



From the Secretary of State
for Work and Pensions

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Devolution (further powers) committee

Thank you for your letter of 13 March following the Committee's February meeting where you considered the draft clauses relating to welfare. I am happy to provide clarification on the points raised in your letter and, more generally, to support the Committee in constructive working between our Governments.

Disability, Industrial Injury and Carer's Benefits – use of definitions

With regards to the definitions of "Disability benefit" and "disabled person", you mention differences between the definitions in clause 16 (Disability, industrial injuries and carer's benefits) and the definitions in clause 22 (Employment support).

There are indeed differences in the proposed definitions, but the legislative and factual context of clause 16 is different from the context of clause 22. The two clauses are drawn up differently for the purpose of meeting differing issues of devolution.

Clause 16 transfers powers in terms of the recommendations of the Smith Commission set out at paragraph 49(1), that is, to devolve competence in relation to Attendance Allowance (AA), Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Benefit/Allowance and Severe Disablement Allowance. These are all social security cash benefits. AA, DLA and PIP are "disability benefits" for the purpose of the clause, and the definition at clause 16(4) is intended to broadly define the primary characteristics of those benefits without being too prescriptive as regards any new benefits or services the Scottish Government may wish to introduce to replace them. The definition includes a provision to the effect that the adverse effects or needs arising from an individual's health condition or disability – the common key feature to the benefits – must not be short-term, that is of a more or less transient nature; but the wording is not otherwise prescriptive.

Clause 22 follows the definitions of “disabled person” and “disability” used in the Equality Act 2010, which are generally speaking prescriptive in nature, that is to say, the person must have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on his or her ability to do things and undertake normal daily activities. “Long-term” in this regard is usually taken to mean 12 months or more, but some specific conditions such as a diagnosis of cancer or AIDS/HIV do not have to pass this test. Furthermore, the test under this heading is enabling, in the sense that it is concerned with providing assistance (namely, “employment support”) to certain groups, including disabled people, and hence “disabled” is defined broadly but with reference to the key piece of equalities legislation that is relevant to disabled people.

Putting this another way, clause 22 is not a provision concerning the kind of social security benefits covered by clause 16, so the definitions of “disabled person” and “disability” need not necessarily be tied in to those which apply for benefits purposes.

Furthermore, I assure you that under both definitions people with terminal cancer, MS or other fluctuating conditions, or who are terminally ill, would not be excluded from entitlement to either a disability benefit or employment support.

With regards support for carers, taken together with existing devolved powers in areas like social care, the clauses do ensure that the Scottish Parliament will have the powers to set out the way in which support is provided for carers, including the rate at which it is paid, whether it is paid as a benefit or whether support is provided in some other way, and there is also a very broad definition of the “disabled person” in respect of whom a carer’s benefit can be paid.

I believe we fully meet the intent and spirit of the Smith Commission report as far as the “structure and value” is concerned. There are many areas in which we have framed the clauses in a way which allows flexibility to the Scottish Parliament to depart from other eligibility rules in the existing benefits – to give just one example, the clauses do not require them to maintain the rule that Carer’s Allowance is only payable to one carer in respect of each disabled person. Thus the detail in the clause is to provide a structure within which the Scottish Parliament can work and reflects some long-standing principles about how people are supported in different circumstances.

Discretionary Payments/Discretionary Housing Payments

Your letter sought clarification on clause 18 which provides the Scottish Parliament with powers to make discretionary payments line with the recommendation made by the Smith Commission. Discretionary payments are not the same as benefits and as social security remains reserved more generally it is important to ensure that any

power for discretionary payments does not inadvertently allow for new benefits to be created in areas of welfare that have not been devolved. The clause has therefore been drafted to give the ability to make a payment in any area of welfare but without giving the ability to create benefits, hence the reference to meeting a 'short-term need' within the draft clause.

You sought clarification on the relationship between the draft clause 18 and the current exception to the social security reservation under which the Scottish Welfare Fund operates. The draft clause does broaden the current exception in that, as you noted, there will no longer be a requirement for a person's need to have arisen out of an exceptional event or circumstances. As such, a payment can be made to meet any need related to an individual's well-being as long as it does not create an on-going entitlement (which would be more akin to a benefit rather than discretionary payment).

The only exception to this is if the need has arisen as a result of a sanction to a reserved benefit as the sanctions and conditionality policy remains reserved to the UK Government. However, the clause provides for a payment to be made where a person has been sanctioned if it is to cover an immediate short-term need that arises from an exceptional event or exceptional circumstances. This replicates the existing power for the Scottish Welfare Fund which requires the need to be immediate and short-term and to arise out of an exceptional event or exceptional circumstances. We therefore do not consider that the draft clause restricts the existing powers.

With regards Discretionary Housing Payments (DHP), clause 19 provides for the devolution of powers to provide DHPs as they currently apply in England, Wales and Scotland. As a result, the restrictions set out in the draft clause already exist with respect of DHPs and are not new. The Scottish Parliament will have great freedom to design and deliver a system of support for people who need help with their housing costs.

Employment Support

You have raised the scope of the clauses and the focus on support for the long-term unemployed. Claimants receive support from different organisations at different points in their journey towards work. In the early stages of their claim they receive support from Jobcentre Plus, which is also able to make use of short-term contracted provision, such as Mandatory Work Activity, as a tool to support claimants into employment. The Jobcentre Plus element of the claimant journey remains reserved under the recommendations of the Smith Commission.

If a claimant is at risk of long-term unemployment, they are referred onto longer term support, such as the Work Programme or Work Choice. Here, responsibility for supporting the claimant back into work is transferred entirely to the programme provider.

The criteria in the draft clauses create a clear distinction between the Jobcentre Plus elements of the claimant journey and what will be the Scottish Government led elements of the claimant journey. This will allow Jobcentre Plus to access the tools they need when they are leading on a claimant's support whilst also giving the Scottish Government clear space in which to develop its own programmes. This will create a smoother and more efficient claimant journey, and will allow both the Scottish Government and Jobcentre Plus to operate together more effectively.

In all of this, there is still a need for the Scottish Government and UK Government to work together to agree the fiscal framework this will operate in; and that any decisions the Scottish Government make will need to keep within the overall financial settlement or raise further revenue.

I trust that this provides you and the Committee with the clarification you seek.

I am copying this letter to the Secretary of State for Scotland.

Rt Hon Iain Duncan Smith MP

SECRETARY OF STATE FOR WORK AND PENSIONS