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Devolution, Parity and Welfare Reform in Northern Ireland

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Northern Ireland**

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Foreword

This is one of a series of papers prepared in the context of our second 'conversation', funded by the Economic and Social Research Council (ESRC), on issues related to possible constitutional change in Scotland. These 'conversations' are being jointly organised by the DHI and Professor Charlie Jeffery of the University of Edinburgh. Professor Jeffery is also a Trustee of the Institute.

The first in the series covered macro-economic policy issues and financial sector oversight and regulation. The excellent papers from that conversation are available on our website. The third 'conversation' is to be on energy sector issues, in conjunction with the Scottish Council for Development and Industry (SCDI); and the fourth on competition policy and regulation, for which we have the full support of the Scottish Government. All four will be completed by end May 2013.

In each case our approach has been to commission papers from informed parties, then run a round table with key players. After the round table we ask authors to re-visit their papers, to be published on line at the time of a full DHI seminar, open to all.

This second 'conversation' covers issues related to social security and welfare under alternative constitutional settlements. We have received papers from; David Bell, Derek Birrell and Ann Marie Gray, Bea Cantillon, Nicola McEwen, Ailsa McKay and Jeremy Purvis.

These are all now available on our web site. Taken together they provide a remarkably stimulating and wide-ranging assessment of the key issues and options - including informed input on experience outwith GB.

Our round table was held at the Royal Society of Edinburgh on 11 December 2012 and the full seminar is on Monday 19th February, again at the RSE. In addition to our authors' inputs, we arranged that Professor James Mitchell of the University of Strathclyde would sum up issues at the end of the round table and then set proceedings underway - in a constructive direction - at the seminar.

As with the other 'conversations' we have agreed with our friends at Scotland's Futures Forum that there should be a further round table, this time with MSPs in the autumn.

My Trustees and I are extremely grateful to the ESRC and the Binks Trust for their support; to Charlie Jeffery for organising the 'conversation'; to James Mitchell for his crucial input; and to all of our excellent group of authors. Together we believe we have made an important, evidence-based, informed and transparent contribution to this important topic within the context of the critical debate in Scotland on possible constitutional change.

At the same time, however, the DHI, as a charity, can have no views on these issues and hence I must record that the views expressed in this and the related papers are those of the authors and not of the Institute. Nevertheless we commend them to your attention.

Jeremy Peat
Director, David Hume Institute
February 2013

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Introduction

While social security is not devolved to Scotland and Wales the position of social security is different in the devolved arrangements for Northern Ireland. Formally and constitutionally social security is a devolved matter (Birrell, 2012) but the actual position is somewhat complex. The complexities are the consequence of the historic application of the principle of parity in welfare benefits, new statutory requirements following UK legislation in recent years and devolved arrangements for the operation of the social security system in Northern Ireland. In the context of parity it is significant to examine any existing breaches in parity; differing administrative structures; or meeting particular needs. The radical proposals in the UK Welfare Reform Act led to an ongoing debate and decisions on the scope for variation from Great Britain in the Northern Ireland version of the Welfare Reform Bill. This paper also examines some potential lessons for Scotland, in the context of both a similar devolution of social security to Scotland or a devolution max.

The Development of the Principle of Parity

Historically the division of functions in both the Government of Ireland Act 1920, originally establishing devolution and also the 1973 Northern Ireland Constitutional Act omitted social security from the lists of non-devolved matters, categorised as reserved and excepted services. However, as devolution had developed from the 1930s Northern Ireland adopted the policy that the principle of parity would apply to maintain social security benefits as similar to and at the same level as in Great Britain. A number of financial arrangements, notably the Social Services Agreement Act 1949, provided for maintaining the rates of contributions and benefits in parity and implemented measures to supplement Northern Ireland's finances (Birrell and Heenan, 2010). In practice this has usually meant that separate Northern Ireland legislation was passed in parity with the Westminster legislation; pre 1973 as Acts of the Stormont Parliament; and under Direct Rule between 1972 and 1999 as orders in council of the Westminster Parliament; and with the restoration of devolution as Acts of the Northern Ireland Assembly. This means, for example, the 2008 Pension Act (Northern Ireland) replicated the 2007 UK Pensions Act. This process of legislative duplication also covered the large body of secondary legislation and regulations. A small amount of UK legislation did also include Northern Ireland relating to specific matters which were not devolved, for example, national insurance, the appointment of social security commissioners and social security investigatory powers concerning fraud.

Some statutory measures have been introduced which have served to underpin parity, particularly in the Northern Ireland Act 1998 which re-established devolution. Section 87 of the Act specifies that the UK Secretary of State and the Northern Ireland Minister having responsibility for social security shall from time to time consult one another with a view to securing that, to the extent agreed between them, legislation provides single systems of social security, child support and pensions for the United Kingdom. Arrangements were also made to make provision for any necessary financial adjustments through the continuation of the Joint Authority which consisted of UK and Northern Ireland ministers and the Chancellor of the Exchequer. Further integration occurred when the child benefit and tax credits became the responsibility of HM Revenue and Customs and Revenue and therefore no longer a devolved matter (Evason, 2006). There have also been some more practical measures promoting integration.

The Department for Social Development in Northern Ireland and the Department of Work and Pensions share computer systems for the payment of benefits. Northern Ireland comes under the remit of the UK advisory bodies for social security, rather than having separate bodies. The Social Security Advisory Committee gives advice to the relevant Northern Ireland department in respect of social security matters (Saunders, 2007).

Differences in Administration and Scrutiny

A number of aspects of the administration of the social security system are different in Northern Ireland from Great Britain. The corresponding functions of the Department of Work and Pensions in Great Britain are the responsibility of two different government departments in Northern Ireland. A Department of Social Development has responsibility for social security and has an executive agency, the Social Security Agency, for the delivery of benefits, while the Department of Employment and Learning has responsibility for employment, training and education. This has caused some difficulty in producing joined up approaches, for example, in establishing Jobs and Benefits offices. Another difference exists in the administration of housing benefit which is the responsibility of a centralised public body, the Northern Ireland Housing Executive, rather than local councils as in Great Britain.

Northern Ireland has its own social security commissioners, separate from Great Britain but in practice the Commissioners follow similar interpretations as in Great Britain but case law from Great Britain is not binding (Dickson, 2005). There is also a Northern Ireland Standards Committee, created in 1999, to report annually on decision making and case accuracy on social security (Department of Social Development, 2012). Social security matters can also be examined by bodies reporting to the Northern Ireland Assembly. The Northern Ireland Audit Office has investigated such matters as uptake of benefits by pensioners and social security fraud and error. These reports can form the basis for scrutiny by the Northern Ireland Assembly Public Accounts Committee. The Departmental Social Development Committee of the Northern Ireland Assembly also carries out a scrutiny function over social security and has reported on such issues as the transition to Employment Support Allowance and the administration of Disability Living Allowance (Northern Ireland Assembly, 2011a).

Policy Breaches in the Principle of Parity

Historically there have been few major breaches of the principle of parity in terms of the nature, scope and level of benefits. Examples have been cited relating to strict residential condition (Fahey and McLaughlin, 1999) and repayment of debts measures in the 1970s to counter civil disobedience campaigns. Most of the examples of breaches fall within a category on the periphery or margins of the social security system. With employment matters also devolved as well as social security the welfare to work agenda produced some divergence from practices in Great Britain. There was some variation in New Deal programmes of support offered to the unemployed or economically inactive. Wiggan (2012) defines the measures as parity with minor modifications. The 2010 Welfare Reform Bill (NI) bringing Northern Ireland into line with provisions in the 2009 Westminster Welfare Reform Act was the subject of debate particularly with calls for parity to be stretched to reflect the scarcity and cost of childcare in Northern Ireland in relation to requirements being placed on lone mothers to actively seek work (Horgan and Monteith, 2012).

The outcome was an inclusion of clauses in the Jobseeker's Allowance (Lone Parents) (Availability for Work) Regulations (Northern Ireland) enabling lone parents with a youngest child under 12 to restrict their availability to work to children's school hours and requiring personal advisers to have regard to the impact of the available for work regulations on the well-being of any child who might be affected by it. This did represent a breach with Westminster legislation but the decision not to impose sanctions on a lone parent was left at the discretion with individual officers. Other marginal examples of variations in rule applications can be found but mostly they operated without financial implications (Fitzpatrick and Burrows, 2012).

The Financial Incentive for Parity

Social security in Northern Ireland is funded within what is known as annually managed expenditure (AME), set for the coming year, which lies outside the block grant provided through the Barnett Formula for other devolved matters. Annually managed expenditure comprised 40 per cent of total expenditure in 2011 and departmental expenditure limit (DEL) 60 per cent of total expenditure. Almost all of AME is social security spending (Northern Ireland Assembly, 2011b). Non-contributory benefits are funded in full out of UK general taxation, while contributory benefits are funded from the Northern Ireland National Insurance Fund, boosted by annual transfers from the Great Britain National Insurance Fund. Thus benefit funding is demand led and is in line with the actual entitlement of claimants. The Treasury statement of funding policy states that "If, in the future, the Northern Ireland Executive changes social security policy to differ from the rest of the UK, UK ministers will need to take a view on where and how to adjust this funding." (HM Treasury, 2007). A concordat between the Department of Work and Pensions (UK) and the Department of Social Development provides guidance for consultation on how any divergence was accommodated (DWP, 2003). This indicates a major financial disincentive to abolish parity. The then minister of Social Development was to state in 2007 that "Northern Ireland was not self-financing and the cost of paying benefits was heavily subsidised by Great Britain. Therefore, while diverging from parity might be ideologically desirable, financial realities make it extremely problematic." (Birrell and Heenan, 2010). The responsible minister in 2010 was to state he aimed "to stretch the limits of parity in a way that does not prejudice the block grant or those who are on benefits" (Northern Ireland Assembly, 2011c). This implied that if Northern Ireland departed from parity in benefits the UK Treasury would adjust the level of subsidy to that needed to maintain parity in benefits.

After the restoration of devolution in 1999 there was no attempt or proposal to depart from parity in social security (McLaughlin, 2005). A Private Member's Bill introduced in 2008 proposed legislation for a Carer's Allowance. This would have allowed carers who became pensioners to continue to receive the carer's allowance once the state retirement pension was received. The Department of Social Development advised that the proposal would breach the parity principle and the additional costs, some £20 million, would fall to the Northern Ireland block. It was believed that the UK Treasury would take the view that Great Britain should not be subsidising Northern Ireland to pay enhanced benefits. The private member's bill was withdrawn so the real outcome was not tested (Northern Ireland Assembly, 2008).

Welfare Reform Act 2012 and Parity

Welfare reform has given rise to more forceful debate about parity. Discussion of breaks with parity arose as a result of the 2011 Welfare Reform Bill (DWP, 2011) which gained Royal Assent in March 2012.

Calls for full parity not to be maintained can be related to the likely economic impact and the predicted greater impact in Northern Ireland of the proposals contained in the 2011 Welfare Reform Bill. The Institute for Fiscal Studies (Browne, 2010) found that after London, households in Northern Ireland, will be the hardest hit by tax and benefit changes to be implemented as a result of welfare reform between January 2011 and April 2014/15, mostly because of larger families and higher number of people on Disability Living Allowance.

The passing of the Welfare Reform Act in Westminster in 2012 and the decision by the NI Executive to table the same proposals led to a number of MLAs raising questions in the NI Assembly about what flexibility existed within the confines of parity. In May 2012 the Minister responsible for Social Security in NI, Nelson McCausland, a member of the DUP, confirmed that he did not intend to seek accelerated passage for a Welfare Reform Bill and the proposals would therefore be taken through the full Assembly legislature process. The Northern Ireland Assembly Welfare Reform Bill was introduced on October, 2012 and is currently at the Committee stage in the legislative process.

The structure of the power-sharing Northern Ireland Executive and the requirement to produce cross-community consensus for new legislation made decision making difficult. Politicians tended to welcome the aim of the Welfare Reform Act in terms of simplifying the system but party political differences are evident with regard to the overall measures. An additional problem in NI has been the existence of a mandatory coalition and the absence of a conceptual/value basis for welfare policy resulting in a tendency for lowest common denominator policy making (Gray and Birrell, 2012). Difficulties agreeing a programme for government resulted in it not being published until six months after the election. Many significant social policy issues remain mired in disagreement including a replacement for the 11+ transfer test and a community sharing and integration strategy. In other policy areas such as adult social care, childcare and reform of health services developments have been very slow. This lack of consensus, or even discussion about the values underpinning policy goals and outcomes presents challenges to developing a unique or even tailored welfare system.

A consensus emerged about the need to maintain parity and avoid the risks which may be associated with breaching parity. Most of the calls for divergence from the Westminster Act related to what could be achieved within the confines of parity. The Minister's rationale for welfare reform in Northern Ireland mirrors that set out in Britain. The DUP minister has expressed strong support for the welfare reforms generally in keeping with the neo-liberal approach that the DUP has tended to adopt with regard to social policy issues. However, several DUP MPs voted against the Welfare Reform Bill at Westminster. The SDLP has been a vocal opponent of the welfare reforms but is in a minor position in the power sharing Executive. The Ulster Unionist and Alliance parties support some flexibilities. Sinn Fein, as a major Executive party, has faced the most difficulty opposing British imposed welfare cuts but accepting the reality of arguing for changes without incurring major financial penalties. The Bill survived a second stage vote and has gone to Committee stage where Sinn Fein and the SDLP are attempting some amendments. A consensus on a few enhanced flexibilities seems the likely outcome. Concerns expressed by some MLAs led to the establishment of an Ad Hoc Committee on Conformity with Equality Requirements, of the Welfare Reform Bill.

Welfare Reform Act 2012 and Administrative Differences for Northern Ireland

Some provisions of the Welfare Reform Act cannot be mapped directly to administrative and governance structures in Northern Ireland. This applies particularly to the social fund, housing benefit and rates (council tax) relief. Previous to the reforms Social Fund payments were included in the social security budget and were covered by parity. However, the Westminster Welfare Reform Bill included proposals to remove the discretionary social fund from the social security budget and replace it with a new local service administered through local government in England from April 2013. Money to be allocated to local authorities in England will be non ring-fenced and local authorities are free to design their own schemes to 'meet local priorities' (DWP, 2011).

In Northern Ireland it is not possible to transfer social fund arrangements to local councils which have limited functions. The DSD has recently published a consultation document on the service design of discretionary support (DSD, 2013). The replacement scheme is likely to be directly administered by the Department for Social Development through its Social Security Agency.

Housing benefit and rates relief for tenants is administered by a public body, the Northern Ireland Housing Executive. For homeowners they are administered by an executive agency in the government department, Land and Property Services. In Britain local authorities will have discretion over council tax benefit but Northern Ireland will clearly not follow the same path given the difficulties inherent in such a localised scheme in the administrative context of Northern Ireland (Law Centre, 2011). A consultation is taking place on rates support for low income households and which body should administer the new system (Department of Finance and Personnel, 2013).

Negotiated Policy Flexibilities Within Overall Parity

The Minister of Social Development has carried out a dialogue on customising the bill and negotiated with ministers in the Department for Work and Pensions supplemented with discussions by officials. The main negotiation has been with Lord Freud, the minister responsible for Welfare Reform. The Northern Ireland minister made his case on the basis of supporting the principles of Welfare Reform and a commitment to the principle of parity but arguing for some recognition of unique circumstances in Northern Ireland. In a written answer to the NI Assembly, the DSD Minister said that Lord Freud had given a written commitment that the Universal Credit IT system will have specific functionality to:

- automate the payment of housing costs to both social and private sector landlords rather than the claimant as the default position while allowing for an opt out of that arrangement;
- split the payment between parties in a household;
- make bi-monthly payments of Universal Credit.

(McCausland, 2012)

Work is to be carried out with the Department of Work and Pensions to ensure the Universal Credit computer system design is enhanced to deliver these flexibilities (Northern Ireland Assembly, 2012).

Universal Credit will not be launched until April 2014, following UK roll-out from October 2013. This was seen as still part of the UK roll-out so there would be no short-term breach of parity. There would be further inter-governmental discussions on the use of discretion within welfare reform; on Housing Benefit, including the under occupancy measures; rates (council tax) support (relief) for low income households arising from the rate rebate element of housing benefit ceasing to be part of the UK-wide social security system; conditionality requirements for lone parents; and budget advice, short-term advances and special banking products for universal credit claimants.

An Assembly ad hoc committee on conformity of the legislation with equality requirements reported that while it could not find anything specific in the Bill that was a breach or potential breach of human rights, the greatest concern was to do with the regulations which would follow legislation. It was critical of the lack of data and analysis of impact by the DSD and argued for action mitigating the impact of sanctions on lone parents, those with mental health issues and children. (Ad-hoc Committee Welfare Reform, 2013)

Campaigning groups have made proposals for further customised policy discretion in arrangements affected by; the absence of child care; the proportionally high incidence of mental illness, and disability living allowance recipients; and the nature of the social housing stock; and special requirements of Northern Ireland equality legislation.

Welfare Reform and Cognate Devolved Areas

A criticism levied at the Welfare Reform Bill proposals in NI is that they are not considered in the context of NI policy and legislation which is not subject to parity and in a number of areas social policy in NI lags behind other parts of the UK. The devolved government could take action on a range of devolved functions which can assist groups who may be judged to be adversely affected by the welfare reform measures: The main areas would be childcare, housing, fuel poverty, support for young people to stay in education and special financial assistance measures.

Northern Ireland has the lowest level of accessible and affordable child care provision in the UK (Employers for Childcare, 2011). It has still no equivalent of the 2006 childcare Act which places a requirement on local authorities to ensure adequate provision of childcare. Although there has been consistent lobbying for a comprehensive childcare strategy and the Programme for Government commits the government to publish and implement a childcare strategy (OFMDFM, 2011), there is as yet no strategy. A consultation document on a childcare strategy was published in Dec 2012 but lacks detail and provides little confidence that a childcare strategy will be in place in the near future.

The housing related measures in the Welfare Reform Bill will pose particular difficulties in Northern Ireland. Around 60% of all Northern Ireland Housing Executive tenants of working age claim Housing Benefit (HB). Of that figure a total of 26,000 households are under-occupying either one or two bedrooms. In England, 24% of private renters are on housing benefit; in Northern Ireland the figure rises to 57% (DCLG, 2012). Currently, 100% of Northern Ireland Housing Executive (NIHE) NIHE tenants, 97% of Housing Association tenants and 74% of private sector tenants that receive HB have their rent paid directly to their landlord. The NIHE has stated that it would be completely unable to provide alternative accommodation for those who have been identified as underoccupying a dwelling as 50% of its housing stock has three or more bedrooms.

The DSD has indicated that it will try to mitigate the effect of this through the use of discretionary housing payments but lobby groups have rejected this arguing that it should be through specific amendments to the Bill rather than discretionary support. Discretionary Housing Payments (DHPs) are currently available only to tenants within the private rented sector who are entitled to housing benefit but have a shortfall between their housing benefit entitlement and the contractual rent being charged by the landlord. Unlike Housing Benefit, DHPs are drawn from a cash limited budget allocated to the NIHE every year by DSD. Once the budget set-aside by the DSD for these payments is used in the financial year there can be no further discretionary payments made.

The Ad-hoc Committee (2013) recommended that the Department should not apply sanctions to claimants who are unable to locate reasonable alternative accommodation. The Committee also recommended that, in its calculation of housing benefit, the Department should take into account the exceptional needs of some specific groups, such as disabled children and foster carers.

There are some examples of actions by the devolved government in the area of fuel poverty where the publication of a fuel strategy (DSD, 2011) and a report into fuel poverty by the Social Development Committee (Social Development Committee, 2012) has resulted in partnership working to maximise benefit uptake, to pilot pay as you go schemes and to pilot initiatives such as the affordable warmth scheme across a number of local councils.

The Minister for Education in Northern Ireland did not follow policy in England on the abolition of the Educational Maintenance Allowance (EMA) and has said that the Department of Education is committed to the retention of EMA but that it would be 'better 'targetted'.

Potentially significant is the Financial Assistance Act (NI) 2009 which provides a statutory basis for the NI Executive to respond to exceptional circumstances including making available financial assistance to tackle poverty, social exclusion or deprivation when existing funding arrangements are considered ineffective, inadequate or unsatisfactory. The Act has been little used. One example in 2009 was the determination that exceptional circumstances existed as a result of the impact of increased household energy costs and the Department for Social Development was mandated to bring forward a Household Fuel Payment Scheme which authorised a one-off payment of £150 to approximately 150,000 low income households. More recently the Minister for Finance and Personnel referred to the potential for the fund to be used to assist business in Belfast affected by the flags dispute (Northern Ireland Assembly, 2013).

Possible Lessons for Scotland

What are the main lessons for Scotland from the application of the UK welfare reform Act to Northern Ireland? This question may be best addressed in the context of two different scenarios; 1) the scenario of devolution of social security to Scotland in a similar way to that currently existing in Northern Ireland and, 2) the scenario of devolution max.

Under scenario 1 social security would become a devolved matter but within the context of an overall parity principle. It is likely to be accepted that parity does not mean absolute uniformity in regulations, organisational arrangements, scrutiny mechanisms, appeals processes and there may be some payment related discretionary areas. The Northern Ireland case also shows that some divergence may be negotiated with the UK Government. In the case of the concessions made to Northern Ireland this followed largely ad-hoc ministerial inter-governmental negotiations. The Northern Ireland minister's position was to press for concessions that had a consensus of support within the Executive and Assembly and the UK ministers were prepared to recognise the special circumstances of Northern Ireland in some delivery aspects. These concessions did raise the issue of whether this would allow Scotland and Wales to pursue similar concessions. The Scottish Federation of Housing Associations thought Scottish ministers should use the success of Northern Ireland as leverage. In Wales the minister requested a meeting with Lord Freud to discuss payment flexibilities and rolling out universal credit later in Wales. It can be noted that Scotland, Northern Ireland and Wales will all have discretion to produce a scheme to give council tax/rate relief to low income households when that element is removed from housing benefit. It is really the potential sanction of financial penalties that has made it difficult for any major divergence from policy and payment levels and entitlements. Scotland will have more discretion than Northern Ireland has after the implementation of the Scotland Act in 2015 when the scope for income tax adjustments could fund divergence in social security. It can be noted that the suggestion that water charges might be introduced in Northern Ireland to help fund divergence has not been popular. Treasury threats of financial sanctions have recently appeared real, with a prediction that a delay in introducing the changed Social Fund regime would cost Northern Ireland some £200 million and that a thirty day delay in proceeding with Universal Credit would cost NI £13.1 million (McCausland, 2013). Outside the confines of social security Scotland can take action under existing devolved powers in other areas to tackle issues of poverty, low income, poor health, housing need, low educational achievement, fuel poverty and social exclusion. In Northern Ireland employment is a devolved matter and this potentially provides some discretion in policies related to welfare to work.

Under scenario 2 Scotland would have full autonomy over social security and over the expenditure that would be allocated and the proportion of government income. The scenario would require income tax and national insurance to be devolved as well. The system would require separate Scottish legislation, appropriate administrative, advisory and scrutiny mechanisms. The debate would then shift to the question of what system/level of social welfare and social security would meet Scotland's needs, and the relationship of the social benefits system to cognate services in social care and housing and other support for vulnerable groups.

There has been no support for the idea that Northern Ireland could aim at a separate social security system. In such a scenario there would be political support for reducing the scale and scope of the system and not just for enhancing it.

Despite this a few aspects of the operation of the social security system hint at issues arising in more autonomous or even independent systems, for example, residence qualifications; cross-border entitlements and welfare tourism and fraud; and a distinct social security legal system. There remains however, in NI, the ongoing problem with the difficulty in reaching consensus.

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