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## **Social Security under devolution in the United Kingdom**

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The central question of this paper is how is the right to social security to be exercised in political systems without national uniformity of provision because of a multi-level system of government. Its thesis is that there are powerful pressures to resist any differentiation of social security because there is a desire to have the cost and political responsibility borne by the central state, but that the desire for policy development in devolved areas has an indirect impact on the social security system that might throw light on rights issues. In a multi-level system the lower levels, though politically and legally weaker, may be able to contribute to a defence of social security rights threatened with erosion.

The UK is an example of a unitary, state-directed social security system with relatively little notion of acquired and guaranteed rights. Devolution has been pursued as a matter of political pragmatism without any uniform federal structures and enacted by normal laws of the UK Parliament that it can change. When devolved administrations took up powers in Scotland, Wales and Northern Ireland in 1999, they were excluded from policy discretion on social security matters (Wales has a weaker form of devolution without the power to enact primary legislation). This applied also to Northern Ireland: even though social security was a devolved matter there with separate administration, as it had been under the previous government of Northern Ireland from 1922 to 1972, a condition of UK financial support was strict parity of benefits. With the Northern Ireland devolved institutions suspended for political reasons since 2002 social security is supervised by UK ministers with legislation passed through the UK Parliament.

But a territorial dimension of social security policy has entered in two respects. At some interfaces with devolved health, education

and social work (support for those at school-leaving age, housing benefit and housing support to tenants, allowances for persons requiring care in their own homes) practical issues of co-ordination between social security and devolved social services have arisen. And more importantly, there has been political controversy over two cash-related matters that are largely devolved: fees for higher education tuition and charges for long-term personal care that falls short of medical and nursing treatment. In both issues the devolved administrations in Scotland, Wales and (until suspended in 2002) Northern Ireland have taken a more universalist, rights-based view. The issues have opened up discussion of questions of rights to social security that was suppressed in the previous uniform UK policy, and discussion of it may be of relevance to other countries where there is political pressure for territorial differentiation of integrated national systems.

The legal position seems clear (table 1). The whole field of income maintenance and transfer is reserved, and there has been little political controversy about this throughout the devolution issue. Politically and administratively the system accepts that social security is set at the UK level and that devolved administrations have no rights to supplement the incomes of their citizens, except in limited fields related to devolved functions like free public transport for the elderly and wider rights to free drug prescriptions for out-patient health treatment. There is an elaborate disputes mechanism through political and legal channels that has never been used by the governments because of their desire for accommodation (the nearest case was apparently the wish of the Scottish Executive to compensate victims of hepatitis-C caused by faulty blood products under their health powers without the recipients losing a corresponding amount from their social security benefits; in the end the UK government adopted the same policy (McEwen and Parry 2005 : 55)).

*Table 1: Social security functions reserved to the UK Government*

Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits

Requiring persons to a) establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or b) make payments to or in respect of such schemes, and to keep records and supply information in connection with such schemes

The circumstances in which a person is liable to maintain himself or another for the purposes of the enactments relating to social security and the Child Support Acts

The regulation of occupational pension schemes and personal pension schemes

Source: adapted from Scotland Act 1998, Schedule 5, Head F

There are limited exceptions to this, especially in connection with social welfare services that may include cash payments. The Social Work (Scotland) Act 1968 was a pioneer of such direct payments in order to keep families together. The Scotland Act 1998 makes clear that housing benefits (rent allowances to private landlords and rent rebates to public landlords) are reserved.

There are some interfaces between reserved and devolved, as are inevitable in every system (table 2). Housing benefit is reserved; although administered by local government, funding comes (in effect) direct to them from the UK Department for Work and Pensions even in Scotland and Wales (Gibb 2004: 136). But the financing of housing support (advice and assistance of a social work nature designed to facilitate independent living) is devolved since 2003. With education and children's services devolved, there is limited scope for income transfers – educational maintenance allowances for school pupils, and especially fees and maintenance grants for students. For the elderly, various remissions of charges are possible, most notably on free bus transport, now introduced throughout Scotland and Wales for their residents. And as we will see, universal support for the cost of personal care (falling short of nursing and medicine) has been a controversial political issue.

*Table 2: Relationship of reserved and devolved areas in social security*

<b>Reserved area</b>	<b>associated devolved area</b>
Housing benefit	housing support
Child benefits	student support
Retirement pensions	cost of personal care free public transport
Employment law	training and skills policy

The first question is why social security remains typically undeveloped? Originally it was not. The traditional of poor law in Scotland is different from England, and church-centred arrangements were preserved after the Act of Union of 1707. Scotland was a European pioneer of widespread adult literacy, civic universities and medical education. In the 19<sup>th</sup> century the split of the Church of Scotland in 1843 on the question of church governance forced new secular arrangements under the Board of

Supervision of the Poor Law. When national insurance was introduced in the UK in 1912 separate Boards of Commissioners were established for England, Scotland, Wales and Ireland. But when the National Insurance system following the Beveridge report was implemented in 1948 territorial features were swept away in a nation-building spirit under the Labour government (McEwen and Parry 2005). The UK nation-state became the guarantor that the Poor Law would never return and that common standards would prevail irrespective of local circumstances or political control. This theme is even more prominent in the National Health Service, the UK's secular church; always administered separately in Scotland (and later Wales), these nations are now resisting the competitive regimes being introduced for England by the Blair government but all UK systems rest on the common principle of treatment free at the point of use without prior contributory conditions. When the Conservatives rebranded the NHS in Scotland the 'Scottish Health Service' in 1996 the decision was reversed by Labour.

The subsequent course of policy on social security can be understood as falling into three eras:

- 1) 1948-1980 – a uniform, national system but with local implementation (by staff of central government departments that amounted to discretion because of the availability of exceptional payments and additions in the light of personal circumstances
- 2) 1980-2001 - following the transformation of Supplementary Benefit into Income Support the scope for local discretion became much less and the administration of social assistance highly centralized. The Benefits Agency and Employment service became agencies within the civil service in the late 1980s. For a time Scottish administration was merged with that of Northern England under the Benefits Agency. The reorganisation of local government in Scotland and Wales 1996 removed top-tier regions and counties (which had run social work) in favour of a structure of unitary authorities less well-equipped to pursue anti-poverty strategies. The high financial dependence of local governments on block grants from the centre, and the use of specific financial inducements to pursue central programmes, further reinforced the centralized nature of UK social policy.
- 3) 2001 – the Benefits Agency and the Employment Service were merged into a new agency, eventually given the name JobCentre Plus, a uniform 'brand' throughout Britain.

The way of doing business in UK social security has changed from framework law with local administration to one, in the UK jargon, of 'pathfinder schemes' followed by 'national roll-out'. JobCentrePlus in particular is being rolled out gradually in line with the physical redesign of offices to offer an integrated job support and benefit payment service, with as much of the routine claiming and payment done automatically. This represents a deterritorialisation of policy. Data on regional variations in expenditure show that even on national uniform schemes Northern Ireland, Wales and Scotland are ahead of all English regions other than the North East (table 3), reinforcing what is often interpreted as political privilege for the non-English nations, especially in social policy. It is noteworthy that recent UK debate on long-term incapacity benefit has been accompanied by UK government circulation of data on the high incidence of this benefit in the Glasgow area, widely interpreted as a result of the political and medical culture of the area, with the bill picked up at UK level. In Scotland, the cost of social protection in 2004-05 was over £15bn. With the total budget of the Scottish Executive £25bn (financed not by local taxes but by a block grant from the UK government), the lack of attraction of absorbing and financing this large item of expenditure is clear.

*Table 3: Social Protection expenditure per head, Scotland, Wales, Northern Ireland and the English Regions, 2003-04*

	GBP £	Index UK=100
<b>Northern Ireland</b>	<b>3,013</b>	<b>122</b>
North-East	2,943	115
<b>Wales</b>	<b>2,921</b>	<b>115</b>
<b>Scotland</b>	<b>2,874</b>	<b>113</b>
North-West	2,782	109
West Midlands	2,558	100
Yorkshire & Humberside	2,548	100
London	2,521	100
South-West	2,434	95
East Midlands	2,344	92
East	2,232	88
South-East	2,175	85

Source: HM Treasury, *Public Expenditure Statistical Analyses 2005*, tables 8.11 and 8.12 (London: The Stationery Office 2005, Cm 6521)

UK public social security is largely unfunded. The National Insurance Fund is a fiction because contributions are part of the income tax system and benefit levels are determined independently of

resources. Therefore there would be no complications of dividing up funds between parts of the UK; all that would move would be spending liabilities. Nor is there the possibility of using a pension fund as a source of funds for local investment, as in Québec's decision in 1966 to set up its own Pension Plan alongside Canada's (even if EU rules allowed it). Civil service and some health service pensions are unfunded and paid out of current revenue, but most local government employees are contributors to real, actively invested funds run by consortiums of local authorities. Again, there would be no difficulty in dividing the system territorially.

What would be more difficult would be the treatment of benefits delivered by the income tax system. Since 1999 the preferred way of increasing income support in the UK has been through tax credits, requiring claiming and means-testing but paid in most classes as a negative element in the income tax bill. Since 2003 these policies have been called Working Tax Credit and the much more extensive Child Tax Credit. These would require a distinct income tax system able to identify taxpayers by place of residence within the UK tax collection system. Such a system is maintained for Scotland to allow the Scottish Parliament to use its power (never actually used) to raise or lower the standard income tax rate by 3%. But the loss of transparency about where the tax system ends and the benefit system begins is a further constraint to change. It is also important to note that the benefit and tax administration (Department for Work and Pensions and HM Revenue and Customs) are integrated UK departments doing much of their business from centralised offices distant from their clients.

### **Policy action in semi-contested rights areas**

Some of the policy areas mentioned in table 2 deserve further attention as they show the room for creativity of the devolved administrations.

#### *Housing support*

An important aim of devolution funding arrangements is to prevent the transfer of funding from the Scottish budget to UK funds. The way this might happen is if policy decisions in Scotland altered eligibility for mean-tested UK benefits. If, for instance, local authority rents were increased fast the many tenants receiving housing benefit would pass on the cost of these increases to the social security budget. Similar considerations apply to council tax. The UK Treasury has made it clear that if they saw this as a systematic policy of spending displacement they would be prepared to adjust the assigned budget downwards. But nobody knows what an out of-line increase would be. When it became clear in 2002-03

that the Scottish Executive was encouraging local authorities to take advantage of 'transitional housing benefit' that allowed their tenants to receive extra reimbursement for housing support, the Treasury moved to devolve the successor scheme ('Supporting People') (Parry 2004: 172). Since 2005-06 it has become part of the normal block budget of the Executive, where political choices about it have to be made.

### *Student support*

The UK has a tradition of free university tuition and of maintenance grants for poorer students. The UK government had moved away from that by introducing fees (at £1,000 per year) and dropping grants, and now from 2005 greatly increasing fees (up to £3,000), reintroducing grants and allowing all the costs to be rolled up into loans repayable after graduation. Devolution allowed Scotland and Northern Ireland (who could pass their own laws) and Wales (which had administrative discretion within UK legislation) to set distinctive policy if they paid for them. The Scottish fees regime since 2000 offers free undergraduate tuition to Scottish-domiciled students (who may also get limited maintenance grants), and non-UK EU/EEA students at Scottish universities (though £2,000 has to be repaid after graduation). English-domiciled students pay fees. Wales and Northern Ireland have adopted fees and grants packages that fall short of 'free tuition'.

### *Personal care*

The personal care issue raised particular difficulties for Labour because it opened up a situation where affluent people who had previously been paying a contribution to a service would now receive it free (and so, for instance, not be forced to realize the capital of a house they might have wished to leave to their heirs). It was one of the most explicit debates about the right to social security seen in the UK in recent years. The issue was the distinction between hospital care (free under the NHS) and nursing and personal care in residential homes and in persons' own homes. A Royal Commission on Long-Term Care reported in 1999 (this traditional mechanism for expert review of a policy area independent of government is now rare) and recommended that the distinctions were no longer fair and that all care should be free. In this they were much influenced by pressure groups on Alzheimer's Disease. In the end, the case for free nursing care has been conceded throughout the UK but only in Scotland has free personal care been introduced (in 2002).

This is a compromised policy, as it can only be accessed after local authority assessment and has cost limits that are inadequate in

terms of the actual fees charged. But it is a remarkable political enterprise, for it required a fight with fellow-Labour ministers in London over the principle of means-testing. And Scottish ministers have had to pay a price, as former self-funders who receive free care may lose some social security benefits; the UK government refused to transfer these savings back to Scotland (Parry 2004: 173).

### *Training and skills policy*

The creation of JobCentre Plus reinstated the presumption in UK policy that assessment of a work record and the payment of benefit would be closely linked. Research by Donna Wood at the University of Edinburgh has shown how in the eyes of Scottish officials employment and social security are one large reserved area in which London sets the policy (Wood 2006). In fact, since 1991, employment policy (in the form of training and skills, but not employment law, health and safety law, or employment-related benefits) has been devolved to Scotland, initially administratively and since 1999 legislatively. The reason for this was to enable the previous public economic development agency, the Scottish Development Agency, to be turned into a broader-based, more employer-friendly body called Scottish Enterprise, working through local enterprise companies legally outside the public sector.

Initially this was one of the least active policy areas of the Scottish Executive, but eventually it became caught up in their wish to set ambitious economic and social strategies encompassing both reserved and devolved areas – the large-scale social inclusion agenda, later renamed social justice, ‘closing the opportunity gap’ and an ‘employability framework’ (Scottish Executive 2004). Wood found that ‘there is no distinction in people’s minds between training for employment and any other kind of training. Almost everyone thinks that training is fully devolved, not shared’ (Wood 2006: 10). While the Department for Work and Pensions, with its extensive Scottish operation and Scottish headquarters, has been accommodated within the Scottish policy network, the (English) Department for Education and Skills that in theory has responsibility for UK skills strategy jointly with the devolved ministers, has not, with potential tension about the rights-based nature of skills training.

Summing up these cases, we can see how they rest on the exploration of a middle category in the UK’s approach to social security rights:

- i) *uncontested*: universal flat-rate retirement pensions, a universal health service not charging for hospital or



physician care, social assistance (including housing costs) on the basis of means-tests and work-tests; school education

- ii) *partially contested*: undergraduate university education, non-hospital drugs charges, skills training not meeting employment needs, care and support for people in need outside hospitals, public transport support for the elderly
- iii) *contested*: provision of housing, postgraduate university education, earnings-related pensions

While there is some political pressure for state action in the contested areas (and the devolved administrations could provide some of them like public housebuilding) the real action is in the partially contested areas where a political consensus can be constructed for universal policies. With a proportional electoral system leaving Labour in a minority (and governing in a coalition with the Liberal Democrats in Scotland since 1999 and Wales from 2000-2003) it has ended up resisting in small but potent ways the policy of its party at UK levels.

This complicates the unifying political theme of an accommodation between the Scottish and UK administrations based upon their shared political base in the Labour Party, which remains largely an integrated British organisation. Scottish MPs still sit in the UK Parliament, their numbers reduced from 72 to 59 since 2005 to bring them into line with England population ratios (previously there was a historic over-representation). These members have a high tax and benefits caseload and the sense of being part of a higher-prestige legislature, where they are a vital part of Labour's UK majority (in 2005 the Conservatives polled more votes than Labour in England, though they are well behind in seats). Prominent members of the Blair government sit for Scottish constituencies, especially the Chancellor of the Exchequer and likely future Prime Minister Gordon Brown.

The Brown agenda is of political importance because it combines much more generous income transfers in some areas with a more discretionary, less rights-based approach in others. It derives from traditional Treasury preferences for targeted support without a rights-based deadweight of those who could afford to make individual provision (Deakin and Parry 2000 ch 6). Means-tested benefits and credits offer the opportunity of maximum political advantage from taking people out of poverty at minimum cost. By the 1990s traditional Labour resistance to means-testing had dissipated, to be replaced by an unrealistic idea of work incentives. From the start, Brown pursued novel demonstration targeted

policies of uncertain net impact like the various 'New Deals' for the workless under-25s, lone parents and other groups (Dickens, Gregg and Wadsworth 2003). Expensive universalist policies like free personal care are an unwelcome challenge to this approach and their enactment a significant rights-based achievement.

## **Conclusion**

The UK is an example of a pragmatic political culture in which social rights arise from contingent and changeable political decisions rather than from a law-based structure. Over recent decades all actors in the system have become used to government decisions that alter eligibility, alter the relativities of benefit levels between groups, and impose new work tests. The latest of these is the UK government's welfare proposals of January 2006, replacing incapacity benefit by 'employment and support allowance' that will seek to remove as many claimants as possible from the category of long-term unfitnes to work (Department for Work and Pensions 2006). The 1997 Labour government provided a new justification for this approach by targeting generous support to lower-income families with children and pensioners, with a significant impact on inequality coefficients for these groups (Sefton and Sutherland 2005).

In the context of devolution, UK economic policy steered by Gordon Brown has provided a dominant paradigm for all the UK administrations. Scotland and Wales were happy to associate themselves with its success, and they needed to keep the Treasury happy in order to repel attacks on their funding formula. But, under pressure from liberal Democrat coalition partners and the professionally-led consensus in social policy in their nations, they adopted the previous UK universalist consensus rather than the changed new Labour one. Labour Party channels put pressure on some ministers and elected representatives to uphold the UK position, but they did not prevail. Henry McLeish, Scottish First Minister 2000-01 was an important advocate of free personal care. Rhodri Morgan, Welsh First Minister since 2000, has been a consistent advocate of Welsh approaches to Welsh circumstances that looks like a defence of 'old Labour'.

When distinctive Scottish and Welsh policies have had an impact on the social security budget it has been small. The principle that Scotland and Wales cannot have access to the UK social security budget through their policies has been maintained, even when money has been saved in it. In the case of housing support, an attempt by the Scottish executive to encourage housing providers to use UK money was addressed by the transfer of the funding, and

the responsibility for budget control, into the Scottish budget. The Scottish and Welsh administrations associate themselves with an integrated UK social security policy in which pathfinder projects (for instance, recent attempt to turn housing benefit into an allowance not directly related to the rent paid) are Britain-wide and local authorities have direct links with the Department for Work and Pensions.

In this way, social security becomes part of the pragmatic political management of a multi-level system. The intermediate and local levels cannot assert a rights-based counterweight to the central paradigm because they depend upon central funding that, in the case of Scotland and Wales, redistributes in their favour. The economics and politics of a subdivided UK social security system would be hazardous for peripheral areas, for their local political systems have never had to make decisions about priorities, eligibility and generosity.

The UK as a whole teaches us about the potential for the loss of rights to social security. The contribution of devolution is to give the possibly of political resistance to the loss of universalism at the margin between contested and partially contested rights. This can take the form of either preserving a pre-existing universalism that is within the EU consensus (student tuition fees) or redefining the boundary between universal and means-tested benefits in the light of modern medical thinking (personal care). It is a modest corrective to the ideological dominance of the central state in the UK, but it is at least a further dimension to the international debate on social security rights.

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