

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gsi.gov.uk

Our Ref: Fol 2317 & IR 340

DATE: 28 July 2017

Dear Neil Lovatt,

Thank you for your Freedom of Information requests of 2 June and 1 July 2017.

On 2nd June you asked:

The Scottish Government has the right under the Scotland Act 2016 (S28) to introduce new welfare benefits with a specific carve out on their right to introduce a new pension benefit or one related to old age.

"This exception does not except providing assistance by way of pensions to or in respect of individuals who qualify by reason of old age."

This obviously begs the question in respect of women affected by the changes to the age at which pension entitlement arises (WASPI women) and does the carve out above mean that the Scottish Government would be precluded from providing a new benefits to these women before their retirement age as this would by definition not be a pension.

Therefore can I see all and any correspondence between the Scottish Government and the DWP in respect of the analysis of this issue including any requests for such clarification from the Scottish Government in respect of the ability to provide a new welfare benefit before the official State Pension Age.

On 1st July you asked:

I am writing in respect of the request detailed here :

https://www.whatdotheyknow.com/request/discussion_and_analysis_of_the_r

And note I have not received any further correspondence within the timescale stipulated by yourselves. Can you provide an update of the position.

Please accept our apologies for the delay in responding and note that we uphold your review request.

I enclose a copy of two letters to the Scottish Government outlining the UK government's position. Relevant information relating to communications between ministers is also held. However it engages an exemption from disclosure which protects relations within the United Kingdom. Disclosure in this instance would, or would be likely to, prejudice relations between

the Scottish and United Kingdom governments and Section 28 (1) of the Freedom of Information Act therefore applies.

Section 28 is a qualified exemption. This means that it can only be relied upon where the public interest in maintaining the exemption outweighs the public interests in disclosing the information.

There is a public interest in furthering the understanding of, and participation in, the debate of issues of the day which will allow individuals to understand decisions made by the administrations affecting their lives.

However, the correspondence in this instance was provided in-confidence and the Department is satisfied that on balance the public interest in maintaining the exemption outweighs the public interest in disclosure.

The correspondence that we have enclosed sets out the UK Government's position on how devolved powers may be used in regard to the issue you raise. The UK Government view is that the wide-ranging powers that were transferred to the Scottish Parliament gives the Scottish Government the ability to provide support to people before they reach State Pension age and the State Pension is paid.

We have, however, always been clear that the matter of how these devolved powers are used is entirely for the Scottish Government to consider and determine. The powers under section 28 of the Scotland Act 2016 (exception 10 to Section F1) give the Scottish Parliament the ability to create new benefits in Scotland. This is a significant power and one that gives the Scottish Parliament the competence to provide financial support in devolved areas of responsibility.

Whilst this power cannot be used to provide pensions to people who qualify by reason of old age, many of those affected by changes to the State Pension age will not yet have reached State Pension age. As a result, this broad power does offer the Scottish Government the possibility of introducing new financial support to help this group before they become eligible to draw the state pension.

The power to create new benefits is just one of the substantial welfare powers that the Scottish Parliament can use. Others include the ability to make discretionary payments and pay top-up to any reserved benefits.

Used together these substantial welfare powers give the Scottish Government possibilities to meet a range of challenges.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Strategy Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dpw.gsi.gov.uk or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk