Y Comisiwn Annibynnol ar Ddyfodol Cyfansoddiadol Cymru
The Independent Commission on the Constitutional Future of Wales

Independent Commission on the Constitutional Future of Wales: report of the welfare sub-group

Summary

The process of benefit devolution to Scotland has been complex and expensive; due to the costs of establishing Social Security Scotland and the extra demand generated by the Scottish reforms. The inter-action of devolved and reserved benefits leads to continuing complexity.

The focus of the Welsh Government is on improving the operation of benefits already devolved, to create a reformed Welsh benefits system, with easier access through a single point of contact. This could form the basis for seeking more powers but given the administrative challenge and fiscal risks this is not the priority at present.

As part of the co-operation agreement with Plaid Cymru, the Welsh Government is exploring the feasibility of devolving powers in relation to benefit administration as distinct from the benefits themselves.

Introduction

The sub-group members are:

> Anwen Elias, Miguela Gonzalez, Shavanah Taj, Leanne Wood, Lauren McEvatt, Michael Marmot, Philip Rycroft (Commissioners)
>
> Mairi Spowage and Gareth Williams (Expert Panel).

The sub-group met on 30 March and 18 April 2023.

On 30 March the group agreed its approach and discussed the Scottish experience of benefits devolution.

On 18 March the group met the Minister for Social Justice, Jane Hutt and her officials, and the Director of the Bevan Foundation, Victoria Winckler.

Background

Welsh Government position

The Welsh Government's evidence paper for the Commission of September 2022 includes the following on a list of potential candidates for further devolution:

> *'administrative powers in relation to welfare (in the context of potential opportunities this could provide for joining together devolved and reserved support arrangements for vulnerable households, which is increasingly important in the context of the cost of living crisis)'*

Co-operation Agreement with Plaid Cymru

The agreement includes the devolution of the administration of welfare, as follows:

Tackling poverty and inequality – Support the devolution of the administration of welfare and explore the necessary infrastructure required to prepare for it. Such a transfer of power would need to be accompanied by the transfer of appropriate financial support'

Wales Centre for Public Policy

The Wales Centre for Public Policy explored the case for devolving the administration of the benefit system in Wales in their 2020 report: - Administering Social Security in Wales. This noted the difficulty of separating administration from policy, when matters such as the timing of benefit payments are usually laid down in legislation.

Welsh Affairs Committee

In June 2021, the Welsh Affairs Committee launched an inquiry into the benefit system in Wales. The inquiry examined the operation of the benefit system in Wales and how the pandemic had changed the type and amount of support that people need.

The Committee's report The Benefits System in Wales - Welsh Affairs Committee (parliament.uk) was published in March 2022, and included the following statements:.

> *The evidence collected during the inquiry showed that attitudes to the idea of devolving welfare vary significantly. Some were concerned about the financial implications and many felt that they did not have enough information. However, during the course of the inquiry many experts noted the potential merits of being able to deliver benefits in a way that is tailored to the demography of Wales. (Paragraph 160)*
>
> 32. *It is important to make the distinction between devolving the administration of certain welfare benefits and the wholescale devolution of welfare and we recommend that, as a first step, the UK-Welsh Government Inter-Ministerial Advisory Board on Social Security should undertake an assessment of the potential merits of devolving the administration of the same benefits to Wales as have been devolved to Scotland.* (Paragraph 161)

The UK Government's response of July 2022 , included the following statement:

> *The UK Government has no intention to devolve social security to the Welsh Government. The Committee's report acknowledges the advantages of the current system, highlighting its strength during the Covid response. The evidence gathered during the inquiry showed that attitudes to the idea of devolving social security to Senedd Cymru / the Welsh Parliament vary significantly in terms of policy, operational and funding implications.*

Senedd Local Government Committee Inquiry

The Committee's 2019 inquiry considered several aspects of the welfare system in Wales, including devolved and reserved benefits, and called for further work on the devolution of specific benefits.

Benefits in Wales: options for better delivery (senedd.wales)

The Welsh Government's response of May 2020 included the following statement:

> *In my evidence to your inquiry, I confirmed the commitment of this Welsh Government to the social union and the important role that a UK-wide social security system plays in meeting significant challenges. How the UK can work collectively to meet very significant challenges is in all of our minds at this time, and only further highlights the need for Wales to proceed with caution when considering the devolution of social security.*
>
> *In relation to recommendations 9 to 17 I will be considering further the direction that will be taken in this Government term over the devolution of any parts of the social security system. It is crucial that we explore this further to ensure that the social security safety net is there for all and particularly that in furthering any discussions on this matter with the UK Government that we establish a clear set of principles for social security, that we assess the implications for the devolution settlement, and that any funding transfers and negotiations are informed by a good, sound evidence base.*

Evidence to the sub-group

Scotland

The group noted that Scotland provides a live case study on the practicalities of devolving social security benefits. Following the report of the Smith Commission, the UKG agreed to the devolution of a number of benefits to the Scottish Parliament and Government, by means of the 2016 Scotland Act.

The Expert Panel paper by Prof Mairi Spowage (*Annex 1*) lists the devolved benefits and outlines the impact on the Scottish Government's budget. The key points from the paper are:

- The devolution process is not expected to be completed until the end of the current parliament in 2026.
- A new executive body, Social Security Scotland, has been created to administer the payments, and a staged transition of claimants is underway.
- There are 19 newly devolved benefits, mainly linked to ill health, disability, and caring. with a total cost of £3.8 billion in 2021-22.
- Overall, the budget for devolved social security in Scotland is set to increase to £7.3 billion by 2027-28.
- There is a growing gap between the Scottish social security budget and the funding received from the UK Government.

- This reflects a) the introduction of new benefits not available elsewhere in UK, such as the Carer's Allowance Supplement and the Scottish Child Payment and b) a different application process for disability benefits that is expected to result in a higher number of claimants than the reserved benefits they replace.

- The funding gap must be met entirely within the Scottish budget. It is forecast to more than double in 2023/24 to £776m and rise to £1.4 bn by 2027/28.

- The impact of these choices is being felt elsewhere in the delivery of public services in Scotland. Devolved social security makes up 10% of the Scottish Budget in 2023-24 – this will increase to 13% by 2027-28. This means less money for local authorities, Higher Education, Economic Development and justice.

In discussion, the sub-group noted that these costs flow from policy choices made by the Scottish Government. There has been much criticism of the slow speed of implementation, but no real challenge to the policy objectives.

The scale of expenditure involved demonstrates the need for fiscal flexibility to support benefit reforms. The Scottish Government has raised the higher rate of income tax, but the revenue raised has not fully offset the additional costs of the benefit reforms. (The group noted that this had not generated an exodus of higher rate taxpayers, possibly due to other benefits available to Scottish residents such as the absence of tuition fees.)

In addition, there have been significant IT and recruitment challenges in creating Social Security Scotland and in migrating claimants on to the newly devolved benefits. It has become clear that tailoring benefits to reflect individual needs is a very labour-intensive process. Eligibility for Universal Credit is used as a passport to access devolved benefits so that every time the UKG makes a change to reserved benefits, it is necessary to calculate and implement adjustments to devolved benefits.

Wales Governance Centre research

devolving_welfare_final.pdf (d3n8a8pro7vhmx.cloudfront.net)

In its 2019 report, the Wales Fiscal Analysis team at the Wales Governance Centre examined the implications of devolving to Wales the benefits devolved to Scotland as discussed above. The authors argue that because the take-up of these benefits has been falling in Wales (arguably due to the fact that the legacy of heavy industry is gradually fading), had they been devolved on the basis of the same financial calculation as used in Scotland in 2018/19, there would have been a net surplus for the WG budget of £200 million (compared to a total spend of £2bn).

We note the following caveats to this calculation:

- it is not clear that there would be a continued fall in the uptake of these benefits in future, meaning that there is no guarantee that devolving these benefits in say 2025/6 would lead over time to an equivalent surplus

- judging by the Scottish experience, the financial benefit could easily be swallowed up by the costs of setting up the Welsh benefits administration system;

- there would be huge pressure on the Welsh Government (as in Scotland) to increase the relevant benefits as well as to introduce new benefits which would likely end with money having to be found from elsewhere in its budget to finance the costs over and above the £200million.

Bevan Foundation

The Bevan Foundation has published extensively on poverty in Wales, including making proposals to improve the operation of Welsh benefits i.e. those which are already devolved (council tax benefit, Discretionary Assistance Fund, school meals, Education Maintenance Allowance etc). This was stimulated by evidence on the barriers to access and low take up.

In discussion, the Director, Victoria Winckler, underlined the scale of UKG expenditure on social security in Wales, which had more than doubled between 1996-97 and 2021-22, from £4.6 bn to £11.6 bn, largely driven by the growth in old age and disability benefit spending.

In Wales, some form of social security or tax credit payment is received by:

- Almost all pensioners
- Almost all children
- More than half of the working age population

The Bevan Foundation noted that poverty and destitution has increased due to a combination of:

- Benefit levels
- The two-child limit on payments to families
- Deductions, sanctions, benefit caps and shortfalls
- Debt due to the 5 week waiting period for UC and payment timings.

The devolved Welsh benefits provided a vital supplement to reserved benefits. The immediate priority was to align and streamline these into a single system, to enable people to get their entitlements with less effort and duplication of process, and thus increase take-up. This programme was a collaboration between the Welsh Government, local government and the third sector, and enjoyed cross-party support.

A reformed Welsh system could form the foundation for devolving further benefits such as discretionary housing payments. Benefits devolution was not all or nothing. -In 2016 the Foundation had floated the idea of seeking the devolution of disability benefits to Wales, but disability groups did not see it as a priority.

Substantial devolution to Wales would not be feasible without major change in the tax system. In addition, the roll out of Universal Credit made it very complex to disentangle its component benefits.

The group noted that independence would mean taking on the whole package of benefits, but there would not be a blank sheet to design a new system. The settlement with UKG would need to reflect the legacy inherited by the new government.

The scale of budget pressure would depend on benefit levels, the eligibility criteria and the fiscal resource available. There would be choices e.g. between maintaining the pensions triple lock or investing in higher housing subsidies. Wales could learn from the experience of Scotland in considering options for the future.

In addition to the issues highlighted by the Bevan Foundation, a range of socio-economic factors impact poverty and destitution, including the level of public sector pay. Many frontline workers, including civil servants administering benefits are in receipt of in work benefits.

Minister for Social Justice

The Minister, Jane Hutt, outlined what the Welsh Government is doing within its existing powers. This included introducing tailored schemes to respond to crises including:

- the winter fuel payment which reached 256,000 families and required much work with DWP and HMRC to ensure that the grant reached families without offsetting benefit reductions.
- the basic income pilot for care leavers designed to help the most disadvantaged young people;
- the uplift to the Discretionary Assistance Fund to meet demand;
- the commitment to universal free school meals.

These and other schemes were funded from the Welsh Government's block grant.

The Welsh Government regularly made representations to the UK Government about the negative impacts of changes to reserved benefits, to no avail. The recommendations of the Welsh Affairs Committee report in 2022 on the benefits system as it applied to Wales, were all rejected by UKG.

The Welsh Government was working with partners including the Bevan Foundation and local government on a project to streamline the application processes for devolved benefits with a single point of access for all schemes. This would underpin a new Welsh benefits charter and could significantly reduce the barriers to access and increase take-up. When established this could pave the way for further powers.

As part of the co-operation agreement with Plaid Cymru, the Welsh Government was working on the feasibility of devolving the administration of reserved benefits, to test whether this would enable better outcomes in Wales and was planning a research project to provide evidence on potential outcomes. She would provide a note with more detail on this.

There was positive engagement with DWP at operational level on practical issues, but much more difficult to engage Ministers. As part of the reformed IGR structure, a joint Ministerial group was planned but not yet arranged (as at April 2023). There was no interest in learning from the basic income pilot for care leavers or working on a joint campaign on pensions credit take up. There were close working relationships with the Scottish Government.

The sub-group noted the potential impact of the care leavers' pilot in reducing offending. The Minister mentioned an initiative by the Welsh Police and Crime Commissioners on responding to neuro divergent people, and the scope for more work on this.

The sub-group asked about the scope for benefit devolution to enable better support for those leaving prison and asylum seekers, and the Minister agreed to provide a note (*Annex 3*).

<u>First Minister</u>

The First Minister reaffirmed the ambition for the devolution of some aspects of welfare administration, including through job centres, in his evidence to the Commission on 28 September 2023. The aim is to improve the service and support offered to people in Wales, particularly those in the most vulnerable positions. The Welsh Government's planned research project (mentioned in the Minister's evidence above) will provide an independent and evidence-based definition of the functions that fall within the definition of administration of welfare. The objective is to help the Welsh Government and UK Government reach agreement on the definition of administration of welfare and the actions that fall within the scope of the definition. The research is due to be completed by summer 2024.

Conclusions

The sub-group's conclusions are as follows:

- the Scottish experience shows that partial benefit devolution has created positive opportunities for change, but is a major undertaking with substantial costs and risks;
- the Welsh Government is working with partners to improve the operation of those benefits already devolved, in response to proposals from the Bevan Foundation for a Welsh benefits system and plans to commission research on the scope for devolution of the administration of some benefits. These developments could form the basis for seeking further powers in future;
- under the current settlement, the Welsh Government is unable to pilot changes that might eg support prisoner rehabilitation or enable asylum seekers to work;
- inter-governmental collaboration is strong at operational level, but weak at Ministerial level;
- evidence to the group demonstrates no appetite for further benefit powers at this stage;
- benefits devolution does not therefore seem to be a requirement for a stable and secure devolution model; but would need to be considered under a federal model;
- the legacy of UK benefits would be a major item for negotiation prior to an independent Wales;

- greater open-ness from the UK Government to working with devolved governments to trial new approaches could enable valuable innovation and learning in this area.

Annex

Social Security Devolution in Scotland

A large package of powers were devolved to the Scottish parliament following the Smith Commission in 2014, through the Scotland Act 2016. Since the act was passed, the slow process of devolution of these payments has been underway, which should be completed by the end of the current parliament in 2026. Social Security Scotland has been set up to administer these payments, and a staged transition of claimants is underway.

Largely, the newly devolved payments were in the area of benefits linked to ill health, disability, and caring, with some also linked to older people (such as winter fuel payments). The act also formally devolved employability services and gave the Scottish Parliament the ability to create new benefits (which it has now done).

Table: Devolved Social Security in Scotland, 2021-22 Outturn

£ million	2021-22	Notes
Adult Disability Payment	1,739	Replacement for UKG’s Personal Independence Payment
Best Start Foods	14	Replaced UKG’s Healthy Start Vouchers
Best Start Grant	14	Replaced UKG’s Sure Start
Carer's Allowance Supplement	58	New Devolved Benefit introduced to top up carer’s allowance to the level of Job Seeker’s Allowance
Child Disability Payment	227	Replacement for UKG’s Disability Living Allowance for children
Child Winter Heating Assistance	5	Additional payment for those receiving the highest level of the CDP
Discretionary Housing Payments	76	Devolved since 2017 to mitigate the “bedroom tax” and the benefit cap
Employability Services	26	Spending on Fair Start Scotland
Employment Injury Assistance	80	Replacement for UKG’s Industrial Injuries Disablement Scheme
Funeral Support Payment	10	Replacement for Funeral Expenses Payment
Pension Age Disability Payment	515	Replacement for UKG’s Attendance Allowance
Pension Age Winter Heating Payment	-	Replacement for the UKG’s Winter Fuel Payment, £185m by 2026-27
Scottish Adult Disability Living Allowance	464	Replacement for UKG’s Disability Living Allowance for adults
Scottish Carer's Assistance	294	Replacement for UKG’s Carer’s Allowance
Scottish Child Payment	56	New devolved Benefit – increasing to £457m by 2027-28
Scottish Welfare Fund	36	Replaced elements of the UKG’s Social Fund which was devolved in 2013
Self-Isolation Support Grant	62	Temporary COVID support

Severe Disablement Allowance	7	This payment has been closed to new entrants since 2001.
Winter Heating Payment	-	Will replace the UKG's Cold Weather payment from 2022-23: around £24m per year
Total spending	3,682	

Outlook for Social Security Spending

The most significant in terms of cost is the Adult Disability Payment, which asks for less evidence from applicants about their disability and is therefore expected to attract more claimants and a higher reward rate than the reserved benefit that it replaces (Personal Independence Payment).

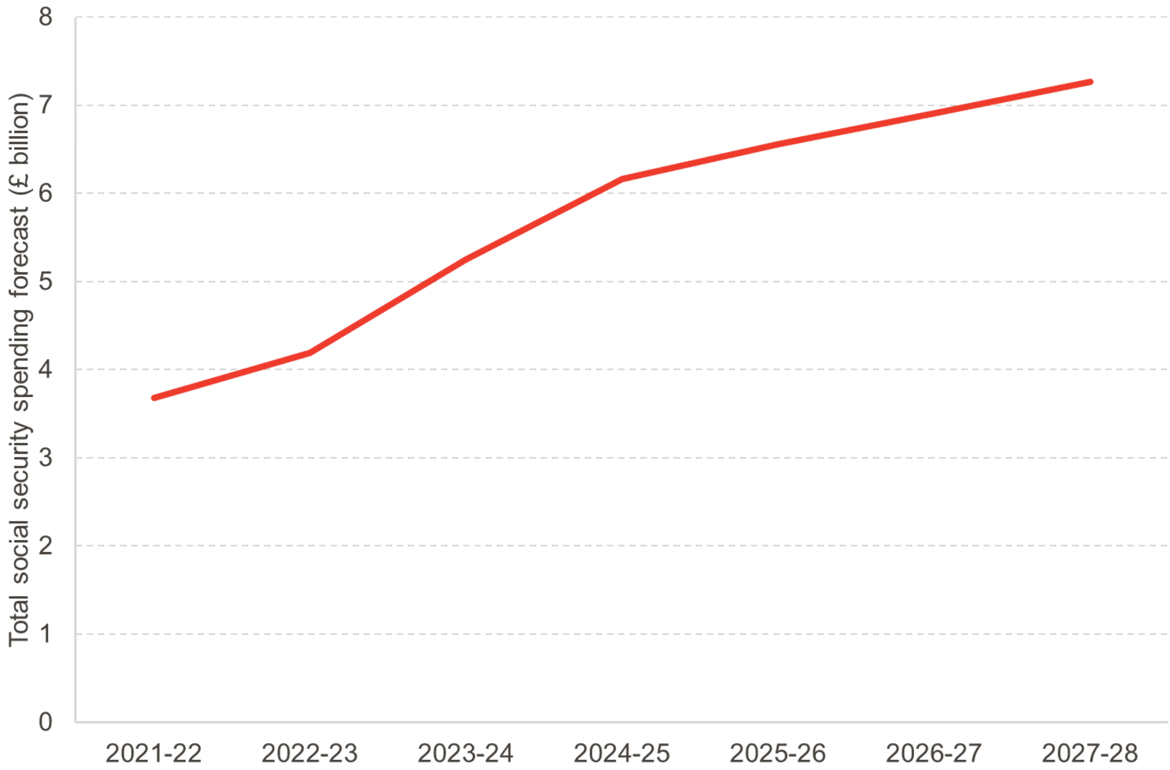
The cost of this benefit is therefore forecast to be higher than PIP and this additional spending falls solely on the Scottish Government (ie. is not covered by the funding which is provided to the Scottish Government to reflect the fact that this benefit is now devolved, through the so-called "block grant adjustment" or BGA).

The Scottish Child Payment is a new devolved benefit, and has been made a flagship policy of the current Scottish Government. This is seen as one of the main policies to alleviate child poverty in Scotland – and crucially help the Scottish Government meet extremely challenging statutory child poverty targets.

The SCP is a direct payment to households with children in receipt of qualifying benefits (such as Universal Credit). Starting at £10 per week for children under 5, it has now reached £25 per week and has been extended to eligible children under 16. It will nearly double in cost in nominal terms between 2022/23 and 2023/24.

The net result of these, and other, commitments on social security mean that estimated devolved social security spending is set to rise by £1bn in the space of a year (see Figure 1).

Figure 1: Social security total spending forecasts, 2021-22 to 2027-28 (£ billion)



Source: Scottish Fiscal Commission

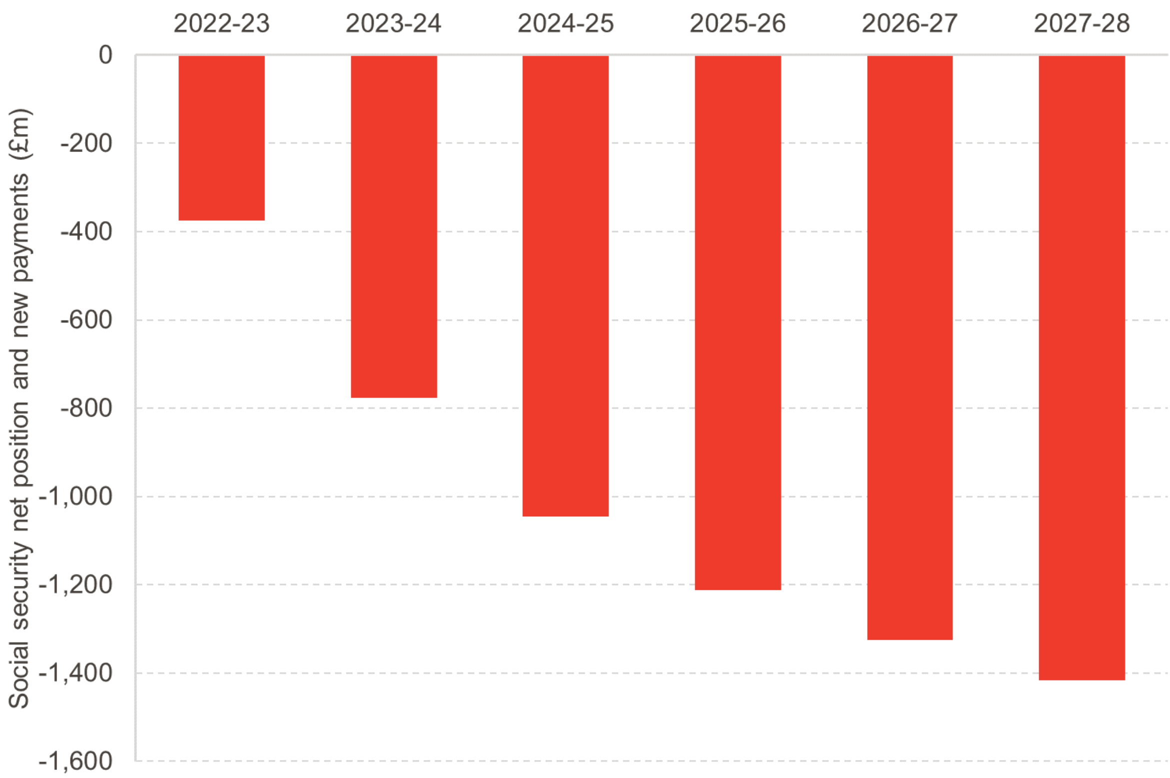
Overall, then, Devolved Social Security is set to increase to £7.3 billion by 2027-28.

Crucially, there is a growing gap between the social security budget and the funding received from the UK Government through BGAs (see more on this below). This funding gap reflects the different choices made over social security by the UK and Scottish Governments and in particular, is the result of two policy choices made in Scotland:

- The Scottish Government has introduced new benefits not available elsewhere in rUK, such as the Carer's Allowance Supplement and the Scottish Child Payment.
- The Scottish Government has introduced a different application process for newly devolved disability benefits that is expected to result in a higher number of claimants than the reserved benefits they replace.

This funding gap must be met entirely within the Scottish budget. It is forecast to more than double in 2023/24 to £776m (18% of BGA) and rise to £1.4bn (25% of BGA) by 2027/28.

Figure 2: Social security net position and new payments, 2022-23 to 2027-28



Source: Scottish Fiscal Commission

Recent data have shown that in the period since the pandemic, a significant increase in the number of adults receiving disability benefits in Scotland. The Scottish Fiscal Commission attribute this increase to the combined impact of the following factors:

- Eligible people considering sources of support as a response to the cost of living crisis.
- People waiting longer for NHS treatment, potentially leading to conditions worsening or treatment being less effective, to such an extent that they become eligible for disability benefits.
- Continuing long-term impacts from COVID-19, including long COVID and broader impacts of the pandemic on mental health.

This, along with higher inflation, is pushing up the costs of devolved benefits at a time when the wider funding environment is extremely challenging.

These policy choices fit with the Scottish Government's broader aims, which have been focussed particularly on the reduction in child poverty. There is no question that they will directly reduce child poverty and have been welcomed by disability campaigners.

The impact of these choices, though, is being felt elsewhere in the delivery of public services in Scotland. Devolved Social security makes up 10% of the Scottish Budget in 2023-24 – this will increase to 13% by 2027-28. In a constrained funding environment, this means other parts of the budget are facing the axe.

Long-term Fiscal Sustainability

The conversation in Scotland is therefore turning to the fiscal sustainability of such choices in the long term.

The Scottish Fiscal Commission has recently released its first Fiscal Sustainability Report. This is different to their regular five year forecasts of the economy, devolved tax receipts and social security. Rather, this analysis projects funding and spending up to 2072-73 to examine how sustainable current policies on tax and spending are, given demographic and other factors which are likely to put pressure on public finances.

The report highlights that there are considerable challenges for the Scottish Government in funding public services in the future. The SFC highlight that over the next 50 years spending on public services will increase because of pressures from rising costs of delivery and an ageing population.

Building on the trends from recent years, spending on health is projected to grow more quickly than that on other services, increasing from around a third of total devolved spending at present to about half in 50 years' time.

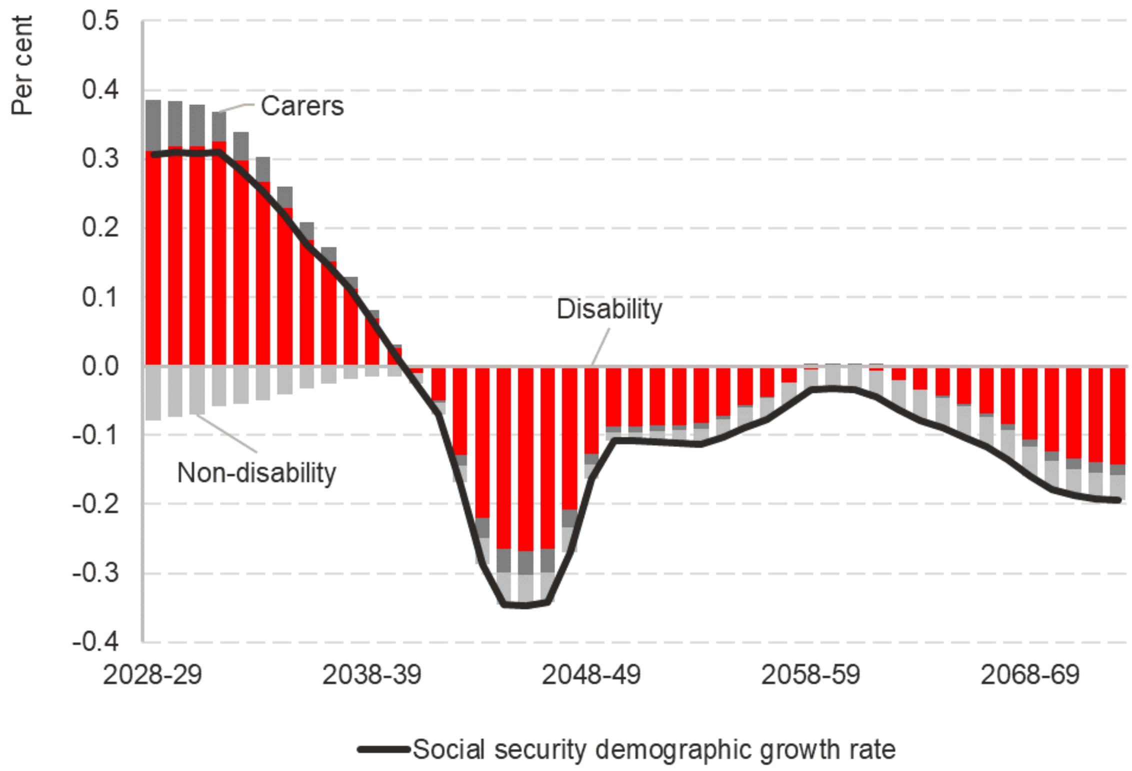
Importantly, the increased spending on public services will run ahead of the likely increases in the funding available to the Scottish Government (from the Block Grant and devolved taxes).

Despite significant tax devolution, the Scottish Budget is still mainly funded from the block grant, which is linked to spending levels on devolved services in England. In other words, the fiscal sustainability of the Scottish Government's spending and tax policies is interlinked with that of the UK Government.

The headline here is that under current Scottish and UK fiscal policies, if public services in Scotland are to continue to be delivered as they are today, Scottish Government spending over the next 50 years will exceed the estimated funding available by an average of 1.7% each year. However, this is in the face of an unsustainable position at the UK level, as outlined in the OBR's most recent report. If the UK Government were to move towards a more sustainable position for the UK as a whole, the average budget gap would be 10.1% in Scotland.

While the main contributory factor in the long-run is health spending, in the first decade or so of the projection social security spending also contributes, particularly as the assumed spending on disability related benefits increases.

Figure 3: Demographic spending growth by social security payment type



Source: Scottish Fiscal Commission

In the mid-2040s there is downwards demographic pressure as the SFC's modelling reflects the increase in the State Pension age. This has the short-term effect of reducing the size of the population over State Pension age, and with people over State Pension age more likely to receive social security benefits, it leads to a fall in caseload. For the rest of the projection period, population projections lead to less pressure on social security spending as – rather depressingly - Scotland's population falls.

Implementation Process, Costs and Staffing

The implementation of Scotland's new social security powers has not been without difficulty, and – particularly in the case of transitions away from Personal Independence Payments onto the devolved equivalent – implementation has tended to take longer and be more costly than was expected.

This has been the subject of many reports by the Scottish spending watchdog, Audit Scotland.

Initially, implementation costs for the overall programme were estimated to be £308 million. This has increased to the current estimate of £685 million to 2025-26. Partly this is because instead of the planned 4 year programme (which was supposed to complete by 2021-22) it is now estimated that it will take 8 years to fully deliver the devolved package of benefits.

The scale of staffing required to implement and administer the devolved benefits has also been much larger than had been anticipated. The SG had initially set out that Social Security Scotland would employ at least 1,900 staff – its current workforce planning indicates that it will have in excess of 3,500 staff by Spring 2023.

Social Security and Block Grant Adjustments

The fiscal framework describes how funding for the Scottish Budget should be adjusted following devolution of taxes and social security. These funding changes are called Block Grant Adjustments (BGAs).

Tax BGAs remove funding from the Scottish Budget, because the Scottish Government is now raising its own tax revenue. Social security BGAs add funding, because the Scottish Government has become responsible for social security payments.

BGAs are based on revenues or spending in Scotland the year before devolution, and then adjusted in line with increases in UK Government revenue or spending per head on the corresponding taxes and social security payments. The adjustments are designed to reflect the hypothetical amount that would have been raised or spent in Scotland if the taxes and payments had not been devolved.

One way to think of these BGAs is that they reflect the spending that UKG has saved as a result of no longer delivering the benefit in Scotland. In effect, the BGA is saying: If Carer's Allowance (for example) had not been devolved, how much would the UKG have spent on Carer's Allowance in Scotland? This estimated amount is transferred to the Scottish budget.

It is not a ring-fenced amount. If the Scottish Government spends more on a payment in Scotland than has been transferred through the BGA (for example, if it establishes a policy that is in some way more generous than that provided in England and Wales), it would have to find additional resources from elsewhere in its budget (via tax rises or spending decreases elsewhere).

On the other hand, if the Scottish Government spends less on a payment than it receives in BGA, it can use the additional resources to spend on other areas of devolved public spending, or cut taxes.

There are two components to calculating a BGA:

- An initial addition. This is the amount that the UK Government spent on a payment (e.g. Carer's Allowance) in Scotland in the year prior to that payment being devolved.
- An indexation measure: a measure of the growth in spending on 'comparable' social security payments per capita in England and Wales.

This is shown schematically in Figure 4, for the hypothetical example of Carer's Allowance.

Figure 4: Calculating the BGA: example of the UKG Carer's Allowance

Source: FAI

Effectively what the BGA calculation is saying is: Let's assume that, if Carer's Allowance had not been devolved, the UK Government's spending on it in Scotland would have grown at same per capita rate as in England and Wales (E&W). This amount is transferred to the Scottish budget, and if the Scottish Government spends more on it (as has been the case in 2019/20 following the payment of a Carer's Allowance Supplement in Scotland), then the Scottish budget bears the additional cost.

One of the features of the BGAs is that the Scottish budget is protected against factors that push up spending per capita on the payments across the UK as a whole. For example, to the extent that many of the payments being transferred are more likely to be claimed by older aged groups, then an ageing population will imply higher spending per capita.

Scotland's population of older age groups is projected to increase, implying higher expenditure in Scotland. But the population of older groups in England and Wales is also projected to increase, which will lead to an increase in the size of the BGAs. On the other hand, the Scottish budget is exposed to the risk of faster growth in spending per capita on the payments being transferred relative to spending per capita on the equivalent payments in England and Wales.

This outcome could arise if the payments were more generous in Scotland than in England and Wales, either in terms of eligibility criteria or payment amounts. But it could also arise if the population of eligible claimants grows more quickly in Scotland than in England and Wales. Think again about the demographic issue described above. The share of older aged groups is expected to grow in Scotland and England and Wales. But it is expected to grow relatively more rapidly in Scotland.

So whilst the effects of an ageing population in Scotland on social security spending might be offset to an extent by increases in the BGAs, they are unlikely to be fully offset. It's possible therefore that future spending on social security in Scotland might be higher than the resources transferred through the BGAs, not because of any policy change, but because of differential demographic trends.

Whether this outcome would be 'fair' and whether or not it was an intended feature of the funding mechanism could be debated.

Reconciliations & In-year Budget Management

So, this is how it works in theory. However, when budgets are being set in Scotland (usually presented to parliament initially in December) the spending in England and Wales for that year is not yet known, and the BGA needs to be based on a forecast.

Forecasts will inevitably be wrong, so there needs to be a process for reconciling these forecasts to the final outturn.

On tax, this works differently for income tax compared to fully devolved taxes. This is relevant due to the interaction with social security, so bear with me!

- For income tax, the final outturn data is not available for a considerable time after the financial year in question, given the need to incorporate self-assessment receipts into the annual measure. This builds in a complicated series of forecasts and reconciliations into the Budget process:
    - The Budget for 2020-21 was presented in December 2019, and was basd on the SFC forecasts of Scottish Income Tax receipts;
    - The outturn data is published in July 2022;
    - A reconciliation (positive or negative) is made to the resources available to the Scottish Government in Budget 2023-24 which reflects the difference between forecast and outturn for 2020-21. This takes into account, at this point, the difference between the forecast BGA at the time the budget is set compared to the final outturn. So, there are two different sets of forecast errors that feed into this. The Scottish Government can use resource borrowing powers to help manage this if the reconciliations are negative (see below).
- For the fully devolved taxes, the process is a bit more simple:
    - When the budget is set, there are forecasts that are used to set the budget envelope for each of the devolved taxes. The SG then collects these through Revenue Scotland, and if there are any differences between forecast and outturn, the SG must manage these in-year.
    - However, the BGAs for these taxes do undergo reconciliations, which take place in two stages. The first stage is an in-year reconciliation, which normally occurs within the same financial year, on the basis of updated OBR forecasts produced for the UK Government autumn fiscal event. Outturn data becomes available in the autumn following the end of each financial year. Using these

outturn figures, a final reconciliation is applied to the Block Grant in the financial year two years after the original BGA was applied.

The process for devolved social security is the same as for the fully devolved taxes. So, if, in-year, spending runs higher than is forecast, the Scottish Government must manage that within year. Resource borrowing that can be used for in-year cash management is limited to £500 million (fixed at the moment in cash terms), and one can see how that could be insufficient given the scale of the payments covered by devolved social security. This also is one pot for both the fully devolved taxes and social security.

The outturn BGA also adds reconciliations to the Budget in later years, on top of those applied for income tax. The resource borrowing for forecast error is limited to £300 million (or £600 million in the case of a "Scotland Specific Economic Shock[1]"), and this is supposed to be sufficient for all reconciliations (which, let's not forget, can be positive as well as negative).

So, for the latest Budget for 2023-24, there was a small reconciliation of -£15 million. This this is the sum of +£50 million reconciliation for income tax relating to the 2020-21 year, -£35 million and +£31 million for the final reconciliation of fully devolved taxes and devolved social security payments relating to the 2021-22 year. This makes the borrowing powers look reasonable.

However, for the budget for 2021-22, there was a negative reconciliation due to income tax of -£309 million, which, given the size of the tax, is not necessarily an unexpected outcome. The increase of the responsibilities due to social security may make these even larger in future years.

Recent Developments

Recent announcements highlight some of the complexities of partially devolving bits of the social security system to some parts of GB.

A key announcement in the Spring Budget was that the Work Capability Assessment (which determines a premium for Universal Credit for disabled people) will be abolished and the existing assessment for receipt of Personal Independence Payment (PIP) will be used instead as a passport.

This will not come into force until the next parliament, so there is some time to work out the details. UK-wide, there is the question of how to deal with the fact that close to a million people who currently get this premium are not PIP claimants.

[1] defined as when onshore Scottish real GDP growth is below 1% in absolute terms on a rolling four-quarter basis, and one percentage point below UK real GDP growth over the same period, and may be triggered from outturn data or forecasts. Interestingly, given this is defined in the Scotland act, it for the first time means there is a statutory duty to produce Scottish GDP data.

In Scotland, though, it gets even more complicated. If ADP has more generous eligibility criteria than PIP, then there will be a question whether this can also be used to passport claimants onto the higher UC premium. It will also need to be decided how it will work for non-ADP claimants in Scotland.

Based on previous statements by the UK Government, there are 3 possible eventualities:

- ADP is used in Scotland as the 'passport' onto disability premiums in UC instead of PIP and the UK Government swallows the additional UC premiums in Scotland if ADP eligibility changes.
- The Scottish Government pays the difference in UC premiums claimed if ADP eligibility changes. The risk of this eventuality could be enough to prevent the Scottish Government from altering ADP eligibility further (i.e., it could alter the cost/benefit ratio quite considerably)
- The UK Government could decide that ADP eligibility is likely to diverge too sharply from eligibility for PIP, prompting them to find another way of deciding eligibility for premiums in UC – keeping WCA capability in Scotland, for example.

This is something which perhaps will be worked through in the fiscal framework review.

Professor Mairi Spowage

March 2023

Annex 2: Welsh Government briefing note 31 May 2023

Purpose of the briefing note

Following the meeting between the Minister for Social Justice and Chief Whip and members of the welfare sub-group on 18 April follow up questions were asked in relation to the work on devolution of the administration of benefits. This briefing note provides a response to these questions.

Questions: ***What is meant by the administration of benefits, what this would enable the Welsh Government to do, and what is the latest position on this work?***

Introduction

1. Given the level of detail relating to the delivery of UK social security benefits that is embedded within regulations, it is not straightforward to define what is an administrative process that can be modified (without the need for UK social security legislation to be amended) to deliver improved outcomes for claimants in Wales.

2. The research undertaken by the Wales Centre for Public Policy[2] reached the conclusion that the *'distinction between welfare policy and administration is a confused and contested issue and will require complex negotiations with UK Government to disentangle*.'

What is Administration of Welfare?

3. In its simplest terms the administration of welfare can be viewed as the tasks undertaken when applying the legislation to the processing of a social security benefit claim. For example, calculating a claimant's Universal Credit maximum amount is an 'administration task' given the process involves identifying the appropriate amounts to include in the calculation from the provisions set out in Part 4 of the Universal Credit Regulations 2013.

4. Having administrative powers for welfare however does not give any power to divert from social security legislation when processing a benefit claim. For example, being responsible for the administration of Universal Credit would not offer an opportunity to change the position where social housing tenants in Wales have their Universal Credit maximum amount reduced because they have a spare bedroom.

5. The process of ensuring a claimant receives their Universal Credit payment is undoubtedly an administration function and it would therefore be reasonable to

[2] 200110-Administering-social-security-in-Wales-evidence-on-potential-reforms.pdf (wcpp.org.uk)

assume that agreeing with a claimant the timing/frequency of their payment is also an administration function.

6. However, given the detail included in the regulations for some benefits this is not always the case. For example, as a key policy intent of Universal Credit is for payments to 'mirror the world of work,' the timing/frequency of a Universal Credit payment is laid out in legislation[3]. Thus, whilst ensuring a claimant receives their Universal Credit payment is an administrative task, determining the timing/frequency[4] of when a payment is made is not.

Defining Administration of Welfare

7. The Welsh Government is committed to untangle the confusion that surrounds the separating of 'policy' and 'administration' of social security benefits, and a proposal has been drafted for research to be undertaken that will:
   - provide an independent and evidence based definition of the specific functions that fall within the definition of administration of welfare.
   - identify the favourable outcomes that could be achieved by the Welsh Government having the power to deliver these administrative functions, and
   - consider why the current arrangements for administering social security prevent the attainment of these outcomes and whether any of these outcomes could be achieved within the current devolution settlement.
8. The research will provide evidence that will help Welsh Government and (a future) UK Government to reach a shared agreement on the definition of administration of welfare and the actions that fall within the scope of the definition.

Work in Progress - Administration of Welfare

9. As part of the co-operation agreement with Plaid Cymru the Welsh Government have committed to support the devolution of the administration of welfare and explore the necessary infrastructure required to prepare for it. Such a transfer of power would need to be accompanied by the transfer of appropriate financial support.

10. Alongside the proposed research (outlined above) other areas of work are being progressed that will support the development of the infrastructure required to effectively deliver any future powers for the administration of welfare. This includes:

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[3] The UC, PIP, JSA & ESA (Claims and Payments) Regulations 2013
[4] Legislation was included within the Scotland Act 2016 to enable Scottish Ministers to have control over the frequency of Universal Credit payments to claimants residing in Scotland.

A. Welsh Benefit Charter

The development of the Welsh Benefit Charter is at the centre of the work we are undertaking to simplify the Welsh benefit system and prepare a fit for purpose administration structure. The principles in the Charter will support the development of a coherent Welsh benefits system that is based on entitlements, joined up and compassionate where people are at the centre of both the design and delivery and only need to tell their story once to receive all the financial support that they are entitled to. As we finalise the draft Charter, we are continuing our engagement with people who claim Welsh benefits and partners who deliver Welsh benefits. Their knowledge and experience will also guide the plans for the successful implementation of the Charter.

B. Streamlining the Administration of Welsh Benefits

On 4 April, the Bevan Foundation published the Policy in Practice report *'A common approach to Welsh benefits - Feasibility study[5]'*. The research identifies two main paths that the Welsh Government could consider in implementing a more uniform approach: a centralised approach with a central database and/or a central application portal, or greater uniformity of approach within current structures. The Policy in Practice report is welcomed, and we are engaging with the Bevan Foundation, Policy in Practice, Welsh Government policy leads and local government (and other delivery partners) to reach informed decisions on the merits of each of the recommendations and work with local government to determine an implementation plan for streamlining the administration of Welsh benefits.

C. Analysis of DWP Benefits

We are examining key DWP social security benefits with stakeholders to identify and analyse the problems individuals face in claiming and maintaining their entitlements. The outcomes from this research will enable the root cause of a problem to be identified as resulting from an administration process (that has the potential to be overcome if Welsh Government has administrative powers for welfare) or the result of the legislation/policy that underpins a particular benefit and give a clearer understanding of the potential impact of changes in responsibility for the administration of benefits.

[5] Final-A-data-view-of-a-common-approach-to-Welsh-benefits-Bevan.pdf (bevanfoundation.org)

Annex 3: Welsh Government briefing note of 31 May 2023 on the benefits system and prisoners and asylum seekers

***Question*: Is it likely that the administrative devolution model would enable these possibilities to be pursued?**

a) *The possibility of enabling prisoners to apply for benefits before release, to facilitate resettlement.*

1. Under social security legislation advance claims for benefits by certain groups of claimants are permitted. However, such claims are accepted at the discretion of the DWP Secretary of State.

2. For example, Regulation 32 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013[6] allows '*Universal Credit claims to be made up to one month in advance where the case falls within a class for which Secretary of State accepts advance claims.'* The Department for Work and Pensions (DWP) Decision Makers guidance[7] confirms that prisoners are a '*class for which Secretary of State may accept advance claims.'*

3. DWP officials however have explained '*there is no facility at present for prisoners or any other groups of people to make a Universal Credit claim in advance of leaving institutional care'*. This is on the basis that *'because Universal Credit is a digital benefit, prison leavers cannot make a claim in advance of their release… due to restrictions placed on the use of computers in prisons.'*

4. There are many reasons however why a person may not be able to make and maintain their Universal Credit claim online such as visual impairments, lack of basic literacy and legal limitations. This is why the regulations[8] state that whilst Universal Credit claims are '*digital by default, where is not possible to make a digital claim, a new claim can be made by telephone if the claim falls within a class of case for which the Secretary of State accepts telephone claims*.'

5. Given the DWP Secretary of State may accept advance claims for Universal Credit and some people have a right (at the Secretary of State's discretion) to make their claim by telephone, if DWP are not accepting 'any' advance claims for Universal Credit their policy appears not to be aligned with legislation. Further information has been requested from the DWP.

b) *The possibility of enabling asylum seekers to work and/or apply for benefits.*

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6 The UC, PIP, JSA & ESA (Claims and Payments) Regulations 2013)
[7] ADM A2048 Advance Claims for UC
8 The UC, PIP, JSA & ESA (Claims and Payments) Regulations 2013

1. Regulation 115 of the Immigration and Asylum Act 1999 excludes a person subject to immigration control who has no recourse to public funds from having entitlement to the majority of payments from the UK's social security system. All asylum seekers (with the exception of unaccompanied asylum seeking children) have no recourse to public funds. If the Welsh Government were responsible for the administration of welfare, it must apply the legislation when processing a social security benefit claim and would therefore not be able to make an award, for example, of Universal Credit, to an asylum seeker.

2. The Asylum and Immigration Act 1996 outlines the conditions and restrictions placed on asylum seekers seeking work in the UK. This legislation was further clarified and amended in the Immigration, Asylum and Nationality Act 2006 and the Immigration Act 2016. In summary, an asylum seeker in the UK does not have the right to work, unless they have been given permission by the UK Government (Home Office). For example, where an asylum seeker's application has taken more than a year to process, they may apply for permission to work, but any such permission is at the discretion of the Home Office. The rights of an asylum seeker to work would not be changed if the Welsh Government were responsible for the administration of welfare.