

# Devolution and decentralisation of social security in the United Kingdom

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## 1. A general picture of the system of social security and the administration organization

The system of social security in the United Kingdom is highly centralized, complex, and consists of a large number of different schemes and benefits. This system is currently subject to major reforms and some decentralization. As in most European countries, a distinction can be made between contributory social insurance provision and targeted social assistance.

*Insurance-based benefits* include benefits protecting against the risks of unemployment, pregnancy, incapacity for work, old age and death. Pension provision is by far the largest component of insurance-based expenditure. The new State Pension (introduced by the *Pensions Act 2014* to replace the Basic State Pension) is a flat-rate, single tier pension paid to all over state pension age who have a record of contributions to the National Insurance scheme; there is also an earnings-related supplement. The contributory Jobseeker's Allowance (JSA) provides six months' of non means-tested support for those who meet contribution conditions. Contributory Employment and Support Allowance (ESA) (and formerly the Incapacity Benefit) is also paid to those with long-term or chronic sickness, providing they meet the contribution conditions and a medical assessment of their inability to work.

The origin of the current system of National Insurance was the *National Insurance Act 1911*, which introduced benefits based on contributions paid by employers and employees in certain sectors. The Beveridge Report published in 1942 proposed expanding and unifying separate schemes into a system of social insurance. Its recommendations would provide the basis of the UK's post-war welfare state. A central element of the new structure put in place was a move away from the decentralised, discretionary system which had historically existed under localised *Poor Relief*. This led to social security in Britain to be centralised to an extraordinary degree (Spicker 2011, 55), with rules made at the centre, no significant role for local authorities, and little discretion for implementing officials.

However, the limited protection in practice provided by the National Insurance scheme led to an expanding role for *non-contributory social assistance* in the latter part of the twentieth century, while means-tested provision itself was also expanded in scope (Alcock and May 2014). This has resulted in means-testing of benefits being much more common in the UK than in most developed countries, with over 30 schemes administered by various government departments and local authorities (NAO 2011).

The UK government's *Welfare Reform Act 2012* introduced the legislative framework for a major policy reform known as Universal Credit, a social security benefit available for working age people both in- and out- of work. This single benefit is intended to replace six existing means-tested benefits and tax credits (Income Based Jobseeker's Allowance, Housing Benefit, Working and Child Tax Credits, Income Related Employment Support Allowance, and Income Support). Amounts awarded to claimants will be based on income, assets and family circumstances, and delivered as a single monthly payment. The reform has been described as the "most comprehensive reform of the social security system since the Second World War" (Hood and Keiller 2016), and when fully implemented, will affect approximately eight million households (Miller and Bennett 2017).

A third category of benefits in the UK are those which are not based on contributions or income, intended for specific categories of people not covered by the insurance system. These include financial support for people with specific disability needs. Child Benefit had been the pre-eminent non-contributory, non-income related provision in the UK, though this scheme has become somewhat income-related since 2013.

Claimants have a right to most of the benefits they receive (subject to various conditions), with discretionary payments largely removed from mainstream social security provision (Alcock and May 2014). The main exception was the cash limited provisions of the Social Fund established in 1988, comprising Crisis Loans and Budgeting Loans (intended to cover sudden expenses and emergencies), and non-repayable Community Care Grants (CCGs) for certain persons leaving residential or institutional accommodation. Provisions in the *Welfare Reform Act 2012* resulted in the 'localising' of this type of support, with implications for the responsibilities of local government bodies (known collectively in the UK as local authorities), and the devolved governments in Wales and Scotland.

The financing of contributory benefits are covered by contributions paid by insured persons and employers. Six contribution classes are distinguished depending on the status of the individual. These contributions are deposited in the National Insurance Fund, which can also be supplemented with funds from general taxation. Meanwhile, non-contributory benefits schemes are fully financed from general taxation.

Since a 2001 departmental reorganization, the administration of social security in Great Britain (that is, England, Scotland and Wales) has been primarily the responsibility of the *Department for Work and Pensions (DWP)* under the authority of a cabinet-level Secretary of State. Since the 'Next Steps' initiatives of the late 1980s and early 1990s which split service delivery functions from central ministerial departments into semi-autonomous agencies, most operational tasks of the benefit system have been managed by independent agencies at arms-length from central government. The largest of these is *Jobcentre Plus*, which since 2002 has provided benefits and employment services to claimants of working age. Likewise, the *Pensions Service* administers benefits for pensioners.

HM Revenue and Customs (HMRC) administers child benefit, guardian's allowance and the tax credit system, although the implementation of universal credit will result in HMRC relinquishing its responsibility for the latter. Responsibility for administering some benefits lies with local, rather than central, government, notably housing and council tax benefits. As catalogued in section 3, local authorities have also recently gained responsibility for some discretionary benefits. They also

administer a range of other cash transfers (for example, free school meals) and subsidised access to local services.

Statutes provide a general framework for social security legislation, while the main body of material law is provided by a range of statutory instruments, or regulations (Pieters 2002, 139). Social security legislation passed by the UK government mostly refer to Great Britain (covering England, Scotland and Wales). Separate legislation applies to Northern Ireland, but this is broadly identical to legislation in Great Britain (in line with the ‘parity principle’ explored in section 2).

## 2. The state of devolution

### *a. Historical remarks*

Despite being a country consisting of four historic nations, conventional orthodoxy regarded the United Kingdom as a pre-eminent example of a state which had concentrated executive power at the central level and had resisted the global decentralizing trend (Paun & Hazell 2008; Shaw, MacKinnon and Docherty 2009). But a series of referendums that conferred new powers on democratically-elected territorial bodies in Scotland, Wales and Northern Ireland, followed in quick succession by new constitutional settlements granting additional powers over policy and taxation for these bodies, have transformed the United Kingdom into a polity rivalling Spain, Belgium and Italy as a venue for some of the most prominent centre-periphery territorial political competition in Europe.

Despite the prevailing conceptualization of the UK as historically centralized state, a substantial literature disputes this by reconsidering the historical processes that created the modern state. Drawing from Rokkan & Urwin’s formulation of a “union state” (1983), Gay and Mitchell (2007, 243) argue that the UK was “created over centuries through a series of unions each leaving a distinct legacy, especially in how the components of the state relate to the centre at Westminster”. As such, it is better to conceive of the UK as a ‘state of unions’, rather than a ‘unitary’ or even a ‘union state’. The history and legacy of each union has shaped the rationale for devolution in each of Scotland, Wales and Northern Ireland, helping to explain the UK’s highly asymmetric system of government today.

England has long been the dominant part of the UK, and could be described as a unitary polity from very early times (Campbell 1995, 47). Wales remained distinctively separate until a clash of nation-state building projects led to the defeat of Wales by the Anglo-Norman English state in 1282. Wales was initially governed via a ‘colonial constitution’ (Wyn Jones 2005) and subsequently assimilated by the 16th century Acts of Union which fully integrated Wales into the English parliamentary system. However, a separate language, culture and nonconformist Protestant religion have kept Wales distinctive until contemporary times.

Unlike Wales, Scotland was not annexed but agreed to enter a Union with England in 1707. This political Union followed a century in which the crowns of England and Scotland had been unified under a single monarch. Although Scotland lost its separate parliament after the Union with

England, it retained its own legal and educational system, and a Presbyterian (rather than Episcopalian) established state church.

Despite the absence of democratically-elected territorial bodies, some domestic policy has been administered separately for Scotland, Wales and Northern Ireland for many decades. A Central government minister and administrative department for Scotland (the Secretary of State for Scotland and the Scottish Office respectively) were established in 1885. Similar arrangements for Wales followed in 1965. These territorial ministerial departments assumed domestic functions from other UK departments such as education, health, economic planning, housing and local government.

Ireland was integrated into the United Kingdom in 1800, and the 1921 treaty dissolving this Union and creating the independent Irish Free State allowed six majority-protestant northern counties to remain in the UK, thereby forming 'Northern Ireland'. Northern Ireland was subsequently governed by a Protestant-led devolved government and parliament from 1920 which excluded the Catholic minority from full participation. On the collapse of this government at the onset of the 'Troubles', Northern Ireland was governed directly by a Westminster-appointed Northern Ireland Office and Secretary of State. These arrangements were replaced by the Belfast Agreement of 1998 which ended the 'Troubles' and established a power-sharing devolved government between both unionist and nationalist communities. Northern Ireland's powersharing administration has been suspended several times since 1998; during which time the UK government (via the Northern Ireland Office) assumes temporary control of executive functions.

In 1979, and in order to supplement the administrative functions of the UK government's territorial offices with an element of local democratic legitimacy, two referendums were held on political devolution to Scotland and Wales. However, only 20% of those who voted backed the proposals in Wales, and although a small majority in Scotland voted in favour of devolution, the affirmative vote share fell below the 40% required for the measure to pass. While these referendum defeats might have been expected to keep devolution off the political agenda, the Labour Party's support for devolution grew steadily over the course of Margaret Thatcher's Conservative premiership. The incoming Blair government in 1997 pledged to offer two referendums in Wales and Scotland which were held in September 1997. A referendum seeking popular consent for the Belfast Agreement, including devolved powersharing, was held in May 1998. A large majority vote in favour in Scotland and Northern Ireland, and a much narrower vote in favour in Wales, led to reconstitution of the Scottish Parliament and a new National Assembly for Wales and Northern Ireland Assembly. These bodies all sat for the first time on an official basis in 1999.

#### *b. Constitutional setting*

Following affirmative votes in referendums in Scotland, Wales and Northern Ireland, the UK Parliament passed three devolution Acts: the *Scotland Act 1998*; the *Northern Ireland Act 1998*; and the *Government of Wales Act 1998*. These Acts established three devolved legislatures which hold varying degrees of power that had previously been held at the UK level. In the absence of a written constitution, sovereignty remains with the Westminster Parliament, which retains the power to amend the devolution acts, legislate in devolved areas, or suspend devolution (as happened under

the *Northern Ireland (Temporary Provisions) Act 1972* which suspended the Parliament of Northern Ireland). Under the *Sewel Convention*, named after a UK government minister responsible for directing the legislation that led to the creation of the Scottish Parliament, the UK government will not normally legislate on devolved matters without legislative consent from the devolved legislatures.

The three devolution settlements are highly asymmetric across the three devolved countries and have evolved rapidly since 1999.

- *Scotland Act 1998* to today

Scotland's devolution law specifies the policy areas that are 'reserved' to the UK, and all areas that are not named in this way are deemed to be devolved. The Scottish Parliament in Edinburgh (colloquially named *Holyrood* on account of its location opposite the Palace of Holyroodhouse) has primary law-making powers in the devolved areas. The growing electoral strength of the pro-independence Scottish National Party since devolution compelled the UK government to establish an investigatory committee to consider additional powers. The Calman Commission (2008-2009) recommended an element of fiscal decentralization and additional policy responsibilities for the Scottish Government that would revise the existing division of competences. In 2010, both the departing UK Labour administration and incoming Conservative-Liberal Democrat coalition led by David Cameron agreed to implement most of these recommendations and legislated for their introduction via the *Scotland Act 2012*. During the 2014 Scottish Independence referendum campaign, the "No" campaign promised additional powers for the Scottish Parliament in the event of a majority vote to remain in the Union. A second Commission therefore met shortly after the referendum and published a set of proposals for additional responsibilities including broader taxation and welfare powers in November 2014. The UK government agreed with these proposals and devolved further competences via the *Scotland Act 2016*.

- *Government of Wales Acts 1998 and 2006* to today

Both public opinion and the devolution settlement have evolved perhaps even more rapidly in Wales than in Scotland. The *Government of Wales Act 1998* restricted the competence of the Assembly to the discretionary 'secondary' legislative or regulatory powers usually held by UK ministers within the framework of primary law. The newly-constituted Assembly was therefore generally restricted to making regulations rather than deciding the overarching policy frameworks in the 20 devolved 'subjects' such as local government and education. In contrast to the reserved powers model of Scottish devolution, these 20 subjects were specifically enumerated (or 'conferred') in the devolution legislation: all remaining powers were retained by Westminster.

These limited powers were deemed unsatisfactory soon after the establishment of the National Assembly. An investigatory committee known as the Richard Commission (2002-2003) made a number of recommendations with respect to the powers and electoral arrangements of National Assembly. Although the UK government did not proceed with several major recommendations, its own proposals would enable the Assembly to be granted primary law-making powers subject to a two-thirds majority vote in the Assembly, a popular referendum, and the assent of the UK parliament. The *Government of Wales Act 2006* enacted these proposals and divided Wales' devolved institutions into separate legislative and executive bodies that are today known as the

National Assembly for Wales and the Welsh Government. The enabling referendum for fully devolved legislative powers was held in 2011, far sooner than initially expected, and was approved by a large majority. This result shifted Wales' devolution settlement to a new part of *the Government of Wales Act 2006*, conferring primary legislation-making powers on the National Assembly in the 20 devolved policy areas. Shortly after the passage of the reform, an additional investigatory committee known as the Silk Commission (2011-2014) recommended fiscal devolution and the replacement of Wales 'conferred powers' model of devolution with a 'reserved powers' model as in Scotland. These proposals led to the *Wales Act 2014* (pertaining to new tax powers for the Welsh Government and National Assembly) and the *Wales Act 2017* (the reserved powers model of devolution).

- Northern Ireland

The *Northern Ireland Act 1998* establishing the devolved powersharing Assembly and Executive enumerates two types of powers retained at the UK level: 'Excepted matters' (Schedule 2) which are unlikely to be devolved, and 'reserved matters' (Schedule 3) which may be devolved in future. The *Northern Ireland (St Andrews Agreement) Act 2006* modified the original Act to allow the Democratic Unionist Party and Sinn Féin to form an executive, eventually ending a five-year suspension of the Assembly between 2002 and 2007. The Northern Ireland Assembly is automatically dissolved if it is unable to elect a powersharing First Minister and deputy First Minister within six weeks of its first meeting – devolved powers are then exercised by the UK Secretary of State for Northern Ireland. A failure to elect a First Minister and deputy First Minister occurred after March 2017 elections and the Assembly remains suspended at the time of writing in 2019.

- England in the United Kingdom

England is the only country of the UK not to have a devolved Parliament or Assembly: English domestic affairs remain the responsibility of the UK Parliament. As part of the Blair government's constitutional reform programme, a referendum on establishing a North East England Assembly was held in 2004 but was rejected by a large margin of voters in that region. Proposals for regional devolution were subsequently dropped by the Labour government, and government administrative offices and economic development agencies for the regions of England were abolished by the incoming Conservative-Liberal Democrat coalition in 2010. In place of large regional legislative bodies, the UK government instead pursued devolution to elected mayors in metropolitan 'city regions' of England. The Greater London Authority and Mayor of London was established in 2000; this development was followed by elected metropolitan mayors and 'combined authorities' in city regions including Greater Manchester, Liverpool, South Yorkshire and the West of England (Bristol). The patchwork of devolved bodies with asymmetric powers in England has however led to concerns that voters' interests in some form of English representation at the UK level were being ignored (for example, Jeffery et al. 2014) and fuelled a longstanding debate centring on the continuing rights of Welsh, Northern Irish and Scottish Members of Parliament (MPs) to vote on UK government policy pertaining only to England. This latter question led to the adoption of a system termed 'English Votes for English Laws' in the UK House of Commons after the 2015 general election, whereby legislation which affects only England requires the support of a majority of MPs representing English constituencies during a new stage in the legislative process.

*c. The division of competences between the layers of government*

*i. State structure*

The starkly asymmetric system of devolution in the UK is managed by the UK's Treasury Department which allocates funding to the Scottish, Welsh and Northern Irish governments according to the extent to which a specific policy is devolved. These percentages are published at the time of the UK's periodic multi-annual spending review and are known as 'comparability factors' that represent how much of a given UK department's spending is deemed to be devolved to Scotland, Wales and Northern Ireland. For example, as Education is completely devolved in all three countries, the 'comparability factor' is 100% for each country. Conversely, as the justice system is not devolved to Wales, the comparability factor is 0% in Wales but 100% in Scotland and Northern Ireland. These factors are frequently contentious because they play a major role in funding the devolved governments.

<b>Table 1: Comparability factors of UK departments (HM Treasury 2015)</b>			
<b>Department</b>	<b>Scotland</b>	<b>Wales</b>	<b>Northern Ireland</b>
Business, Innovation and Skills	66%	66%	67%
Business Rates	100%	100%	100%
Cabinet Office	7%	7%	10%
Chancellor's Departments	0%	0%	0%
Communities and Local Government	100%	100%	100%
Culture, Media & Sport	77%	77%	78%
Education	100%	100%	100%
Energy & Climate Change	2%	2%	15%
Environment, Food & Rural Affairs	100%	99%	100%
Health	99%	99%	99%
Home Office	92%	0%	92%
Justice	100%	0%	100%
Law Officers' Departments	100%	0%	92%
Transport	91%	81%	91%
Work & Pensions	1%	1%	100%

The early period of devolution was associated with a very limited degree of fiscal devolution and responsibility over taxes and borrowing, which considering the high degree of spending autonomy was considered highly unusual from an international perspective (Silk Commission 2012). With the exception of some local government property levies and business rates, all taxes had been reserved to UK level.

Each devolved government was funded by an annual block grant from UK Government, which meant that devolved governments had very little control over the size of their budgets at the margin. Annual changes to the block grants were determined by changes to government spending on

comparable services in England, using the ‘Barnett formula’ (HM Treasury 2015). For example, if spending per person in England on education (an entirely devolved policy area) increased by £100, then a population share of this £100 per person would be added to the budgets of the devolved governments. Devolved government budgets have therefore been heavily linked to UK government policy, arguably constraining policy divergence.

The *Scotland Acts of 2012 and 2016* have transferred substantial powers over taxation to the Scottish Government, to the point where devolved and assigned revenue will account for almost half the Scottish budget (Scottish Government 2016). The *Wales Act 2017* also partially devolved income tax to the Welsh government, alongside powers over some minor taxes devolved in the 2014 Act.

## ii. Division of competences in social security

### (a) Great Britain (England, Scotland & Wales)

Despite this rapid evolution of the devolution settlements in Scotland and Wales, competence over social security has primarily continued to be reserved at the UK level. Social security benefits can be described as “some of the most centralised services” of the United Kingdom (Spicker 2015, 3). This is perhaps a legacy of the UK’s historical position at its “centralising peak when the structures that defined its modern welfare state were set in place after the second world war” (McEwen and Parry 2005, 49). Devolved competences lie mainly in the “distributive” services, of health, education and social services, while the “redistributive” functions of major taxes and benefits have largely remained reserved to the UK (Lodge and Trench 2014).

Schedule 5 of the *Scotland Act 1998* lists social security schemes as a reserved function and therefore outside the powers of the devolved government. Similarly, the *Wales Act 2017* also reserves social security schemes to the UK government. This has meant that uniformity in social security benefits, payments and entitlements has remained despite devolution, with the Department for Work and Pensions delivering the majority of social security functions across England, Scotland and Wales.

The devolved administrations’ distributive powers have however provided an opportunity to expand some entitlements and some means-tested remission of charges related to devolved areas of education, health and social work. During the first decade of devolution, there was a clear policy trend towards universalist provision in Scotland and Wales (McEwen and Parry 2005, 57), such as the abolition up front tuition fees in Scotland and introduction of learning grants in Wales. Universalist provision was aided by the benign situation for UK public finances over this period, with ever-increasing budgets that allowed the devolved governments to meet the costs of expansionary policies.

The interdependence of (reserved) cash benefits and services under devolved competence has the potential to create disputes between the UK and devolved governments (Keating 2002). A prominent disagreement followed the introduction of ‘free personal and nursing care’ by the Scottish Government (Simeon 2003). In response to the expansionary policy in Scotland, the UK Treasury ruled that recipients in Scotland would no longer be entitled to the UK attendance allowance benefit, and allowance for personal care for the disabled and those over 65. This decision



reduced the cost to the UK social security budget and did not provide the Scottish devolved administration with the expected additional funding. Instead, the Treasury and DWP had resisted any attempt to relinquish any funds saved as a result of devolved policy changes (McEwen and Parry 2005, 57).

(b) Northern Ireland

The constitutional division of competences in social security is quite different in Northern Ireland than it is in Great Britain. The *Northern Ireland Act 1998* continued the earlier devolved arrangements where social security would not be listed as a reserved or excepted matter and therefore would be devolved. In practice however, the principle of *parity* has been adopted to maintain social security benefits at the same level as in Great Britain, and this is normally implemented through the passage of separate Northern Ireland legislation that simply copies Westminster legislation for Great Britain (Birrell and Gray 2014, 206). Section 87 of the *Northern Ireland Act* requires cooperation on the coordination of social security systems between Northern Ireland and Great Britain. This system did allow however for some devolved discretion, particularly in social security administration. Responsibility for the delivery of social security in Northern Ireland rests primarily with the Social Security Agency (part of the Department for Communities of the Northern Ireland Executive).

Funding is clearly a key imperative underpinning parity (Birrell and Heenan 2010), stemming from the fact that an annual transfer is made from the GB National Insurance Fund to cover benefit costs that cannot be met from contributions raised in Northern Ireland, and non-contributory benefits are fully funded by the UK government outside the block grant from which other devolved services are funded. The UK Treasury position is that the devolved administration should not be subsidised to enhance benefit provision, and that any savings generated by devolved government actions should be returned to the Treasury. Birrell and Heenan (2010) argue that major policy divergences in this area are unlikely to be agreed by the Northern Ireland Assembly because of the likely major (and negative) financial implications.

Despite social security remaining as a UK competence at least in Scotland, Wales and England, recent years have seen a partial but significant shift away from this highly centralised system of social security. As Simpson (2017, 265) comments, the social union between the countries of the UK “remains in a state of flux”.

Two factors have driven this trend. First, several aspects of the UK Government’s *Welfare Reform Act 2012* intersected with devolved competences, provoking a hostile response from the Scottish and Welsh governments and a debate in Northern Ireland on the meaning of the principle of parity. Second, the rise of the Scottish National Party and the narrow vote against Scottish independence in 2014 prompted to the partial devolution of social security to Scotland.

The most obvious effect of the UK government’s welfare reforms on devolved government competences was the abolition and decentralisation of some social security schemes in England (outlined further in section 3). Responsibility for replacement arrangements in Wales and Scotland was given to the devolved administrations, while in Northern Ireland, such benefits would consequently be considered outside ‘parity’ considerations, and would therefore be subject to possible amendment.

The *Welfare Reform Act 2012* abolished some discretionary elements of the social fund which provided discretionary financial assistance to people facing unforeseen emergencies and assisted people leaving residential or institutional care. Funding was transferred to the devolved governments for replacement schemes. The Welsh Government created the centrally-administered Discretionary Assistance Fund for Wales, while the Scottish Government introduced a national scheme called the Scottish Welfare Fund (administered by local authorities). The closing of the Independent Living Fund (ILF) in 2015, a discretionary source of funds for applicants to live in the community rather than in residential care, also expanded the role of the devolved governments in the provision of discretionary benefits. The devolved administrations in Scotland, Wales and Northern Ireland would decide how the ILF recipients in their countries would be supported in future, with funding transferred from the UK government. The scheme was replaced by national schemes in Scotland (which also administers cases for Northern Ireland) and Wales. Local governments in Wales and Scotland (under devolved control) are also responsible for delivering Discretionary Housing Payments (DHPs), which are paid out when claimants experience a shortfall between rent due and the Housing Benefit payable. Both governments provided additional funding for DHPs to mitigate the reductions in Housing Benefit entitlements for certain recipients (especially in response to the measure of cutting housing benefit for people deemed to have a spare bedroom in their home – commonly referred to as the ‘Bedroom tax’).

The *Welfare Reform Act 2012* also provided for the abolition of the Council Tax Benefit, essentially a means-tested rebate for the local property tax paid to local authorities. Initial funding was transferred to the devolved administrations, though with a 10% cut from the previous year. The Scottish and Welsh governments both introduced centralised Council Tax support schemes.

By replacing several income-based schemes by Universal Credit, the coalition’s welfare reform measures also affected some “passported” benefits and services provided by the devolved governments based on eligibility criteria for existing DWP benefits. These include free school meals, concessionary travel, education maintenance allowances, and legal aid (in Scotland). This required new eligibility criteria for these benefits and services, and led to the Scottish Government introducing the Welfare Reform [Further Provision] [Scotland] Bill in 2012.

Perhaps the greatest impact of the *Welfare Reform Act 2012* on devolution however was felt in Northern Ireland. Whereas passing separate legislation for social security in Northern Ireland to replicate legislation for Great Britain is usually considered a formality, it proved difficult for political parties in the power-sharing Northern Ireland Executive to agree consent for the Welfare Reform Bill. Both the main parties in the executive – the Democratic Unionist Party (DUP) and Sinn Féin – agreed that welfare reform should recognise the unique circumstances of Northern Ireland, with evidence indicating that it would be the area most effected by the changes to benefits. This resulted in a two-year delay in the legislative process and the ultimate defeat of the Bill in May 2015. Under the terms of the ‘Fresh Start’ agreement of November 2015 between the Northern Ireland Executive and the UK government, primary legislation was brought back into line with Great Britain through the short-term transfer of social security competences to Westminster (Simpson 2015).

However, this agreement did permit social security in Northern Ireland to deviate from welfare reforms in Great Britain in crucial ways. Concessions were agreed for Northern Ireland, mainly of an administrative nature: Universal Credit would be paid twice monthly instead of monthly;

payment could be split between two parties in the household instead of a single payment; and the housing element would by default be paid to the landlord rather than the claimant (Birrell and Gray 2014). The maximum ‘sanction’ period (when benefits are withdrawn from claimants) would also be shorter in Northern Ireland, and the Northern Ireland executive would be able to fund a four-year disapplication of the so-called ‘Bedroom tax’ described above. Though it remains to be seen whether this represents a new precedent for the Northern Ireland Executive to reject wholesale reforms made at Westminster (Simpson 2017), devolved legislators are now “less willing to accept that parity can simply be justified by default” (McKeever 2016, 7). Such concessions inspired lobbying efforts by the Scottish and Welsh Governments for similar opportunities (Birrell and Gray 2014), and the flexibilities afforded to Northern Ireland influenced the eventual powers devolved to the Scottish Government.

The territorial dimension of social security politics also relates to the second key factor driving social security devolution across the UK in recent years, namely the rapid change in politics in Scotland. The Scottish National Party came to power as a minority administration in the Scottish Government in 2007 and won a majority at the 2011 devolved elections with a manifesto commitment to a referendum on independence. Following the Edinburgh Agreement between the UK and Scottish governments which permitted a legal referendum, the *Scottish Independence Referendum Act 2013* was passed by the Scottish Parliament and a referendum was held in September 2014. Social security became a key focus for both sides of the independence campaign.

The Scottish Government’s Expert Working Group on Welfare outlined several immediate departures from UK government policy that an independent Scotland could take, as well as a longer-term vision of a different welfare system (Expert Working Group on Welfare 2013). The Yes campaign during the referendum attacked the welfare reforms of the UK government, presenting independence as a means to protect the foundations of the welfare state being eroded by successive UK governments (Mooney and Scott 2015). As McEwen (2013) argues, this was done to underline Scotland’s distinctive values, and “portray a picture of an independent Scotland that would preserve the rights of social citizenship”.

As detailed in section 2, immediately after the ‘No’ vote in the Scottish independence referendum, the UK government established a new investigative commission to bring forward new proposals of fiscal and welfare decentralization that were agreed by all major political parties. These recommendations subsequently formed the basis of the *Scotland Act 2016*.

The *Scotland Act 2016* devolves approximately £2.8 billion of benefit expenditure to the Scottish Parliament (based on 2015-16 figures), over 15% of total benefit spending in Scotland. This will be in addition to the £371 million which was spent on the already devolved Council Tax Reduction Scheme and the Scottish Welfare Fund.

Table 2 summarizes the benefits recently devolved to the Scottish Parliament. Although there may be opportunity to deviate or replace these, this power can only be exercised within the terms of the 2016 legislation. For example, the Act pre-defines who can be entitled to the Carer's Allowance. This constrains the potential for expanding welfare entitlement or developing alternative or innovative policies (McEwen 2015).

The vast majority of devolved benefit expenditure relates to support for carers, disabled people and those who are ill, as well as payments currently part of the 'regulated social fund'. The Scottish Parliament has also been granted the power to make administrative changes to the UK government's Universal Credit and to vary the housing cost element, similar to the concessions granted to Northern Ireland described above.

<b>Table 2: Devolved Social Security Benefits under the Scotland Act 2016, 2015-16 (£m)</b>	
	<b>2015-16</b>
Disability Living Allowance	1,399
Attendance Allowance	487
Carer's Allowance	224
Winter Fuel Payment	180
Personal Independence Payment	315
Industrial Injuries Disablement Benefit	91
Severe Disablement Allowance	49
Discretionary Housing Payments	13
Cold Weather Payment	3
Funeral Payment	4
Sure Start Maternity Grant	3
<b>Total expenditure on benefits to be devolved</b>	<b>2,768</b>
<b>As share of total benefit spending in Scotland</b>	<b>15.3%</b>
<b>Total benefit spending in Scotland (including state pension)</b>	<b>18,345</b>

*Source: Government Expenditure and Revenue Scotland 2015-16)*

To administer these devolved responsibilities the Scottish Government has established a new agency, named *Social Security Scotland*, by way of the Social Security (Scotland) Act 2018. Approximately 35% of Scottish households will receive benefits from both UK and Scottish agencies (Bell 2016). The establishment of this new social security agency will require intergovernmental coordination to ensure that claimants do not fall between the gaps (McKeever 2016; 2017). Spicker (2015) argues that devolving some benefits and not others enhances the potential for claimants to fall between the gaps and overlaps between benefits, for example, creating situations where raising benefits in one place led to loss of benefit in another. A Joint Ministerial Working Group on Welfare (with ministers from both governments) was established in February 2015 to provide a forum for discussion and decision-making in implementing welfare devolution, a body which meets regularly.

As well as the legislative limitations outlined above, there will also be strong financial limitations and pressures on Scottish policy-making on social security. Under the terms of a new 'fiscal framework' agreement signed by the two governments, an initial baseline addition to the Scottish budget will be made in line with the UK government spending on these benefits in Scotland immediately prior to devolution (HM Treasury 2016). Thereafter, this funding will change according to the Barnett formula (outlined in section 2.c.i); according to changes in per person

spending on these benefits in the rest of the UK. This means any Scottish deviation away from UK government policy will have to be funded by reallocating money from other budgets or by using its newly devolved fiscal powers. Scotland's more rapidly ageing population will also pose fiscal challenges, especially since around half of the benefits to be devolved are directed towards senior citizens.

### iii. Local responsibility or solidarity between local states/regions

The idea of solidarity between the different countries of the UK, and the contemporary conceptualizations made by pro-Union politicians of the UK as a 'social union', is frequently prominent in debates over social security devolution. Arguments made by central government and policy-makers from different parties often stress the importance of equal provision of social security in all areas of the UK. For example, the UK government's Scotland Office (2009) described the social security system as the "most explicit expression" of the UK's social union, in that it "ensures that people across the UK have access to the same support in time of need". Similarly, in its response to the Silk Commission on Devolution in Wales, the UK government rooted its opposition to social security devolution in the 'parity principle'; that "as people throughout the UK pay consistent rates of NI contributions and non-devolved taxation, they should also be entitled to consistent rights and benefits" (Wales Office 2013, 90).

Although an advocate of additional devolved powers in most fields, the former Labour First Minister of Wales, Carwyn Jones argued in 2014 that "I place a strong value on the fact that we all have an equal claim on the safety net that protects us... I see social security as one of the core components of our common citizenship." This view of social security echoes a historically-dominant perspective on the British left associated with prominent former Labour politicians such as Aneurin Bevan and Neil Kinnock. Bogdanor (1999, 169) summarized this view as believing that a "different standard of social welfare in different parts of the country (threatens) the very foundations of the Welfare State".

The high degree of regional economic inequality in the UK also plays a role in discussions over social security devolution. As can be seen in table 3, spending on social protection per person varies significantly between the countries of the UK, even though they are provided on an equal basis across the country. As a result, there is a perception that poorer nations may lose out if such support were to be devolved (for example, see Bradshaw 2014).

While public opinion data do not suggest large difference in perceptions and feelings towards social security in Scotland or Wales (Curtice and Ormston 2011; Henderson et al. 2013), elite discourse in these countries tends to reflect more redistributive and pro-welfare values (Greer 2007). Such discourse has been amplified in opposition to welfare reform since 2010, fuelling demands for more local control and responsibility over social security.

There is also a realisation that devolution of health and education for instance have not led to varying levels of entitlement. From a Welsh perspective, some have commented that Wales would not necessarily suffer financially under a similar fiscal framework as Scotland (for example, Bevan Foundation 2016). With social security essentially becoming a ‘shared’ competence in Scotland and Northern Ireland, we may see further interest in social security devolution in Wales, as is often the case in asymmetric devolution settlements, where the desire to ‘keep up’ with others drives demands for additional powers (Simpson 2017).

<b>Table 3: Spending on social protection* (excluding social services), 2015-16</b>								
	£ per person				£ per person (England = 100)			
	England	Scotland	Wales	Northern Ireland	England	Scotland	Wales	Northern Ireland
Sickness and disability	620	776	908	1,271	100	125	146	205
Old age	1,600	1,709	1,811	1,748	100	107	113	109
Survivors	15	32	23	42	100	213	153	280
Family and children	235	218	245	268	100	93	104	114
Unemployment	39	49	50	76	100	126	128	195
Housing	411	382	387	315	100	93	94	77
Social exclusion	476	421	516	549	100	88	108	115
<b>Social protection (excluding social services)</b>	<b>3,396</b>	<b>3,587</b>	<b>3,940</b>	<b>4,269</b>	<b>100</b>	<b>106</b>	<b>116</b>	<b>126</b>

*Source: HM Treasury Country and Regional Analysis, 2016.*

\*As classified by United Nations’ Classification of the Functions of Government (COFOG)

### 3. The state of decentralisation

#### *a. Historical remarks*

In many ways, modern British welfare has its roots in the initiatives of local, rather than central government. Local services for health, social assistance and education were established during the 19<sup>th</sup> century and were delivered by the *Poor Law* guardians; as a result such this became the core of a reformed local government system. Historically, social security became more centralised over time. After the Second World War, local government lost responsibility for areas such as health, social security and public utilities.

In the 1970s, local government was reformed to form two main tiers (county and district) in most of Britain. Since then, unitary (single-tier) authorities have been widely established, though two-tier authorities are still common. The two tiers have distinct functions, though they sometimes overlap. There are 353 local authorities in England, of which 125 are single-tier authorities. Local government is devolved to Scotland, Wales and Northern Ireland: Wales has 22 unitary authorities, Scotland has 32 unitary authorities, while Northern Ireland has 11 ‘district councils’. As will be seen below, the role of local government differs in each country.

Recent UK government efforts to strengthen local accountability and reduce central spending have resulted in several elements of social security being decentralised to the local authorities in England and devolved administrations in Wales and Scotland (as described in section 2).

#### *b. Constitutional setting*

UK local authorities have few powers to act other than where they are expressly authorised by law to do so. However, they have a wide range of statutory duties that they are required to fulfil, and a wide range of permissive powers enabling them to undertake defined activities if they so wish.

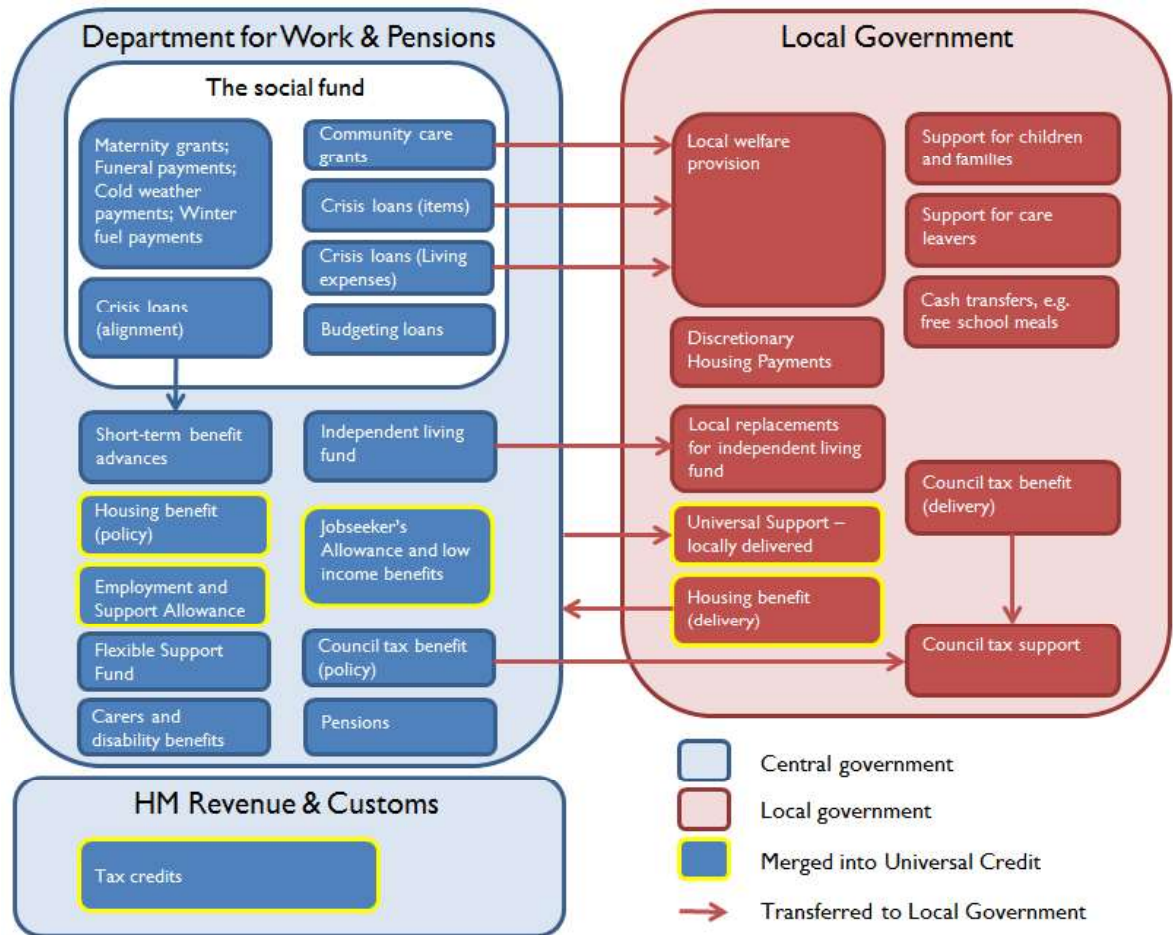
They also have a small number of ‘general’ powers – the *Local Government Act 1972* permits authorities to incur expenditure that is in the interests of their area, subject to certain conditions. The *Local Government Act 2000* contained the general power to “promote economic, social and environmental well-being” of their area, and enables them to provide financial assistance to any individual. As explored below, this has enabled transfer of responsibility for some social security schemes to local authorities under powers contained in existing legislation (DWP 2014, 5). The *Localism Act 2011* also introduced a new “general power of competence” for local authorities in England.

#### *c. The powers of the local decentralised level*

Recent welfare reforms, the UK government’s ‘localisation agenda’ and significant efforts to reduce the national deficit since 2010 have all influenced the role played by local authorities in social security, particularly in England.

Figure 1 illustrates how responsibilities for certain social security schemes have been transferred from central to local government in England in recent years.

**FIGURE 1: RECENT REFORMS AND DECENTRALISATION IN NON-CONTRIBUTORY SOCIAL SECURITY SCHEMES IN ENGLAND**



Source: Modified from National Audit Office (2016) with authors' research.  
 Note: figure shows how reforms have affected social security in England. See section 2 for discussion of how these reforms have impacted Wales, Scotland and Northern Ireland.

The discretionary elements of the Social Fund provided discretionary, often ‘last resort’, loans and grants to individuals, and comprised of Crisis Loans (financially assisting people facing unforeseen emergencies), Budgeting Loans and non-repayable Community Care Grants (CCGs – mainly assisting people leaving residential or institutional care). As a result of the *Welfare Reform Act 2012*, CCGs and Crisis Loans were abolished to be replaced by provision delivered by local authorities in England, schemes sometimes referred to as Local Welfare Provision.

The *Welfare Reform Act 2012* also provided for the abolition of Council Tax Benefit (CTB). Council Tax is a property tax paid to local authorities, and this benefit reduced the amount of council tax



that low-income households had to pay (essentially a means-tested rebate), often entirely. Provisions for the creation of localised schemes in England to replace this nationally devised system were included in the *Local Government Finance Act 2012*.

The Independent Living Fund provided cash payments to disabled people with support needs, delivered by an executive non-departmental public body of the DWP. It was permanently closed in June 2015 and responsibility for supporting recipients in England was transferred to local authorities.

These additional responsibilities for local authorities were added to some existing functions relating to social security. Discretionary Housing Payments (DHPs) are administered by local authorities and paid out to claimants when they experience a shortfall between the rent due and the Housing Benefit payable. Funding for DHPs was increased by the UK government to mitigate reductions to Housing Benefit entitlement introduced between 2010 and 2017. Although the administration and delivery of Housing Benefit was previously the responsibility of local authorities, this benefit is currently being merged into the centralised Universal Credit system, alongside a number of other means-tested benefits. Until Universal Credit is fully implemented, local authorities are responsible for enforcing a maximum recipient funding limit known as the 'benefit cap'. This cap is designed to ensure that no individual or household is in receipt of benefits to a value greater than average earnings after tax and national insurance. This cap has been achieved on a temporary basis by adjusting Housing Benefit entitlements.

As discussed in section 2, the elements of social security that were 'localised' in England were simultaneously transferred to the devolved governments of Scotland and Wales. The devolved governments have often rejected the localised approach of the UK government in England. Instead of introducing a localised welfare schemes to replace Community Care Grants and Crisis Loans, the Scottish Government introduced a national scheme called the Scottish Welfare Fund (which is however administered by local authorities), and the Welsh Government created the centrally-administered Discretionary Assistance Fund for Wales. Both governments also introduced centralised Council Tax support schemes rather than devolving policy to local authorities. The Independent Living Fund was replaced with national schemes in Scotland (which also administers cases for Northern Ireland) and Wales, though the Welsh scheme has been decentralised to local authorities from 2018 onwards. Meanwhile, there has been no decentralisation of these social security schemes in Northern Ireland.

#### i. Policy, determining of claims and delivery of services

Whereas the role of local authorities in social security in the past was mainly administrative (for example administering Council Tax and Housing Benefits), they now have a more active role in devising their own benefit schemes and eligibility criteria. They have been given relatively extensive flexibility over policy and the determination of claims in the case of decentralised social security, reflective of the discretionary nature of the benefits that have been decentralised. The level

of statutory requirements and regulation placed on local authorities by Central Government varies between the various social security schemes.

In the case of Local Welfare Provision (replacing CCGs and Crisis Loans), local authorities are under no obligation to provide any particular form of support, leaving the system with no statutory force. The Government did not impose any new duties on local authorities, maintaining they would be open to scrutiny at the local level for the decisions they took. However, guidance was provided by the DWP setting out general expectations that central government had of local authorities. The lack of statutory obligations was a cause of concern for charities in response to a DWP consultation.<sup>1</sup>

Although councils provide similar support to the previous schemes (for people in emergencies and to help people remain or resettle in the community), there has been some notable variation between local authorities in England (NAO 2016, 22). Some local authorities advertise a broader range of support than others, spend different amounts on similar types of support, and vary the length of time they provide crisis support. A big change from the formerly centralised scheme has been the shift away from providing cash support to providing goods in-kind, with furniture and consumer utility goods accounting for most of local welfare spending (ibid, 25). The majority of local authorities in England have moved away from providing loans, due to the costs involved in retrieving repayments (which was previously done by DWP by deducting amounts from benefits).

The *Local Government Finance Act 2012* requires local authorities in England to devise their own Council Tax Reduction Schemes, reducing Council Tax liabilities “to such an extent as the billing authority thinks fit.” The framework within this must be done is contained in Part 1 of Schedule 4 of the Act, which sets out the type of considerations an authority may take into account in deciding support provided, including capital and income levels of claimants and the number of dependents. Although reductions could take a variety of forms and levels, the UK government has prescribed (by regulation) that support for pensioners must be maintained, and that they were protected from any adverse consequences of the change.

As part of cost-reducing requirements (see financing section below), most local authorities have imposed criteria to limit support, for example by imposing minimum Council Tax payments for working-age people, reducing savings thresholds, and changing the “income taper” (the rate at which support is withdrawn as income rises) (Bushe, Kenway and Aldridge 2013).

Whereas the DWP previously determined eligibility criteria for claimants of the Independent Living Fund, each local authority now has responsibility to determine its own criteria. The amount of support provided therefore varies from authority to authority.

Local Authorities are also under no obligation to pay Discretionary Housing Payments. The level and number of awards for these payments also vary between authorities. This can be driven by differences in the local housing markets and the varying effects of welfare reforms across the country that the payments are intended to mitigate against.

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<sup>1</sup> For example, see page 41 of <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP11-48>

## ii. Local authorities and third party service delivery

In order to minimise administration costs and coordinate different forms of support to individuals, the majority of local authorities run their own local welfare schemes, typically locating local welfare provision within their existing revenues and benefits service (NAO 2016, 19).

A 2014 DWP review of local welfare provision also noted that local authorities had not only been able to align their schemes with existing services, but had also been able to work with other organisations to support claimants. Of those local authorities that provided information to the DWP review, around 33% of local authorities established some type of contracted provision to administer the funds on their behalf, and a similar number stated that they had coordinated provision with the voluntary and community sector.

In Wales, while not being decentralised, the Welsh Discretionary Assistance Fund is delivered on a national basis by the Northgate Public Service in partnership with other organisations, after a competitive tendering process.

## iii. Supervision

Since the decentralisation of certain elements of social security, concerns have been raised that there is no official or systematic national oversight of the schemes introduced by local authorities (Social Security Advisory Committee 2015).

## iv. Financing

The system of financing local government in the UK has traditionally been highly-centralised. Funding has come from three main sources: domestic property tax revenues (council tax); general grants from central government (including the redistribution of non-domestic property tax revenues); and ring-fenced grants for specific areas.<sup>2</sup> Grants distributed from central government tended to be allocated based on spending needs or on the basis of particular central government objectives. Local authorities have traditionally only had very little discretion on the overall size of their budgets. However, the introduction of the Business Rates Retention Scheme (BRRS) in England in 2013-14 represented a move towards providing a 'fiscal incentive' for local authorities.

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<sup>2</sup> The UK government is responsible for the financing of Local Government in England, while responsibility for funding Welsh and Scottish Local Government rests with the Welsh and Scottish Governments respectively. Until recently, the three nations had similar systems of funding local government. The system of local government in Northern Ireland is very different.

The decentralisation of social security schemes outlined in the previous section has come during a time of significant cuts to local authority budgets. Funding for local authorities in England has cut almost 26% in real terms since 2009-10 (Smith et al. 2016). Furthermore, as responsibility for some benefits have been handed down to local authorities, funding budgets allocated for these benefits have been reduced before and after decentralisation. Central government funding for local authorities has generally been non-ring-fenced by central government.

In the first year of decentralisation, the budget for Community Care Grants and Crisis Loans were passed on in full to local authorities in England and the devolved administrations on a non-ring-fenced basis, along with additional administrative funding, to fund local welfare assistance. This was awarded geographically along the lines of existing spending patterns. However, it should be noted government spending on these schemes in years before decentralisation had decreased significantly (NAO 2016, 15). This amount would be reduced in the second year, in line with the Government's expectation that there would be efficiency savings through the new services being locally aligned with existing services (DWP 2014). Although uncertainty around demand levels led to 78% of local authorities to underspend their allocation in the first year (DWP 2014); this level of underspending reduced in subsequent years (NAO 2016). A report by the Centre for Responsible Credit (2015) recommended ring-fencing the grants in order to protect funding for local welfare schemes.

Funding for Council Tax Support schemes was cut explicitly by 10% from the level of the centralised Council Tax Benefit scheme, with the expectation that local authorities would decide where the resulting cuts would be implemented. Funding was provided through the Business Rate Retention Scheme rather than through a separate grant, again on a non-ring-fenced basis. Although the funding was initially separately identified, this has not happened in subsequent years (Wilson and Murphey 2016, 9). Replacement funding for the Independent Living Fund was also provided via a non-ring-fenced grant from central government. The charity Disabled Rights UK raised concerns that not ring-fencing this funding would lead to reductions in support in some areas (Jarrett 2018). Discretionary Housing Payments are also funded via DWP allocations, while local authorities are allowed to spend up to two and half times their allocation.

In face of steep cuts in local budgets and non-ringfenced grants, a report by the Social Security Advisory Committee (2015, 33) noted wide-spread concern amongst local government officials over the financial sustainability of local social security schemes, and suggested that the benefits of decentralisation would be lost without continued investment. The Local Government Association noted that lack of funding meant that local authorities were extremely constrained in their ability "take a holistic and integrated approach to addressing people's broader circumstances" in delivering their local welfare schemes (ibid.). The Social Security Advisers in Local Government group noted that the "perception of localisation of welfare support as means to an end and a cost cutting exercise".

The decentralisation of funding for these benefits represents a large transfer of financial risk. Whereas the UK government budget can respond to deteriorating economic conditions, local authority budgets are far more constrained and responding to variations in demand for assistance is far more challenging (House of Commons Work and Pensions Committee 2016). Welfare

devolution has accompanied wider Local Government finance reform in England towards a more self-reliant system in which more spending and revenue risk lies with individual authorities (Smith et al. 2016). Although this provides local authorities' with much more of a stake in the economic well-being of their areas, it does raise questions about their ability to provide the emergency social security schemes now under their control.

#### 4. The state of the debate and future perspectives

With its origins in *the National Insurance Act 1911*, the social security system in the United Kingdom has traditionally been viewed as long-developed and highly centralized. The Department of Work and Pensions, the government body that administers social security in Great Britain (England, Scotland and Wales) is the largest public body in the UK, paying out GBP177 billion in benefits in 2017-18. Indeed, a major recent overhaul of the benefits system – the 2010-2015 UK coalition government's *Universal Credit* programme – will further centralize aspects of benefit administration including the transfer of tax credits element of social security to this central government department.

Equally however, two major political and public policy developments over the same period have generated significant decentralizing pressure on the UK's social security system.

The first of these has been the pressures for additional devolution from the three constituent countries of the UK with devolved legislatures and governments. In Scotland, widespread demands for additional powers for the Scottish parliament culminated in a 2014 referendum on independence. While lost, the cross-party process set up in the immediate aftermath of the 'No' vote resulted in GBP2.8 billion of benefit expenditure – more than 15% of all benefit spending in Scotland – being devolved to the Scottish Parliament. The Scottish Government responded by establishing a new cabinet portfolio for Social Security and a new agency to administer devolved benefits, *Social Security Scotland*. As was previously the case in relation to taxation powers, devolution of welfare benefits to Scotland has subsequently influenced the debate in Wales. In 2019, the incoming Welsh First Minister expressed his view that “we ought to explore the devolution of [welfare] administration. We want to do it carefully, but I think the case is made for exploration”, and a National Assembly for Wales committee has launched an inquiry into the administration of benefits in Wales in reference to Scottish social security devolution. And in Northern Ireland, while ‘parity’ with Great Britain has previously been rigidly applied in the province's separate welfare system, new deviations in social security administration have recently emerged. These include more frequent welfare payments to claimants, direct payment of housing benefits to landlords rather than tenants, and shorter maximum ‘sanction’ periods where benefits are temporarily withdrawn from individuals. In the three devolved countries of the UK therefore, pressures for additional devolution of at least some elements of social security are likely to continue.

The second pressure on the UK's traditionally-centralized social security system has been welfare reform programmes and austerity budgets which have decentralized discretionary provision across the UK (and not just in the three devolved countries). Responsibility for a number of discretionary loans and grants previously managed as part of the Department of Work and Pensions' Social Fund were transferred to local governments in England and the devolved governments in Scotland and Wales. Previously simply administrators of various benefits, local governments now have a more active role in devising their own benefit schemes and eligibility criteria, with relatively extensive flexibility over policy and the determination of claims over the localised schemes. Having implemented large-scale budget cuts since 2010, most local authorities have imposed criteria to limit eligibility or the level of support provided. With little prospect of rapid increases in local government budgets over the next decade, a continuation of this process of transferring responsibility to lower-tier bodies and limiting eligibility appears likely.

Along with the UK's vote to leave the European Union, these political tensions between centralization, devolution and decentralization will continue to dominate UK social security in the decades to come.