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What can the Scottish Parliament do with new social security powers?

Paul Spicker

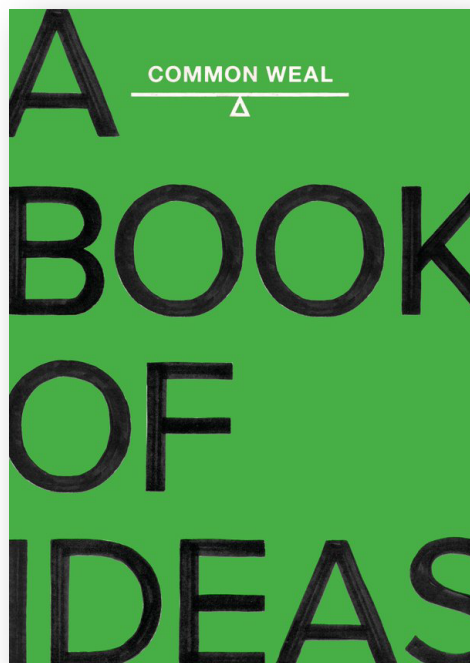
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Author

Paul Spicker is a writer and commentator on Social Policy. He was Grampian Chair of Public Policy at the Robert Gordon University from 2001-2015, and is now an Emeritus Professor at the university. Paul is the author of books on poverty and social security including *Poverty and Social Security* (1993), *The Idea of Poverty* (2007), *How Social Security Works* (2011) and *Social Policy: Theory and Practice* (2014).



Introduction

1. The Scotland Bill, currently passing through the House of Lords, gives the Scottish Parliament authority to develop some social security benefits. Much of the exercise has been treated as if the intention was to pass the administration of existing benefits to Scotland, but that is not what the Smith Commission agreed, and it is not what the Bill actually does. The Bill only makes it possible for the Scottish Parliament to do something. It does not create any new benefits. It does not offer money to anyone, or take money away from them. It does not cancel any of the powers of the DWP or the Treasury. If the Scottish Government decided it was not going to operate any benefits, most of them would continue to be the responsibility of the UK government.

"Much of the exercise has been treated as if the intention was to pass the administration of existing benefits to Scotland, but that is not what the Smith Commission agreed, and it is not what the Bill actually does."

Transferring existing benefits

2. The political reality is that some of the benefits will certainly be transferred. The Scottish Government wants to have more powers, and the UK government does not really want to bother with some of the benefits (such as payments for funerals and maternity). At the simplest level, the Scotland Bill can be taken to represent a potential transfer of authority for ten existing benefits:

- Disability Living Allowance
- Personal Independence Payments
- Attendance Allowance
- Severe Disablement Allowance (legacy cases)
- Industrial Injuries Benefits
- Welfare Foods (Free milk and vitamins)
- Cold Weather Payment (which is being presumed, questionably, to include Winter Fuel Payment)
- Funeral Payments
- Sure Start Maternity Grant and
- Carers Allowance

The Scottish Parliament already has responsibility for four other benefits, all operated at local authority level:

- Financial aid in social work
- The Scottish Welfare Fund (including crisis grants and community care grants)
- Council Tax Reduction
- Discretionary Housing Payments

As well as any benefits which might be associated with existing devolved services, including free social care, free prescriptions and free school meals. With the main exception of financial aid in social work, each of these have been established through a national policy which is implemented at the level of the service.

3. Table 1 shows the costs of the main benefits. They are mainly useful as a pointer to the size of the benefits. Some of the figures are dated; some (such as Council Tax Reduction) are difficult to estimate accurately; some are in transition (UC and DLA/PIP). The asterisks mark those benefits which are being devolved.

Table 1: Benefits in Scotland

	Cost (£m, 2014-15)
Attendance Allowance*	485
Bereavement	56
Carers Allowance*	203
Child Benefit	926 (2012-13)
Cold Weather Payments*	7
Council Tax Reduction (already devolved)*	379 (2012-13)
Disability Living Allowance*	1465
Employment and Support Allowance	1433
Housing Benefit (excluding £50m DHPs)	1776
Incapacity Benefit	9
Income Support	249
Industrial Injuries Disablement Benefit*	89
Jobseekers Allowance	311
Maternity Allowance and Statutory Maternity Pay	239
Pension Credit	587
Personal Independence Payments*	164
Severe Disablement Allowance*	77
State Pension	7324
Tax Credits	2226 (2012-13)
Universal Credit	2
Winter Fuel Payments*	184
Total identified expenditure	17807

4. The first decision to be made is whether the transfer should happen. There may not be many circumstances where the Scottish Government would not want to take the reins, but the position of Severe Disablement Allowance is illustrative. SDA closed to new applicants on 6 April 2001; there were still 163,000 claimants in Britain in 2014/15, but the current estimate of all those people who will still be entitled by 2017 is 24,000, all of whom will be pensioners. That probably translates to less than 3000 people in Scotland. The main effect of transferring these people, while continuing to pay the benefit, would be to carry forward an anomalous situation for a very small number of people while running the risk of disrupting their income flow.

5. A second decision is who should be responsible. Some disability organisations have expressed concerns about the possibility that disability benefits will be put into the hands of local authorities, partly because of the variations which that implies, but also because the priorities of local authorities have been heavily geared to social care, which is only a limited part of the purpose of benefits. According to CoSLA, however, “councils are not suggesting they should make decisions about who gets benefits or how much they get.” In relation to existing devolved benefits such as the Scottish Welfare Fund or CTR, the division of labour between the Scottish Government and local authorities has worked fairly well - far better, one might say, than in England: the Scottish Government establishes the policy and the criteria, while local authorities have been responsible for service delivery.

6. The third stage is to create an administrative mechanism that will best deliver the benefit. This will almost certainly imply some changes in rules, because most of the benefits that are being transferred work rather badly. People often fail to claim them when they are entitled.¹ The rules are not well understood. The simplest way to deal with this is to accept appropriate medical evidence. Carers Allowance is worthless to most claimants, because it gets knocked off other benefits; the main point of claiming is to qualify for premiums in other benefits. The complexity of the regulated social fund reflects criteria that are too complex. Funeral payments depend on a 36 page form, including details about the claimant, the claimant’s financial circumstances, the person being buried, the claimant’s relationship to that person, the resources of that person’s estate, and who else might have responsibility for the funeral. Sometimes, however, the problem is simply that the rules are impractical. The process of converting DLA to PIP has been hobbled by the insistence on individual assessment, which the DWP has not been able to procure effectively.

7. There is scope, too, for some rather more extensive intervention in service delivery. The House of Commons Work and Pensions Committee have pointed to problems of delays and underpayment. Even if the role of the Scottish Parliament is limited, there may be some scope for mitigating some of the delivery problems. Examples might include PO boxes for claimants, welfare rights support, and computer access including scanning, photocopying and document certification. In France and Belgium, local authority centres (Centres communaux d'action sociale) prepare and verify benefit claims, for which by agreement they are paid a fee by the benefits authorities. This could be extended to trusted third sector providers, and it would be a very practical way of improving services in rural and remote areas of Scotland.

Moderating what happens in DWP benefits

8. The most obvious effect of the Scottish Parliament’s limited powers to date has been to avoid some of the things that have been happening in England. Discretionary Housing Payments were used to limit, and then to cancel, the effect of the bedroom tax. The Scottish Welfare Fund made it possible to offer a nation-wide scheme for Crisis Grants and Community Care Grants in Scotland, while in England local authorities introduced a much broader and desperately underfunded set of measures. While English authorities introduced various schemes for Council Tax Support, the Scottish scheme for Council Tax Reduction was largely able to retain the features of the scheme that preceded it.

“Any change to the operation of Universal Credit promises to be difficult and staggeringly expensive. The cost of introducing the administrative process has been put by the Major Project Authority at an incredible £15.845 billion.”

9. The Scottish Government will have the power to negotiate changes to some Universal Credit rules with the DWP: the powers relate to the timing of benefit, who the benefit gets paid to, and how the housing element will work. Some of the powers may not be used: there will almost always be a substantial cost attached, and in some cases that may be prohibitive. Part of the problem is that the existing computer systems don’t work very well. Despite the hope of an all-singing, all dancing computer programme that would make all ills fade away, Universal Credit has been rolled out to date with multiple IT systems (Camlite, DRS and the Work Service Program) that don’t actually speak to each other. Security and identification proved impossible to manage in the way that the DWP hoped, and they have been pulled off the system and redirected to the staff in Jobcentre Plus, because they are the people who have some personal contact with claimants. The other part is that any change to the operation of UC promises to be difficult and staggeringly expensive. The cost of introducing the administrative process has been put by the Major Project Authority at an incredible £15.845 billion. Even if the Scottish Government had to bear only a tiny proportion of that cost to obtain a variation, it would probably not be able to afford it. The powers to vary Universal Credit depend on negotiation with the Department for Work and Pensions; there are likely to be tears before bedtime.

¹ See DWP, 2012, Income related benefits: estimates of takeup 2009-10, <https://www.gov.uk/government/statistics/income-related-benefits-estimates-of-take-up>; D Kasparova, A Marsh, D Wilkinson, 2007, The takeup rate of Disability Living Allowance and Attendance Allowance: feasibility study, London: Department for Work and Pensions.

10. There are provisions in place to make sure that Scotland does not interfere with the operation of sanctions, and in relation to employment programmes, the DWP clearly expects the Scottish Government to do what it is told. Whatever happens to the Work Programme, a Scottish provider will have to work within the DWP rules on sanctions, to accept mandatory referrals to the programme and to report back to the DWP. The oddness of that arrangement is reinforced by the requirement for Scottish programmes to last for at least a year - regardless of what the programme is. Fortunately, Scotland will also have the option of topping up programmes or introducing new ones. If the Scottish Parliament wished to introduce supplementary programmes, for example a support programme of short duration, it could do so. The French *Revenu de Solidarité Active* undertakes activation in this way, offering individual contracts for social inclusion (*Contrat Unique d'Insertion*), which might stretch to courses e.g. in literacy, cookery or driving, in order to enhance skills. A Scottish programme could usefully assist people to gain, e.g., a driving licence, a Food Hygiene certificate or the Construction Skills Certification Scheme card needed for construction work.

Reforming existing benefits

11. Changing benefits is difficult. If any measure is going to cost what it cost before, then no benefit can be improved for some without making it worse for others. There is a strong tendency, too, to treat the current system as a 'laid table', with everything already in its proper place - a tendency that is reinforced because change is so painful. Many people rely heavily on the income they get from benefits, and even small losses can be catastrophic. That means, effectively, that benefits cannot be reformed without the reform costing money. It also means that governments tend to be conservative - trying to keep things more or less as they are, rather than trying to make wide-reaching changes.

"The basic principle behind social security benefits is that people get the money to spend, rather than being provided with an item or a service; but sometimes direct service is a better way of doing things."

12. In some cases, the best answer might not be to have a benefit at all. We used to have a means-test for prescriptions and eye tests, so that people on low incomes would not have to pay charges. Free provision removes the need for that. Similarly, if school meals are free, then parents and pupils do not have to go through the process

of claiming a benefit to get them. The basic principle behind social security benefits is that people get the money to spend, rather than being provided with an item or a service; but sometimes direct service is a better way of doing things. The Scottish Government is already committed to increase free childcare; and that will reduce the extent to which people claim childcare as part of tax credits. It may be better to offer support for funerals rather than making a (very limited) contribution to the costs. (Although direct services are sometimes better, the general principle should come with a word of caution. We must not assume that providing care could be a substitute for Attendance Allowance, or that help with fuel would be a substitute for Winter Fuel Payment. Some benefits are mis-named.)

13. Another possibility is to change the criteria of existing benefits. In theory, Disability Living Allowance is a benefit for people of working age. In practice, people who have become disabled while they are in that age bracket can get an extension to stay on DLA. More than a third of the claims for Disability Living Allowance come from older people. In Scotland, 128,000 people over the age of 65 get Attendance Allowance; 107,000 get DLA. The pensioners who get DLA can get support for their mobility needs, and those who get Attendance Allowance cannot. This situation is deeply unfair: it means that the help people get is not directly related to their need, or to the severity of their condition, but to when their condition started. It is hard to resist the argument that older people with disabilities should be able to get help with mobility - even if that argument comes with a hefty price tag.

14. There may be the potential, too, to consider more radical changes. One possibility would be to link social care with Attendance Allowance and DLA/PIP, a prospect which has promoted some concern among disability organisations. The problems with the idea are partly that it is dependent on assessment (often a slow and inconsistent process), and partly that different local authorities approach social care differently, but mainly because the income that the benefits offer is about much more than social care - and probably five out of six people who get Attendance Allowance do not get social care support.

15. Another possibility is to remove the current dependence of the courts on fault-based compensation. Scotland will be responsible for most systems of compensation, with some exceptions (such as War Pensions and Vaccine Damage Payments.) It would be possible to integrate several of these systems, including industrial injuries and decisions made by the courts, with no-fault compensation for disability. The approach was pioneered in New Zealand, which replaced court actions with a no-fault assessment of disability in relation to accidents of all kinds.²

² See e.g. M Bismark, R Paterson, 2006, No fault compensation in New Zealand, *Health Affairs*, Jan./Feb. 2006 25(1):278-83.

Developing new benefits

16. The powers that are being devolved are limited, and while there is some support in Scotland - and in the Common Weal - for big ideas like Basic Income, the scope for introducing such measures will be very limited. There are, however, two important principles in the Scotland Bill. The first is that benefits can be 'topped up'. The second is that new benefits can be introduced in areas of devolved responsibility.

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17. The idea that benefits could be 'topped up' was based on previous experience with Housing Benefit, where the Scottish Government was able to compensate for the bedroom tax by offering grants to the local authorities who administer HB. This kind of arrangement could not be made in relation to most other benefits: paying the DWP to supplement (say) Child Benefit or pensions depends on the development of administrative routines which separate out Scottish claims from others. (By way of comparison, HMRC estimates that the cost of altering its IT systems to distinguish Scottish taxpayers from English ones is £10m. The non-IT costs of setting up a Scottish rate of income tax, including for example writing to taxpayers to inform them of the change, have been put at £20m).³ It would be more practical to set up a distinct, topping-up benefit payable on evidence that the qualifying benefit is being received.

18. Topping up benefits for large numbers of people is liable to be very expensive, even if the changes are modest. There are more than a million pensioners in Scotland, and nearly a million children; increasing Scottish pensions from £155.65 per week to £160 per week - the figure pledged in the Green Paper prior to the referendum - would cost more than £230m, and a 25% increase in Child Benefit would cost about the same. By contrast, there are fewer than 75,000 people receiving Job Seekers Allowance, so general provision there would be much less expensive. On the face of the matter, that also applies to Carers Allowance, which is claimed by fewer than 65,000 people - but that figure may be too low, reflecting current barriers for disabled people to claim qualifying benefits, limited take-up and the peculiar rules which currently mean that Carers Allowance is not always worth claiming.

19. In the case of Child Benefit, it would be open to the Scottish Government substantially to increase its value. Child Benefit does not affect other benefits and has no disincentive effect related to transitions to work. Taken in tandem with the substantial increases forthcoming in the minimum wage, this could reduce child poverty. With a sufficiently large increase - to be compatible with the rules, it would need to be at least 25% - it would also be possible to consider different treatment of Child Benefit in the Scottish tax system. Child Benefit is not taxed for most recipients, with the exception of higher-rate taxpayers who have it clawed back in its entirety. Making all Child Benefit taxable - that is, included in tax calculations when a person's income is high enough - would mean that families with incomes above the tax threshold would gain less than families below it, and so that the benefits will be targeted more on lower incomes. The total cost of a 50% increase could be brought down from £465m to nearer £325m. (The main disadvantage of this kind of 'clawback' is that many people do not understand it - it looks as if money is being given with one hand and taken with another - but it is fairer and less complicated than other options.)

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20. Pensions could also be improved. Although the new UK pension scheme should mean that most pensioners get the standard rate, the UK Government has decided to maintain a contributory principle, and to pay Pension Credit to those pensioners whose work record is insufficient to make up a full State Pension. Pension Credit is complex and confusing - nearly 5% of Pension Credit payments are currently made in error and the benefit fails to reach something in the region of a third of all the people it is intended for - up to 100,000 people in Scotland. Something between a fifth and a quarter of the value of the benefit is unclaimed.⁴

The Scottish Parliament will have a new power to 'top up' the pension. Within the limits of the Scotland Bill, Scotland could introduce a Citizens' Pension for all, payable on the basis of age and residence. The approach has been pioneered in New Zealand through their 'Superannuation' scheme. Scotland would not be paying everyone a basic pension, because most pensioners already get the State Pension, and it could not afford to do that. It could however pay a supplement to everyone, plus a top-up to those who

³ Auditor General, 2015, Implementing the Scotland Act 2012, Audit Scotland.

⁴ DWP, 2012.

have less than the full state pension. This extra income would immediately mean that most people would not then be entitled to the means-tested Pensions Credit, and under the no-detriment principle, Scotland could then reclaim that money from the UK government. The cost of such a scheme would be the cost of the top-ups less the reduction in entitlement to Pension Credit. Those costs are difficult to predict, because of low take-up and varying entitlements, but on the basis that at least a fifth of the value of Pension Credit is unclaimed, it could easily be £150m. The advantage of a Citizens Pension would be improved coverage, enhanced dignity, and a reduction in bureaucratic intrusion.

Overview

21. The reforms have been represented as giving Scotland “one of the most powerful devolved parliaments in the world.” That is debatable. In any federal system, powers lie by default with the states, not with central government. It is open to the states (and sometimes to local governments) to experiment and to innovate. Scotland will not be able to do this. Everything the Scottish Parliament does will have to be done with an eye to what is happening elsewhere in benefits, and they will be subject to continued direction, and control of resources, from central government. However, there will be things they can do, and those things will be worth doing.

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www.allofusfirst.org

ben@common.scot

0141 249 0850

3rd Floor, 111 Union St,
Glasgow, G1 3TA

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