



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 31 October 2024

Session 6



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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
28th Meeting 2024, Session 6

CONVENER

Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

COMMITTEE MEMBERS

- *Jeremy Balfour (Lothian) (Con)
- *Katy Clark (West Scotland) (Lab)
- *Marie McNair (Clydebank and Milngavie) (SNP)
- *Paul O’Kane (West Scotland) (Lab)
- *Liz Smith (Mid Scotland and Fife) (Con)
- *Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 31 October 2024

[The Deputy Convener opened the meeting at 09:33]

Interests

The Deputy Convener (Bob Doris): Good morning, and welcome to the 28th meeting in 2024 of the Social Justice and Social Security Committee. We have received apologies this morning from our convener Collette Stevenson, so I am afraid that you are stuck with me as deputy convener.

I apologise for not being in the room this morning. Had I anticipated that I would be required to convene, I would have been there. No discourtesy was intended. David Torrance, who is the Scottish National Party substitute member on the committee, might or might not appear this morning.

Agenda item 1 is a declaration of interests. I welcome to the committee Liz Smith, who replaces Roz McCall—I thank Roz for her valued contribution to the committee. Liz, as you are a new committee member, I must ask whether you have any relevant interests that you wish to declare.

Liz Smith (Mid Scotland and Fife) (Con): I have no relevant interest to declare, convener, but I look forward to being on the committee.

The Deputy Convener: It is good to have you here. I think that this is the first time that I have sat on a committee with you, and I am looking forward to it.

Subordinate Legislation

Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 [Draft]

09:34

The Deputy Convener: Agenda item 2 is consideration of a Scottish statutory instrument. As the instrument has been laid under the affirmative procedure, it can come into force only if the Parliament approves it.

I welcome to the meeting Shirley-Anne Somerville, Cabinet Secretary for Social Justice, and the following Scottish Government officials: Owen Allen, team leader, winter heating benefits and welfare fund; Julie McKinney, head of social security strategy, welfare fund and winter benefits; and Stephanie Virlogeux, lawyer, legal department. I thank all of you for joining us today.

Following this evidence-taking session, the committee will be invited under agenda item 3 to consider the motion to recommend approval of the instrument. I remind everyone that Scottish Government officials can speak under this item but not in the debate that follows.

Before I invite the cabinet secretary to make a short opening statement, I also remind members—indeed, everyone—that legal proceedings on winter fuel payments are active. Therefore, under the Parliament's sub judice rule, members should avoid making any statement about the subject matter of those proceedings, although I should say that the rule does not restrict consideration of legislation. Members and witnesses should therefore focus their remarks on the regulations—specifically the regulations that we are considering today—and avoid straying into wider matters that relate to the legal proceedings.

I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): Thank you, convener, and good morning.

Just weeks before our original regulations were to be laid in Parliament, the United Kingdom Government announced a significant change in policy that had a devastating consequence for our delivery of a universal benefit. Nevertheless, these regulations mark a significant milestone in the delivery of our winter heating benefits, following the introduction of our child winter heating payment in 2020 and our winter heating payment, which replaced the UK Government's unreliable cold weather payments last February. Although the provisions that are laid out in the regulations are not what I had expected us to be delivering,

they will help ensure that vital support for this winter's fuel bills is available to eligible pensioners who will otherwise be without support.

My officials engaged extensively on the proposals for delivery of our universal benefits, and we received a record number of responses to our consultation, with more than 900 individuals and stakeholders taking the time to provide their views on the delivery of the benefit, now and in the future. Given the late notice of the UK Government's decision and the timescales for delivering the benefit, it has not been possible to engage further on the revised policy.

The Scottish Government acknowledges that there are other pensioners who are likely to face financial difficulty and who would benefit from this support. However, given the significant reduction in the funding that we expect to deliver the pension-age winter heating payment, it is no longer practicable to deliver the benefit on a universal basis. We will continue to call on the UK Government to reverse its decision to means test winter fuel payments and to reinstate the payment for all pensioners, and I have committed to keeping the eligibility and the scope of the pension-age winter heating payment under review, to ensure that, where possible, we maximise the benefit's impact.

Our focus now is on ensuring that eligible pensioners receive the support that they are entitled to this winter. It is no longer possible for Social Security Scotland to deliver the benefit this year and, therefore, the Department for Work and Pensions will deliver it on our behalf under an agency agreement. Although Social Security Scotland will have no role in administering the pension-age winter heating payment this winter, officials have been working closely with the UK Government to ensure that the DWP is prepared to deliver the functions required of it under the Social Security (Scotland) Act 2018.

In Scotland, we actively encourage people to apply for the benefits that they are eligible for and strive to make applying as easy as possible, with support every step of the way. Although pension credit, which will be central to increasing take-up of our new winter heating benefit, is a reserved benefit and therefore Scottish ministers have no official role in administering it, my officials have been engaging with a number of stakeholders to help raise awareness of the link between pension credit and the entitlement to the pension-age winter heating payment. That will ensure that we can reach as many people as possible this winter.

Under the regulations, pensioners in Scotland in receipt of a relevant benefit will automatically be paid £200 or £300, depending on their age. I am immensely grateful to the members of the Scottish Commission on Social Security for giving their

time and engaging constructively with officials on the draft regulations shared with them in April, and for agreeing to scrutinise those regulations retrospectively. Wherever possible, we will always aim to give sufficient time for scrutiny ahead of laying regulations, but in these circumstances, that has not been possible.

I welcome the opportunity today to assist the committee in its consideration of the regulations.

The Deputy Convener: Thank you, cabinet secretary. We now move to questions from MSP colleagues, and I ask Katy Clark to kick off.

Katy Clark (West Scotland) (Lab): Cabinet secretary, why do you feel that you have no choice but to follow the UK Government policy on this matter?

Shirley-Anne Somerville: As I alluded to in my opening remarks, the UK Government's changes to winter fuel payment eligibility will reduce the Scottish block grant by an estimated £150 million in 2024-25. That is more than 80 per cent of the cost of the Scottish Government's replacement benefit. Particularly given that the chancellor's late decision was taken without notice, despite officials from both Governments working closely on the social security programme, the financial constraints and the lack of prior consultation with the Scottish Government mean that ministers have reluctantly concluded that eligibility must be restricted to those in receipt of a relevant qualifying benefit.

Katy Clark: In the time available, to what extent did you explore other options?

Shirley-Anne Somerville: We delivered a public consultation, which I referred to in my opening remarks. The time constraints that we faced and the practicalities of moving forward made that very difficult.

With respect, given the live legal proceedings, I will keep my remarks to those general considerations.

Katy Clark: I am sure that other members will pick up some of those themes. Thank you.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. It is welcome that the First Minister wrote to councils to seek assistance in the drive to increase the take-up of pension credits. I am aware of the good work that has been done in that regard in my constituency and across Scotland. Will the cabinet secretary put on record her appreciation of the work that local authorities are doing to increase pension credit take-up?

Shirley-Anne Somerville: You raise an important point. Many organisations and different parts of Government have done what they can to increase take-up of pension credit, and I pay

tribute to councillors and to the many MSPs who have done their own proactive work to encourage their constituents to come forward and claim what they are eligible for.

We have always known that the uptake of pension credit was challenging and that it needed to be increased. I am delighted that councils have responded proactively and encouragingly to the situation that we are in this year. I thank them and everyone else who has been involved in that work, including the many organisations, third sector charities and so on that have done their utmost to increase the uptake of pension credit.

Marie McNair: I am sure that they appreciate that. Receipt of a council tax reduction can in some cases be a good indication that a pension credit claim should be made. Are you aware of examples of council tax reduction records being used to help to target pensioners who may be entitled to pension credit?

Shirley-Anne Somerville: I am sure that councils have undertaken a number of pieces of work on that issue. The point that you raise about how we share that good practice across councils and across the board is interesting. If the Government can do anything on that, we would be happy to assist.

Paul O’Kane (West Scotland) (Lab): Good morning. I will follow on from where Katy Clark left off with regard to the flexibility that is available for any change in approach in Scotland, because we are talking about a devolved benefit.

I am keen to understand what consideration was given to the consequentials that will come from the household support fund. The cabinet secretary and I have debated this previously and, at that point, she was sceptical about the suggestion that £41 million of consequentials would come from that fund. I hope that, given yesterday’s UK budget, she is less sceptical about the money that will come to Scotland.

There is a genuine debate around the issue that we are discussing, but there is a consensus around what more could be done to, as the cabinet secretary said, maximise the benefit’s impact, and to see how the criteria could be widened. To what extent has she considered that? It is interesting to note that, in the intervening period, the devolved Administration in Northern Ireland has given consideration, along with the DWP and others, to how it might use the consequentials that flow from the household support fund to enable the criteria to be widened.

Shirley-Anne Somerville: We indeed had the discussion that Paul O’Kane refers to. Given that the UK budget was delivered only yesterday, we are still working through the finer detail, as I think that Paul O’Kane will appreciate, but we have said

that the budget includes proposals, certainly in some areas, that are a step in the right direction.

Clearly, once we have considered the budget fully, we will be able to consider how any consequentials that flow from it could be used across Government, including on the aspect that we are discussing. If there are consequentials, the Government will consider how much they are and what they could be used for. I will be happy to carry on that conversation with Paul O’Kane once we are a bit further down the track of analysing the fine detail of yesterday’s budget.

09:45

Paul O’Kane: I appreciate that there is a lot to get through, given that there is £1.5 billion a year of extra consequentials. The chancellor announced that the household support fund has been extended beyond the six-month period to cover a full year. Do you accept that there will be Barnett consequentials and that the estimate from the House of Commons library is that there will be £41 million for Scotland as a result of the spending on that fund?

Shirley-Anne Somerville: It appears that there will be additional consequentials. I hope that you will forgive me if I anticipate that, over the next couple of days, a number of calls will be made as regards how to spend those consequentials, and I note that such calls often add up to a lot more than the consequentials that are received. Additional consequentials may be coming, but the important thing at this point is for the Government to analyse that.

I accept that Mr O’Kane has made calls on the matter right from the start, but other colleagues from his party and other parties will perhaps ask us to spend those consequentials in different ways and, as I said, the total of those calls often adds up to more than the money that we get.

However, with all those caveats, I absolutely take Mr O’Kane’s point and I will be happy to carry on that conversation with him and colleagues as we move forward and progress on to the budget.

Paul O’Kane: I am grateful for that. I think that we have agreed the principles that there could be flexibility in the offer to pensioners more widely and that there will be consequentials, notwithstanding what you have just said.

I am keen to understand the nature of the system that was built by Social Security Scotland. My understanding from my discussions and our debates is that it is a universal system and it therefore cannot be changed. I am keen to understand why that is the case. Notwithstanding where we are now, a future Scottish Government of whatever stripe may decide to change eligibility

up or down. For example, people might decide that millionaires should not receive the winter fuel payment. That is one view. I am keen to understand why there is no flexibility in the system that was built by Social Security Scotland, or am I incorrect in my view?

Shirley-Anne Somerville: The system was built on the assumption that the Scottish Government's policy intent of a universal benefit would be carried out. Theoretically, a system could be built within the agency that could cope with myriad different issues, but we would then be challenged about why we were building a system that tried to second-guess what may or may not happen in the future and why we were wasting resources on that when we should be building the system for the Government's policy intent.

That was the policy intent, that is what we intended to deliver and that is what the system was built on. Clearly, the system can be changed. It will have to be changed for next year. That will require work, which involves additional expense. Each suggestion that the system could do something different requires funding to allow that to be built. These things take time. It could not be changed overnight, which is why we have had to rely on the DWP this year, because the system could not be changed over the timeframe that we were given, but it can be changed for next year.

The system could be changed in myriad different ways, but I hope that the committee would expect that systems are built based on the policy intent that the Government wants to take through. I am not sure how we could second-guess what is going to happen in the future or how many variations of that we would want to build a system for, and, in any case, that would be a highly inefficient way to build a system.

The Deputy Convener: Mr O'Kane, before you come back in, I note that we are moving slightly away from the regulations. I will not prevent you from coming back in, but I note that Marie McNair wants to ask a supplementary question. If you finish your line of questioning, I will then bring her in.

Paul O'Kane: I appreciate your comments, deputy convener; I will finish on this question.

On the point about flexibility, I just want to be clear. The cabinet secretary says that the system could not be changed for this year, so additionality could not be put in—the system would have to replicate what has been done at the DWP. Am I correct in saying that there is no flexibility in the system this year?

Shirley-Anne Somerville: The system was built for the provision of a universal benefit, which was the Scottish Government's intent. Given how long it takes to build a social security system, we

cannot change it for this year in just a couple of weeks.

Paul O'Kane: So, there is no flexibility in the system whatsoever.

Shirley-Anne Somerville: It was built for a universal benefit—that is what it is for.

Marie McNair: I will come in on the back of Paul O'Kane's comments. Cabinet secretary, in September, you wrote to the UK Government because you were concerned about the amount of mitigation that you are providing. You say that you cannot continue to mitigate the effects of UK policies, but we have been told:

"Read my lips: no austerity under Labour."

What response did you get to that letter?

Shirley-Anne Somerville: In many ways, the response was made clear during the budget yesterday. The two-child cap was not lifted and the bedroom tax was not scrapped, and we will therefore have to continue to mitigate the effects of those policies. We already spend around £134 million to mitigate the worst excesses of some of the UK welfare policies.

The Deputy Convener: Katy Clark has a supplementary.

Katy Clark: Cabinet secretary, in the context of scrutinising these regulations, to what extent did you look at what is happening south of the border, and in particular at what councils are doing? In July, half a billion pounds of additional support to councils in England was announced to help them to support fuel poverty, and I believe that further money was announced yesterday.

To what extent have you looked at what additional support is being provided down south, particularly for pensioners who are experiencing fuel poverty?

Shirley-Anne Somerville: Clearly, some types of support are available in England. In Scotland, we provide support that is not available in England. For example, we have the Scottish welfare fund—

Katy Clark: I quite understand that you might want to speak about some of the things that you have done, but I am asking about the extent to which you have looked at what some councils down south are doing, where there are a number of different approaches. In the context of the policy and regulations that we are considering today, I want to know the extent to which you have looked at those. Have you asked for briefings, or been briefed, on what is happening south of the border?

Shirley-Anne Somerville: As we look at how we could use any consequentials—if, indeed, there are any—ministers will receive advice on

alternative ways by which we can provide support to pensioners in addition to what is already provided here that is not available in England.

The Deputy Convener: Cabinet secretary, I have one brief supplementary question. It might be one for you to reflect on and write back to the committee, because I expect that we will return to this policy matter once the legal case, which is subject to the sub judice rule, is disposed of in one way or another.

How much notice would the UK Government have been required to give the Scottish Government of its intention to scrap the provision of winter fuel payments to all pensioners, to allow you to pivot and to seriously consider any alternatives or mitigations?

I also have another point on which I ask the Scottish Government to reflect. Other measures and mitigations can be brought forward only if the Scottish Government knows how much cash it has in its pocket. How much notice would you need of the financial settlement for the current financial year, which can still be revised, and for the following financial year, to allow you to budget appropriately to do something different?

You might say that, in asking that question, I am drifting away from the regulations, in which case you could perhaps bank it and write to the committee about that at a later date. However, it is clear that the lines of questioning from members so far relate to what could have been done differently, so that information would be helpful.

Shirley-Anne Somerville: I would certainly be happy to provide further information in writing to the committee about how quickly changes to social security systems can be made. That is clearly an issue that all such systems have, so I will refer to it in writing if that is convenient, deputy convener.

The Deputy Convener: That might be helpful for future scrutiny. I appreciate that. We move on to questions from Jeremy Balfour.

Jeremy Balfour (Lothian) (Con): It is good to have you here, cabinet secretary. I have a couple of questions. Looking forward to next year, when the presumption is that Social Security Scotland will take on delivery of the pension-age winter heating payment, will it be able to do that? I seek assurance on that. Further, will that have to be delivered under a universal system only?

Shirley-Anne Somerville: No. To be absolutely clear, had we been able to go forward with a universal benefit, Social Security Scotland was ready to do so. There were no issues at our end with taking that forward.

Our taking on delivery next year will give us more time to adapt the system, and I am confident

that the system will be changed in enough time to allow the agency to deliver it next year.

Jeremy Balfour: That is helpful. Thank you.

Did you consider applying different eligibility criteria for the benefit or was that simply ruled out immediately because the system would not let you make changes?

Shirley-Anne Somerville: An important part of the consultation was enabling people to respond on different types of payment, now and in the future. There were differing views on that.

The options that were then available to the Scottish Government when we got the information through were much narrower. We had built a system based on universality, which was the system that we would have been able to deliver. However, if we were unable to deliver it, it would have to be something that the DWP could do under an agency agreement. At that point, we had available to us a much narrower field of practical options.

Jeremy Balfour: That is helpful. Did you have any discussions with the DWP about the agency agreement and doing something slightly different here in Scotland? Did the DWP come back and say that it does not have the resources to do that, or did you have that discussion with it?

Shirley-Anne Somerville: Mr Balfour, you and I have had many conversations over many years about the nuances of agency agreements. You and I both know that the agency agreement is to absolutely follow what the DWP does. There have never been any options for the Scottish Government to do anything different. That is not how agency agreements work, so we would not have got into that—

Jeremy Balfour: I appreciate that, cabinet secretary. I am just asking whether you tried to have that discussion, or did you simply think that there was no point in having it?

Shirley-Anne Somerville: The agency agreement works in one way and in one way only, and it is for the DWP to carry it out as it does for the rest of the UK. That has been the case all the way through. If there had been a great deal more time for us to get into nuanced discussions with the DWP, there might have been a way to do something different, but that would have been at a cost to the Scottish Government, and the DWP would have had to allow us to do it. That has never happened. There has never been an option to do that, and it certainly could not in any way, shape or form be negotiated at speed.

The Deputy Convener: From what I can see, there are no more questions from members—*[Interruption.]* Oh! I hear that that might not be the case. There was nothing in my chat box, but Kevin

Stewart's name has appeared twice now. Mr Stewart, over to you.

Kevin Stewart (Aberdeen Central) (SNP): It is a pity that we canna broaden out some of the questions but, obviously, because of the current court situation, the sub judge rule is in play. Therefore, I will stick to the regulations that are in front of us. Cabinet secretary, I take it that you wish that you were laying different regulations in front of the committee today.

10:00

Shirley-Anne Somerville: Yes, very much so. The consultation that we carried out clearly indicated that the vast majority of people wished for the payment to be a universal benefit, and that was the Scottish Government's intention. We believe in the universality of benefits for a number of reasons, but that sometimes comes up against a harsh reality, and that is the situation that we are in. Therefore, it is with deep disappointment that I ask the committee to recommend that the regulations be approved.

Kevin Stewart: I want to turn to the policy decision that the UK Government made—it was a bit of a shock decision—and the removal of those moneys from the Scottish Government. I have a general question about respect. Has the Scottish Government raised the issue of the respect agenda with the UK Government when it comes to intergovernmental relations, as opposed to its taking an approach in which a change in policy is sprung upon you unawares that you then must deal with? I understand—you said this in your opening remarks—that discussions between your civil servants and UK civil servants about the transfer of the powers and resources had been going on for some time. How far in advance of the announcement did you have knowledge of what the UK Government was about to do, and do you think that it acted in a respectful way?

Shirley-Anne Somerville: We did not have any forewarning. There is an irony in that because it is well rehearsed that intergovernmental relations with the previous UK Government were exceptionally difficult. However, even during the worst of those phases, there was an exceptionally good working relationship on the operational level between the DWP and the Scottish Government. That was one of the few areas in which that continued in a respectful way. We have genuinely never had this situation before, and the irony is that wider intergovernmental relations have improved. Having said that, I have made clear my views to the secretary of state. We have had those discussions and we now need to move forward.

I hope and believe that there is greater recognition that we are in a different phase now

with the devolution of social security and that any change like this will have an immediate impact. A change that relates to benefits such as this one or to disability benefits, can have big consequences for in-year or future years' expenditure.

We have been through a very difficult phase, but the secretary of state and I have had that discussion, and we are keen to move on and for that not to happen again. The responsibility for ensuring that that is the case lies with the DWP. I have been given those assurances, and I will take the secretary of state at her word on that. However, that situation cannot happen again, because that would mean that I would have to come in front of the committee with other matters to say that the Scottish Government did not want to make changes but had been forced into a position that it did not want to get into.

Kevin Stewart: The UK Government's policy change has an impact on people who live in the real world. You spoke about some of the mitigation measures that the Scottish Government has put in place, such as through the Scottish welfare fund and discretionary housing payments. Given that eligibility now largely rests on entitlement to pension credit, what discussions have you had with the secretary of state about the UK Government running a campaign to ensure that all those folk who are entitled to pension credit get that benefit, and therefore get the winter fuel payment?

Shirley-Anne Somerville: You raise an important point about benefit take-up in general. One of my first asks of the secretary of state was to do with take-up. I appreciate that the DWP has undertaken some work on that, and we have seen an increase in uptake, but we are still keen to see what more can be done.

As I said in my opening remarks, we, as the Scottish Government, are keen to play the role that we can in that regard, even though pension credit is not our benefit. Local authorities and others have played a role in that, too. In essence, I am very keen that the DWP does what the Scottish Government has done on that. For some time, the Scottish Government has had a benefit take-up strategy; we are the only country in the UK that has such a strategy. Take-up of pension credit is important, but take-up of other benefits is also important, which is why having a wider take-up strategy is important.

The Deputy Convener: As there are no further questions, we move to agenda item 3. I call the cabinet secretary to move the motion, and to speak to it, should she wish to do so.

Motion moved,

That the Social Justice and Social Security Committee recommends that the Winter Heating Assistance (Pension

Age) (Scotland) Regulations 2024 [draft] be approved.—
[Shirley-Anne Somerville]

The Deputy Convener: Members now have the opportunity to contribute to a debate on the motion. Does any member wish to speak?

I see that Mr Balfour wishes to speak. I ask the clerks, if any other member wishes to speak, to put their names in the chat function.

Jeremy Balfour: I wish that we were not in this position, and I agree with a lot of what the cabinet secretary has said. The UK Government has made a bad, and very strange, decision, which will have a real effect on many of our constituents' lives.

I understand why the regulations have been introduced. However, I am concerned with the bigger picture and how Social Security Scotland works and the systems that it has in place. From what we have heard this morning, it seems that, if the Scottish Government had wanted to look at different criteria for doing things in a different way, that would have been simply impossible, because the system is designed in a particular way. That gives me some concern, because it suggests that that system is fixed and has no flexibility in it.

What happens depends not only on the decisions that the UK Government has made in this year's budget but on any decisions that it might make in future. It might change the criteria, and I am concerned about how quickly Social Security Scotland could respond to that.

I would welcome the cabinet secretary writing to the committee on how quickly Social Security Scotland could redesign and amend the system. How long would that take? Would it be weeks or months? We do not want to get into a position next year in which we have to go back to reach another agreement with the DWP, because that would have a financial cost to us all.

I am disappointed that we are having to make these decisions, which will affect real people, but there is also the bigger picture, as we move forward, regarding how Social Security Scotland works and whether it can deliver what we, as a Parliament, want it to deliver.

Paul O'Kane: I do not intend to rehearse the debates that we have already had on this subject, not least those in the chamber. I would just point to my earlier line of questioning to the cabinet secretary, in which I reflected on where we are. We want to ensure that people who meet the qualifying criteria are able to receive pension credit payments and that the uptake for those is as robust as possible. We are also keen for more work to be done at UK level to increase both the uptake of pension credit and the availability of such payments to more people, not least through

its connection to housing benefit, and for there to be more consideration of the wider criteria.

In my lines of questioning throughout this debate and our other discussions, I have consistently said that I am concerned about the Scottish Government's lack of utilisation of the Barnett consequential that we will see through the household support fund. I believe that there has been an opportunity to do more. I again point to the on-going work that has been done with the Executive in Northern Ireland. There has also been an opportunity to look again at the system's flexibility. I have concerns that the social security system has to be built in such a way as to be flexible. Things change and develop, and views vary, so flexibility has to be built in.

Naturally, I recognise in this debate the need to ensure that payments go out. However, I have a number of concerns, which I have just put on the record.

Katy Clark: The committee is dealing with these regulations today, but I wish to note my concern that the cabinet secretary has not been able to say more about the plans in Scotland in light of the £0.5 billion of additional funds that were made available in England for household support. We know that some councils in England are using that money to make payments to the many pensioners who lost out as a result of the Westminster Government's decision to end certain winter fuel payments. I do not have the figure for the additional funds that were made available yesterday. Once the cabinet secretary is clear about the implications of yesterday's budget for that aspect of policy, it would be interesting to hear about them.

We have to consider the regulations that are before us, and take a decision on them, but I say to the cabinet secretary that more could be done, despite the decision that has been taken at Westminster. I hope that she will be in a position to consider that in detail, by looking at what is happening down south, what happened with funding in July, and what emerged from yesterday's budget, to see what more could be done in Scotland this winter.

Kevin Stewart: I think that it is agreed that none of us wants to be in the position of approving the regulations, but it is a necessity. We are where we are, because of the UK Government's shock decision to end universality on winter fuel payments, which has an impact on our budget here. We can debate until the cows come home what funding might be available from other announcements and from yesterday's budget. However, I have been sitting here in this meeting, listening to the various arguments about what will or will not be available, and I have to say that I do not envy the task of the cabinet secretary or her

colleagues, particularly the finance secretary, in trying to get to grips with what the budget means for us.

From our discussions today and previously, I recognise that the cabinet secretary does not want to be in that position either, and that she wants to do better for the people of Scotland. I am quite sure that she will come back with proposals. I talked about the shock that we had—which, obviously, the Government had, too—about the changes. However, the real shock is for the folk out there whose expectation was that they would get winter fuel payments this coming year, many of whom now will not. The short-term impact of situations that happen in this country, where shock comes into play, is unacceptable, and UK Governments must take cognisance of that and not do such things in the future.

I also recognise Mr Balfour's point about the DWP. However, those of us who have, over many years, followed the discussions about the DWP, and its lack of flexibility in its attitude to the Scottish Government in the past, will not be surprised to hear that there has been no flexibility from the DWP on this issue.

The shock scenario is the worst aspect of this policy, not only for the Scottish Government but in particular for those folks out there who expected payments this year.

10:15

The Deputy Convener: As no other members wish to contribute, I will take the opportunity to make a few remarks myself. I wish to reflect on Mr Balfour's comments about whether the system could be designed to be more flexible—in effect, designing a targeted system that could respond if such an eventuality as the one that we are discussing should happen.

I am just thinking about the politics of this. I say this genuinely and sincerely to Mr Balfour, but had the Scottish Government spent money putting in place a system that could change winter fuel payments to make them a targeted, rather than a universal, payment, some members of the committee—possibly Mr Balfour—would have been wringing their hands about the additional costs that that would incur, and they would have said that it must mean that the Scottish Government intended to move towards a targeting policy.

Perhaps I am being unfair to Mr Balfour, but in the past he has always made it clear that perhaps we do not need a Scottish social security system, and that we should deliver all social security benefits from Westminster—

Jeremy Balfour: Will the member take an intervention on that point?

The Deputy Convener: Yes, of course I will, Mr Balfour.

Jeremy Balfour: Can Mr Doris point to one occasion on which I have said that in this committee? I must ask him to clarify his comments, because I have never said that we do not need a social security system in Scotland; indeed, I was proud to be on the committee that brought forward our system. Can he point to one occasion on which I have said that?

The Deputy Convener: Mr Balfour, if you really want me to do this, I will be happy to look at the *Official Report* for those occasions either in the chamber or in committee when you have questioned why we were building the system in the first place, and scrutinised the cost of the system and said that it might be more affordable and cheaper simply to run it from Westminster. If you have not said that, I will happily apologise, but I think that that has been a pretty consistent position of yours.

However, let us not personalise this issue between us. I am trying to make the point that there is a balance to be struck between having a flexible system and a system that provides value for money, that is cost-effective and which delivers the policies that we intend to deliver. That is the only point that I was trying to make, Mr Balfour, so I offer my apologies—I did not mean to trigger you with my contribution.

I thought that Katy Clark's contribution was incredibly helpful. I hope that I am capturing correctly what she said, but she asked what more could have been done in spite of the decision from Westminster. That speaks to mitigations—although I will not mention them, as I want to stay away from the politics of this.

Katy Clark also asked what more could be done once the Barnett consequential becomes clear. Again, that points to an uncertainty in the Scottish budget, not just until the Chancellor of the Exchequer gets to their feet, but until the consequences are known.

We are where we are, and we all understand why that is the case. This is not really a moment for politics—my understanding is that we do not pass—

Katy Clark: Will the deputy convener take an intervention? I do not know if it is appropriate to intervene on the member in his capacity as deputy convener.

The Deputy Convener: Of course it is.

Katy Clark: The deputy convener probably also heard me say that it was quite clear what the

consequential were in relation to the announcement from July—they were £0.5 billion at a UK level for the household support fund. We know that that means a £41 million consequential for the Scottish Government.

As the deputy convener will know, my colleague Paul O’Kane, as our Scottish Labour policy lead on this issue, has consistently asked for that money to go to the poorest pensioners in Scotland and to people who are losing out as a result of the decision at Westminster, and he has suggested that that could perhaps be done by councils. Does Bob Doris accept that we know—and have known since July—that there is £41 million, but we are still waiting for confirmation of the precise figure in relation to yesterday’s budget?

I myself have a figure, but I do not know whether it is accurate. We know that there is £41 million, but we might have a sum that is considerably more. Does he accept that?

The Deputy Convener: First of all, as far as etiquette is concerned, it is completely fine to intervene on the convener. Indeed, you absolutely should do so, given that I specifically mentioned your comments.

You have again made a really important point: there will always been in-year budget revisions, and sometimes things go up and sometimes they go down. Ms Clark, you have identified a budget that is going up, but lots of other budgets are going down as a result of those revisions, and the Scottish Government must look at things in the round. I look forward to seeing what decisions the Scottish Government makes, and our committee will scrutinise them on a cross-party basis. That was a helpful intervention.

None of us wants to be in a position of letting politics get in the way of this important winter fuel payment being delivered to some of the most vulnerable pensioners. I suspect that most or all of us will wish that the benefit were being paid on a universal basis, but that is not to be at this stage. I will leave my comments at that.

As no other member wishes to speak, do you wish to sum up, cabinet secretary? You can waive the right—it is fully up to you.

Shirley-Anne Somerville: I will make just a couple of points.

We need to be really clear about what happens with consequential. The fact that a secretary of state says that something might happen in July is not an appropriate basis for our deciding how to use that money, because, as you have said, convener, one budget might go up while others go down, so—

Katy Clark: Will the cabinet secretary take an intervention?

Shirley-Anne Somerville: I will finish this point first, if I may.

I have that scepticism, because literally two weeks or so before the announcement on the winter fuel payments was made, I was told that we would work together and that there would be no surprises—yet here we are. Therefore, people will forgive me for being slightly sceptical about whether an announcement will result in an increase in funding.

As for yesterday’s budget, I would say yes, we should absolutely look at that. Again, though, I ask that we be careful, because I know from experience that, whatever positive consequential might come, the asks on the Scottish Government to use them will be much, much more than the consequential that we are given.

I respect the fact that Mr O’Kane and Katy Clark have been very consistent on this issue, but we will have calls from other MSPs to use consequential in different ways. We can spend the money—if indeed it comes at all—only once, so we need to be very cautious about taking some overall approach to using it. *[Interruption.]* I presume that it is up to the convener whether I take an intervention, but I am happy to do so.

The Deputy Convener: I cannot see who wishes to intervene, but I am content for you to take an intervention, cabinet secretary.

Katy Clark: I am very happy to make an intervention, if the cabinet secretary is willing to take one.

I fully appreciate that you do not have the money from consequential yet. However, I understand that you already have the money from the benefit on the basis of its being a universal benefit—although I appreciate that there will now be an adjustment. The principle is that money was announced in July as a consequence of the UK Parliament’s decision to pass regulations that focused winter fuel payments only on those who were entitled to claim pension credit. As a consequence, £0.5 billion of additional money was put into the household support fund in Scotland. Therefore, if money has been announced to help poorer pensioners who have lost out as a result of a decision to means test the winter fuel payment, the principle should be that that money, which has been given to the Scottish Government for that reason, should be passed to those poorest pensioners. Do you not agree with that principle?

Shirley-Anne Somerville: Ms Clark might agree with that principle, but she might want to check with everybody else in her Scottish Labour parliamentary group to ensure that nobody double counts the consequential that we get and asks us to spend more.

Members might all agree on that aspect with regard to the consequentials, but—and I am speaking from bitter experience here—other members might well raise other aspects, and we will get asked to spend money more than once. That is not how we make a budget. I acknowledge that Katy Clark and Paul O’Kane in particular have been consistent on this issue, but, year after year, when it comes to, say, in-year adjustments or some other budget, we get calls to spend more money than we have. That is why I am sceptical. That said, I am, of course, happy to work with members, and I have heard the suggestions that have come forward.

Deputy convener, if you will bear with me, I will just bring up one other issue. All social security systems are built to deliver the Government’s policy intent, and I ask the committee to give some thought to exactly what it is asking this agency to do. Mr Balfour has said that he is disappointed that the system cannot deal with flexibilities, but how many flexibilities does the committee want us to build into it? We might have wanted to target the payment—or somebody else might have wanted to, even if we did not—but should it be targeted on the basis of age, benefit entitlements or whether a person is in a couple or is single? Do you want us to target it on the basis of geography or income levels?

There are many variations that we could, theoretically, have built into the system at great cost, but I have no doubt that, when we came back before the committee, Mr Balfour would, rightly, be challenging us on why we spent money building a system that did something that the Government did not intend to do. After all, the possibilities and variations are almost limitless. If that is the type of system that Mr Balfour wants, I have to tell him that that is not how our social security system is built, nor is it how any other social security system is built.

Let us be really cautious about the practical challenges and costs involved in the suggestion that the system must be more flexible. It has to be built with specifics in mind. I have given but a few examples of how we could build a system that dealt with theoretical changes that might or might not happen in the future under a different Government, and all of them would have been a waste of public resources.

The Deputy Convener: The question is, that motion S6M-14682, in the name of Shirley-Anne Somerville, be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

For

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

Abstentions

Balfour, Jeremy (Lothian) (Con)
Clark, Katy (West Scotland) (Lab)
O’Kane, Paul (West Scotland) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Convener: The result of the division is: For 3, Against 0, Abstentions 4.

Motion agreed to,

That the Social Justice and Social Security Committee recommends that the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 [draft] be approved.

The Deputy Convener: I thank all members for their patience.

Following today’s proceedings, the clerks will prepare a draft report, and the committee is invited to decide whether to consider that draft report in private at our next meeting. Do members agree to do so?

Members indicated agreement.

The Deputy Convener: I thank the cabinet secretary and her officials for their contribution to today’s meeting, and I also thank fellow committee members for how they conducted this morning’s debate.

We now move into private session.

10:30

Meeting continued in private until 10:33.

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