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The fiscal framework and the delivery of welfare benefits.

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The Fiscal Framework and the delivery of welfare benefits

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1. Thank you for the invitation to comment on this issue. The central difficulty of doing so is that few of the details or estimates of costs have been put in the public domain. The framework document lacks a technical annex and few figures are available for consideration.

Reforms to the benefits system

2. The terms of the fiscal framework state that "The block grant to the Scottish Government will be adjusted to reflect ...the transfer of responsibility for welfare." (*The agreement ... on the Scottish Government's fiscal framework,* Feb 2016, para 9) This makes important assumptions. The Scotland Bill does not directly transfer responsibility for the administration of benefits. Once the Bill is passed, the Scottish Parliament will have a shared competence in relation to some specified areas of activity. If for any reason that competence is not exercised, the activity will remain in the remit of the UK Parliament and the Secretary of State for Work and Pensions.

3. The Scotland Bill can be taken to represent a potential transfer of authority for ten or eleven 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 (being supposed 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.

4. Some of the terms in which benefits are identified in the Scotland Bill are not fully consistent with existing benefits. The terms in which disability benefits are

defined are not directly equivalent either to Disability Living Allowance or its replacement by Personal Independence Payment. The current operation of Carers Allowance is anomalous, because in many cases it is not actually paid to claimants, but instead shapes the entitlement to premiums in other benefits. Although there has been a general assumption that Winter Fuel Payment will be transferred, as the Smith Commission recommended, the wording of the Scotland Bill refers only to cold weather, which is the criterion for a completely different scheme.

5. It is not self-evident that the Scottish Parliament will wish to use all the powers granted in the Scotland Bill. The provisions for altering rules in Universal Credit are restricted and may be prohibitively expensive to operate. Severe Disablement Allowance closed to new applicants on 6th 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 in by 2017 is 24,000. That probably translates to less than 3000 people in Scotland. The main effect of transferring responsibility for the payments would be to carry forward an anomalous situation with the potential to disrupt the income flow of a very small number of vulnerable people with severe disabilities. Among the options that the Scottish Government has been reviewing are agency arrangements whereby UK agencies will operate specific benefits.

6. It may be misleading to think about the issues only, or even primarily, in terms of transfer. The Scotland Bill is concerned only with the establishment of powers - no responsibilities are removed from the existing authorities - and the powers that are being granted include three particularly significant opportunities for doing things differently. The first of these is the power to create new benefits, in section 26 of the Bill. The second is the power to top up benefits, in section 22 - there are long-standing precedents in this field, and restriction to ‘discretionary’ provision does not mean that such provision cannot be regularised and rule-based. The third is to redefine and reintegrate benefits with other aspects of the system in Scotland - including potential new developments in health, social care and the legal system.

The costs of implementing benefit schemes

7. The proposals to date imply four kinds of cost:

- the immediate cost of transferring responsibility and setting up alternative benefit systems
- the cost of the benefits themselves, covered by the block grant
- the continuing cost of managing benefits, and

the implications of the ‘no detriment’ rule.

8. *The cost of transfers*. The First Minister’s note to the Prime Minister on February 17th gave an initial estimate of £400-£660 million. In the fiscal framework those costs have been bundled together with other aspects of the transfer of responsibilities, and it is explained that “Both Governments have agreed that the UK government will provide £200m to the Scottish Government

to support the implementation of new powers." (para 31) I am not privy to the details and cannot assess whether or not this figure is adequate.

9. The costs of transfer will in most cases be the responsibility of the Scottish Government. The framework states that "All other demonstrable and jointly agreed net costs to the UK government wholly and necessarily incurred as a result of the devolution of powers will be met by the Scottish Government" (para 38), implying that all residual and unspecified costs fall on one party to the agreement. This may prove problematic. By way of illustration, this passage comes from an Audit Scotland Report, *Implementing the 2012 Scotland Act*, paragraph 26:

"*HMRC has charged the Scottish Government £0.73 million for it to stop collecting Stamp Duty Land Tax*. HMRC charges the Scottish Government for costs associated with the devolution of Stamp Duty Land Tax, the UK tax that LBTT replaced. It estimates this will cost £1 million, most of which is for changes to its IT systems. For the period up to the end of 2014/15, HMRC has invoiced the Scottish Government for £0.73 million."

Every transfer of responsibility benefit carries the implication that there will be a change in administrative practice by DWP or HMRC. There could then be further costs, identified by the UK government and wholly beyond the control of the Scottish Government, nested within any potential reform.

10. *The block grant.* The amount that is to be allocated for the payment of social security benefits is explained as follows: "The initial baseline addition to the block grant for devolved welfare payments will be the UK government's spending on these areas in Scotland in the year immediately prior to the devolution of powers" (para 13) The allocation will be reviewed in 2021.

11. The Northern Ireland Assembly had full powers and authority over its benefit system, but was paid proportionately to the costs of benefits in the rest of the UK. During the recent dispute over welfare reform, the Treasury calculated that the amounts distributed relating primarily to Employment and Support Allowance and Personal Independence Payment should be reduced and the Assembly had substantial payments deducted from its allocation because of its failure to introduce equivalent legislation. The calculation was particularly questionable in relation to PIP, which has been introduced very slowly in the rest of the UK and retains the responsibility to pay for the needs that have led to increasing costs to date. The example seems to imply that, regardless of the devolution of powers, the UK government may demand future conformity with its own policies and priorities.

12. *The continuing cost of managing benefits.* It is not clear whether the block allocation will be an amount for benefits paid, or whether it will also be expected include administrative costs; the financial statements in the current DWP annual report do not attribute a proportion of administrative costs to specific benefits. It is difficult to estimate the costs of administration because much of the core information has been withheld from the public. The DWP currently claims a general administrative cost of about 3.5% a year, but that lumps together high

cost benefits like Employment and Support Allowance with low cost ones like the State Pension. The DWP Annual Reports used to carry a breakdown, but in recent years the specific details of administrative costs have been excised. It is possible however to find roughly comparable data in earlier reports. In 2007-08, the administration of working-age benefits cost 6.3% of the cost of those benefits, being £2.98bn, on expenditure of £47.3bn Pensions cost £220m for £97.8bn benefits, equivalent to 0.23% of the cost. The administration costs of some benefits will have increased in the intervening period - that is the result of personalisation, conditionality and assessment.

13. The benefits being devolved to Scotland are not like pensions - they are mainly more expensive and more complex. The value of benefits currently being devolved to Scotland is just below £2.7 bn, so the Scottish Government's initial estimate of £200m per annum looks like an administrative cost in the region of 6.9% (that is, £200m out of £2.9bn.) 6.3% of costs would be closer to £183m. I have here to add a word of caution: these figures are pointers at best, pieced together in the absence of adequate information.

14. *The implications of the 'no detriment' rule.* Para. 45 states that "where either government makes a policy decision that affects the tax receipts or expenditure of the other, the decision-making government will either reimburse the other if there is an additional cost, or receive a transfer from the other if there is a saving." If either the Scottish parliament or the UK government takes steps which impose costs on the other administration, compensation should be paid. One of the examples given in the 2015 White Paper, *An enduring settlement*, concerned the Vehicle Excise Duty paid by people with disabilities: if Scottish rules were to certify that more people were disabled, the Treasury would want to get the money back. Similarly, decisions related to Carers Allowance will have implications for other benefits, because Carers Allowance offers an 'underlying entitlement' to some claimants for premiums on means-tested benefits.

15. The framework document states that "The Governments have agreed that any new benefits or discretionary payments introduced by the Scottish Government must provide additional income for a recipient and not result in an automatic offsetting reduction by the UK government in their entitlement elsewhere in the UK benefits system." (para 89) It does not however say how this effect is to be achieved, and the situation is unclear. As things stand, if the Scottish Parliament were to introduce a top-up to the State Pension, it would reduce entitlement to Pension Credit and Housing Benefit: para 89 of the framework agreement only refers to such income not being included in tax calculations. Other decisions to introduce a new benefit or a top-up benefit may affect the calculation of existing means-tested benefits, including Universal Credit and Pension Credit. One option is for Scottish benefits to be treated as exempt income for the purposes of income assessments: this could be done through appropriate regulations. The alternative would be for there to be cross-charging for the 'direct and mechanical' effects of interaction with other benefits, a procedure requiring the specific agreement of both governments (para 52).

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