

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Welfare Reform (Further Provision) (Scotland) Act 2012 makes the provisions required by the Scottish Parliament's partial refusal of legislative consent for the UK Welfare Reform Act 2012¹ ("the UK Act). It is an enabling Act which gives powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes.
4. The Act largely mirrors relevant clauses of the Bill for the UK Act which were removed during that Bill's Third Reading in the House of Lords. Their removal was the consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. Unlike the relevant clauses of the Bill for the UK Act, however, the provisions in the Act do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This would have been a necessary express qualification in the UK Act, because the UK legislation could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Act is unnecessary because in its view all of the powers conferred in the Act are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Act is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Act's provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly. The Scottish Government furthermore considers that the Scottish Ministers will be constrained in exercising these enabling powers within the limits of their devolved competence set out in section 54 of the Scotland Act 1998.

OVERVIEW OF THE ACT

5. **Section 1** of the Act provides powers to make provision in consequence of the introduction in 2013 of universal credit and the abolition of some existing social security benefits by the UK Act.
6. **Section 2** of the Act provides powers to make provision in consequence of the introduction in 2013 of personal independence payments and the accompanying abolition of disability living allowance by the UK Act.
7. **Section 3** of the Act contains general ancillary powers which apply to any regulations made under sections 1 and 2 of the Act.
8. **Section 4** of the Act requires the Scottish Ministers to prepare reports on the impact of the UK Act on the people of Scotland until 2017. The reports are to be laid before the Scottish Parliament. The Scottish Ministers are empowered by order to modify the timescales provided for laying the reports.

Section 1: Universal credit: further provision

9. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in Part 1 of the UK Act which creates universal credit and abolishes certain existing social security benefits, referred to further in paragraph 12. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes and so could be used, for example, to make consequential or supplemental provision in the devolved area of passported benefits where that provision is considered appropriate in light of the abolition of existing social security benefits by the UK Act.
10. “Universal credit” refers to the new, integrated benefit and tax credit which will be rolled out across the UK from April 2013-2017. UK Government policy in respect of universal credit has been set out in the white paper (“Universal Credit: Welfare That Works”²) in November 2010 and in subsequent briefing notes³. Universal credit will be comprised of a basic award onto which ‘add-ons’ in respect of particular needs such as housing and help with child care costs will be added where appropriate. It will act as a top up benefit for those in work and will be paid to households monthly into a bank account. The intention is that recipients of universal credit will be able to manage their claims online so far as possible and that the amount payable will change automatically to accommodate a change in a household’s circumstances. A “pathfinder” system is due to be introduced in April 2013 with implementation proper due to proceed from October 2013 for new claimants with a four year phase-in period for existing welfare claimants ending in 2017.
11. The power set out in section 1 of the Act is needed because the existing benefits, which will be abolished, have links to devolved areas, the main one being that they are used as an eligibility hook for a variety of devolved, Scottish “passported benefits”. These include benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance. When the existing benefits are abolished, so too will the current, associated eligibility hooks. The Scottish Ministers may use the power provided by this section to make changes for a devolved purpose such as to refer consequentially to some aspect of the new universal credit or to supplement the gap left by the abolition of the hook benefit, for example by creating new eligibility criteria for certain passported benefits conferred in devolved areas such as health or access to justice. Existing social security benefits also impact on other devolved areas such as pre-action requirements where a landlord’s grounds for possession include rent arrears

² <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf>

³ <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/universal-credit-briefing/>

and cancellation of adoption allowances. The Scottish Ministers could also make free-standing provision using this power provided it were for a devolved purpose and was required in consequence of provision made by or under Part 1 of the UK Act.

12. The existing social security benefits which will be abolished by section 33 of the UK Act and replaced by universal credit are:
 - Income support under section 124 of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”),
 - Housing benefit under section 130 of the 1992 Act,
 - Jobseeker’s allowance under the Jobseekers Act 1995 (where income-based),
 - Employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where income-related),
 - Child tax credit under the Tax Credits Act 2002, and
 - Working tax credit under the Tax Credits Act 2002.
13. Subsection (2) provides that regulations under this section may modify primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation which relate to devolved matters) for a devolved purpose and subject to the other restrictions on competence in the Scotland Act 1998.
14. Subsection (3) provides that regulations under this section are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and otherwise are subject to the negative procedure.

Section 2: Personal independence payment: further provision

15. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of Part 4 of the UK Act. Part 4 of that Act creates the personal independence payment and abolishes disability living allowance. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes. It could be used, for example, to make supplemental or consequential provision in the devolved area of legal aid where the governing legislation refers to the mobility component of disability living allowance, where consequential or supplemental provision is considered appropriate in light of the abolition of disability living allowance by the UK Act.
16. Further provision in relation to Part 4 is needed because, as with universal credit, the introduction of personal independence payment and the abolition of the disability living allowance have consequences for devolved matters and their associated legislation. The power in this section could be used to make changes for devolved purposes to refer to the personal independence payment instead of the disability living allowance so as, for example, to create new eligibility criteria for certain passported benefits such as ‘blue badge’ parking permits. The Scottish Ministers could also make free-standing provision using this power provided it were for a devolved purpose and in consequence of provision made by or under Part 4 of the UK Act.
17. Subsection (2) provides that regulations under this section may modify primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation) for a devolved purpose and subject to the other restrictions on competence in the Scotland Act 1998.

18. Subsection (3) provides that regulations under this section are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and otherwise are subject to the negative procedure.

Section 3: Regulations under this Act: ancillary provision

19. This section contains general provisions which apply to any regulations made under sections 1 and 2.
20. Subsection (2) provides that the regulations may make provision which is either in direct or indirect consequence of the UK Act. Provision can also be made which is not itself in consequence of the UK Act but concerns a matter which is, or previously was, in consequence of the UK Act. This will allow the Scottish Ministers to make provision required for reasons which are not in direct or indirect consequence of the UK Act. For example, if the powers enabled by this Act are used to establish an income threshold for entitlement to certain passported benefits then, in future, the Scottish Ministers may wish to vary that income threshold. Such variation may not be in direct or indirect consequence of the UK Act but in consequence of something else, such as a rise in the rate of inflation. It would, however, be linked to a matter which was in consequence of the UK Act.
21. Subsection (3) provides for the regulations to make different provision for different cases or purposes and to include supplemental, incidental, consequential, transitional, transitory or saving provision.

Section 4: Impact of reform: annual reporting

22. This section imposes a duty on the Scottish Ministers to lay before the Scottish Parliament reports on the impact of the UK Act on people in Scotland. Subsection (6) describes more fully what is relevant, and subsection (5) allows the reports to include such additional information as the Scottish Ministers consider appropriate.
23. Subsections (1) and (2) specify that an initial report is to be laid before the Scottish Parliament on or before 30 June 2013 (with the effect that it may be laid earlier than that date, although subsection (7) enables the Scottish Ministers to fix a later date).
24. Subsections (3) and (4) specify that an annual report is to be laid before the Scottish Parliament on or before 30 June each year (with the effect that it may be laid earlier in the year concerned, although subsection (7) enables the Scottish Ministers to fix a later date). This requirement lasts until 2017, although subsection (7) enables the Scottish Ministers to extend the period during which the reports are to be provided.

Section 5: References to the UK Act

25. This section defines the term “the UK Act” which is used throughout the Act.

Section 6: Commencement

26. This Act will commence the day after it receives Royal Assent.

Section 7: Short title

27. This section gives the short title of the Act.

PARLIAMENTARY HISTORY

28. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

*These notes relate to the Welfare Reform (Further Provision) (Scotland)
Act 2012 (asp 10) which received Royal Assent on 7 August 2012*

<i>Proceedings and Reports</i>	<i>References</i>
Introduction	
Bill as Introduced – 22 March 2012	SP Bill 11 – Session 4 (2012)
Stage 1	
(a) Welfare Reform Committee	
2 nd Meeting 2012, 13 March 2012	col 22- 66
3 rd Meeting 2012, 29 March 2012	col 74 -86
4 th Meeting 2012, 17 April 2012	col 93 - 128
5 th Meeting 2012, 24 April 2012	col 135 - 158
6 th Meeting 2012, 1 May 2012	col 166 - 206
7 th Meeting 2012, 8 May 2012	Papers for meeting, 8May
8 th Meeting 2012, 15 May 2012	Papers for meeting, 15 May
1 st Report, 2012 (Session 4) – Stage 1 Report on the Welfare Reform (Further Provision) (Scotland) Bill	Report
(b) Subordinate Legislation Committee	
10 th Meeting 2012, 17 April 2012	col 348 - 362
22 nd Report, 2012 (Session 4) – Welfare Reform (Further Provision) (Scotland) Bill	Report
(c) Finance Committee	
11 th Meeting 2012, 18 April 2012	col 963 - 978
(d) Consideration by the Parliament	
Stage 1 Debate – 23 May 2012	col 9224 - 9276
Stage 2	
Welfare Reform Committee	
9 th Meeting 2012, 13 June 2012	col 214 - 230
Stage 3	
Consideration by the Parliament	
Stage 3 Debate – 28 June 2012	col 10825 - 10873
Bill as passed – 28 June 2012	SP Bill 11A Session 4 (2012)
Royal Assent	
7 August 2012	Welfare Reform (Further Provision) (Scotland) Act 2012 (asp 10)