



The Scottish Parliament
Pàrlamaid na h-Alba

WELFARE REFORM COMMITTEE

AGENDA

10th Meeting, 2013 (Session 4)

Tuesday 28 May 2013

The Committee will meet at 10.00 am in Committee Room 3.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 and item 6 in private.
2. **The Big Lottery:** The Committee will take evidence from—

Jackie Killeen, Director for Scotland, The Big Lottery.
3. **Scottish Human Rights Commission:** The Committee will take evidence from—

Alan Miller, Chair, Scottish Human Rights Commission.
4. **Subordinate legislation:** The Committee will take evidence on the Welfare Reform (Consequential Amendments) (Scotland) (No.3) regulations 2013 (SSI 2013/142) from—

Ann McVie, Team Leader, Welfare Division, Stuart Foubister, Directorate for Legal Services, Jenny Brough, Team Leader, Council Tax Unit, and Catriona MacKenzie, Legal Aid Policy Manager, Scottish Government.
5. **Work programme:** The Committee will consider its work programme.
6. **DWP Decision Makers visit:** The Committee will consider an invitation to visit a DWP office in Scotland where decision making is carried out.

WR/S4/13/10/A

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The papers for this meeting are as follows—

Note by the Clerk	WR/S4/13/10/1
Note by the Clerk	WR/S4/13/10/2
Note by the Clerk	WR/S4/13/10/3
PRIVATE PAPER	WR/S4/13/10/4 (P)

Welfare Reform Committee

10th Meeting, 2013 (Session 4), Tuesday, 28 May 2013

The Big Lottery

1. At its evidence session on 22 January the Committee examined the adequacy of the advice resources that were likely to be available to those affected by welfare reforms.
2. One of the issues that emerged from this session was that the Big Lottery Fund in England appeared to have co-financed additional resources provided by the UK Government for advice services to accommodate increasing demand as a result of welfare reforms. The Scottish Government has also made available additional resources to advice agencies in Scotland, but to date these have not been co-financed by the Big Lottery in Scotland.
3. The Convener wrote to the Big Lottery's Director for Scotland on this issue and received a response on 14 February (attached).
4. The Big lottery has also provided an additional submission (attached) for the appearance of its Director for Scotland today.
5. The attached briefing note from SPICe provides information on the additional funding for advice services made available by the UK Government as well as any funding made available by the devolved administrations.

LETTER TO MICHAEL MCMAHON FROM BIG LOTTERY FUND – 14 FEBRUARY 2013

Dear Mr McMahon

Funding for advice services in Scotland

Many thanks for your letter dated 23 January 2013 regarding funding arrangements for advice services in Scotland. As promised in my letter of the 31 January 2013, I am now able to provide a more comprehensive response.

As you may be aware, The Big Lottery Fund's work focuses on people most in need. We monitor trends in enquiries and applications, and also feedback and reports from grantholders. This intelligence helps us shape our funding programmes.

Big Scotland also has ongoing discussions with the Scottish Government on a range of issues related to growing hardship and the potential impact of welfare reform. Our discussions provide an opportunity to share intelligence, explore joint working and connect to the people directly affected by hardship and welfare reform changes.

We are currently engaging with Scottish Government to gain a detailed understanding of their recently announced funding for support advice services and to explore how our investment can complement this to achieve greater impact.

The Big Lottery Fund has taken a different approach to investing – we are an outcomes funder and invest to achieve broad aims rather than to support specific sectors. We are able to and do fund advice services through our funding programmes, where they are able to show that they meet the overall outcomes we are trying to achieve. Through our main programme, Investing in Communities, we have invested over £5 million since 2006 in advice projects throughout Scotland and will continue to do so in the future.

The type of advice project we have recently invested in includes the Castle Rock Edinvar Housing Association's 'Money Matters' project. This is a partnership project between Castle Rock Edinvar, Dunedin Canmore, Port of Leith, Blackwood housing associations and Citizens Advice Edinburgh and will improve the financial capability and Inclusion of housing association tenants who will be able to access one-to-one financial advice and debt advice support. The project aims to prevent the transition to debt, provide access to appropriate financial products and increase tenants' financial capabilities.

We are, also, developing a new source of investment as part of our responses to growing hardship and we expect advice services to be able to access this. Our applicants and grantholders have reported to us growing hardship with projects on the ground also reporting increased needs for support with basic needs and welfare and financial advice.

This new investment will direct £10 million to organisations who are engaged in a range of activities, including tackling food and fuel poverty as well as providing access to financial skills, services & advice. It aims to respond quickly to growing current and future unmet need for a number of disadvantaged groups. A strong theme of this support will be to connect services in the community to help provide more effective support.

We plan to make details of this investment available at the end of February 2013 and open for applications at the end of March 2013.

I hope this information is helpful. I am happy to provide the Committee with further information, and provide evidence in person if that would be useful.

With best wishes,

Jackie Kileen

Director for Scotland

SUBMISSION FROM THE BIG LOTTERY FUND

Background

The Big Lottery Fund (BIG), the largest distributor of National Lottery good cause funding, is responsible for giving out 40% of the money raised for good causes by the National Lottery. BIG is committed to bringing real improvements to communities and the lives of people most in need and has been rolling out grants to health, education, environment and charitable causes across the UK since June 2004. The Fund was formally established by the UK Parliament on 1 December 2006.

Since the National Lottery began in 1994, 28p from every pound spent by the public has gone to good causes. As a result, over £28 billion has now been raised and more than 383,000 grants awarded across arts, sport, heritage, charities, health, education and the environment.

The Scotland Committee has been making Big Lottery Fund decisions on Scottish projects since March 2007. As well as taking devolved decisions on Lottery spending, the Committee, led by Chair, Maureen McGinn, has and will continue to play a strategic role in the future direction of BIG in Scotland.

The Scottish Ministers set the Framework for the work of the Big Lottery Fund in Scotland through policy directions.

The Big Lottery Fund is investing in Scotland's communities through its Investing in Communities portfolio, as well as the small grants schemes Awards for All, Investing in Ideas, Communities and Families Fund (in partnership with the Scottish Government) and 2014 Communities.

Introduction

We are aware of the current levels of hardship and material need facing communities and individuals throughout Scotland. It's clear that there's a demand for crisis and emergency help, and this has been reflected in the number of projects applying for funding through the Big Lottery Fund to meet these needs.

BIG has supported a range of projects in this area. Our investment has so far helped local projects provide a wide range of support. We've delivered this through a range of our existing funding programmes, which has allowed us to respond quickly and flexibly to this developing situation.

In addition to this ongoing investment, we are actively working with other key partners, including other funders, government and a range of third sector organisations to increase our knowledge of hardship and hardship support services and to explore how we can all work together to tackle the changing needs of Scotland's communities during these difficult economic times.

Responding to hardship

The Big Lottery Fund's focus has been on responding to growing hardship. This includes exploring how we can support organisations working with individuals and families in urgent need and crisis.

The Big Lottery Fund is responding both in a strategic way and with investment. Our strategic response focuses on engaging with key stakeholders to gather intelligence, map service provision, explore collaboration and joint working and connect us to people directly affected by hardship. Our investment focuses on making key investments in frontline organisations who are engaged in hardship activities, primarily through a specific new funding initiative called **Support and Connect**.

We have also made a number of key investments through our **Investing in Communities** programme and small grants programmes, **Awards for All** and **Communities and Families Fund**.

Through Investing in Communities we have directed investment to a range of organisations who are engaged in tackling hardship such as welfare rights, debt advice, financial capability & inclusion, tenancy support, household goods and affordable energy.

Through our Awards for All programme and Communities and Families Fund we have made smaller grants to a wide range of organisations across Scotland to support activities including advice, starter packs, and food banks.

Support and Connect is a new £10 million fund which aims to improve the support available for people experiencing hardship and material need. It will fund organisations helping those who are in hardship that are experiencing growing demand for their services. It will also help organisations and services enhance their provision and connect with each other to provide more effective support. It will direct investment to organisations who are engaged in a range of activities, including tackling food and fuel poverty as well as providing access to financial skills training & services, clothing & household goods and welfare advice. We expect advice services to be able to access Support and Connect and will invest £10 million in 2013/14 through two rounds of funding in May and September 2013.

Support and Connect will make awards of between £10,000 and £350,000 to voluntary & community organisations, local authorities, schools and housing associations that can achieve the following outcomes:

- 1 Organisations helping those in hardship are better connected to each other so they can offer more effective support.
- 2 People in hardship have better access to services that can help them.

While we were developing and launching Support and Connect we were alerted to possible additional sources of funding for advice that might become available. Since then, we have been liaising with Scottish Government, Money Advice Service and

Scottish Legal Aid Board on an ongoing basis since February 2013 to discuss the criteria, processes, communications and implementation of our respective funding programmes for advice provision to ensure these complement rather than duplicate each other.

May 2013

Agenda item 1		WR/S4/13/10/1
28 May 2013		

Advice Services

Introduction

This paper provides information on the additional funding for advice services made available by the UK Government as well as any funding made available by the devolved administrations. It also highlights recent reviews of the advice service sector that were by each administration.

England

On the 21 November 2011, the Cabinet Office announced¹ that £20m would be released for advice service funding across the UK. England would be allocated £16.8m and the remaining £3.2m would go to the devolved administrations.

In England, the £16.8m would help not-for-profit free advice services and be delivered by the Big Fund². The Cabinet Office said that the fund would provide “immediate support to debt, welfare benefits, employment and housing advice services” and would be open from November 2011.

According to the UK Budget 2012³: “The Government will make £20 million available to the not-for-profit advice sector in 2013–14, and again in 2014–15 to support the sector as it adapts to changes in the way that it is funded.”

On the 26 October 2012, the Cabinet Office announced⁴, in partnership with the Big Lottery Fund, that £65m would be made available for free advice services in England. The funding is being administered through the Advice Services Transition Fund, run by the Big Lottery Fund. Information provided by the Big Lottery Fund indicates⁵:

¹ Cabinet Office news release: <http://www.cabinetoffice.gov.uk/news/168-million-support-free-advice-services> 21 November 2011.

² The Big Fund is part of the Big Lottery Fund, but is able to administer non-lottery funding on behalf of third parties.

³ HM Treasury, Budget 2012: http://cdn.hm-treasury.gov.uk/budget2012_complete.pdf (see para 2.33) March 2012.

⁴ Cabinet Office news release: <http://www.cabinetoffice.gov.uk/news/65-million-free-advice-services-help-vulnerable-26-October-2012>

⁵ Big Lottery Fund, ‘Advice Services Transition Fund: Questions and Answers’ http://www.biglotteryfund.org.uk/-/media/Files/Programme%20Documents/Advice%20Services%20Transition%20Fund/public_qa_s_for_launch_v4.ashx

“The Government set aside funding to support the advice sector in the March 2012 Budget and has decided that it is more efficient and effective to support BIG’s programme of investment in the sector, rather than deliver a separate fund. The BIG programme will facilitate the changes government expects to see in terms of greater collaborative working, better joining-up of services for end users and more resilient and sustainable advice organisations.

BIG and the Cabinet office will each contribute 50% of the funding for the programme.”

Review of Advice Sector

Also on the 26 October 2012, the UK Government published a review⁶ of the funding of the not-for-profit advice services in England. The report outlines how advice agencies will need to adapt to make use of the funding which has been made available, for example:

- work more collaboratively together to build sustainability and effectiveness
- take early action to prevent the problems which cause people to seek advice
- diversify their funding streams and how they deliver their services so they can be more resilient and sustainable in the long term
- demonstrate their impact more effectively
- use all appropriate channels to reach those in need of support

Scotland

Scotland received £1.7m as part of its share of the initial £20m made available by the UK Government in November 2011⁷ for 2012-13. It has also been allocated £1.7m in 2013-14 and 2014-15.

Further Funding Announcements

There has been a total of £7.9million announced for advice funding since January by the Scottish Government which includes the Barnett consequential money covered above.

On the 21st January 2013 Deputy First Minister Nicola Sturgeon announced⁸ a £5.4million funding package to support those providing front-line advice to people across Scotland.

This included:

⁶ Cabinet Office (26 October 2012) “Not for profit advice services in England”

<http://www.cabinetoffice.gov.uk/resource-library/not-profit-advice-services-england>

⁷ Scottish Government (16 January 2013) Personal communication

⁸ Benefit Advice Groups Share 5.4million <http://www.scotland.gov.uk/News/Releases/2013/01/welfare-reform21012013>

- An immediate cash injection of £300,000 for services such as those provided by Citizens Advice Scotland (CAS)
- Setting up a new £1.7 million fund providing direct support to advice services
- A further £3.4 million to be spent over the next two years on helping organisations mitigate the impacts welfare reforms

On 10 March 2013 The Scottish Government stated that it “is providing an extra £2.5 million to social landlords to ensure there is advice on hand for people who will lose housing benefit due to the under occupancy measures and other housing benefit changes being introduced by Westminster(...)This is on top of the £5.4 million we have already allocated to help those affected by benefit reforms.”⁹

In a follow up announcement¹⁰ on 25 April 2013 the Scottish Government set out how both sets of funding was going to be allocated. The Making Advice Work (MAW) programme will support organisations helping people in Scotland facing debt and other problems stemming from benefits changes and the ongoing impact of the economic downturn. MAW will bring together £5.1 million of Scottish Government funding with a further £2.35 million being allocated by the Money Advice Service as part of its debt advice funding partnership. The total fund of £7.45million will be managed by the Scottish Legal Aid Board.

The MAW programme will focus on priority issues agreed with Scottish Ministers and the Money Advice Service:

- around £4m will be allocated to projects that provide advice and representation to help people facing financial difficulties, and a range of other problems flowing from welfare reforms.
- £2.5m will be allocated to projects led by social landlords that provide advice, information and representation to tenants dealing with the impact of welfare reform. (as mentioned in the March press release above)
- around £1m will be allocated to projects designed to find new ways of helping groups of over-indebted people who face particular barriers in accessing appropriate help to deal with their debts

In response to written question S4W-13907 on 26 April 2013 Nicola Sturgeon confirmed that the Scottish Government will allocate the remaining £2.5million to CAS up until March 2015.¹¹

Review of Advice Sector

Nicola Sturgeon has indicated that the Scottish Government’s ‘Access to Justice’ project in the ‘Making Justice Work’¹² programme:

⁹ Help for People Hit by Bedroom Tax <http://www.scotland.gov.uk/News/Releases/2013/03/social-welfare10032013>

¹⁰ Scottish Legal Aid Board http://www.slab.org.uk/news/articles/MAW_launch

¹¹ http://www.scottish.parliament.uk/S4_ChamberDesk/WA20130426.pdf

“is directed at better co-ordination and prioritisation of advice funding, seeking to develop a more efficient and cost effective approach to public sector funding of advice services. The project is currently mapping the range of information and advice services that receive public sector funding and why, covering advice on areas of law such as housing, welfare benefits, debt and consumer issues.”¹³

Wales

As a result of the £20m made available by the UK Government for the not-for-profit advice sector for 2013-14, and again in 2014-15, Wales was allocated £0.9m for 2013-14 and £0.9m for 2014-15. It was not possible to confirm whether funding was received for the year 2012-13.

In March 2012, the Welsh Assembly Government announced¹⁴ £6.6m funding for Citizens Advice Cymru for three years. This is intended to support the work of Citizens Advice in light of the increased workload for the advice sector as a result of welfare reforms.

Review of Advice Sector

The Welsh Assembly published on May 15 2013¹⁵ a review of advice services, exploring how a stronger advisory network can be developed so that services can be delivered consistently and universally across Wales. The Minister for Local Government and Communities, Carl Sargeant, said that the magnitude of the challenges facing Wales in light of welfare reform had led to his and the Finance Minister’s decision to undertake the review¹⁶.

Northern Ireland

As a result of the £20m made available by the UK Government for the not-for-profit advice sector for 2013-14, and again in 2014-15, Northern Ireland was allocated £0.6m for 2013-14 and £0.6m for 2014-15. It was not possible to clarify whether funding was also received for the year 2012-13.

Review of Advice Sector

¹² Scottish Government, “Making Justice Work” programme webpage, <http://www.scotland.gov.uk/Topics/Justice/legal/mjw>

¹³ Scottish Parliament, (2012) “Daily Written Answers Tuesday 18 December 2012” S4W-11720, http://www.scottish.parliament.uk/S4_ChamberDesk/WA20121218.pdf

¹⁴ Welsh Assembly Government, News release, 8 March 2012 “Minister Announces £6.6 Million Funding for Citizens Advice Cymru” <http://wales.gov.uk/newsroom/housingandcommunity/2012/120308cab/?lang=en>

¹⁵ Welsh Assembly Government, 15 May 2013, Advice Services Review: Final research report <http://wales.gov.uk/docs/dsjlg/research/130515asrexcsummaryen.pdf>

¹⁶ Welsh Assembly Government, News release, 19 June 2012, “Welsh Government Announces Review of Advice Services”, <http://wales.gov.uk/newsroom/housingandcommunity/2012/120619adviceervices/?lang=en>

The 'Opening Doors Strategy'¹⁷ (2007) sought to create a sustainable advice sector by reforming the voluntary advice sector framework. It held a mapping exercise to assess the size and location of advice sector services across Northern Ireland and sought to create a number of central 'Area Advice Centres'¹⁸. It was suggested that these centres would provide a wide range of services such as advice, advocacy and support on both basic and complex generalist advice with referral to a number of specialist organisations if necessary (eg legal advice services). However, no final decision has yet been made on this strategy.

Nicki Georghiou / Heather Lyall

SPICe Research

21 May 2013

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

¹⁷ Department for Social Development, Northern Ireland, (2007) "Opening Doors Strategy"
http://www.dsdni.gov.uk/vc-opening_doors_report.pdf

¹⁸ Department for Social Development, Northern Ireland, (2010) "Area Advice Centre Location: Policy Statement" <http://www.dsdni.gov.uk/vcni-area-advice-centre-policy-statement-2010.pdf>

Welfare Reform Committee

10th Meeting, 2013 (Session 4), Tuesday, 28 May 2013

Scottish Human Rights Commission

1. During the course of the Committee's evidence sessions, and in written evidence that the Committee has received, a number of witnesses have asserted that elements of the welfare reform legislation are contrary to human rights legislation. Indeed a number of challenges have been made to the legislation on human rights grounds.
1. With this background in mind the Committee has invited the Chair of the Scottish Human Rights Commission to give evidence to it and share his views on these issues.
2. The attached briefing note from SPICe sets out the human rights context, and particularly the roles of the Scottish Human Rights Commission and the Equalities and Human Rights Commission.
3. The Chair of the SHRC has also supplied a paper setting out his views (attached)

Agenda item 2		WR/S4/13/10/2
28 May 2013		

Welfare Reforms and Human Rights

Introduction

This briefing gives an introduction to the Scottish Human Rights Commission and summarises the areas where it has been argued that UK Government's Welfare Reforms may have infringed on Human Rights. This paper refers to the European Convention on Human Rights, relevant case law, legislative scrutiny in other parts of the UK, and then refers to arguments made by various interest groups on the issue.

Scottish Human Rights Commission

Human rights¹ are neither reserved nor devolved; it depends on whether rights concern the application of reserved or devolved policy. For example, human rights in relation to welfare matters would be reserved (in the main, i.e. passported benefits are devolved), and human rights in relation to Scottish criminal law would be devolved.

Human rights in relation to devolved areas are the responsibility of the Scottish Human Rights Commission. Human rights in relation to reserved policy areas are the responsibility of the Equality and Human Rights Commission.

The functions of the Scottish Human Rights Commission are set out in the Scottish Commission for Human Rights Act (2006) (the Act). Under the Act the Commission has a general duty to promote awareness, understanding and respect for all human rights - economic, social, political, cultural and civil - to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights. The Commission also has a number of powers. These include:

- The power to conduct inquiries into the policies or practices of Scottish public authorities, either those working to deliver a particular service, or public authorities of a particular description i.e. those working on certain issues or a particular description.
- The ability to provide education, training and awareness raising, and by publishing research.
- Recommending such changes to Scottish law, policy and practice as it considers necessary.

¹ The Human Rights Act 1998 is a protected enactment under Schedule 4 of the Scotland Act 1998. This means the Scottish Parliament cannot modify the Human Rights Act.

- The power to enter some places of detention as part of an inquiry, and the power to intervene in civil court cases where relevant to the promotion of human right and where the case appears to raise a matter of public interest.

The Commission is under a duty to ensure it is not duplicating work that others already carry out.

Further information is available at <http://www.scottishhumanrights.com>

European Convention on Human Rights and a right to social welfare

The [ECHR](#) guarantees civil and political rights (e.g. right to life, right to a fair trial). However, there is no actual right to social welfare, although there are many examples of cases regarding social welfare and how these contravene certain articles under ECHR. The European Court of Human Rights has a [factsheet](#) on social welfare which documents various cases from across Europe (January 2013).

Case Law - Under Occupancy Penalty (Bedroom Tax)

Lord Freud, the Minister for Welfare Reform, has stated that he felt the [Housing Benefit \(Amendment\) Regulations 2012](#), which includes the 'bedroom tax', were compatible with Human Rights. ([Lords Debate, Grand Committee, Monday 15th October 2012](#)).

However, in a [unanimous ruling](#) on the 'Burnip Case' on 15 May 2012 the Court of Appeal held that the size criteria in the current Housing Benefit regulations 2006 (Local Housing Allowance - only applied to claimants living in private rented housing) discriminates against disabled people.

Claimants were said to have established a 'prima facie' case of discrimination for the purposes of Article 14 of the European Convention on Human Rights. Article 14 is a qualified right which deals with prohibition of discrimination. It was ruled that the Secretary of State had failed to establish objective and reasonable justification for the discriminatory effect of the statutory criteria.

The DWP has dropped their appeal against this judgement. This means that from the date of the Court of Appeal judgment on 15 May 2012, local authorities (LAs) should allow an extra bedroom for children who are unable to share because of their severe disabilities. ([DWP Housing Benefit / Council Tax Benefit Bulletin U2/2013](#))

Case Law – Work Placement Judgement (Poundland)

On the 12 February 2013 three judges at the Court of Appeal [unanimously ruled](#) that the regulations² under which most of the government's 'back to work' schemes have been created are unlawful. The case is based on two Appellants Reilly & Wilson who

² Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011

were both told that working unpaid was mandatory and a condition for receiving their out of work benefit.

The regulations were subject to judicial review on four grounds one of which relates to Article 4 of the ECHR (forced labour). The Court of Appeal found against DWP on two grounds:

- (a) The ESE ((Employment Skills and Enterprise) Regulations were quashed on the grounds that they failed to describe the schemes to which the regulations apply in sufficient detail, as required by the primary legislation;
- (b) The Court upheld the High Court's ruling that letters sent to claimants when they were mandated to an ESE Scheme did not comply with the regulations.

The Court of Appeal found in favour of the DWP on two grounds:

- (a) It rejected the claimants' argument that the ESE regulations were contrary to European Convention on Human Rights Article 4 (forced labour);
- (b) It rejected the claimants' argument that the ESE regulations could not be enforced in the absence of a published policy in relation to them.

As a result of the judgement, the appellant's lawyers have suggested that claimants who were sanctioned by having their jobseeker's allowance taken for non-compliance can claim back their lost benefits. ([The Telegraph, Blow as court says Government back-to-work scheme is unlawful, Feb 2013](#)). The Department for Work and Pensions plans to appeal to the Supreme Court and has already replaced the regulations with [The Jobseeker's Allowance \(Schemes for Assisting Persons to Obtain Employment\) Regulations 2013/276](#). The [Explanatory Memorandum](#) to the regulations state that the reason for replacing the original regulations with immediate effect is because "it is essential that the DWP is able to continue to mandate claimants to take part in the schemes to which the Regulations apply, which were previously covered by the 2011 regulations".

The DWP has also enacted the Jobseekers (back to work scheme) Act 2013. The explanatory notes to the Bill state that it has been introduced "to avoid the need to repay claimants who have been sanctioned for failure to comply with requirements under the ESE (Employment Skills and Enterprise) Regulations". The justification of this policy decision was that it would save the UK taxpayer £130 million. ([Jobseekers \(back to work scheme\) Bill Explanatory Notes](#)) However, some commentators argue that it could be seen to reverse the court of appeal decision. The Public and Commercial Services Union stated that:

"The bill would set a dangerous precedent if passed – sending the message that when citizens defeat the government in court, it can overturn the court

ruling retrospectively with primary legislation – effectively making the government above the law.”

More information can be found in the [House of Commons Briefing on the Bill](#).

Currently in the High Court – ‘10 Families Case’

The High Court is currently hearing a series of legal challenges to the ‘bedroom tax’ by ten families who feel they have been discriminated against by the penalty. The ten cases have been joined together as test cases and include families who have members who are disabled (many of which are children), have mental health problems or children that have experienced domestic violence.

The Equalities Human Rights Commission is intervening as an independent third party expert to assist the court on discrimination law and human rights. It will submit that the new regulations potentially breach the right of people not to be discriminated against in the enjoyment of their rights (Article.14) and their right to a family life (Article.8).

It will also advise the court on the UK's duty to provide reasonable accommodation for people with a disability under international law, particularly the obligations under the United Nations Convention on the Rights of People with Disabilities (UNCRPD). This requires the government to take steps to abolish or modify laws that discriminate against disabled people. ([EHRC, Press release, 15 May 2013](#))

Inside Housing reports that lawyers also plan argue that Iain Duncan Smith has failed to comply with his public equality duty under the 2010 Equality Act. It also reports that DWP is accusing lawyers for the applicants of disregarding measures taken by the government to provide funds directly intended to meet the needs of individual cases through the discretionary housing payment system ([Inside Housing, 15 May 2013](#)).

UK Legislative Scrutiny

The [Human Rights Joint Committee published a report on its legislative scrutiny of the Welfare Reform Bill](#) in December 2011. Key points are outlined below, the committee:

- Expressed regret that the Bill was not accompanied by a full human rights memorandum and disappointment at the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the United Nations Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of Persons with Disabilities.
- Believed that the Bill should be amended to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants which would make it less likely that the Bill

would lead to incompatibilities with the UK's obligations under the UN Convention on the Rights of Disabled People. It also recommended a trial assessment period.

- Clarified that imposing conditionality requirements on benefits is not precluded by human rights law. However, it believed there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR (prohibition of torture), if the individual concerned was genuinely incapable of work.
- Expressed concern that some of the proposals, such as those relating to employment support allowance and housing benefit, may be implemented in a way which could lead to a discriminatory impact and which does not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised.
- Called on the Government to improve its capacity to conduct equality impact assessments and to better monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally.

The Human Rights Joint Committee also [reported on the 26th March 2013](#) that there have been a number of Bills which they have not been able to subject to proper scrutiny due to timetabling of the bills or short notice in terms of amendments. This includes the Jobseekers (back to work scheme) Bill which relates to the Poundland case discussed above. According to the Human Rights Joint Committee the Bill was unnecessarily fast tracked and its provision for retrospectively taking away the entitlement to benefit gives rise to two human rights compatibility issues. First, whether the Bill was compatible with the right to peaceful enjoyment of possessions in Article 1 Protocol 1 ECHR; and, secondly, whether by taking away the benefit of the Court of Appeal's judgment the Bill is incompatible with the right of access to court in Article 6(1) ECHR.

The report also includes the Welfare Benefits Up-rating Bill. The committee stated that there was nothing in the information provided by the Government to indicate that it had considered the compatibility of the Bill with other relevant human rights standards, including the UN Convention on the Rights of the Child ("UNCRC"), or the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). It also felt it was unjustifiably timetabled as emergency legislation.

NI Legislative Scrutiny

An [ad-hoc committee on conformity with equality requirements, welfare reform bill](#) at the Northern Ireland Assembly has scrutinised the equality and human rights³ aspects of the Northern Ireland Welfare Reform Bill. The committee published a [report](#) on 21 January 2013 and stated its overall conclusion to be that "it cannot

identify any specific breaches of equality or human rights aspects of the Welfare Reform Bill. This decision was reached by majority vote.” However, it has produced a number of recommendations to safeguard human rights and equality issues. These included:

- Taking into account in its calculation of housing benefit exceptional circumstances, such as additional room requirements for those who have joint custody of a child, who are foster carers, or who require additional space because of a disability, in order to respect the human rights of disabled people and children.
- Ensuring that claimants of Universal Credit have the right to opt for payment of benefit on a bimonthly basis, in order to minimise any potential adverse impacts on women and children.
- Requesting medical evidence in the first instance for Personal Independence Payment (PIP) claims.
- Puts in place procedures to monitor sanctions against lone parents in order to identify and minimise any potential adverse impacts on women and children.

However, the BBC [reported](#) (29 January 2013) that nationalist and unionist MLAs were divided over the results of a committee investigation into the human rights aspects of the Welfare Reform Bill.

Views from interest groups

We are Spartacus

A campaign group called ‘[We are Spartacus](#)’ produced a paper [Closing the Door on the Law: The Implications for Chronically Sick and Disabled Tenants of the Housing Benefit \(Amendment\) Regulations 2012](#) which sets out, in the author’s view, a range of Human Rights breaches relating to the bedroom tax:

“As they stand, the size criteria changes in the draft Housing Benefit Regulations:

- Are contrary to Article 1 (Protocol 1) of the European Convention of Human Rights (ECHR)
- Are contrary to Articles 3, 8 and 14 of the ECHR
- Are contrary to Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR)
- Are contrary to Articles 4, 19 and 28 of the UN Convention on the Rights of Persons with Disabilities. (UNCPRD)
- Provoke a retrogressive outcome under the terms of the UNCPRD
- Are contrary to protections under the Equality Act
- Are contrary to decisions and judicial opinion in the Burnip case”

We are Spartacus also published '[The People's review of the Work Capability Assessment](#)' (November 2012), and said it 'suspects' that the WCA may compromise disabled people's human rights.

Scottish Campaign on Welfare Reform

[SCoWR](#) – the Scottish Campaign on Welfare Reform published a [manifesto](#) in March 2010. Among the reforms it campaigned for was 'Make respect for human rights and dignity the cornerstone of a new approach to welfare.' This included urgently reviewing the ESA (Employment Support Allowance) and making benefit and job seeking services accountable at a local level to service users, with the aim of ensuring that all claimants are treated with dignity and receive an excellent service.

The Hardest Hit campaign published the '[Tipping Point: the human and economic costs of cutting disabled people's support](#)' (October 2012) and said

"The Government must not treat disabled people as an easy target for cuts in the budget and spending review. Disabled people already feel their basic rights under the UN Convention on the Rights of Persons with Disabilities (UNCPRD) have come under attack. This report has set out the human and financial costs to date and warns that unless disabled people's fundamental rights are upheld all of us will end up in a bad place"

Inclusion Scotland

[Inclusion Scotland](#) has submitted evidence to a preliminary hearing of the Human Rights Council of the UN ahead of a planned review of the human rights record of 14 states, including the UK, in May 2013.

On behalf of the Campaign for A Fair Society, a coalition of more than 70 Scottish charities, it warned the cumulative impact of welfare reform and cuts to benefits affecting disabled people will mean their ability to live a full life is impaired. In particular, it argued that welfare changes undermine their right to be included in the community. The campaign also claims disabled people are being denied access to justice when they try to appeal against these cuts to their benefits.

A factsheet entitled [Being Part of Scotland's Story under the UN Disability Convention](#) has been produced by the Equalities and Human Rights Commission to accompany the session.

Amnesty International

Amnesty International UK, at its AGM on 14th April 2013, passed a resolution on the Human Rights of sick and disabled people in the UK. The resolution read:

‘This AGM calls for urgent action to halt the abrogation of the human rights of sick and disabled people by the ruling Coalition government and its associated corporate contractors.

Calls for Amnesty International UK to urgently work with grassroots human rights campaigns by and for sick and disabled people, carers and their families. And to set up a specialist Disability Human Rights network.....

To protect the human rights of people with disabilities, ill people and carers to halt this regressive and lethal assault on our rights.’

The resolution was proposed by Rick Burgess and Nancy Farrell of WOW (War on Welfare) petition www.wowpetition.com. The full resolution, with supporting information is [available here](#).

Just Fair

[Just Fair](#) is an NGO working to achieve justice and fairness through human rights. It campaigns for Economic and Social Rights, including the rights to food, clothing, housing and health, for everyone in the UK. It launched an Economic and Social Rights Consortium in spring 2013 with more than 70 leading national charities and community groups expressing an interest in joining. Campaigners say austerity measures could put the UK in breach of EU human rights conventions as welfare cuts threaten to leave hundreds of thousands of low-income households unable to afford to eat regularly and healthily. They point to the increased use of food banks to support this claim.

Heather Lyall and Nicki Georgiou
SPICe Research
21 May 2013

SUBMISSION FROM THE SCOTTISH HUMAN RIGHTS COMMISSION

Austerity & Human Rights

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of its functions. The Commission mandate is to promote and protect human rights for everyone in Scotland. The Commission is one of three national human rights institutions in the UK, along with the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission, and is Chair of the European Network of National Human Rights Institutions.

1. Introduction

The Scottish Human Rights Commission (SHRC) welcomes this opportunity to give evidence before the Welfare Reform Committee on austerity and human rights. We have provided this submission to assist the Committee in understanding the potential human rights impacts of the recent welfare reform measures. The Commission is concerned that a number of the measures will have a deleterious and retrogressive effect on the enjoyment of human rights. Similar concerns have been raised by the UK Joint Committee on Human Rights which criticised the UK Government for a lack of information on how it had assessed the human rights and equality impact of what became the Welfare Reform Act 2012.⁴

The measures are deep and wide and will affect large numbers of the population, both those out-of-work and in employment. Consistent evidence and testimony indicates that disadvantaged and marginalised groups including women, children, disabled people, older people, ethnic minorities, migrants and refugees will be disproportionately affected by the measures. Recent research supported by the Scottish Parliament indicates that these cuts are anticipated to have the most severe impact on those in the most deprived areas.⁵ The main elements of the Act introduce a streamlined Universal Credit payment, transfers Disability Living Allowance into the Personal Independence Payment (PIP), and brings a “fairer approach” to Housing Benefit. It also removes some or all of child benefit for households where one parent is earning more than £50,000.

⁴ Joint Committee on Human Rights (2011) – Legislative Scrutiny: Welfare Reform Bill, summary. UK Parliament

⁵ Christina Beatty and Steve Forthergill, *Hitting the poorest places the hardest, the local and regional impact of welfare reform*, Sheffield Hallam University, Centre for Regional and Economic and Social Research, April 2013 - http://www.shu.ac.uk/research/crest/sites/shu.ac.uk/files/hitting-poorest-places-hardest_0.pdf

There are currently a number of Judicial Review challenges to the welfare reform measures in England.⁶

2. Domestic Protection

Civil and political rights are brought into Scotland's constitutional framework via the Scotland Act 1998, which embedded the Human Rights Act 1998 (HRA) into the devolutionary settlement. Under the Scotland Act, the Scottish Parliament may not pass laws which are incompatible with the rights in the HRA⁷ and the Scottish Government may not make law or do anything else which is incompatible with the HRA.⁸ Under the HRA, public authorities too are prohibited from acting in a manner incompatible with the rights of the European Convention on Human Rights (ECHR) which are included within the HRA.⁹

3. European Convention on Human Rights (ECHR)

Article 2 & 3 – the right to life and freedom from torture and inhuman or degrading treatment or punishment

Article 3, which is an absolute right from which no derogation or exception is permitted at any time, prohibits torture and inhuman or degrading treatment or punishment and requires positive measures for protection from ill treatment. As the European Court of Human Rights (ECtHR) has stated in a case involving the United Kingdom, a wide range of state conduct can be considered to breach Article 3, and it will depend *inter alia* on the level of severity of the ill-treatment and the effect that it has on the victim, taking into account her age, *health and mental and physical condition*.¹⁰ The House of Lords has held that refusal of financial support, including refusal of access to accommodation or food may breach Article 3 where the individual would otherwise be destitute.¹¹

Article 2 protects the right to life and like Article 3 cannot be derogated from even in times of war or other public emergency. The UN Human Rights Committee has found that under the right to life states should take “all possible measures to...increase life expectancy”, including eliminating malnutrition.¹² In a Scottish case at the House of Lords it was considered the right to life could be relevant in situations

⁶ See Carmichael & Rourke v Secretary of State for Work and Pensions (Leigh Day & Co Solicitors & Ors) - [http://www.leighday.co.uk/News/2013/May-2013/Bedroom-Tax-Challenge-at-the-High-Court-\(1\)](http://www.leighday.co.uk/News/2013/May-2013/Bedroom-Tax-Challenge-at-the-High-Court-(1)) / Cohen, Hutchinson & Cotton - Liberty <http://www.liberty-human-rights.org.uk/media/press/2013/liberty-bedroom-tax-breaches-right-to-family-life.php>

⁷ Scotland Act 1998, section 29(2)(d).

⁸ Scotland Act 1998, section 57(2).

⁹ Human Rights Act 1998, section 6.

¹⁰ Ireland v UK (1978) 2 EHRR 25

¹¹ *R v Secretary of State for the Home Department ex parte Limbuela* [2005] UKHL 66.

¹² UN Human Rights Committee, *General Comment No. 06: The right to life (art. 6)*, 30/04/1982.

where the quality of housing or accommodation was so bad that it imperilled the life of residents.¹³

The implementation of welfare reform measures has reportedly seen some critical services cut or severely reduced to 'life and limb' provision only and as a result many people may be at risk of being subject to harm, neglect or social isolation. In other instances the measures may render people homeless or destitute. There has reportedly been a marked increase in the use of food banks in Scotland in part due to the austerity measures.¹⁴ In extreme cases the cumulative impact of a number of these measures may amount to a breach of Articles 2 or 3 the Convention.¹⁵

Article 8 – The right to respect for private and family life, home and correspondence

Article 8 requires the respect for private and family life, home and correspondence. Private life has been defined by the ECtHR as a broad concept, stating that the 'respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings'.¹⁶ Article 8 which is a qualified right requires the state to justify any interference by reference to their legality, necessity and proportionality.

There is concern that a number of the welfare reform measures may be incompatible with Article 8. For example, the under-occupancy rules or "spare bedroom tax" which came into force on 1st April 2013 will see a reduction of housing benefit for people living in council accommodation or other social housing who are assessed to have at least one extra bedroom. This measure is likely to have a huge impact on an individual's private life and social well-being if they are forced to move away from friends, family, health and social care and other established support networks. Many people have already moved away from their community to an unfamiliar area to meet the bedroom requirement and in so doing lose their sense of location and place and may be at risk of social isolation and loneliness as a result. Further, the measures may impact upon the enjoyment of family life if separated or divorced couples who share care of the children are only allowed one extra room between them – if the other keeps a bedroom for the children, it will be deemed "spare."

¹³ *Mitchell v Glasgow City Council* [2009] UKHL 11; [2009] WLR (D) 65, per Lord Rodger (para 69): "if the Council had allowed their housing stock to fall into disrepair, so that tenants were at risk of suffering life-threatening injuries or of becoming seriously ill, the Council could have been in breach of article 2."

¹⁴ BBC News, *Scottish food bank requests more than double*, 24 April 2013 - <http://www.bbc.co.uk/news/uk-scotland-22274903>.

¹⁵ An important example of the nature of the cumulative impacts is given in a report by Mary-Ann Stephenson with James Harrison and Ann Stewart. *Getting Off Lightly or Feeling the Pinch? A Human Rights and Equality Impact Assessment of the Public Spending Cuts on Older Women in Coventry*, a Joint Report by the Centre for Human Rights Practice, University of Warwick and Coventry Women's Voices, July 2012. That report concluded "In extreme situations, for instance if those receiving care are not able to obtain sufficient food and drink, individuals could even find themselves in situations that constitute inhuman and degrading treatment or threaten their right to life."

¹⁶ *Niemietz v Germany* A 251-B (1992); 16 EHRR 97 para 29

Many people may try to stay on in their current home but if they cannot keep up with payments they may face eviction. The ECtHR has consistently found that *“the loss of one’s home is the most extreme form of interference with the right for respect for the home.”*¹⁷ The UK Supreme Court has found that the proportionality of an eviction should be considered, and agreed with the Equality and Human Rights Commission that *“proportionality is more likely to be a relevant issue in respect of occupants who are vulnerable as a result of mental illness, physical or learning disability, poor health or frailty”*.¹⁸

4. International Obligations

Under the Scotland Act both the Scottish Government and Parliament must also take into account the whole range of international human rights obligations by observing and implementing them.¹⁹

International human rights obligations which the Scottish Ministers and Parliament must observe and implement include a broader spectrum of rights and obligations than those incorporated in the HRA.

The International Covenant on Economic, Social and Cultural Rights (ESC rights)

The UK ratified the International Covenant on ESC rights in 1976. This requires the UK to respect, protect and fulfil rights such as the right to adequate housing, to an adequate standard of living, and to the highest attainable standard of health.

These rights include immediate obligations, such as to ensure non-discrimination and prioritise the most vulnerable; to ensure the realisation of “minimum essential levels” of the rights as well as to take effective measures to ensure use of the maximum available resources to progressively realise those rights. ESC rights are internationally protected in a range of treaties, including the International Covenant on ESC rights, and in Europe via the European Social Charter. In the context of rising austerity measures the Chairperson of the UN Committee on ESC rights, Ariranga G Pillay (former Chief Justice of Mauritius), has advised all States Parties that they should *“avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights”*.²⁰ In his letter Chief Justice Pillay noted four requirements for any retrogressive measure. These were, in summary:

¹⁷ *McCann v United Kingdom* (App no 19009/04) 13 May 2008 (2008) 47 EHRR 913, at para 50. See also *Connors v UK* (Application no. 66746/01), 2004; *Čosić v Croatia* (App no 28261/06), 15 January 2009; *Zehentner v Austria* (App no 20082⁽⁰²⁾), 16 July 2009; *Paulić v Croatia* (App no 3572/06), 22 October 2009; *Kay v United Kingdom* (App no 37341/06), 21 September 2010.

¹⁸ *Manchester City Council v Pinnock* [2010] UKSC 45, at para 64.

¹⁹ Scotland Act 1998, Schedule 6, para 7(2).

²⁰ Letter from Ariranga G Pillay to All States Parties to the International Covenant on Economic, Social and Cultural Rights dated 16 May 2012 -

<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

1. that it is temporary and covering only the period of crisis;
2. that it is necessary and proportionate, in that any other measure would be more detrimental to the realisation of ESC rights;
3. that it is not discriminatory and includes all possible steps to mitigate inequalities and disproportionate impact on the most marginalised;
4. that the minimum core content, which the International Labour Organisation states as being the “social protection floor”, is upheld at all times.

Germany and Latvia provide good examples of where states have integrated ESC rights into their domestic or constitutional law. In Germany last year the Constitutional Court ruled that ESC rights require states to ensure a “dignified minimum existence” to asylum seekers²¹. In Latvia, the Latvian Constitutional Court agreed with pensioners in 2009 that the Government should have explored less harsh measures to reduce the deficit before considering a substantial reduction in state pensions.²²

UN Convention on the Rights of Persons with Disabilities (CRPD)

The UK ratified the CRPD in 2009. Among the rights protected in the CRPD is the right of disabled people to live independently and to be included in the community.

The Commission has noted concern that welfare reform measures will have a disproportionate impact on persons with disabilities.²³ Disabled adults are twice as likely to live in low income households as non-disabled adults with 30% already classed as living in poverty.²⁴ There is real concern that disabled persons might lose entitlement to passport benefits such as the Blue Badge and concessionary travel. According to the Department of Work and Pensions own Equality Impact Assessment 65% of households likely to be affected by the change contain a disabled person.

UN Convention on the Rights of the Child (CRC)

Among other things, the CRC requires that children must not be separated from their parents unless it is in their best interests.²⁵ There is concern that some of the welfare measures including the bedroom tax will have a detrimental effect on children. Scotland’s Commissioner for Children and Young People has noted that

²¹ Judgment of the Federal Constitutional Court I the proceeding 1 BvL 10/10

²² Case No. 2009-43-01 On Compliance of the First Part of Section 3 of State Pensions and State Allowance Disbursement in 2009 – 2012 insofar as it Applies to State Old-Age Pension with Article 1, Article 91, Article 105 and Article 109 of the Satversme

²³ See written evidence provided to the Joint Committee on Human Rights, Inquiry on the implementation of the right of disabled people to independent living - http://www.parliament.uk/documents/joint-committees/human-rights/Independent_Living_Written_Evidence_4.pdf

²⁴ See Inclusion Scotland Welfare Reform Changes Briefing, September 2011.

²⁵ Article 9, CRC

the welfare reforms, would “heap misery on families already struggling on the breadline”²⁶

5. Impact Assessment

In an environment where there are financial constraints, a human rights framework can provide objective guidance which will assist balanced decision making on the use of reduced resources. These criteria include maintaining those minimum services and standards necessary to enable a dignified existence: prioritising the most vulnerable and ensuring no direct or indirect discrimination; limiting the extent and duration of any retrogression through identifying and using the maximum available resources for the progressive realisation of rights. There is a cost to bad decision making and a clear benefit for all, including governments and public authorities, in getting policies and budgetary decisions right the first time. The adoption of a human rights based approach can set legal ‘red lines’ below which states actions must not fall, e.g. in ensuring the cumulative effects of austerity renders nobody destitute. It also ensures there is no disproportionate impact upon the most vulnerable by requiring a reasonable balance to be struck between any such impact and the potential cost savings. The use of a robust integrated equality and human rights impact assessment and human rights budget screening will ensure that human dignity and rights are placed at the heart of decision making. This is the approach which should be taken by both the UK and Scottish Governments as well as all public authorities.

Such an approach is not only good governance but is also the approach required to be taken by the tribunals and courts which come to adjudicate on specific cases arising from the austerity measures.

6. Conclusion

International human rights law provides a framework for the objective and fair allocation of reduced state resources, including in times of austerity.

To ensure this potential is realised people should be empowered to know and enjoy their rights, public authorities should be further enabled to put those rights into practice and a culture of accountability for the realisation of human rights should be advanced.

Empowerment: individuals and families impacted by welfare reform measures need to be made aware of their rights under domestic and international human rights law in order to protect themselves against any unjustifiable interference with such rights.

²⁶ <http://www.vaslan.org.uk/newsart/bedroom-tax-breaches-un-childrens-rights>

Ability: In both design by the UK Government and implementation by public authorities in Scotland, welfare reforms should be subject to an assessment of their impact on all of Scotland and the UK's human rights obligations.

Accountability: International human rights laws ratified by the UK should now be incorporated into domestic law to ensure that they are implemented by the UK Government and public authorities in Scotland and can be upheld in our courts.

The Commission hopes that these comments will be of assistance to the Welfare Reform Committee on 28 May 2013.

Professor Alan Miller

Chair, Scottish Human Rights Commission

May 2013

Welfare Reform Committee

10th Meeting, 2013 (Session 4), Tuesday 28 May 2013

**Welfare Reform (Consequential Amendments) (Scotland) (No.3) regulations
2013 (SSI 2013/142)**

Background

1. The Scottish Government laid the [Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No.3\) regulations 2013 \(SSI 2013/142\)](#) before the Parliament on 13 May 2013. The accompanying Policy Note is attached as the annexe to this note.
2. The Regulations make consequential amendments further to those made in the Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 to reflect the transition from Disability Living Allowance to the new Personal Independence Payment (PIP) so as to allow disability related “passported” benefits to be claimed in Scotland, following the introduction of PIP.
3. It also makes consequential amendments to allow for the introduction of the Armed Forces Independence Payment (AFIP), a new UK Government benefit which will be payable to the most seriously injured ex/service personnel.
4. Regulations 3 and 7 also make amendments so that payments from the Scottish Welfare Fund will be disregarded when assessing the disposable income or disposable capital of a person who wishes to receive advice and assistance, or civil legal aid.
5. The Regulations are subject to the negative procedure. They will come into force on 11 June 2013.

Subordinate Legislation Committee consideration

6. The Subordinate Legislation Committee considered the Regulations at its meeting on 21 May 2013 and did not raise any points on the instrument.

Recommendation

7. The Committee is invited to consider and note the Regulations.

**Clerk to the Committee
May 2013**

POLICY NOTE

THE WELFARE REFORM (CONSEQUENTIAL AMENDMENTS) (SCOTLAND) (No.3) REGULATIONS 2013

SSI 2013/142

1. The above instrument is made in exercise of the powers conferred by sections 12(3), 17(2B) and 42 of the Legal Aid (Scotland) Act 1986 and sections 1 to 3 of the Welfare Reform (Further Provision) (Scotland) Act 2012. The instrument is subject to negative resolution procedure.

2. Certain of the amendments in the instrument deal with AFIP (see paragraph 4 below). That benefit has been introduced in consequence of the abolition of disability living allowance by Part 4 of the Welfare Reform Act 2012 and is the broad equivalent for certain ex/service personnel of Personal Independence Payment. Accordingly, the view of the Scottish Government is that the amendments dealing with AFIP are within the powers conferred by section 2 of the Welfare Reform (Further Provision) (Scotland) Act 2012, as read with section 3(2)(b) of that Act.

Policy Objectives

3. The main purpose of this instrument is to make consequential amendments, further to those made in the Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 to reflect the transition from Disability Living Allowance to the new Personal Independence Payment (PIP) so as to allow disability related passported benefits to be claimed in Scotland following the introduction of PIP.

4. It also makes consequential amendments to allow for the introduction of the Armed Forces Independence Payment (AFIP), a new UK Government benefit which will be payable to the most seriously injured ex/service personnel.

5. Regulations 3 and 7 also make amendments so that payments from the Scottish Welfare Fund will be disregarded when assessing the disposable income or disposable capital of a person who wishes to receive advice and assistance, or civil legal aid. Such payments are also brought within the category of payments which do not have to be utilised to pay solicitors' fees where the legal advice and assistance or civil legal aid provided results in Welfare Fund payments being obtained or retained.

6. Regulation 9(2) and (3) also makes further minor consequential amendments to the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 to ensure dependants of universal credit recipients are remitted from health charges.

Commencement date

7. The date of commencement of these Regulations is 11 June 2013.

Consultation

8. The Scottish Government ran a formal consultation exercise on its approach to passported benefits which closed in September 2012. We also held informal consultation events with a range of stakeholders. The primary focus of stakeholders from this consultation activity was the need to protect entitlement to passported benefits as far as possible.

9. There has been limited informal consultation with stakeholders regarding the consequential amendments to take account of the introduction of AFIP. AFIP recipients would in all likelihood have qualified for DLA or PIP and the amendments being made to Scottish legislation are primarily procedural.

Impact Assessments

10. Given the diverse nature of the changes proposed in these Regulations, it is problematic to assess overall impacts. Impact assessments for the individual policy areas affected will be published on the Scottish Government website where appropriate.

Financial Effects

11. The financial effects of these Regulations are minimal. The passported benefits changes seek to maintain existing arrangements. AFIP will be claimed by ex/service personnel who would almost certainly have qualified for DLA and PIP, therefore we are not creating any new claimant groups through the amendments in question.

Scottish Government – Housing, Regeneration and Welfare Directorate

May 2013