617-618.
[47] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 627.
[48] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 628.
[49] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 628.
[50] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 629.
[51] Scottish Parliament Health and Sport Committee. *Official Report 22 November 2011*, Col 673.

Direct impacts

77. In relation to direct impacts, the LGR Committee drew attention to three areas: payment of Housing Benefit to individuals; reduction of Housing Benefit in cases of over-occupation; and replacement of DLA with PIP.

78. The LGR Committee highlighted concerns from local authorities about a possible increase in rent arrears which would result from proposals in the Bill to make Housing Benefit payments directly to claimants rather than to social landlords or local authorities directly. COSLA argued that the proposal to penalise tenants deemed to be occupying a property larger than they needed would also lead to increased rent arrears and be likely to increase homelessness, impact on housing investment and distort local housing strategies.

79. In relation to the replacement of DLA with PIP, and the target of reducing expenditure by 20 per cent, COSLA expressed concern that people with low level disability would be disqualified from claiming PIP.

Indirect impacts

80. The LGR Committee also drew to the attention of this Committee, a range of potential indirect impacts.

81. Firstly, evidence from COSLA suggested that the proposed welfare reforms would result in increased demand for a range of local authority services such as advice services, employability and economic development services, and social work services.

82. Secondly, the introduction of UC and PIP would require a change to the criteria for access to 'passported benefits'[52] such as free school meals, blue badges, and leisure service concessions.

83. Thirdly, the proposed abolition of Council Tax Benefit and its replacement, from April 2013, with a fixed addition to the Scottish budget which the UK Government asserts will correspond to CTB paid in Scotland minus 10 per cent. COSLA suggested to the LGR Committee that this might lead to increases in council tax arrears.

84. Fourthly, the LGR Committee highlighted evidence from COSLA which raised a range of concerns relating to the delivery of benefit and revenues and the impact on local authority staff in these areas. These included—

- the loss of front and back-office efficiencies;
- major costs and risks associated with the re-engineering of IT systems;
- concern about the provision of an effective benefit service during the transition period;

[52] Passported benefits are benefits to which a person is entitled by right of their entitlement to another benefit.

- that arrears and collections costs will increase; and
- a significant increase in workloads for benefits staff.

85. Finally, as noted at paragraph 41 above, the LGR Committee raised concerns about the increased costs which would fall upon local authorities in pursuing debts arising from increases in rent arrears and council tax arrears as a result of the changes to welfare benefits.

Committee conclusion

86. **The Committee notes the evidence from the LGR Committee about the potential direct and indirect impacts on local authorities in Scotland from the provisions of the Welfare Reform Bill and draws them to the attention of the Scottish Government and the Parliament.**

87. **The Committee is extremely concerned about the increased pressure which will be brought to bear on local authorities as a consequence of the extent of projected cuts to welfare expenditure in Scotland, given their range of statutory responsibilities, including vital work to tackle homelessness.**

CHILD POVERTY

Social Mobility and Child Poverty Commission

88. The legislative consent memorandum relates most directly to child poverty with regard to the establishment of the Social Mobility and Child Poverty Commission (SMCPC). Since introduction, the Welfare Reform Bill has been amended to broaden the remit of the Child Poverty Commission to include reporting on social mobility.

89. The Scottish Government has expressed concerns with the approach taken via UK Government amendments to the Bill. The supplementary memorandum stated—

> "It seems neither necessary nor appropriate for the SMCPC to apply the level of scrutiny that amendments appear to suggest i.e. to report on implementation of the Scottish child poverty strategy. The Scottish Government believes a more proportionate approach would be to lodge any Scottish report on child poverty, which Ministers are already required by statute to produce for the Scottish Parliament, with the UK Parliament. This could be as an annex to the report on the UK strategy, which would be prepared by the SMCPC."[53]

90. The Child Poverty Action Group (CPAG), in written evidence submitted to the Committee, similarly expressed disquiet at the UK Government's approach—

> "The UK government's amendments have left out an important condition for the membership of the Commission – that it should be an expert body and the appointment of individual Commissioners should be conducted such that,

[53] Scottish Government. (2011) *Legislative Consent Memorandum: Welfare Reform Bill*. Available at: http://www.scottish.parliament.uk/LegislativeConsentMemoranda/WelfareReformBill-lcm.pdf

> taken as a whole, the Commission has expertise in policy, research and direct work with children and families."[54]

91. The Scottish Government also had concerns related to the Secretary of State not being obliged to consult with Scottish Ministers on appointments to the SMCPC. However, the UK Government is said to have indicated a willingness to consult on all appointments to the SMCPC and Scottish Ministers are awaiting the specifics of draft amendments.[55]

92. On the issue of the UK Government's annual reporting, CPAG's written submission to the Committee stated—

> "Whilst we welcome the new provisions requiring the Commission to report annually on government's progress towards the targets, we do not believe this negates the need for the UK Government itself to produce annual reports on progress as was originally required under the Child Poverty Act."[56]

93. Douglas Hamilton of Save the Children framed the potential role of the child poverty commission. He said—

> "[The commission] could provide a forum where the devolved and the reserved [responsibilities] could be discussed together within a UK context. If used properly, that could be of benefit to the Scottish Government as an entry point into some of the issues for which the UK Government has responsibility."[57]

Levels of child poverty and the Child Poverty Strategy

94. Beyond the question of the SMCPC, the Committee explored the wider implications of the Bill, both on levels of child poverty in Scotland and the Bill's impact on the Scottish Government's child poverty strategy. John Dickie of CPAG told the Committee—

> "It is hard to overplay the implications for families and other people in Scotland of the combined effect of the Welfare Reform Bill and the wider cuts that the United Kingdom Government is making to benefits and the benefits system."[58]

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[54] CPAG (2011) *Welfare Reform Bill (UK Parliament Legislation)*. Available at: http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/Child_Poverty_Action_Group_in_Scotland.pdf

[55] Scottish Government (2011) *UK Welfare Reform Bill: Requirements for Legislative Consent – 4. Social Mobility and Child Poverty Commission (A Technical Note).*

[56] CPAG (2011) *Welfare Reform Bill (UK Parliament Legislation)*. Available at: http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/Child_Poverty_Action_Group_in_Scotland.pdf

[57] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 568.

[58] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 543.

95. He suggested that, based on an IFS forecast of 800,000 children being placed into poverty in the UK, up to 100,000 more children in Scotland will be put into poverty by 2020, undoing progress made since the late 1990s.[59]

96. In terms of monetary impact, Matt Lancashire of Citizens Advice Scotland (CAS) quoted the Fraser of Allander Institute's estimation that the overall impact of welfare changes would be to remove £2 billion from the Scottish economy.[60] Asked by how much the UK Government hoped to reduce the cost of welfare benefits in Scotland each year, Neil Couling of the DWP estimated £2.5 billion.[61]

97. Save the Children referenced the Institute for Fiscal Studies' assessment of the impact of the Bill—

> "[The changes] will bring about a massive increase in the number of children who live in poverty. Clearly, that will affect the impact of the child poverty strategy in Scotland. It is interesting to note that the IFS says that universal credit will, by itself, reduce the number of children living in poverty. However, that is more than offset by other changes that are coming in, such as the move from using the retail prices index to using the consumer prices index."[62]

98. Marion Macleod of Children in Scotland described a "double whammy" effect on children. She said—

> "Their family income is being reduced and the public services that support them through direct provision in local authorities and through the charitable and voluntary sector are being restricted. In the short, medium and long terms, the consequences for children are likely to be bad."[63]

99. The plight of lone parents in particular was highlighted by Marion Davies of One Parent Families Scotland. She told the Committee—

> "The Institute of Fiscal Studies has shown that lone parents will suffer an 8.5% cut in their income over the next five years. So that is a key concern of ours in relation to child poverty."[64]

100. The anxiety already being felt by clients of One Parent Families Scotland was relayed to the Committee. The organisation had seen an increase in calls from parents worried about how welfare reform will impact on their families with regard to benefits, the age of their children, conditionality, employment, and childcare.[65]

101. Marion Davies addressed the issue of in-work poverty—

> "Many children who are in poverty have a parent who is working. Under the Bill, conditionality will not only be tied in to signing on and looking for work,

[59] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Cols 543-44.
[60] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 552.
[61] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 651.
[62] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 567.
[63] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 570.
[64] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 573.
[65] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 573.

> but it will affect parents who are in work….parents, as their child gets older, must increase the number of hours that they work. Someone who has a child over 12 is expected to work full time in a job that is within 90 minutes' travel of their home. That has serious implications, not only for some of the issues that we have talked about, but for the childcare infrastructure."[66]

102. Marion Davies pointed to research suggesting that conditionality[67] could be flawed and that clients might have good reasons – such as ill health, caring responsibilities, or chaotic family circumstances – for not attending interviews with Jobcentre Plus. She suggested that almost 4,000 parents in Scotland already on a low income have had a cut in their benefit. "That is a concern, and it is bound to have implications for child poverty and the Scottish Government's strategy on it."[68]

103. Action for Children's Robert McGeachy echoed that concern and pointed to the precedent for safeguards around sanctions. He told the Committee—

> "I note that, in the previous welfare reform legislation, the UK Government at the time gave a commitment that it would ensure through regulations that vulnerable claimants with dependent children would not face sanctions in these kinds of situations. However, as Marion Davies has made clear, those sanctions are already happening. We are simply seeking parity with the approach in the previous legislation."[69]

104. The modelling undertaken by the Institute of Fiscal Studies was mentioned again, by Kate Higgins of Children 1st. She stated that one in four children in Scotland is living in poverty in Scotland and the IFS work pointed to another 50,000 children being added. She said—

> "I do not think that any of the organisations here, including Children 1st, is in doubt that the Bill has the potential to make poverty worse for families and children and young people and to increase the numbers who are growing up in poverty."[70]

Child support maintenance

105. The Welfare Reform Bill introduces a number of changes affecting the new statutory scheme for child support maintenance, which is due to be introduced in 2012. These changes include the introduction of a new gateway, which all parents would be required to go through before they could access the new statutory system, and the introduction of an indicative maintenance calculation service to assist parents with negotiating their own arrangements.

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[66] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 578.
[67] Universal Credit is underpinned by a new "conditionality" framework setting out the responsibilities claimants may be required to meet. This is backed up sanctions for non-compliance which include a reduction in Universal Credit payments for periods of up to three years. House of Commons Library (2011). Research Paper 11/48 *Welfare Reform Bill: Committee Stage Report.* Available at: http://www.parliament.uk/briefing-papers/RP11-48 [Accessed November 2011]
[68] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 579.
[69] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 579.
[70] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 585.

106. These changes provoked a number of concerns from witnesses. Mark Ballard outlined Barnardo's view—

> "The UK bill will replace the CSA, as detailed in four fairly short clauses at the end of a massive bill. It is clear from looking at clauses 131 to 134 that there has been no consideration of how the new proposed system will relate to the minute of agreement model in Scottish family law. Ministers at Westminster have given commitments that victims of domestic abuse will be able to access the statutory system directly, but it is unclear – particularly in Scotland – how those victims will be identified, on whom the burden of proof will fall and how that will relate to Scottish definitions in law. There is an emphasis on family support and mediation systems, but in Scotland those systems are on a very different statutory footing."[71]

107. Kate Higgins of Children 1st told the Committee—

> "…the Child Support Agency is broken. However, the proposals in the Bill are not the way to fix it. One problem is that the UK Government carried out a consultation in June but, before it even published its response to its own white paper, it had included these enabling clauses in the Bill. Frankly, we are surprised by the omission of child maintenance from the legislative consent memorandum, because it cuts across Scots family life and, as Mark Ballard said, it cuts across the family support and mediation provisions."[72]

108. Marion Davies of One Parent Families Scotland was also worried about the changes proposed. She said—

> "…32% of maintenance will go back to the [UK] Government rather than to the child. We are concerned about that. Countries around the world have found child maintenance to be a big challenge, and the UK has a pretty deplorable record on the amount of maintenance that has gone to children. OPFS has argued for more than 20 years that child maintenance should be dealt with through the taxation system. Obviously that is not within the Scottish Government's remit…"[73]

Disabled children

109. On the question of disabled children, Children 1st told the Committee—

> "We would like you to ask the UK Government to reconsider its proposal to reduce the amount of support available for new claimants of universal credit who care for disabled children."[74]

110. Pam Duncan of Inclusion Scotland echoed the concern. She said—

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[71] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 569.
[72] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 571.
[73] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Cols 573-74.
[74] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 570.

> "The [UK] Government should reverse its decision to reduce by 50% the disability premiums that families with disabled children receive."[75]

111. At a time when the Scottish Government was consulting on legislation to embed children's rights in Scottish law, Children in Scotland's Marion MacLeod suggested not losing sight of this when considering welfare reform. She told the Committee—

> "The performance framework that this [Scottish] Government seeks to operate to define one of its key performance objectives as being to give every child the best start in life so that it is ready to succeed. In this legislation, there is the potential to undermine in a fundamental way the value of enacting child rights legislation and the intentions of the performance framework."[76]

112. On a philosophical level, David Griffiths of Ecas asked what kind of society people aspired to and suggested that such musing might better inform Scotland's approach. He told the Committee—

> "If Scotland wishes to support disadvantaged and disabled people, children and all the other groups we have been talking about, it has the ability to alter some things to enable it to do that. We have been asking the question the wrong way round. We ask what powers we need, but the questions are, what sort of society do we want? What sort of welfare state do we want? How do we achieve that?"[77]

Mitigation

113. Given the very strong likelihood of the Welfare Reform Bill being passed at Westminster in early 2012, the witnesses were asked about how best to mitigate negative impacts of the changes in Scotland.

114. CPAG expressed the view that the important point was what could be done to prevent crises for individuals. John Dickie said—

> "A big part of that is ensuring that the advice and information infrastructure is in place to support people who want to challenge decisions. We must get things right quickly and ensure that they do not end up with no financial support week in, week out, over a period of time, which would create longer-term costs for support services, local authorities and others. We try to prevent that by ensuring that, from the beginning, people are aware of what they are entitled to and how they can challenge decisions that go against them."[78]

115. Maggie Kelly of the Poverty Alliance put the ball in the court of the Cabinet Secretary for Finance and Sustainable Growth, telling the Committee that Mr Swinney should "conduct his budgeting in a positive way that focuses on the

[75] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 614.
[76] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 583.
[77] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 559.
[78] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 555.

question, "Could what I am spending in this department be better spent elsewhere in terms of its impact on people in poverty".[79]

116. As well as budgetary focus and funding, the theme of preventative spending was also suggested as a strong mitigating factor by the Poverty Alliance and Citizens Advice Scotland[80], and also by Children in Scotland. Marion Macleod told the Committee—

> "One way of mitigating poverty is providing appropriate help and support for children and their parents at the earliest stages in children's lives, when they are likely to be in the poorest category. The youngest children are the poorest children, as the UK figures have pretty consistently demonstrated."[81]

117. She went on to say—

> "One positive step forward would be the provision of good childcare that is available to all, which would not only support children's wellbeing but facilitate parents' entry to the workforce."[82]

118. One Parent Families Scotland pointed to the potential in taking a fundamentally different approach to welfare. Other options were available. Marion Davies said—

> "Why is it that in some countries such as Sweden, the percentage of lone parents is as high as it is in the UK but the levels of child poverty are among the lowest? Along with the USA, the UK has one of the highest levels of child poverty. The answer is that the welfare system in those countries takes into account the fact that, aside from their needs as workers, parents who work also have certain needs as parents. In the UK, people are treated as workers and are assessed as being available for work or moving into work, and there is not the same focus on their role as parents. It does not have to be like that."[83]

119. The Cabinet Secretary for Health, Wellbeing and Cities Strategy told the Committee—

> "One of our big interests and responsibilities is to mitigate as far as we can some of the impact of the reforms. Without knowing the detail we cannot yet assess the extent to which those mitigation measures will be required."[84]

120. **The Committee notes the concerns expressed by the Scottish Government and others about the changes proposed to the child poverty commission. It hopes that such concerns can be resolved in the interests of joint working and co-operation in tackling the scourge of child poverty.**

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[79] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 556.
[80] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 561.
[81] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 569.
[82] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 570.
[83] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 579.
[84] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 678.

121. **The Committee notes the significant impact on child poverty levels, predicted by witnesses such as CPAG, Save the Children and Children 1st. Based on the UK modelling carried out by the IFS, the children's organisations believed that between 50,000 and 100,000 children in Scotland may be put into poverty. The Committee highlights the concerns of the third sector at the consequences of welfare reform on the Scottish Government's child poverty strategy. It heard of particular concerns regarding: the plight of lone parents, in-work poverty, conditionality and sanctions, child support maintenance, disabled children, children's rights, and the kind of society to which Scotland wished to aspire. The Committee is pessimistic from the evidence it heard about achieving the Child Poverty Act targets within the child poverty strategy and would welcome an assessment from the Scottish Government on this matter. The Committee notes the comments of the Cabinet Secretary for Health, Wellbeing and Cities Strategy about mitigation, the lack of detail available, and the difficulties therefore of assessment. The Committee recognises the negative impact feared by children's organisations and requests that the Scottish Government keep it fully informed.**

KINSHIP CARERS

122. Citizens Advice Scotland commented in their written submission to the Committee on the impact of the Bill on kinship carers in Scotland—

> "There are provisions contained within the Welfare Reform Bill that will have an impact on all kinship carers across the UK. These include the conditionality requirements imposed upon claimants to be seeking or preparing for work, and the proposed benefits cap. However, the context of kinship caring is different in Scotland compared with the rest of the UK. In England and Wales, formal kinship carers are assessed as foster carers, but in Scotland, formal kinship carers are not assessed as foster carers. Benefit and tax rules that make good sense for English and Welsh kinship/foster carers can, in some cases, be very disadvantageous to Scottish kinship carers."[85]

123. The Committee asked witnesses about the distinctly Scottish implications of the Bill for kinship carers. CPAG said they supported moves to ensure that kinship carers can access the new universal credit system for support. [86]

124. John Dickie went on to say—

> "The Bill as it stands does not give enough information to enable us to understand how kinship carers or student parents will be treated, for example. How these groups are treated could have a big knock-on effect on devolved policy on kinship care and student funding."[87]

[85] Citizens Advice Scotland. Written submission.
[86] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 545.
[87] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 549.

125. Kate Higgins of Children 1st was also concerned with the impact that the Bill may have on Scotland's most vulnerable children. She told the Committee—

> "We would like you to advocate the removal of the proposed benefit cap, because it has implications for larger families and kinship care families, in whom we have a particular interest as providers of the national kinship care service."[88]

126. The Scottish Government set out its position in the memorandum, perceiving an opportunity with the introduction of Universal Credit "to address the specific, Scottish issue of the treatment of kinship carers by the UK benefits system".[89]

127. It described kinship carers as a third group (along with foster carers and the state system of looked after children) and noted that this was not recognised in UK legislation. Furthermore, it stated—

> "The Scottish Government believes that kinship care is considerably more cost effective than fostering or residential care. It is a more stable placement and leads to higher positive destinations for care leavers. Recognition for kinship carers, by the UK benefits system, in terms of kinship carers' entitlement to child benefit and child tax credits (or the appropriate component of UC) would offer scope for the benefits system to help families help themselves and builds foundations to reduce longer-term demands on state support."[90]

128. Children 1st told the Committee of its support for the Scottish Government's approach and the progress made. Kate Higgins said—

> "We are saying two hurrahs for the Scottish Government for using this opportunity to address some of the anomalies and to ensure that kinship carers are not penalised financially. However, we would like the Parliament, and indeed the Government, to go further and support measures that have been pushed by third sector organisations – and recently debated by the Lords – to ensure that kinship carers are exempt from all the conditionality rules of universal credit for at least one year."[91]

129. She told the Committee—

> "It would be grossly unfair for kinship carers, who experience all that upheaval and change and who must ensure that the children are made to feel safe and secure, to be pushed back out the door to work, particularly when some of them will have made an active decision to give up work in order to provide full-time care for the children whom they taking into their families."[92]

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[88] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 570.
[89] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1.
[90] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1.
[91] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Cols 575-76.
[92] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 576.

130. Neil Couling of the Department for Work and Pensions informed the Committee that discussions between the Scottish and UK Governments on kinship carers and child poverty were on-going. He referred to a court case in Kirklees about special guardianship orders and noted the complexity of the intersection of Scots law and UK benefits legislation. He said—

> "We are looking at it and trying to conclude whether people in Scotland are disadvantaged compared to people in the rest of the United Kingdom because of the way in which the rules are configured. Our objective is to make sure that kinship carers in Scotland are not disadvantaged."[93]

131. He also told the Committee—

> "As I understand their position, both ministers [UK and Scottish Government] think that kinship care has an important part to play in the bringing up of children in sometimes very difficult circumstances. We are entering into all that in good faith and with open minds. We are just trying to check that the situation is equitable across the United Kingdom."[94]

132. The Cabinet Secretary for Health, Wellbeing and Cities Strategy said—

> "The case for what we are arguing for in that area is overwhelming, in my view. Without going into the detail of the discussions, I can say that there are elements in the DWP that think that our argument has merit. I therefore hope that we can make progress on that before we go much further."[95]

133. She told the Committee—

> "I do not want to go too far into the realms of private discussions, but his [Mr Couling's] characterisation of ministerial sympathy on the issue of kinship care is certainly in accordance with my reading of the situation. However, that sympathy needs to be translated into real commitment."[96]

134. **The Committee highlights the different status of kinship carers in a Scottish rather than a UK context, supports the case for recognition of their status within the framework of welfare reform to ensure that they do not lose out in terms of financial support, welcomes that the DWP are giving the matter further consideration, and – given the invaluable care kinship carers provide for some of our most vulnerable children in what are often very trying circumstances – in common with the Cabinet Secretary for Health, Wellbeing and Cities Strategy, considers that "sympathy" needs to be translated into "real commitment".**

[93] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 654.
[94] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 654.
[95] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 674.
[96] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 676.

ADVICE SERVICES

135. The importance of advice and information services to ensure awareness and understanding of benefit changes was a recurring theme of the evidence sessions. Kate Higgins of Children 1st told the Committee—

> "We need to take into consideration the education and awareness raising that will require to be done and the information that such families [vulnerable young parents with challenging life circumstances] will need to ensure that they do not lose out."[97]

136. Save the Children's Douglas Hamilton pointed to the volume of briefings and discussion on the Bill and its expected impact and expressed worry at the plight of those who could find themselves at the sharp end of reform. He said—

> "I am concerned about the parents who are at home and who are frightened about what will happen next. They are confused and worried about where their benefits will come from and how they will afford their housing and heating in the years to come."[98]

137. Given the evident complexity of the current system and uncertainties regarding the streamlining of benefits and how that would work under welfare reform, he hoped that the Scottish Parliament and Government would play their part in ensuring support was in place. He told the Committee—

> "Given the multitude of changes, my concern is about ensuring that people get the information, advice and support that they need so that they get everything that they are entitled to and their children have the best possible standard of living."[99]

138. Matt Lancashire of Citizens Advice Scotland outlined the impact of significant welfare reform on organisations such as CAS and local authority advice services. He said—

> "We are the ones to whom people turn when they have a problem or an issue – they turn to the citizens advice service, the local authority service or another charitable advice service to pick up the slack and advise them at a time when they are vulnerable and do not know what to do. We try to steer them in a direction that supports them."[100]

139. In its written submission, CAS stated that during 2010-11 bureaux dealt with 203,462 new benefit issues for clients – just over a third of all issues brought to bureaux. The submission continued—

> "We expect welfare reform changes will put exceptional pressure on advice services across the country. Our experience is that changes to benefit

[97] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 589.
[98] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 590.
[99] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 590.
[100] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Cols 554-55.

> entitlement are the number one driver of advice need at citizens advice bureaux. Problems with welfare will also lead to increased need for debt, housing, consumer, relationship and many other areas of advice."[101]

Advocacy

140. Linked to information and advice services, the Committee heard evidence about the role of advocacy in the assessment and appeals process from both the third sector and the Department of Work and Pensions. Matt Lancashire of CAS told the Committee—

> "Department for Work and Pensions statistics suggest that in 40 per cent of cases that go to appeal, the appealer wins their case. Among those who have representation from a citizens advice bureau, that figure goes up to 70 per cent."[102]

141. The Committee heard from Neil Couling of the DWP on the matter and he suggested—

> "No matter how we try to objectify those kinds of assessment [DLA and also ESA], we do not want to take the system to the point at which it is so inflexible that there is no scope for a fresh pair of eyes to look at a case and take a different view."[103]

142. He was asked about a Channel 4 News report claiming that 40 per cent of appeals are successful but that this rate rises to 70 per cent for people who have an advocate, such as from a citizens advice bureau. Mr Couling said—

> "In fact, if we take all the work capability assessments that Atos does and compare them to the number that are overturned by appeal, we find an overturn rate of about 9 per cent."[104]

143. He also told the Committee—

> "You asked whether I am satisfied with the situation. I am satisfied with the way in which Atos conducts itself. It is unfairly criticised at times."[105]

144. Furthermore—

> "I am sure that we will want to improve those processes and the PIP process in the light of experience…The answer to the question whether the process makes an objective assessment of people's capabilities is yes, but I am not sure that we could say that in every individual case, because human beings get things wrong."[106]

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[101] Citizens Advice Scotland. Written submission.
[102] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 542.
[103] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 633.
[104] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 632.
[105] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 632.
[106] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 633.

145. He stated that the premise of the appeals system was that people could represent themselves.[107] Asked whether more money would be provided for the third sector for advocacy services in Scotland, given the likelihood of organisations facing increased demand from clients stemming from welfare reforms, Mr Couling said—

> "I do not think that that is an appropriate policy response. The whole point of the administrative appeals system is that people do not need representation—that is why it is there—so it just does not make sense for a Government to set up a system that provides for administrative hearings in the way in which it does and to pay for that, and then to pay for additional representation."[108]

146. The Cabinet Secretary for Health, Wellbeing and Cities Strategy told the Committee she would expect demand for advice support to increase and would pursue the issue of resourcing [of advice and advocacy services] via discussion with the UK Government.[109]

147. **The Committee understands the value of good information, advice and advocacy services at a time of major change in the welfare system. The Committee notes the evidence from CAS that it is bureaux, local authorities and voluntary organisations that "pick up the slack" when vulnerable people don't know where else to turn. It welcomes discussions between the Cabinet Secretary and UK Ministers on impact, demand and resourcing. The Committee believes that it would be regrettable should any claimant's appeal falter due to the absence of access to advice and advocacy.**

148. **The Committee believes that the UK Government should provide additional resources for advice and advocacy services.**[110]

FURTHER DEVOLUTION OF BENEFITS

149. The Bill contains measures to devolve responsibility for elements of the discretionary Social Fund and for providing relief to individuals to reduce their Council Tax liabilities.[111]

Council Tax Benefit

150. CTB will be abolished in Scotland and the rest of the UK from 2013. From April 2013, Scotland will get a fixed addition to its budget which the UK Government assert will correspond to CTB paid in Scotland minus 10 per cent.[112]

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[107] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 635.
[108] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 635.
[109] Scottish Parliament Health and Sport Committee, *Official Report, 22 November 2011,* Col 678.
[110] Jackson Carlaw MSP dissented from this paragraph.
[111] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 17.
[112] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 18.

151. Whilst welcoming the additional responsibilities, in its supplementary memorandum, the Scottish Government expressed profound concern about the impact of this UK Government policy—

> "The 10 per cent reduction in spending on CTB will reduce household incomes for over half a million people on the lowest incomes in Scotland. This potentially undermines the Scottish Government's actions to protect household incomes."[113]

152. John Dickie, CPAG, argued that it was important not to assume that the 10 per cent cut in CTB would be passed on to the poorest households in Scotland—

> "Even though there are huge pressures on budgets in Scotland, we could decide to invest more in that system of financial support to families and others to ensure that the full cut is not passed on to our poorest households. I would like to see more discussion and scrutiny and more thinking about what kind of replacement scheme would work in the best interests of our poorest households and what kind of resource we need to put into it to ensure that it works effectively." [114]

153. Kate Higgins from Children 1st suggested that, with the devolution of some benefits, as well as a challenge there was "an opportunity to do better with them than can be done with the current set-up".[115] In relation to CTB, she advocated the centralisation of the administration of the benefit in order to reduce costs and—

> "to create a better benefit that addresses some of the anomalies and problems that are inherent in council tax benefit at the moment and can be used to ameliorate poverty." [116]

Scottish Government

154. The Cabinet Secretary confirmed that CTB was worth £380 million at the present time and that the 10 per cent cut therefore amounted to £38 million. Asked whether it was right to assume that the 10 per cent cut would not be passed on to the poorest, the Cabinet Secretary replied—

> "From the Government's record on trying to ensure that council tax does not financially penalise people who can least afford it, you can take it that we will do everything in our power to protect vulnerable people."

155. The Cabinet Secretary also gave a commitment to provide the Committee with a calculation of the amount of CTB foregone as a consequence of the decision to freeze Council Tax over a four year period. The Committee looks forward to receiving this information in due course.

156. Finally, the Cabinet Secretary confirmed that the Scottish Government would consult on how to handle the devolution of CTB to Scotland.

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[113] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 19.
[114] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 556.
[115] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 592.
[116] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 592.

Social Fund

157. Through devolution of elements of the Social Fund, the Scottish Government is also taking on new responsibilities to deliver successor arrangements for community care grants and crisis loans for living expenses.[117] A consultation on how the successor arrangements might operate was launched on 5 August 2011.[118]

158. The Scottish Government believes that successor arrangements should continue to address similar needs to the current scheme and views were not sought on alternative uses for the funding.[119]

159. Commenting on what a devolved social fund should deliver, John Dickie, CPAG, stated—

> "A social fund would be a source of financial support to families at particularly important times in their lives, such as when they are having children, transitions as children start school, and so on. Such times pose financial challenges to families, as do crises when things break down. A social fund that ensures that families have access to the support that they need at those points would go a long way to mitigating some of the worst impacts [of benefit cuts]."[120]

160. However, the issue of the timetable for the Bill and the speed at which reform would be implemented was brought to the Committee's attention. Barnardo's Mark Ballard said—

> "There will be glitches, but we must ensure that no family turning up in April 2013 looking to get a payment from the social fund is told, "The computer system won't work for the next few months. Can you come back next year for your emergency payment?" We must ensure that the processes that are in place have been tested and are ready and working when the new systems come in."[121]

Committee conclusion

161. **The Committee believes that the devolution to Scotland of benefits such as Council Tax Benefit and elements of the Social Fund presents both a challenge and an opportunity. The Committee considers that the decision to make an arbitrary cut of 10 per cent to Council Tax Benefit cannot be justified, will have adverse effects on local government finances and could impact on some of the most deprived households and areas in Scotland.**[122]

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[117] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 22.

118 Scottish Government (2011). *Devolution of Community Care Grants and Crisis Loans: Consultation on Successor Arrangements*. Available at: http://www.scotland.gov.uk/Publications/2011/07/29104056/0 [Accessed November 2011]

[119] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 23.

[120] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 559

[121] Scottish Parliament Health and Sport Committee, *Official Report, 15 November 2011,* Col 591.

[122] Jackson Carlaw MSP dissented from this paragraph.

162. **In order to mitigate, as far as possible, the effects of this cut to Council Tax Benefit, the Committee recommends that the Scottish Government should conduct a wide-ranging review in order to devise a scheme which will minimise the impact on the most vulnerable claimants. The Committee, therefore, welcomes the Scottish Government's intention to consult on this matter.**

PASSPORTED BENEFITS

163. In its supplementary memorandum, the Scottish Government explained that passported benefits are benefits to which a person is entitled by right of their entitlement to another benefit. At present, a person receiving Jobseekers Allowance (JSA) is also entitled to receive Council Tax Benefit (CTB). JSA acts as a "passport" to CTB. Other examples of passported benefits in Scotland would include legal aid, free school lunches and the "blue badge" disabled mobility scheme.[123]

164. The issue arising from the Bill is that UC will replace all of the "passporting from" benefits such as JSA. As a consequence, the Scottish Government and Scottish local government will have to review the basis on which all existing passported benefits will be available in the future.[124]

165. The UK Government has asked the independent Social Security Advisory Committee to consider the impact of Universal Credit on eligibility for passported benefits and services. It will report in January 2012. Scottish Ministers have agreed that the review should include Scotland in its terms of reference, but it is limited in scope and excludes consideration of Housing Benefit and Disability Living Allowance.[125]

166. CPAG gave examples of decisions which the Scottish Government and Parliament would need to make regarding passported benefits such as free school meals and healthy start vouchers—

> "We should start by asking who we think should have access to passported benefits: who needs them here in Scotland, which families need that support? Then we should design a system that links support in a way that ensures that those people get it."[126]

167. John Dickie recommended that the system should be simple and not "introduce any new cliff edges or work disincentives where people suddenly lose a lot of valuable passported benefits as they increase their earnings".[127]

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[123] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 34.
[124] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraphs 35-36.
[125] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 38.
[126] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 559.
[127] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 559.

168. Carolyn Roberts of SAMH considered that passported benefits could be used to mitigate some of the Bill's impacts—

> "We need to think about how we can ensure that as few people as possible lose passported benefits. Many people who would have accessed them through the disability living allowance will no longer qualify because they will be found not to be disabled when they apply for the PIP, and we need to ensure that they do not also lose their passported benefits."[128]

Scottish Government

169. The Cabinet Secretary was asked about Scottish Government plans regarding which benefits should be passported and which should not. She stated that final decisions had not been taken—

> "Universal Credit will be available to people who are in work and those who are out of work. That raises issues for us, but in short it gives us the opportunity to look innovatively at passported benefits while recognising the affordability constraints that we work within. That is the approach we will take."[129]

170. The Cabinet Secretary confirmed that the Scottish Government would consult in due course about the shape and nature of passported benefits as it had done with the successor arrangements for the social fund.

Committee conclusion

171. **The Committee notes that it will be a complex piece of work to devise a new approach to passporting of benefits as, in some cases, changes to primary and secondary legislation will be needed to effect the change. However, the Committee considers that this work presents an opportunity for a review of the various passported benefits in order to establish eligibility criteria which target support appropriately. The Committee notes the evidence that eligibility for certain UK benefits acts as a gateway to other devolved benefits and services. The loss of entitlement to UK benefits could, therefore, create a double disadvantage for certain claimants, including disabled people. The Committee, therefore, welcomes the Scottish Government's commitment to consult on the proposals for a new system and urges it to do so as soon as possible.**

SUBORDINATE LEGISLATION – CONSENT OF SCOTTISH MINISTERS

172. Several witnesses who gave oral evidence to the Committee described the Welfare Reform Bill as "skeletal" since much of the detail of the proposed changes will be contained in subordinate legislation, commonly referred to as regulations.[130]

173. In its supplementary memorandum, the Scottish Government questioned whether there should be a requirement in the Bill for the UK Government to seek the consent of Scottish Ministers to the making of UK subordinate legislation

[128] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 615.
[129] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 672.
[130] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Cols 545, 549-550 and 580.

applying in Scotland, which impacts on areas in which the Scottish Ministers exercise functions but does not fall within their executive competence.[131]

174. Asked for a response to this question, many witnesses, including CPAG, the Poverty Alliance, Barnardo's; Save the Children, One Parent Families Scotland, Capability Scotland, Inclusion Scotland, SAMH, agreed.

175. The supplementary memorandum stated that there was precedent for such a requirement, for example in the UK Public Bodies Bill 2010-11.[132] The relevant clause from that Bill is reproduced below—

> **"9 Devolution**
>
> (1) An order under sections 1 to 5 requires the consent of the Scottish Parliament to make provision—
>
> (a) which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
>
> (b) which modifies the functions of the Scottish Ministers.
>
> (2) Consent is not required under subsection (1)(b) in relation to provision abolishing a function of the Scottish Ministers which relates to a body abolished under section 1 or 2."[133]

176. The LGR Committee called on the UK Government to consult on future provisions that will be made through secondary legislation "to ensure that the different policy and physical landscape resulting from the devolved arrangements and geography in Scotland are fully taken into account".[134]

177. The ICI Committee also concluded that it was "imperative that adequate mechanisms are put in place by the DWP to ensure that the Scottish Government, the Scottish Parliament and relevant stakeholders are fully consulted on relevant regulations before they are finalised and laid before the Westminster Parliament".[135]

178. In its written evidence, DWP set out its position regarding this matter—

> "DWP remains committed to sharing policy detail as soon as it becomes available and continues to have ongoing policy discussions on areas that are of particular importance to Scottish colleagues – most notably kinship carers but also child poverty. But creating a statutory duty would effectively give the

[131] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 16.
[132] Scottish Government. Supplementary legislative consent memorandum LCM(S4)5.1, paragraph 29.
[133] Public Bodies Bill 2010-11. Available at: http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0234/cbill_2010-20120234_en_2.htm#pt1-pb2-l1g9 [Accessed November 2011]
[134] Scottish Parliament Local Government and Regeneration Committee. Report on the Legislative Consent Memorandum on the Welfare Reform Bill.
[135] Scottish Parliament Infrastructure and Capital Investment Committee. Report on the Legislative Consent Memorandum on the Welfare Reform Bill 2011.

> Scottish Government the power to significantly delay the implementation of reserved policy matters which is something we cannot agree to, especially as this would be a significant departure from the devolution settlement."[136]

179. In oral evidence to the Committee, Neil Couling asserted that to introduce such a mechanism would present considerable difficulties—

> "I cannot think of any way of defining such a power that would preserve the constitutional arrangements of the devolution settlement. What we have offered instead is our commitment to continuing discussions. We share draft regulations with Scottish Government officials and take their representations on them. We talk extensively. If a particular issue needed to be escalated to ministerial level, either side could do so. However, it would be extraordinarily difficult to operate such a condition if it was put on the face of the Welfare Reform Bill; it would be very bureaucratic and cumbersome, and it is not something that attracts the UK Government."[137]

180. Mr Couling also stated that he thought that the UK Government had ruled out making such a provision.

Scottish Government

181. In oral evidence, the Cabinet Secretary acknowledged the UK Government's position—

> "The UK Government's position is that it is not convinced that such an amendment is appropriate, so I do not want to suggest that it is saying that it is open-minded to a consent amendment at this stage. However, it might be prepared to have further discussions, short of that, about the involvement of the Scottish Government in any future regulation making. Obviously, I would have to make a judgment at some point about whether that takes us far enough, given the extent of the detail."[138]

182. The Cabinet Secretary also expressed the view that the absence of Scottish Government involvement in the subordinate legislation process at UK level would "make things more difficult". She explained—

> "Involvement in the subordinate legislation would allow us to plan our response and policy making in a much more managed way than if we did not have it."[139]

Committee conclusion

183. **The Committee notes that the "skeletal" nature of the Welfare Reform Bill means that much of the detail will be contained in subordinate legislation. In order to allow the Scottish Government to develop an effective policy response, it is extremely important that the Scottish Parliament is able to consider regulations made under powers contained in the Bill.**

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[136] Department for Work and Pensions. Written submission.
[137] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 653.
[138] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 665.
[139] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 676.

184. **The Committee notes that the DWP is committed to sharing policy detail as soon as it becomes available and will share draft regulations with Scottish Government officials and take their representations on them. This level of co-operation is welcome, but it does not afford the Scottish Parliament the opportunity to consider and comment on the regulations. The Committee considers that a mechanism should be established to allow the Parliament to scrutinise draft regulations in advance of their laying at Westminster.**

185. **The Committee considers that there should be a requirement on the face of the Bill for the UK Government to seek the consent of Scottish Ministers to the making of UK subordinate legislation applying in Scotland, which impacts on areas in which the Scottish Ministers exercise functions, resulting in differences in policy in practice from the rest of the UK, but does not fall within their executive competence. Given the fact that there is precedent for a similar requirement in another UK Government Bill presently proceeding through Westminster, the Committee questions the evidence provided by DWP that it would be difficult to define such a power.**[140]

CONTINUING PARLIAMENTARY SCRUTINY

186. In several written submissions and during oral evidence, witnesses argued that it was vital that scrutiny by the Scottish Parliament of the implications of the Welfare Reform Bill did not begin and end with consideration of the legislative consent memorandum.

A Scottish Parliament welfare and benefits committee

187. CAS proposed the establishment of a welfare and benefits committee for the lifetime of this parliamentary session that would—

> "… consider how to mitigate whatever issues might arise, such as funding issues, a lack of support by local authorities, cuts to local authority budgets or issues with funding for advice. That committee would examine the impacts of the bill on people and on cross-cutting devolved areas."[141]

188. This proposal was supported by SCVO, the Poverty Alliance, Inclusion Scotland, Barnado's Scotland, Children 1st, Action for Children Scotland, SAMH, and the Scottish Disability Equality Forum.

189. In a subsequent joint written submission to the Presiding Officer, as Chair of the Committee Conveners Group, Barnado's Scotland, Children 1st, Action for Children Scotland and Citizens Advice Scotland repeated their call for the establishment of a Scottish Parliament welfare and benefits committee.[142]

190. Other organisations including CPAG, Save the Children and Capability Scotland did not explicitly endorse the creation of such a committee but supported continuing scrutiny. Douglas Hamilton of Save the Children commented—

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[140] Jackson Carlaw MSP dissented from this paragraph.
[141] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 561.
[142] Correspondence to the Presiding Officer from Barnado's Scotland, Children First, Action for Children Scotland and Citizens Advice Scotland, 18 November 2011.

> "On the question of on-going scrutiny, I do not have strong views either way on whether there needs to be a separate committee for that or whether it should be done through existing Parliament committees."[143]

Secondary committees' view

191. A majority of members of the ICI Committee agreed that the Scottish Parliament should consider establishing an ad hoc committee to consider the regulations made under the Welfare Reform Bill and how they will affect devolved policy areas.[144]

192. The LGR Committee agreed that there "was a case to be argued for the establishment of an ad-hoc committee to consider the impact of these changes to the welfare system as they are rolled out over the next few years". It stated in its report—

> "The Committee accepts that this proposal, should it be taken forward, could provide a useful mechanism through which to measure and monitor the impact of the welfare reforms proposed by the UK Government and would be able to focus on specific issues and make representations on them to government. While such a committee would not, of course, be able to reverse the changes, it would provide a means through which their effects could be measured and monitored during the remainder of the current session of the Parliament. It would also provide a single focus for ongoing representations from local government and the voluntary sector as the impact of the changes becomes more measurable and more widely understood, and would provide a coordinated overview of the implications across a range of sectors.
>
> The Committee therefore recommends the establishment of an ad hoc parliamentary committee on welfare reform."[145] [146]

Scottish Government

193. Asked for her view on what the Scottish Parliament could do to scrutinise the impact of welfare reform changes as they are rolled out across Scotland, the Cabinet Secretary acknowledged that this was a matter for the Parliament but stated—

> "I would strongly welcome on-going committee scrutiny from a stand-alone committee to scrutinise the implementation … The journey does not end when the Bill receives Royal Assent—indeed, in many respects, it only begins at that point. It is very important for the Parliament to oversee the implementation."[147]

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[143] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 581.
[144] Alex Johnstone MSP dissented from this paragraph of the Infrastructure and Capital Investment Committee's Report.
[145] Margaret Mitchell MSP dissented from this paragraph of the Local Government and Regeneration Committee's Report.
[146] The Local Government and Regeneration Committee agreed this paragraph by division.
[147] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 682.

Committee conclusion

194. **The Committee considers that continuing scrutiny by the Scottish Parliament of the implications of the Welfare Reform Bill is essential. Given the cross-cutting nature of the Bill, scrutiny of the legislative consent memorandum has presented a challenge to the subject committees of the Parliament.**

195. **The majority of the Committee is persuaded by the evidence it has received that a single committee could enhance the analysis and scrutiny of the welfare reform changes as they are introduced and implemented. Other members disagree, believing that this would represent a ceding from existing subject committees of significant areas of policy.**

196. **The Committee, by majority, therefore recommends the establishment of a welfare and benefits committee for the remainder of the parliamentary session.**[148]

LEGISLATIVE CONSENT

197. The Committee received written submissions from several organisations urging the Committee, and by extension the Parliament, to withhold legislative consent.

198. For example, Inclusion Scotland asked the Committee to "give serious consideration to recommending the withholding of consent for the Welfare Reform Bill" unless assurances were received from the UK Government that the Bill would be amended in the following ways—

> "(i) Allow those living in residential care to continue to claim the Mobility Component of Personal Independence Payments (PIP);
>
> (ii) The time limit on contribution based ESA should be removed;
>
> (iii) Those with sufficient supporting evidence should be exempted from independent medical assessments for PIP;
>
> (iv) The UK Government should reverse its decision to reduce the disability premiums that families with disabled children receive by 50%;
>
> (v) The UK Government should reverse changes to Housing Benefit which will have a massively disproportionately affect on disabled people."[149]

199. In oral evidence, when asked whether a legislative consent motion should be supported, witnesses expressed a variety of positions. Some such as Inclusion Scotland, Capability Scotland, the Scottish Disability Equality Forum and SCVO were firmly of the view that it should not. Others, such as CPAG, Children 1st, CAS and SAMH were more equivocal, urging the Scottish Government and Scottish Parliament to press the UK Government for additional information and amendments to the Bill, prior to consideration of the motion.

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[148] Jackson Carlaw MSP, Mary Fee MSP, Duncan McNeil MSP and Dr Richard Simpson MSP dissented from this paragraph.

[149] Inclusion Scotland. Written submission.

200. Matt Lancashire of CAS expressed concern about the implications of not giving consent—

> "Rejection of the LCM may delay universal credit and passported benefits for people in Scotland. In 17 months the Scottish Government has to rewrite the legislation. Some vulnerable people could be plunged into further poverty if they do not get energy assistance and free school meals and so on."[150]

201. Kate Higgins, Children 1st, stated—

> "If not passing the LCM has no impact on our ability to influence what is going on at Westminster with regard to that legislation and also jeopardises the ability of Scotland to prepare for those measures coming into effect, our view would be that MSPs must provide the necessary consent. You must ensure that Scotland is in a position to protect and provide for Scotland's most vulnerable families."[151]

202. When asked whether their organisations had conducted an assessment of the impact of voting against the legislative consent motion, witnesses from Inclusion Scotland, Capability Scotland and the Scottish Disability Equality Forum stated that they had not. Capability Scotland explained that this was because it was difficult to assess given the detail is not in the primary legislation—

> "The knock-on effect of voting against the legislative consent motion would depend on how the Scottish Parliament and, in particular, the Scottish Government picked up the responsibilities. Unfortunately, there are far too many variables."[152]

203. Asked whether consent should be given in less contentious areas such as data sharing, industrial injuries disablement benefit and the social mobility and child poverty commission, Richard Hamer from Capability Scotland agreed that it should.[153]

204. Carolyn Roberts of SAMH questioned what the withholding of consent in particular areas would mean in practice—

> "Would it mean that those changes would simply happen anyway and the Scottish Government would not have the chance to influence them, or would it mean that the Scottish Government could pass its own legislation to mitigate the impact on disabled people? If the latter were the case, we would fully support that."[154]

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[150] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Col 548.
[151] Scottish Parliament Health and Sport Committee. *Official Report, 15 November 2011*, Cols 592-593.
[152] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 616.
[153] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 623.
[154] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Cols 623-624.

205. Neil Couling of DWP told the Committee that the legislative consent motion was "our attempt to help this Parliament and the Scottish Government to discharge the consequential aspects of the UK Government's reforms to welfare".[155]

206. He further explained that either a legislative consent motion needed to be passed or the Scottish Government needed to legislate for itself, "otherwise, it will not be able to run some of its devolved responsibilities after the Welfare Reform Bill is enacted".[156]

207. In the event of a legislative consent motion being disagreed to, Neil Couling told the Committee—

> "As I understand it, under the Sewel convention, if you do not agree to the legislative consent motion, we have to remove the powers from the bill by amendment by the last legislative stage. That is what we will probably have to do. Ultimately, what you want to happen on that is a question for you."[157]

Scottish Government

208. The Cabinet Secretary for Health, Wellbeing and Cities Strategy was asked for her response to this issue. She stated—

> "The question for the Parliament is whether it is prepared to give consent to parts of a package without being able to take a view on the overall package. I have not taken a final decision on the Government's position on legislative consent and will not do so until I have seen the outcome of the committee's deliberations."[158]

209. The Cabinet Secretary also explained to the Committee what the consequences would be if consent was not given—

> "The biggest practical consequence would be the need for primary rather than secondary legislation. The Government would have an obligation to ensure that we could handle the additional complications of that—that we had the additional time that was required for primary legislation—and that it could happen."[159]

210. Pressed as to whether there was sufficient time for the Scottish Government to bring forward its own primary legislation, the Cabinet Secretary responded—

> "If we were dealing with primary legislation, the timescales for that are longer than they are for secondary legislation, as all committee members know. We would need to factor that into our planning and still ensure that we aligned with the UK Government timescale."[160]

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[155] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 645.
[156] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 648.
[157] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Cols 649-650.
[158] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 669.
[159] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 670.
[160] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 671.

211. The Committee also asked whether the Parliament could pass a legislative consent motion which agreed to only parts of the Bill, such as those on data sharing and industrial disablement. The Cabinet Secretary replied—

> "As far as I am aware, there is nothing that would prevent Parliament from passing a partial legislative consent motion. It could agree to some of what requires consent and withhold consent on other aspects. Obviously, it would be up to the Parliament to decide whether that was the correct thing to do, but there is no technical reason why that could not be done."[161]

Committee conclusion

212. **The Committee notes that the legislative consent memorandum did not contain a draft motion, but rather set out in detail the five areas of the Bill, as it stands now, which would require consent from the Scottish Parliament.**

213. **The Committee is clear that voting against a motion which seeks legislative consent for the provisions of the Bill which fall within the competence of the Scottish Parliament would not prevent the Welfare Reform Bill from completing its passage at Westminster and receiving Royal Assent.**

214. **The Committee considers that, in respect of the provisions regarding data sharing and industrial injuries disablement benefit there is little controversy and consent should be given.**

215. **However, the Committee has heard from witnesses many strong criticisms and serious concerns about the changes to the UK benefits system proposed in the Welfare Reform Bill. These legitimate concerns centre on the proposals for Universal Credit and Personal Independence Payments. The Committee acknowledges that many of these concerns arise from a lack of detailed information but, nevertheless, believes that they cannot simply be ignored. It is appropriate for the Scottish Parliament to scrutinise these changes, particularly where they will impact directly on areas of devolved policy.**

216. **The Committee notes that an alternative to giving consent in relation to Universal Credit and Personal Independence Payments would be for the Scottish Government to introduce a Bill to the Scottish Parliament. The Committee considers that this approach may be preferable as it would allow the Scottish Parliament time to consider more fully the implications of the forthcoming welfare reforms and the appropriate Scottish policy response to them. However, the Committee is uncertain whether such a Scottish Bill could be drafted, scrutinised and passed by the Parliament in sufficient time to ensure that the Scottish statute book reflects the changes introduced by the Welfare Reform Bill prior to their implementation. The Committee therefore invites the Scottish Government to consider whether this is a practical alternative to allowing the UK Parliament to legislate on behalf of Scotland in these areas and to report its view to the Parliament.**

[161] Scottish Parliament Health and Sport Committee. *Official Report, 22 November 2011*, Col 671.

ANNEXE A: EXTRACT FROM THE MINUTES OF THE HEALTH AND SPORT COMMITTEE

8th Meeting, 2011 (Session 4)

Tuesday 25 October 2011

Welfare Reform Bill (UK Parliament legislation): The Committee considered its approach to scrutiny of the forthcoming legislative consent memorandum. The Committee agreed a programme of oral evidence taking and agreed to consider a draft report in private at future meetings.

12th Meeting, 2011 (Session 4)

Tuesday 15 November 2011

Welfare Reform Bill (UK Parliament legislation): The Committee took evidence on legislative consent memorandum LCM(S4) 5.1 from—

David Griffiths, Chief Executive, Ecas, and elected member of the Scottish Council for Voluntary Organisations Policy Committee;

John Dickie, Head of Child Poverty Action Group in Scotland;

Maggie Kelly, Policy and Campaigns Officer, The Poverty Alliance;

Matt Lancashire, Social Policy Officer, Citizens Advice Scotland;

Robert McGeachy, Policy and Public Affairs Manager, Action for Children Scotland;

Kate Higgins, Policy Manager, CHILDREN 1ST;

Mark Ballard, Head of Policy, Barnardo's Scotland;

Marion Macleod, Senior Policy and Parliamentary Officer, Children in Scotland;

Marion Davis, Senior Manager, Policy & Development, One Parent Families Scotland;

Douglas Hamilton, Head of Save the Children in Scotland.

14th Meeting, 2011 (Session 4)

Tuesday 22 September 2011

2. **Decision on taking business in private:** The Committee agreed to take item 4 in private.

3. **Welfare Reform Bill (UK Parliament legislation):** The Committee took evidence on legislative consent memorandum LCM(S4) 5.1 from—

Pam Duncan, Director, Inclusion Scotland;

Richard Hamer, Director of External Affairs, Capability Scotland;

Carolyn Roberts, Head of Policy and Campaigns, SAMH;

Keith Robertson, Access Development Officer & Manager, Scottish Disability Equality Forum;

Neil Couling, Director, Working Age Benefits, Department of Work and Pensions.

4. **Welfare Reform Bill (UK Parliament legislation):** The Committee considered the evidence heard earlier in the meeting.

15th Meeting, 2011 (Session 4)

Tuesday 22 October 2011

Welfare Reform Bill (UK Parliament legislation): The Committee took evidence on legislative consent memorandum LCM(S4) 5.1 from—

Nicola Sturgeon MSP, Cabinet Secretary for Health, Wellbeing and Cities Strategy, Beverley Francis, Head of Welfare Reform Team, and Chris Boyland, Welfare Reform Bill Manager, Scottish Government.

16th Meeting, 2011 (Session 4)

Tuesday 29 November 2011

Welfare Reform Bill (UK Parliament legislation) (in private): The Committee considered a draft report on legislative consent memorandum LCM(S4) 5.1. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its next meeting.

17th Meeting, 2011 (Session 4)

Tuesday 6 December 2011

Welfare Reform Bill (UK Parliament legislation) (in private): The Committee considered a revised draft report on legislative consent memorandum LCM(S4) 5.1. Various changes were agreed to, and the report was agreed for publication.

ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

12th Meeting 2011 (Session 4), 15 November 2011

Written Evidence

Child Poverty Action Group in Scotland
Poverty Alliance
Citizens Advice Scotland
Action for Children Scotland
CHILDREN 1ST
One Parent Families Scotland – Part 1
One Parent Families Scotland – Part 2

Oral Evidence

Ecas
Child Poverty Action Group in Scotland
Poverty Alliance
Citizens Advice Scotland
Action for Children Scotland
CHILDREN 1ST
Barnardo's Scotland
Children in Scotland
One Parent Families Scotland
Save the Children in Scotland

14th Meeting 2011 (Session 4), 22 November 2011

Written Evidence

Inclusion Scotland – Part 1
Inclusion Scotland – Part 2
Capability Scotland
SAMH
Scottish Disability Equality Forum
Department for Work and Pensions

Oral Evidence

Inclusion Scotland
Capability Scotland
SAMH
Scottish Disability Equality Forum
Department of Work and Pensions

Supplementary Written Evidence

Inclusion Scotland
Department for Work and Pensions

15th Meeting 2011 (Session 4), 22 November 2011

Written Evidence

Scottish Government

Oral Evidence

Scottish Government

ANNEXE C: OTHER WRITTEN EVIDENCE

Consultation and Advocacy Promotion Service
Edward Gorman (indiv.)
Headway UK (Scotland)
Independent Living in Scotland
Lothian Centre for Inclusive Living
MS Society Scotland
North Lanarkshire Disability Forum
Phoenix Futures
Scottish Council for Voluntary Organisations
Scottish Drugs Forum
Scottish Federation of Housing Associations
Scottish Independent Advocacy Alliance
Stroke Association
Values Into Action Scotland
Voices for Change and the We Step Together Group

ANNEXE D: CORRESPONDENCE

6 October 2011 – Letter from the Committee to Rt Hon Iain Duncan Smith MP
24 October 2011 – Letter from Lord Freud to the Committee
28 October 2011 – Letter from the Committee to Lord Freud
5 November 2011 – Letter from Lord Freud to the Committee
18 November 2011 – Letter to the Presiding Officer from Barnardo's Scotland, Children 1st, Action for Children Scotland and Citizens Advice Scotland

ANNEXE E: INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE REPORT ON THE LEGISLATIVE CONSENT MEMORANDUM ON THE WELFARE REFORM BILL

The Committee reports to the Health and Sport Committee as follows—

Introduction

1. The Infrastructure and Capital Investment (ICI) Committee was designated as a secondary Committee to consider the legislative consent memorandum (LCM) on the Welfare Reform Bill 2011 which was lodged on 31 October 2011. The Committee took evidence from COSLA, Shelter and the Scottish Federation of Housing Associations (SFHA) in respect of the Bill on 26 October 2011[162]. It considered the LCM at its meeting on 16 November 2011 and agreed the terms of its report to the lead committee on 23 November 2011.

Consideration

2. The ICI Committee considered the relevant provisions of the Bill which require legislative consent in respect of the introduction of Universal Credit. Within Universal Credit an allocation will be made for housing costs and the Committee considered the implications of this change. Whilst social security and benefits policy is reserved to Westminster, the Committee's attention was drawn more generally to the Bill's impact on devolved housing policy and its consideration is detailed below.

3. Of general concern was the pace of the consideration of the Bill, given its scale and complexity. This concern was exacerbated by the lack of available detail and the level of provision to be included in regulations to be made under the Act. The Committee supports the approach taken by the Scottish Government to ensure that all available evidence was brought before the Scottish Parliament for its consideration, despite the pressures of the timetable.

Universal Credit

4. The Committee agrees that the benefits system should be simplified and considers that a new Universal Credit could be one way of achieving this. However, the Committee heard how fundamental aspects of the calculation of payment and/or the distribution of the housing element of Universal Credit were of serious concern to COSLA, Citizens Advice Scotland, Shelter, the SFHA and SCVO.

The calculation of payment of housing costs

5. Clause 11 of the Bill provides for an amount to be included for housing costs within the Universal Credit (UC). The detailed rules for calculating the amount will be set out in regulations, which could reflect the relative housing costs in different geographical areas in Great Britain. Generally, stakeholders have expressed a

[162] Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 26 October 2011*, Cols 220-235.

concern at the lack of detail as to how the housing element of the UC will be calculated.

6. In addition, the Scottish Government[163] considers that breaking the link between actual housing costs and the support which will be provided for housing costs under Universal Credit means that in real terms support for housing costs could lose its value, severely constraining the level of support the benefit was designed to provide.

7. This view is supported by the SFHA who consider that "Any change to this direct relationship between housing costs paid and actual rent has the potential to create spiralling rent arrears, increased homelessness and threaten the financial viability of social landlords."[164]

8. Shelter stated that "Particularly in remote or rural areas of Scotland where the private rented market is sparse, or where there is a limited supply of social rented properties, households could be left with a choice between moving far away from jobs, friends and family to find affordable housing, or accepting higher rents leading to hardship, rent arrears and homelessness."[165]

Under-occupation penalty

9. Explanatory Notes to the Bill suggest that regulations will be made that will restrict Housing Benefit entitlement for social housing tenants of working age whose accommodation is larger than they are deemed by the UK Government to need. Regulations will set out in detail how this will work in practice.

10. The SFHA "contends that this is neither reasonable nor practical and, indeed, is unworkable in the social rented sector, where tenants' options are severely constrained."[166] Shelter highlighted its concern that the detail of how this proposed measure will be applied is not yet known, stating—

> "We know that the intention is to link the universal credit to property size but we do not know how that will be done or what the cuts will be."[167]

11. The SFHA further states that "Just under a third of working-age tenants under-occupy their tenancies by at least one bedroom. These households will lose an average of £11 a week in Housing Benefit according to DWP estimates."[168]

12. The Legislative Consent Memorandum at paragraph 16 invites the Scottish Parliament to examine whether there is a need for greater flexibility in the

[163] Correspondence from Alex Neil, Cabinet Secretary for Infrastructure and Capital Investment, 24 October 2011: http://www.scottish.parliament.uk/S4_InfrastructureandCapitalInvestmentCommittee/General%20Documents/Letter_from_Cab_Sec_-_Welfare_Reform_Bill_-_241011.pdf.
[164] Written evidence from SFHA, page 7, paragraph 4.2.
[165] Written evidence from Shelter, page 2, paragraph 5.
[166] Written evidence from SFHA, page 5, paragraph 3.2.
[167] Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 26 October 2011*, Col 231.
[168] Written evidence from SFHA, page 5, paragraph 3.4.

operation of the Bill's proposal tolimit payments in respect of the "under-occupying" of property.

13. Evidence suggests to the Committee that the consequences of this provision, together with the cap on benefits could lead to tenants getting into financial difficulty and becoming homeless. **The Committee therefore supports any flexibility in this area that would avoid tenants being penalised through no fault of their own.**

14. **The Committee in particular draws the attention of the lead Committee to the assertion of the SFHA that the implementation of these provisions could result in particular problems emerging in Scotland due to the significant lack of one-bedroom properties.**

Direct payments

15. It is proposed to pay UC directly to tenants and, probably, monthly in arrears. Currently most tenants in the social rented sector have their housing benefit paid directly to landlords. The UK Government has indicated that vulnerable people and pensioners can continue to have their housing costs paid directly to their landlord and that exceptions may be made where rent arrears continue to rise.

16. Shelter's Rosemary Brotchie stated that—

> "In a number of conversations, the DWP and ministers have said that they will retain the facility for direct payments in some circumstances. However, when pushed to answer how that will work, they have not been able to tell us."[169]

17. The Committee heard from Councillor McGuigan, COSLA's concerns that—

> "The consequences of such a change could be rent arrears leading to increased eviction rates and more services being required from local authorities at a time when demographic changes and the economic cuts that are being imposed mean that we do not have the resources to deal with that situation."[170]

18. Maureen Watson of the SFHA stated in evidence that currently 96 per cent of housing association and co-op tenants choose to have the rent paid directly to their landlord. There is also a provision for a social landlord, where a tenant is in arrears of rent by eight weeks or more, to request that the Housing Benefit is paid directly to the landlord. The SFHA believes it critical that current direct payments of housing benefit to social landlords are preserved within the payment of universal credit.[171]

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[169] Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 26 October 2011*, Col 229.
[170] Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 26 October 2011*, Col 222.
[171] Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 26 October 2011*, Col 222 and written evidence from SFHA, page 8, paragraph 6.1.

19. The Committee's attention was also drawn to the potential threat to the financial stability of housing associations as a consequence of these proposals. The SFHA considers that the income streams of social landlords are at risk of being significantly reduced, should the ability for rent to be paid directly to landlords not be preserved.[172] This in turn could lead to lenders viewing housing associations and co-operatives as higher risk, which could impact on the availability and terms of private finance.

20. The Committee is firmly of the view that the ability for housing associations to borrow to fund new supply should not be compromised.

21. **The Committee considers that direct payment to claimants could be offered in certain circumstances but flexibility both to protect certain groups of tenants and avoid disruption to the income streams of landlords is essential. The Committee is of the view that the current system, of direct payments of housing benefit to social landlords, works and is to the benefit of tenants and landlords. Consideration should therefore be given to its retention.**

Benefit cap

22. Under the Bill proposals it is proposed to cap total household benefit payments on the basis of median earnings after tax on working households. Currently this is £500 per week for couples and families and £350 for single people. The cap would be carried forward into the Universal Credit, although the impact on the housing costs element is not clear. The SFHA in its *Welfare Reform Impact Assessment* has estimated that around 1700 Housing Association and Co-operative tenants across Scotland may be affected by this measure. Although the numbers affected are likely to be low, the losses are significant for each of these tenants, between £66-£93 per week.

23. The Cabinet Secretary considers that "the impact of the benefits cap, and how it will be affected by varying housing costs across the country, is unknown."[173]

Consequences for the 2012 Homelessness Commitment

24. The Committee has heard evidence which suggests that each of the policy areas covered by this report: the calculation of the housing element of universal credit, an under-occupancy penalty, a benefit cap and, in particular, the proposal for the Universal Credit to be paid directly to the claimant will impact greatly on the policy of local authorities and housing associations to deliver services.

25. The Committee recognises that social security and benefits are reserved to Westminster, however the Committee agrees with the SFHA that it is "vital that any reforms must take account of the interaction between devolved and reserved

[172] Written evidence from SFHA, page 8, paragraph 6.2.
[173] Correspondence from Alex Neil, Cabinet Secretary for Infrastructure and Capital Investment, 24 October 2011.

powers. Changes and restrictions to Housing Benefit could impact on demand for housing, levels of indebtedness, and potentially increase homelessness."[174]

26. The Scottish Government, Citizens Advice Scotland (CAS), COSLA, Shelter and the SFHA have all mentioned the potential for these provisions to place heightened pressure on or undermine efforts to achieve the objectives of the 2012 Homelessness Commitment in Scotland. This commitment means that from 31 December 2012 all homeless applicants who are assessed as unintentionally homeless will be entitled to settled accommodation.

27. For example, CAS drew the Committee's attention to COSLA's estimate that if 5% of those affected by the drop in income from underoccupancy in the social rented sector become homeless there will be an annual increase in current homeless levels of 4700. In the private rented sector COSLA estimate that a further 3000 additional homeless cases will present in 2011/12 and 2012/13.[175]

28. The Scottish Government has stated that the proposed changes "undermine our efforts to sustain momentum that ensures all unintentionally homeless people are entitled to settled accommodation by 2012."[176]

29. **The Committee draws the lead Committee's attention to the fact that the provisions in the Welfare Reform Bill will potentially impact on a Scottish legislative commitment under the Homelessness etc. (Scotland) Act 2003.**

Consultation

30. The Committee is concerned about the level of representation made on the Bill at a UK level with regard to its impact in Scotland. SFHA did not consider that the different housing policy and housing objectives in Scotland had been fed into considerations and highlighted concerns in relation to Scottish engagement with the Westminster Committees[177]. From the evidence it has received, it appears to the Committee that there has been insufficient commitment from the UK Minister in charge of the Bill to engage with stakeholders in Scotland.

31. The Committee notes the evidence that the lead Committee took from the Department of Work and Pensions (DWP) on 22 November 2011. **It considers that there should be close levels of engagement between the Scottish Government and the DWP at both ministerial and official level, particularly in relation to the development of the detailed implementation of the reforms prior to this being set out in future regulations.**

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[174] Written evidence from SFHA, page 2, paragraph 1.8.
[175] COSLA, Memorandum submitted by the Convention of Scottish Local Authorities to House of Commons Welfare Reform Bill Public Committee April 2011 www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/memo/wr53.htm (paragraph 23).
[176] Correspondence from Alex Neil, Cabinet Secretary for Infrastructure and Capital Investment, 24 October 2011.
[177] Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 26 October 2011*, Col 224.

Regulations

32. The Committee agrees with the Cabinet Secretary that "the pace of reform and lack of detail from DWP makes it difficult to prepare for the reforms; it also makes it difficult to adequately scrutinise them."[178] The detail to be contained in the regulations in respect of the provisions discussed above will be crucial to housing and social policy objectives in Scotland. **The Committee considers it imperative that adequate mechanisms are put in place by the DWP to ensure that the Scottish Government, the Scottish Parliament and relevant stakeholders are fully consulted on relevant regulations before they are finalised and laid before the Westminster Parliament.**

33. **In addition, the majority of members of the Committee agree that the Scottish Parliament should consider establishing an ad hoc Committee to consider the regulations made under the Welfare Reform Bill and how they will affect devolved policy areas.[179]**

Conclusion

34. **The Committee calls on the lead committee to note the recommendations and comments contained in this report and to take these into account when producing its own report on the LCM to the Parliament.**

[178] Correspondence from Alex Neil, Cabinet Secretary for Infrastructure and Capital Investment, 24 October 2011.
[179] Alex Johnstone MSP dissented from this paragraph of the Committee's Report.

EXTRACTS FROM THE MINUTES OF THE INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

6th Meeting, 2011 (Session 4), Wednesday 26 October 2011

Welfare Reform Bill (UK legislation): The Committee heard evidence from—

Peter Meehan, independent expert providing advice to COSLA on Welfare Reform, and Councillor Harry McGuigan, Spokeperson for Community Wellbeing and Safety, COSLA;

Rosemary Brotchie, Senior Policy Officer, Shelter Scotland;

Maureen Watson, Policy and Strategy Director, Scottish Federation of Housing Associations.

Welfare Reform Bill (UK legislation): The Committee reviewed the evidence heard during the meeting.

9th Meeting, 2011 (Session 4), Wednesday 16 November 2011

Welfare Reform Bill (UK Parliament legislation): The Committee considered and noted the legislative consent memorandum lodged by Nicola Sturgeon MSP (LCM(S4)5.1).

10th Meeting, 2011 (Session 4), Wednesday 23 November 2011

Welfare Reform Bill (UK Parliament legislation) (in private): The Committee agreed a draft report on the legislative consent memorandum lodged by Nicola Sturgeon MSP (LCM(S4)5.1), subject to minor amendments.

ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE – INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

6th Meeting, 2011 (Session 4), Wednesday 26 October 2011

Written evidence

COSLA
Scottish Federation of Housing Associations
Shelter Scotland

Oral evidence

COSLA
Scottish Federation of Housing Associations
Shelter Scotland

Supplementary Written Evidence

Capability Scotland
Citizens Advice Scotland
Scottish Council for Voluntary Organisations

ANNEXE F: LOCAL GOVERNMENT AND REGENERATION COMMITTEE REPORT ON THE LEGISLATIVE CONSENT MEMORANDUM ON THE WELFARE REFORM BILL

The Committee reports to the Health and Sport Committee as follows—

Introduction / Background

1. The Local Government and Regeneration Committee was designated as a secondary committee on the legislative consent memorandum (LCM) on the UK Welfare Reform Bill (the Bill), along with the Infrastructure and Capital Investment Committee, by the Parliament, at its meeting on 3 November 2011. The Health and Sport Committee was designated as the lead committee. The Local Government and Regeneration Committee hopes that this report will assist the Health and Sport Committee in its consideration of the LCM.

2. The Committee decided to restrict its scrutiny of the LCM to the impact of the proposed changes in the welfare system on local government, in line with its remit.

3. The Committee agreed its approach to the LCM at its meeting of 21 September 2011, when it agreed to take oral evidence from COSLA, City of Edinburgh Council, Glasgow City Council and Highland Council.

4. The Committee did not issue a call for evidence, but invited COSLA to submit written evidence in support of its oral evidence. Additionally, a number of local authorities noted their concerns over the potential impact of the proposed reforms in their written evidence to the Committee on the Scottish Government's *Scottish Spending Review 2011 and Draft Budget 2012-13*.

5. At its meeting on 9 November 2011, the Committee took evidence from Councillor Harry McGuigan, COSLA's Spokesperson for Community Well-being and Safety, and Michael McClements, COSLA's Policy Manager. Also on the COSLA witness panel were Michael Thain, Strategy and Investment Manager, City of Edinburgh Council, David Coyne, Head of Business and Economy, Glasgow City Council and Dawson Lamont, Head of Exchequer and Revenues, Highland Council. The latter three members of the panel represented the three local authorities that had provided detailed case-study evidence to the House of Commons Public Bill Committee on the Welfare Reform Bill. Extracts from the Minutes of the Committee are included at Annexe A. Annexe B contains a Record of Divisions Taken in Private, and Annexe C contains the Oral Evidence and Associated Written Evidence received by the Committee.

Scope of this report to the Health and Sport Committee

6. The Committee recognises that legislative consent is required only for a relatively limited number of provisions contained in the Bill. These provisions arise in the following contexts:

- the introduction of Universal Credit (clauses 33, 42 and 43);
- data-sharing (clauses 120 and 126);

- the introduction of Personal Independence Payments (PIP) (clauses 75, 89 and 91);

- changes to Industrial Disablement Benefit (clause 65), and

- establishment of the Social Mobility and Child Poverty Commission (clauses 135 and Schedule 13).

7. Given the very limited number of provisions that require legislative consent, the Committee has decided to make more general comments on the potential impact of the proposed reforms to the welfare benefits system on local government in this report. It therefore deals with a number of issues that the evidence has highlighted, as part of the Parliament's wider consideration of the potential impact of the reforms on the people of Scotland.

8. The report does not set out in any detail the broad provisions of the Bill, as the Committee recognises that any required context setting is likely to be provided by the Health and Sport Committee in its role as lead committee for consideration of the LCM. Moreover, many of the detailed provisions relating to welfare reform will be set out in secondary legislation and are therefore currently not known.

Impact on local government

9. In evidence to the House of Commons Public Bill Committee on the Welfare Reform Bill in May 2011, COSLA raised a range of concerns with regard to the impact of the Bill upon local authorities. These were:

- the lack of detail in the Welfare Reform Bill, particularly as regards the proposals for centralisation of Housing Benefit and localisation of Council Tax Benefit, and the resources which would be provided to support the transition to the new approach;

- that the timescales of less than two years for the localisation of Council Tax Benefit and for the transition to Universal Credit to be complete by 2017 were unrealistic;

- concern at the lack of clarity on the role local authority staff would have in the transition to Universal Credit and that large numbers of benefits staff would lose their jobs as a result of the reforms proposed in the Bill;

- that the proposed reforms would have a significant operational impact on local authorities and would result in a loss of economies of scale given that welfare benefits administration are integrated, at present, with other finance and housing functions utilising shared back-office arrangements;

- that the ending of direct payments to social and private landlords would lead to rises in rent arrears and court action for landlords, including local authorities. This would require increased efforts by local authorities to recover arrears, resulting in increased costs and impacting on staff resources;

- that there is insufficient housing stock to allow those who are under-occupying to move to smaller houses;

- the payment of Universal Credit directly to individuals would increase the complexity for many individuals receiving benefits, many of whom might not have the capacity to deal with paying rent and council tax independently. This would require significant investment in advice services both by local authorities and the voluntary sector;

- that the proposed level of funding for Discretionary Housing Payments (DHP) would be insufficient, given the likely numbers of claimants. In addition, COSLA noted that DHP payments would be intended for crisis situations rather than as an on-going safety net.

10. In written evidence, COSLA continued to highlight a wide range of potential impacts, broadly falling into three categories: direct impacts, indirect impacts and the implementation of the Bill's proposals.

11. During the oral evidence session with the Committee, COSLA explained that, despite its continuing representations to the Department for Work and Pensions, little detail had been made available about the implementation of the reforms and how the new arrangements would work in practice. Councillor Harry McGuigan, COSLA spokesperson for Community Well-being and Safety, told the Committee—

> "At political level, the consultation has been very disappointing. Questions have not been answered, perhaps because Westminster politicians do not—or, let us say, because the Westminster Government does not—fully understand the complexities of the territory that has been moved into. We ask questions that seem to us to be absolutely central to improving the welfare system. The questions are the first questions that you would put to yourself. However, we do not get answers. There is certainly no detail. What we keep hearing is uncertainty."[180]

12. The Committee considers that the lack of detailed consultation with Scottish local authorities by UK Government departments is unacceptable given the impact that the reforms will have on local authority services and functions, particularly in the context of the new burdens that the legislation will place on local authorities. Furthermore, the limited information being provided to Scottish local authorities will undermine the ability of those authorities to prepare fully for the forthcoming changes to the welfare system.

Direct impacts

Payment of Housing Benefit to individuals

13. COSLA argued that making Housing Benefit payments directly to claimants without sufficient safeguards (rather than to registered social landlords or local

[180] Local Government and Regeneration Committee. *Official Report, 9 November 2011*, Col 334.

authorities, as at present), would result in an increase of rent arrears and evictions, "sending households spiralling into debt and facing homelessness."[181]

14. Witnesses elaborated on this concern at the oral evidence session. Dawson Lamont of Highland Council told the Committee—

> "… we are concerned about the direct payment proposals, whereby universal credit will be paid monthly and, in general, will be paid to the claimant, whereas at the moment the money for council houses comes directly to the local authority. All authorities are extremely concerned that there will be a lot of leakage unless safeguarding mechanisms are put in place to ensure that that money is used for the purpose for which it is intended."[182]

Reduction of Housing Benefit in cases of over-occupation

15. Under the Welfare Reform Bill, Housing Benefit would be reduced for tenants deemed to be occupying a property larger than they need. COSLA argued that this would lead to increased rent arrears and be likely to increase homelessness, impact on housing investment and distort local housing strategies.

16. The Committee also heard that the practice in relation to housing in Scotland for 30 or 40 years had been to build houses with at least two bedrooms in order to build in capacity for people who might subsequently have children. Michael Thain of City of Edinburgh Council told the Committee that the Government had presented the situation "as if people have the choice either to pay extra or to downsize, but the housing stock that would allow them to downsize does not exist."[183]

Replacement of DLA with PIP

17. Finally, COSLA noted the current lack of information on how the new Personal Independence Payment (PIP), intended to replace the Disability Living Allowance (DLA), would operate and the potential impact of a 20% reduction in the monies available in this area.

18. Councillor Harry McGuigan told the Committee—

> "When we ask how the personal independence payment will compare with disability living allowance, we are told that the detail is not available yet. Our worry is that people who are at the low disability level will be disqualified from receiving the personal independence payment."[184]

Indirect impacts

Increase in demand for local authority services

19. COSLA expected that the proposed welfare reforms would result in increased demand for a range of local authority services such as advice services, employability and economic development services, and social work services. COSLA argued that the scope of the changes proposed in the Bill, and the

[181] COSLA. Written submission.
[182] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 337.
[183] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 343.
[184] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 343.

timeframe for their implementation, would place pressure on local authority staff and the support and IT systems that would be required to deliver the proposed changes.

20. As regards the proposed change from DLA to PIP, COSLA told the Committee that it would "involve a 20 per cent cut" that would "take a huge amount of money out of the system".[185] COSLA argued that—

> "The impact on prevention, early intervention and support is crucial. If those people are taken out and told, "Sorry, you no longer qualify," they will queue up for support services from local authorities and voluntary organisations, which will hit us hard."[186]

21. The introduction of Universal Credit (UC) and PIP would change the criteria required to access these benefits and this, COSLA argued, would impact on 'passported benefits'. COSLA commented in its written submission that "there is no clarity on how thresholds to these might operate in the future and this may require new assessment criteria to be applied involving additional cost and staff resources."[187]

22. Elaborating on the theme of the lack of detail on how the new systems would operate, Councillor Harry McGuigan told the Committee—

> "Some examples from my area are free school meals, clothing grants, blue badges, transport cars, road-tax exemptions, leisure service concessions and the independent living fund for carers. They are all passported based on whether a person qualifies for a particular benefit. That involves a cost issue as well. Will we have to start reassessing those passported benefits against whatever new criteria we are going to use?"[188]

23. Michael McClements of COSLA added—

> "As for passported benefits, because we do not know what the architecture of universal credit or personal independence payments will look like, there is a real issue to do with people's future entitlement to the many benefits that they currently passport, using the current benefits system as a sort of shorthand. I know that the issue has been passed to the social security advisory committee, but it would certainly help to have more detail on how entitlement will be affected. After all, such benefits are important to many people, particularly those with disabilities and older people."[189]

Council tax benefit

24. The Bill proposes the abolition of council tax benefit and the 'localisation' of a council tax rebate system alongside a 10% reduction in the monies available to fund this. Council Tax Benefit subsidy to Scottish local authorities amounted to

[185] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Cols 348-9.
[186] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 349.
[187] COSLA. Written submission, page 3.
[188] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 339.
[189] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 350.

£368m in 2009-10.[190] A 10% reduction in monies available would therefore amount to roughly £37m. COSLA suggested that this might lead to increases in council tax arrears.

25. The Cabinet Secretary for Finance and Sustainable Growth told the Committee (during its budget scrutiny) that, although he understood that council tax benefit was to be abolished on 1 April 2013 and that a sum of money – 90% of what was currently paid in council tax benefit – would be transferred to Scotland to replace it, that was the limit of his knowledge, even though the replacement scheme required to be operational on 1 April 2013.[191] COSLA argued that the lack of detail available and the timescale for implementation will place local authorities "under enormous pressure to have in place delivery systems for rebate schemes by April 2013."[192]

26. Asked about the potential impact of the replacement of council tax benefit with the new system that involved a 10% reduction in the sum available, and whether this reduction could be absorbed in efficiencies, David Coyne of Glasgow City Council told the Committee—

> "The 101,000 households in Glasgow that receive council tax benefit are awarded £74 million, so a 10 per cent cut would be £7.4 million. It is difficult to see how being more efficient in how we operate could get us back £7.4 million. The figures that we are working on indicate that the extra work to collect unpaid council tax costs around £22 per household on top of what is owed, so it is difficult to see how it could be a zero-sum game."[193]

Impact on benefit and revenue departments

27. The COSLA submission noted that many local authorities had merged revenue and benefit systems and the Bill was likely to undermine this integrated approach to service delivery. COSLA highlighted a range of concerns relating to the delivery of benefit and revenues and the impact on local authority staff in these areas. These included:

- the loss of front- and back-office efficiencies;
- major costs and risks associated with the re-engineering of IT systems;
- concern about the provision of an effective benefit service during the transition period;
- that arrears and collections costs will increase; and
- a significant increase in workloads for benefits staff.

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[190] Scottish Government (2011) *Scottish Local Government Finance Statistics 2009-10*, Table 2.2. Available at: http://www.scotland.gov.uk/Publications/2011/02/21143624/0 [Accessed 15 November 2011]

[191] Local Government and Regeneration Committee. *Official Report, 2 November 2011,* Col 312.

[192] COSLA. Written submission, p3.

[193] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 346.

28. With regard to the workforce in these departments, COSLA observed that it was unclear whether local authority staff would assist the Department for Work and Pensions (DWP) in delivering UC, resulting in the transfer of local authority staff to DWP, or whether these staff would not be required.

29. The Committee is aware that many councils operate joint benefits and revenue departments providing a one stop shop that provides services in relation to council tax, housing and other benefits. The Committee heard evidence that the benefits of this approach, together with any economies of scale, were likely to be lost under the proposed changes. Councillor Harry McGuigan of COSLA told the Committee that many councils thought that an integrated approach to housing benefits and council tax was an effective and good way of working, rather than having separate departments deal with the work, and that integrating the work of those services improved their ability to deal with the problems and issues that arose. He went on to say that that kind of integration would "be threatened" under the welfare reform proposals, adding that "integration increases the efficient use of resources, but if some of the resources are removed from local authority control, it will be more difficult to maintain an integrated approach."[194]

Overall Committee views on the impact of welfare reform on local government

30. The Committee accepts that reform of the welfare system is necessary and it supports the simplification of the system. However, the Committee shares the Scottish Government's concerns, expressed in the LCM, and those of stakeholders, that the proposals contained in the Bill may impact negatively on individuals and groups, and may impact disproportionately on certain groups, such as people with disabilities. The Committee therefore supports the position being taken by the Scottish Government in attempting to progress its concerns through "mature and productive negotiation to improve UK legislation from a Scottish perspective, for example to better reflect variances in devolved policies or service provision".[195]

31. The Committee's main concern in this report is, however, to comment on how the welfare reform proposals are likely to impact on local government. The Committee concludes, on the basis of all the evidence it has received, both during consideration of the LCM and during evidence-taking on the *Spending Review 2011 and Draft Budget 2012-13*, that there is likely to be significant impact on local authorities. This impact is particularly likely to be significant in relation to the proposed changes to housing benefit, which the Committee considers are likely to lead to rises in the level of rent non-payment and arrears. Similarly, the impact of abolishing council tax benefit and replacing it with a less well-funded rebate scheme is not entirely clear at this time, but it would appear certain to remove approximately £37m from benefits currently paid in Scotland, most of which finds its way into local government income at present. There is also the potential for significant job losses if the council tax benefit system is to be centralised at Scottish Government level, and for efficiencies that currently result from the

[194] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 345.
[195] Scottish Government. Legislative Consent Memorandum, (LCM(S4)5.1) paragraph 14.

combination of housing benefit and council tax benefit functions in most local authorities being lost.

32. The Committee also notes the concerns of COSLA and others that the replacement of DLA with PIP would result in the loss of the mechanism that local authorities currently use to determine whether claimants are entitled to a range of 'passported benefits' that these authorities themselves provide. This may well mean that local authorities face added costs in determining people's entitlement to these benefits, through the establishment of new criteria.

33. The Committee therefore calls on the Scottish Government to continue its current approach of seeking to progress its concerns through negotiation with UK Government ministers.

34. The Committee also shares concerns expressed by witnesses over the current lack of detail about how many of the provisions within the Welfare Reform Bill would operate in practice. It is clear that there would be significant reductions in the welfare benefits received by many of the most vulnerable people in Scotland if the current proposals are implemented in full, and that this would be certain to have serious implications for the communities in which they live and the local economy. It is not, however, possible at present to assess fully the scale of the impact (and the associated risks) that the proposed changes would have on local government.

35. The Committee notes with concern, however, that, at the very least, it appears likely that the Bill, as currently drafted, would result in significant increases in rent arrears and council tax arrears and associated rises in costs incurred by local authorities in pursuing these debts. More importantly, the Committee believes investment in new social housing could be liable to be considered as riskier by private sector investors and this, in turn, would be likely to impact on the ability of councils and registered social landlords to continue to grow and develop their public housing stock. The Committee considers that this would be very unfortunate at a time when new housing is needed more than ever to meet the 2012 homelessness target and to provide the smaller homes that are likely to be needed, once the Bill has been enacted, to enable people who are considered to be over-occupying to move to smaller homes.

Conclusions on the wider aspects of welfare reform

36. The Committee notes that there have been calls from the voluntary sector and others for the establishment of an ad hoc parliamentary committee to monitor the ongoing impact of the proposed changes to the welfare system. Given the continuing uncertainties over the implementation of the proposed changes, the widespread concern and dismay across local government, the voluntary sector and wider civic Scotland and the fact that the proposed changes are likely to have ramifications that potentially engage the remits of a number of existing subject committees, the Committee agrees that there is a case to be argued for the establishment of

an ad-hoc committee to consider the impact of these changes to the welfare system as they are rolled out over the next few years.

37. The Committee accepts that this proposal, should it be taken forward, could provide a useful mechanism through which to measure and monitor the impact of the welfare reforms proposed by the UK Government and would be able to focus on specific issues and make representations on them to government. While such a committee would not, of course, be able to reverse the changes, it would provide a means through which their effects could be measured and monitored during the remainder of the current session of the Parliament. It would also provide a single focus for ongoing representations from local government and the voluntary sector as the impact of the changes becomes more measurable and more widely understood, and would provide a coordinated overview of the implications across a range of sectors.

38. The Committee therefore recommends the establishment of an ad hoc parliamentary committee on welfare reform.[196] [197]

Scrutiny of the LCM

39. As noted earlier, only a very limited number of provisions in the Bill trigger the need for legislative consent from the Scottish Parliament. The question of whether or not such consent should be given was largely not addressed in the written evidence received by the Committee. The COSLA witnesses who gave oral evidence to the Committee, when asked, also felt unable to comment specifically on whether the consent of the Scottish Parliament should be granted. Councillor Harry McGuigan told the Committee that he had "no informed comment to make" on the LCM, adding that "we should be careful about showing any unwillingness to go along with the LCM." However, he concluded that "if we feel that something in it will damage our good business in Scotland and if the issue in question has no political message associated with it, we should act accordingly".[198]

40. The Committee also considers that it is not in a position to be able to offer a fully informed view to the Health and Sport Committee on whether or not to recommend to the Parliament that consent be granted. This is a product of the lack of detail available on the way in which it is intended that the Bill's provisions will be implemented, and the fact that so much of that detail, when it has been decided upon, remains to be put in place by means of secondary legislation. As a result, the Committee does not, at this stage, have a sufficiently clear understanding of what the implications of recommending, or not recommending, the granting of consent would be, to reach a conclusion.

41. The Committee also notes that, at this stage, the Scottish Government has not published a draft legislative consent motion, although it has committed to do so before the Parliament's Christmas recess.

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[196] Margaret Mitchell dissented.
[197] The Committee agreed paragraph 38 by division: ANNEXE B Record of Divisions Taken in Private.
[198] Local Government and Regeneration Committee. *Official Report, 9 November 2011,* Col 351.

42. It is clear to the Committee, however, that members of the Parliament will need fuller information than is available at present to enable them to make the decision on whether or not to support the motion once it has been lodged. The Committee fully understands that the welfare benefits system is a reserved matter under the Scotland Act 1998, and it is for the UK Parliament to legislate on such matters. Granting or not granting legislative consent will, therefore, have no impact on the main changes proposed in the UK Government's Bill. The Scottish Parliament cannot use the legislative consent procedure to prevent these changes being made. However, it remains unclear, at this time, what the implications of refusal of consent would be.

43. The evidence heard by the Committee from COSLA and others largely relates to provisions that remain to be determined by secondary legislation, for which no consent will be required. Yet, as the evidence heard by the Committee has shown, these future provisions could well have a significant impact on the finances of the devolved Scottish Administration because of the additional costs that would fall on local government as a result. There is also a danger that forthcoming secondary legislation may not sufficiently take into account the different policy landscape in Scotland resulting from the devolved arrangements.

44. **The Committee considers that, to address this latter point, the Scottish Government should seek to gain from the UK Government a commitment to consult on future secondary legislation under the Bill, once enacted**.

45. In relation to the five provisions requiring consent identified in the LCM, the Committee understands that, should consent be granted, the effect would be that the Scottish Ministers would have powers to make consequential changes to the Scottish statute book, required to take into account the changes brought by the Bill, by means of secondary legislation. If consent were to be refused, it would be necessary for Scottish Ministers to bring forward primary legislation in the Scottish Parliament in order to make the required changes. The Committee also understands, following comments made by the Cabinet Secretary for Health, Wellbeing and Cities Strategy to the Health and Sport Committee on 22 November 2011, that it would be possible for the Parliament to give consent to some, but not all, of the provisions covered in the LCM. At this stage, however, it is understood that the Scottish Government has not yet reached a position on whether it would prefer to recommend that the Parliament agree to the legislative consent motion or to introduce primary legislation in respect of some or all aspects that require consent.

46. The Committee therefore calls on the Scottish Government, when it lodges its legislative consent motion, to publish a supplementary memorandum setting out for the Parliament its understanding of what the effect of agreeing to or not agreeing to the motion (or motions, should that be the case) would be, together with details of its plans for bringing forward the required primary legislation should consent be withheld.

47. The Committee further calls on the UK Government to consult on future provisions that will be made through secondary legislation to ensure that the different policy and physical landscape resulting from the devolved arrangements and geography in Scotland are fully taken into account.

48. In the meantime, in view of the lack of information currently available, the Committee is currently unable to recommend that the Parliament should give its consent to the relevant provisions of the Welfare Reform Bill.[199]

[199] Margaret Mitchell dissented.

ANNEXE A: EXTRACTS FROM THE MINUTES OF THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

10th Meeting, 2011 (Session 4), Wednesday 9 November 2011

Welfare Reform Bill 2011 (UK Parliament legislation) The Committee took evidence on legislative consent memorandum LCM (S4) 5.1 from—

Councillor Harry McGuigan, Spokesperson for Community Well-being and Safety, and Michael McClements, Policy Manager, COSLA;

Michael Thain, Strategy and Investment Manager, City of Edinburgh Council;

David Coyne, Head of Business and Economy, Glasgow City Council;

Dawson Lamont, Head of Exchequer and Revenues, Highland Council.

Welfare Reform Bill 2011 (UK Parliament legislation) (in private): The Committee considered the evidence received on legislative consent memorandum LCM (S4) 5.1.

11th Meeting, 2011 (Session 4), Wednesday 16 November 2011

Welfare Reform Bill 2011 (UK Parliament legislation) (in private): The Committee considered a draft report on legislative consent memorandum LCM (S4) 5.1. Various changes were agreed to, and the Committee agreed to consider a revised draft at its next meeting.

12th Meeting, 2011 (Session 4), Wednesday 23 November 2011

Welfare Reform Bill 2011 (UK Parliament legislation) (in private): The Committee considered a draft report to the Health and Sport Committee on legislative consent memorandum LCM (S4) 5.1. Various changes were proposed and decided upon (one by division), and the Committee agreed the draft report as amended.

ANNEXE B: RECORD OF DIVISIONS TAKEN IN PRIVATE BY THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

1. On Wednesday 23 November 2011, the Local Government and Regeneration Committee considered its draft report to the Health and Sport Committee on LCM (S4) 5.1. This consideration took place in private session.

2. David Torrance submitted his apologies for this meeting. Margaret Burgess (Committee Substitute), attended the meeting in his place.

3. During consideration of the draft report, the Convener proposed the following new paragraph 38—

> The Committee therefore recommends the establishment of an ad hoc parliamentary committee on welfare reform.

4. The proposal was agreed to, by division: For 6 (Margaret Burgess; Kezia Dugdale; Mark Griffin; Joe FitzPatrick; Kevin Stewart; Bill Walker); Against 1 (Margaret Mitchell); Abstentions 0.

ANNEXE C: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE OF THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

10th Meeting, 2011 (Session 4), Wednesday 9 November 2011

Written evidence

COSLA

Oral evidence

COSLA
City of Edinburgh Council
Glasgow City Council
Highland Council

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