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The devolution of social security benefits in Scotland: The Smith Commission

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Abstract The United Kingdom is a unitary state, and social security benefits are some of the most centralised services in it. The powers of the Scottish Parliament in relation to benefits have been heavily restricted, to the point where they have fewer formal powers than an English local authority. Despite that, the Scottish Government has sought to use the limited authority it does have to mitigate the effect of UK welfare reforms. Following the independence referendum campaign, and the commitment of all UK parties to devolve greater powers, various options for devolution have been discussed, including powers over particular benefits. There are financial and administrative constraints to overcome, and potential problems wherever benefits interact with each other. The Smith Commission has recommended limited devolution, including a range of benefits relating to disability and elements of housing support, along with a power to create new benefits. This has to be done within a firmly hierarchical structure of authority, and there is scope for conflict as the detailed terms are negotiated and clarified.

Laws need have to have a basis in legitimate authority, which generally means some constituted power. There have to be rules of recognition - so that people can know what the basis of law is - rules of change, and rules of adjudication. (Hart, 1961) In a constitutional government, such as the USA or Germany, the constitution or 'Basic Law' is treated as the fount and origin of other laws. In the United Kingdom, where there is no written constitution, the basis of legislative authority is its elected Parliament. The principle of 'parliamentary sovereignty' may seem vague at times, as if it was claiming a general authority to do whatever the government of the day happened to please. (Elliott, 2004) In the context of devolution and multi-level governance, however, it takes on a much more specific and restrictive meaning. The assertion of parliamentary sovereignty underlies the principle that other tiers of governance can only act with the express authority of the UK Parliament. The powers and 'competence' of the European Union in the UK derive wholly from the treaty obligations undertaken by Parliament; local government can only act within its specified powers - "intra vires"; and the devolved assemblies of Scotland, Wales and Northern Ireland are able to act only within theirs.

Devolution is a process of redistributing powers and competences from the centre to subordinate levels of governance. Terms such as Home Rule, federalism or 'devo-max' - devolution to the maximum extent possible - have been used fairly freely to suggest a strong trend towards the movement of power from the centre to the regions. There are examples of several different kinds of devolution settlement close to home: it is not just that institutional arrangements are different for three regions of the UK, but also that a greater degree of autonomy is allowed to the Crown Dependencies - Jersey, Guernsey and the Isle of Man. They share a currency, defence and foreign policy with the UK, but have substantial independence in relation to all other policies. If Home Rule is taken to imply scope for fully autonomous decision making, it goes much further than any debate about specific powers can capture.

Devolution, Michael Keating has argued, is a political process, not just a set of institutional arrangements. There are some concurrent policies, with common or uniform responses; but the process is also characterised by some distinct policies, some autonomy, and elements of policy competition. (Keating, 2010) The referendum for Scottish independence has been a debate about powers, but that debate has been strongly influenced by concerns about the substance of policy. In some circumstances, notably in relation to health, social care, education and the legal system, Scotland already has the right to act differently from the rest of the UK; the disputed terrain has moved, consequently, to issues related to the economy, taxation and income maintenance, all areas substantially reserved to the government of the UK.

This article focuses on social security policies. There are general issues of principle to consider, but the policies also raise significant institutional and practical issues about the mechanisms necessary to deliver distinctive social policies. Starting with the existing, centralised structure of governance, it outlines the rationale for devolution, some options for devolving social security provision, a review of the proposals made by the Smith Commission on devolution as they apply to benefits, and a reflection on how Smith's recommendations are likely to shape governance in the future.

Social security in a unitary state

The United Kingdom is a unitary state, and social security benefits are some of the most centralised services in it. There was a time when many benefits and services in the UK were delivered by local authorities. Local government in most of the UK - certainly in England and Wales - developed from the structures of the Poor Law. In the absence of other administrative structures, the Poor Law Guardians accrued a wide range of responsibilities during the 19th century - among them, responsibilities for hospitals, schools and public health, as well as provision for the poor. Many of the services developed in the early twentieth century were based in central rather than local government, as a way of distancing them from the Poor Law. When the 'welfare state' was formed in the 1940s, there was a determined attempt to make the new systems as different as possible from the systems which had preceded them. Local government lost many powers - among them, medical care, policing, energy, water supply and public assistance. In the case of social security, the welfare state was expressed through a national system; Beveridge emphasised the universal scope of his scheme, and the importance of a unified administration. (Cmd 6404, 1942) In its heyday, the administration of social security was the very model of a Weberian bureaucracy, governed through a hierarchical chain of command, strict rules, impersonal relationships, performance of closely specified tasks and a Fordist production line. (see Spicker, 2014, ch 13) The government agencies that administered benefits were staffed by civil servants, not by professionals or local officers; the processes were heavily centralised, seeking to hold discretion to a minimum because discretion was seen as driving out rights. Where the rules were unclear, and discretion as was necessary for the system to operate, the use of discretion itself required formal reference back to the centre to define

discretionary rules that could be applied in the local offices. (see Hill, 1969; Bradshaw, 1981) Despite many of the changes which have taken place subsequently - the redefinition of constituent agencies, computerisation, and new approaches to management - the bulk of the social security system is still operated through highly centralised command systems. Some other benefits have been delivered by local government. Local authorities developed a range of benefits of their own - for example, school meals, school uniform grants, educational maintenance allowances, bus passes for unemployed people and exemptions from local charges for social care. Most of those have gradually disappeared, but other benefits have emerged in their place. They have included, amongst others, schemes for rent and rate rebates, community charge benefit and Housing Benefit; despite the structure of local administration, all of those systems have been closely specified and regulated by central government. In the last couple of years, there has been some recent devolution to local government; local authorities now are responsible for Council Tax Support and local welfare assistance. In Scotland, the last two schemes are administered by local authorities, but the terms of the benefits have been set by the Scottish Government.

The most significant exception to the general pattern of centralised control seems to be Northern Ireland, but it is an exception that seems to prove the rule. Northern Ireland has had devolved responsibility for social security provision in various forms, and distinct legislation, for most of the last hundred years; the origins of the current devolution settlement can be traced to the Government of Ireland Act 1920, and the province has been responsible for social security since at least 1923. Although the governance of Northern Ireland has taken a variety of forms in the intervening years, that responsibility has generally been interpreted as requiring a principle of 'parity' with the rest of the UK. In formal terms, parity implies a duty to consult on:

"arrangements for co-ordinating the operation of the legislation ... with a view to securing that ... it provides single systems of social security, child support and pensions for the United Kingdom" (Hansard, 1998).

However, the principle is more generally understood in these terms:

"the long standing principle of parity dictates that an individual in Northern Ireland will receive the same benefits, under the same conditions, as an individual elsewhere in the United Kingdom." (Department for Social Development, 2012)

The parity principle is interpreted as meaning that benefits in Northern Ireland have to be the same as in the rest of the UK - not just the same system, but the same benefits and the same conditions. If this is devolution, it is devolution without any meaningful difference.

Scottish devolution and social security

Under the terms of the Scotland Act 1998, the Scottish Parliament is expressly forbidden to act in relation to social security benefits. (Scotland Act 1998, Schedule V) Schedule 5F 'reserves' social security schemes - that means that the powers are exclusively held by the UK parliament, and not delegated. The schedule refers specifically to "Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits." It goes on to explain that

" 'Benefits' includes pensions, allowances, grants, loans and any other form of financial assistance.

'Providing assistance for social security purposes to or in respect of individuals' includes (among other things) providing assistance to or in respect of individuals—

- (a) who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care,
- (b) who qualify by reason of low income, or
- (c) in relation to their housing costs or liabilities for local taxes."

Payments made in social work are exempted.

This means that the formal powers of Scottish Government in respect of benefits are currently less than those of an English local authority. As the law stands, English local authorities have the power to act to promote welfare as they see fit, including the provision of financial assistance to individuals. The Scottish Government does not have the same power, because its competencies are explicitly restricted by the terms of the Scotland Act. That situation has implications in turn for Scottish local authorities. In 2003, they were granted powers to promote welfare by the Scottish Parliament, (Local Government Scotland Act 2003, s 20(2)) using the same wording as the UK Parliament used to offer power to English authorities. (Local Government Act 2000, s 2.) Despite the terminology of the statutes, these provisions are not equivalent, because the powers of Scottish local authorities are restricted by the limitations of the legislative authority (the Scottish Parliament) from which they are derived.

Despite the severe formal limitations, the Scottish Government has attempted to intervene actively in benefit issues. That reflects partly the desire of the Scottish National Party to extend its range of powers, but also the communitarian, interventionist approach of most Scottish political parties. Changes to Housing Benefit, which are administered by Scottish local authorities, have been modified through subsidies to extend Discretionary Housing Payments and to introduce a substantial exemption from the 'bedroom tax'. In the same way, when English local authorities became responsible for local welfare assistance with the abolition of the Social Fund, the Scottish Government took the reins, introducing a Scotland-wide scheme, the Scottish Welfare Fund, with supplementary funding and national rules. The introduction of the Scottish Welfare Fund required a rider to be added to the Scotland Act (a section 30(2) order, formally issued by the UK parliament) to empower the Scottish Government and local authorities to implement the measure.

Although the independence campaign mainly focused on other issues, benefits were clearly signalled by the Scottish Government as a major part of the case for independence. *Scotland's Future*, represented by the Scottish Government as a manifesto for independence, identified five key ways that Scotland would benefit the reader personally: child care, energy bills, pensions, minimum wage, the value of benefits and a 'fairer Scotland' by blocking Universal Credit, scrapping the bedroom tax and halting welfare changes. (Scottish Government, 2013, p 376.) Three out of the five, then, were concerned with benefits.

Devolving social security benefits

The case for devolution is at times difficult to disentangle from general dissatisfaction with the policies being pursued by the UK government, such as sanctions, medical reassessment and the bedroom tax. That is an argument for changing those policies, rather than changing the division of labour between different tiers of government. If there is a case for devolution within a unitary state, it should be defensible in its own terms.

One argument for devolution is to accommodate policy variations between the tiers of government. For example, the introduction of free personal care in Scotland leads to the removal of Attendance Allowance for people in residential care who claim it - the rule approximates the situation in England, but the conditions are necessarily different. One of the many objections to the "bedroom tax" was that it assumed integration with policies about rent-setting which applied only in England. This meant in Scotland that the so-called 'removal of subsidy' generally took more money away than an extra room might have cost.

Some part of the reason for devolved administration is simply practical. Where benefits are tied to a local service - such as schools, residential care or social housing provision - it makes sense to administer the benefits in tandem. Services for health, social care and social inclusion are organised and delivered at local or regional level. Barnardo's have argued further that services should be coherent from the point of view of users (Barnardo's Scotland, 2014); if that is possible, it argues for services that work together closely, using common approaches and resources.

One of the key reasons for devolving benefits is, then, that it makes it possible to develop services at a local level. There is an elision hidden in that last sentence, which calls for some clarification: services and benefits are not equivalent. Benefits generally work by paying people cash; money from different sources can be mixed together without fussing too much about where it comes from. However, there is some latitude for interpretation in the classification of benefits: at different times, free school meals, residential care home fees, free prescriptions and milk and vitamins for expectant mothers have all been treated as 'benefits', and there is a case for viewing free TV licences, concessionary transport and personal care budgets in similar terms. It is often the case that services might be provided in kind rather than cash provided to pay for items. If, for example, the Scottish Government

were to make more direct provision of child care (which they are committed to do in principle), it would have a direct and immediate effect on entitlement to the Working Tax Credit payable to meet child care fees. Housing Benefit was initially introduced with the intention of transferring money from housing subsidies to personal benefits, and there is a very strong argument for rebalancing the elements so that money goes again to the subsidy of housing provision. In both cases, this kind of rebalancing could only be done if powers were held at the same level of governance, and the authority responsible for delivering the benefits were to have the power over how the resources were used and what was provided.

The case against devolution may, like the case for it, be practical. National insurance contributions are levied along with national tax rates, and the records are held centrally; it would be difficult to disentangle them. There is a risk that devolution of benefit systems could produce inequities and anomalies. There are some inconsistent provisions in the current system, often arising from gaps or overlaps between benefits (such as whether sick people qualify for JSA or ESA, or the position of people who claim PIP or Attendance Allowance according to age). Devolving some benefits and not others creates a potential for generating further anomalies - for example, creating situations where raising benefits in one place led to loss of benefit in another.

There may also be stronger reasons of principle. In a report for the IPPR, Guy Lodge and Alan Trench consider a series of criteria by which devolution of benefits might be judged. (Lodge, Trench, 2014) One of the key considerations is solidarity. There is an intrinsic problem in devolving benefits if it means that the regions with the least ability to pay also have the greatest burden to bear. Need increases during an economic downturn and only a UK-wide scheme offers social protection. Another strong argument relates to economic management. Policies for benefits have to be understood in relation to the UK market and the need for economic growth.

Options for devolution

In the final week of the referendum campaign, the three main party leaders each made a commitment, widely represented as a 'vow' (Clegg, 2014; but see Greenslade, 2014), to give Scotland more powers. After the independence referendum, the Smith Commission was set up to "deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom." The Commission was composed of representatives from the five main political parties in Scotland - Scottish National Party, Labour, Conservative, Liberal Democrat and Greens - under the chair of Lord Smith of Kelvin. They invited and received submissions from the public, a well-established process in Scottish public life; they received 18,788, of which 2855 contained specific submissions about powers, and 639 related to welfare benefits. The Commission agreed early on about a set of guiding principles, and the subsequent agreement on specific competences was based on consensus and compromise between the representatives.

When the renegotiation of devolved powers was initially proposed, the starting position of some stakeholders was that there should be uniform terms and rates of benefit for all benefits. (HM Government, 2014, p.33) If that principle was to be applied, effective devolution would have been impossible. The Scottish Liberal Democrats announced a change in their position shortly before the Smith commission reported, and the Scottish Labour Party relaxed their previously limited position that only Housing Benefit and Attendance Allowance could be devolved.

The Command Paper on proposals for devolution outlined three main options for devolution:

- “1. devolving a portion of the expenditure relating to claimants in Scotland of a particular benefit, alongside the power to either vary the rate and rules or operate a separate benefit with a different rate and eligibility criteria, or alternatively to reallocate that funding to another area;
2. devolving a proportion of the expenditure on a specific welfare service that relates to claimants in Scotland, alongside a statutory responsibility to deliver that service in Scotland, and potentially further powers to either increase or scale back provision of that service; or
3. powers to ‘top up’ benefits above the level set by the UK Government.” (HM Government, 2014)

Only the first of these offers a clear route for devolved authority, but that is limited to devolution within the overarching structure of benefits in the UK. If devolution was confined to the delivery of specific benefits and services, the power of a devolved government to alter those benefits would be limited. The first constraint is financial: the example of Northern Ireland points to the difficulty of exercising powers without having matching powers to raise funds. Equally, if a devolved administration is reimbursed specifically for administering specified entitlements (the current position with Housing Benefit), it may be possible to supplement the payments, but it would be difficult to vary the terms on which benefits are delivered without losing track of the information on which the administering agency’s claim to an allocation ought to be based. The second constraint is administrative. The main options for reforming benefits lie not in varying conditions within benefits, but in redefining boundaries - for example, delivering the care component of PIP in tandem with Attendance Allowance, transferring resources from Housing Benefit to housing grants, shifting the emphasis between Tax Credits and Child Benefit, or reallocating resources between benefits and social care funds. A requirement to deliver a ‘specific welfare service’ would limit the scope to do this. The third constraint is the interaction of benefits. Unless clear arrangements are made about passporting, entitlements and tapers, the effect of increasing one benefit may be to reduce entitlement to others. The introduction of Universal Credit poses particular problems for the operation of Housing Benefit and Council Tax Reduction.

Option 3, ‘topping up’ benefits, could apply only in very limited circumstances. No benefit can be paid effectively by two agencies: the agencies would need equivalent access to information about names, addresses and household circumstances. It follows that topping up has to be done by paying over funds to an administering agency with the requirement to deliver benefits on newly specified criteria. It was possible to top up Housing Benefit to compensate for the ‘bedroom tax’ because the benefit is administered by local authorities, and the Scottish Government was able to pay the local authorities to pass on the benefit. It would not be feasible in the same way for the Scottish Government to pay HM Treasury or the DWP to top up Child Benefit, Pension Credit or War Disablement Pensions - respectively, a universal, means-tested and a non-contributory benefit. Wherever delivery is the responsibility of a UK-wide agency it will be necessary for the operating service first to distinguish potential claimants with Scottish entitlements, and next to offer distinct rates or calculations for those claims. The mechanisms do not currently exist to make this possible, though the Smith Commission has held out the prospect that they might be negotiated in the future.

The Smith Commission’s recommendations

In the event, the recommendations of the Smith Commission went further than the initial positions of the parties might have suggested. The recommendations of the Commission relating to benefits fall into four main sections. (Smith Commission, 2014) First, there were the areas which it considered should remain in the control of the UK government - that were to be ‘reserved’. Reservation means more than the establishment of a division of labour: as long as a power is reserved, it falls outwith the competence of the Scottish Parliament to do anything about it. The reserved elements were to include

- ! all aspects of the State Pension
- ! Universal Credit (subject to some variations, below). This implicitly includes a range of benefits which will in due course be incorporated into UC, including Jobseekers Allowance, Employment and Support Allowance and Tax Credits. Housing Benefit is a special case that will be returned to shortly.
- ! benefits other than Universal Credit: Bereavement Allowance, Bereavement Payment and Widowed Parent’s Allowance (all due shortly to be reformed), Child Benefit, Guardian’s Allowance, Maternity Allowance, Statutory Maternity Pay and Statutory Sick Pay.
- ! the structure of the Department for Work and Pensions, including Jobcentre Plus.
- ! conditionality and sanctions.

Then there were a list of benefits which should be devolved in their entirety. They include:

- ! Benefits related to disability: Attendance Allowance, Carer’s Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance. This is one of the most

interesting developments. Lodge and Trench proposed that Attendance Allowance might be devolved (Lodge, Trench, 2014); that idea was accepted by the Conservative Party's Strathclyde Commission (Scottish Conservatives, 2014, pp 16-17) and in the submission of the Labour Party to the Smith Commission. (Scottish Labour Party's Devolution Commission, 2014, p 12.) Leaving out Disability Living Allowance and Personal Independence Payment made little sense. The current alignment of benefits is the legacy of a policy in the 1970s to restrict help to people with mobility problems on the basis of age, because older people are much more likely to have mobility problems and to the government of the day an age limit seemed a simple way of saving money. PIP, which is in the process of replacing DLA, provides a care component for people with severe disabilities below the age of 65; Attendance Allowance covers the same circumstances for people above the age of 65. However, if a claimant has received DLA or PIP before reaching retirement age, it has been possible to apply for an extension to continue receiving it after that age. Because PIP makes an allowance for mobility, and AA does not, those who can claim the former benefit prefer to do so. Very large numbers of claims for DLA fall into this category; in Scotland people over 65 account for 103,000 claims out of 341,000. It was recognised, then, that benefits to cover disability needed to be considered and reformed at the same time.

- ! The Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment. These benefits have been uncontroversial. They have a marginal role and cost; there have been frequent discussions about the sustainability of the first and last, while funerals and maternity payments have overlaps with locally provided services.

Third, there are benefits where there is to be a division of labour. They are

- ! Housing Benefit and the housing element of Universal Credit. In many of the discussions which preceded the Smith Commission, Housing Benefit had been identified as a prime candidate for devolution, largely because it was already subject to local variation and administered by local authorities. That left a problem, however: the plans for Universal Credit intended to include Housing Benefit in the greater scheme. and it would be difficult to control marginal rates of deduction without it. The Smith Commission decided in consequence to allow variation within the UC scheme. It proposed that the Scottish Parliament should have the power to vary the housing elements of UC, including the bedroom tax, local housing allowance rates, eligible rent, deductions for non-dependents, making payments to landlords instead of to claimants and Discretionary Housing Payments.
- ! Employment provisions and programme, including the Work Programme. Although the benefits linked to these provisions will continue at UK level - along with the claimant commitment, and requirements to work - the provision of employability support will be devolved. It is not immediately clear how this will work; although in principle Work Programme providers were supposed to have free discretion as to

what they provided and how they do it, being judged only in terms of outcomes, in practice they have been required to refer people for sanctions on non-compliance regardless of whether or not it is reasonable to do so.

The fourth area of operation is to act in ways that supplement existing benefits - the sort of 'topping up' arrangement discussed earlier - or, more importantly, to introduce new benefits. The reservation of powers under the Scotland Act on the Scottish Parliament prevent the development of alternative forms of financial assistance. Imagine that the Scottish Government was minded to introduce a new benefit that did not exist in England - for example, a death grant, support for heating rural property, or provision for early retirement for people with disabilities. If social security and financial assistance to individuals are treated in general terms as reserved matters, any benefit of this sort would have to be flatly disallowed without further consideration. A devolution of powers implies the possibility that some benefits will be different in different parts of the United Kingdom. Once that principle is accepted, it implies a presumption that the development of distinct policies to promote welfare in different ways will be permissible.

Something less than federalism

Taken overall, the proposals for devolution of benefits fall some way short of a major redistribution of power. The size of the responsibilities being devolved is limited. Out of about £18bn of expenditure on benefits and tax credits, Smith proposes devolution of about £3bn. The powers that are being delivered are hemmed in by the framework of the systems they are currently part of. Income tax variation will be subject to UK rules on allowances and liability, and housing benefits will be locked into the structure of Universal Credit. Several important areas have been reserved.

In institutional terms, Michael Keating argues, the devolution settlement in Scotland has some resemblances to federalism: the transfer of powers, the formal division of competences, and the imposition of constitutional limits. There is an imbalance, however: the current system is assymetric, and the restrictions which apply to Scotland are not mirrored in the definition of powers held by Westminster. (Keating, 2010, ch 9) During the referendum campaign, Scots voters were told that they would get extensive devolution if they voted no: "A No vote will deliver faster, safer and better change than separation." (Clegg, 2014) If Britain failed to change, Gordon Brown argued, Scotland would move to home rule - "a system of government as close to federalism as you can have in a nation where one part forms 85% of the population." (Brown, 2014) In any federal, constitutional government, there are supposed to be tiers of government, a defined set of competences and a division of labour between different authorities. The settlement agreed in the Smith Report is a long way from that. There are many definitions of federalism, but one of the fundamentals is that powers are not 'devolved'. Either they are defined for each of the different tiers of government, or legal competence rests in the first instance with the lower tier of government, rather than with the federation. (Wheare, 1946, p 5) That means, in

Germany, the USA or the European Union, powers are assigned to the federation by the member states, and that the power of the federal government is limited. Any devolution settlement - by definition - works the other way round.

Whatever the formal arrangement, London-based government shows little sign of wanting to let go. Shortly after the report's publication, both the BBC and the Independent reported that these powers had been watered down at the last minute, following a veto by the UK Cabinet. A draft presented two days before the final report is cited as saying this:

"The Scottish Parliament will have the power to vary the personal allowance, the carer element, the child element, including the disabled child addition, the childcare costs element, the limited capability for work and work-related element and work allowance of UC [universal credit], child benefit & guardian's allowance, maternity allowance, and the operations of Jobcentre Plus in Scotland, including the responsibility for designing and implementing the policies it applies". (in Campbell, 2014; Grice, 2014)

This does not look like a direct extract from the Smith Report; it jumbles together different kinds of provision that the report deals with separately. The reservation of Jobcentre Plus and work-related conditionality seem to have happened because of the strong (and probably well-founded) suspicion that if the Scottish Government could lay its hands on them, it would do things differently. That is not equivalent to consideration of the appropriate division of powers between levels of government, and if it is right, it suggests that the Cabinet were hardly acting in the spirit of the exercise they were supposed to be engaging in, which was about powers rather than policies.

There are examples, in the growing literature on multi-level governance, of arrangements that are complex and indistinct, where jurisdictions overlap and compete. (Hooghe, Marks, 2010) The devolution settlement for Scotland is not quite like that. As the intervention of the Cabinet demonstrates, the relationship between the UK and Scottish Parliaments reflect a basic structural inequality between the constituent powers: what Westminster says goes. This is not federalism, or Home Rule, or devo-max. That institutional perspective may, however, underestimate the importance of the political motivation of the principal actors. Nicola Sturgeon, now First Minister of Scotland, has made her opposition to current policies plain:

"I will briefly highlight two points at the outset. One is the Scottish Government's continued opposition to many of the welfare reform proposals that are being implemented. We talk about welfare reform but, in my view, many of the proposals take the form of pretty crude welfare cuts that are impacting on some of the most vulnerable people in our society, and that does not reflect the Scottish Government's opinion or values. ... The second point, which flows from that, is that we remain determined to do as much as we can to mitigate the impacts. ... In the

five years to 2014-15, it is estimated that welfare reform will have removed £4.5 billion from the Scottish economy. With the best will in the world, the Scottish Government cannot mitigate all that.” (Sturgeon, 2013)

The inequality of arms will remain; the UK government can cut benefits faster than the Scottish Government can put them back. However, the Scottish Government could, within the terms of the devolution settlement, use its powers to develop support that the UK government does not wish to provide. It will have extended capacity to provide further benefits relating to its existing competences (such as health, education and social care). Support for unemployed people, and people with long-term illness, will effectively be shared across different tiers of government; the balance will have to be negotiated. There are, then, ambiguities in the devolution settlement, and there is the potential for conflict.

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