

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) ACT 2012

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Section 1: Universal credit: further provision

9. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in Part 1 of the UK Act which creates universal credit and abolishes certain existing social security benefits, referred to further in paragraph 12. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes and so could be used, for example, to make consequential or supplemental provision in the devolved area of passported benefits where that provision is considered appropriate in light of the abolition of existing social security benefits by the UK Act.
10. “Universal credit” refers to the new, integrated benefit and tax credit which will be rolled out across the UK from April 2013-2017. UK Government policy in respect of universal credit has been set out in the white paper (“Universal Credit: Welfare That Works”¹) in November 2010 and in subsequent briefing notes². Universal credit will be comprised of a basic award onto which ‘add-ons’ in respect of particular needs such as housing and help with child care costs will be added where appropriate. It will act as a top up benefit for those in work and will be paid to households monthly into a bank account. The intention is that recipients of universal credit will be able to manage their claims online so far as possible and that the amount payable will change automatically to accommodate a change in a household’s circumstances. A “pathfinder” system is due to be introduced in April 2013 with implementation proper due to proceed from October 2013 for new claimants with a four year phase-in period for existing welfare claimants ending in 2017.
11. The power set out in section 1 of the Act is needed because the existing benefits, which will be abolished, have links to devolved areas, the main one being that they are used as an eligibility hook for a variety of devolved, Scottish “passported benefits”. These include benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance. When the existing benefits are abolished, so too will the current, associated eligibility hooks. The Scottish Ministers may use the power provided by this section to make changes for a devolved purpose such as to refer consequentially to some aspect of the new universal credit or to supplement the gap left by the abolition of the hook benefit, for example by creating new eligibility criteria for certain passported benefits conferred in devolved areas such as health or access to justice. Existing social security benefits also impact on other devolved areas such as

¹ <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf>

² <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/universal-credit-briefing/>

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

pre-action requirements where a landlord's grounds for possession include rent arrears and cancellation of adoption allowances. The Scottish Ministers could also make free-standing provision using this power provided it were for a devolved purpose and was required in consequence of provision made by or under Part 1 of the UK Act.

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