



Child Poverty Action Group (CPAG) in Scotland

Scotland Bill 2015 briefing (revised 22.06.15)

- **CPAG in Scotland** has extensive expertise on the UK social security system and its existing interaction with devolved sources of financial support. We have played a lead role in informing the development of recently devolved areas of 'welfare' such as the Scottish Welfare Fund. We are also the leading national provider of independent second tier welfare benefits training, information and case work support for advisers and other frontline workers.
- **Our Vision** is of a society free from child poverty where all children can enjoy their childhoods and have fair chances in life to reach their full potential. We believe that a key high level purpose of the benefits system, wherever social security powers lie, should be to eradicate and prevent future child poverty.

The Scotland Bill 2015; devolution of 'welfare' related powers

1. CPAG in Scotland has not taken a position on the extent to which powers should be devolved to Scotland. Our concern is how social security powers can be used to prevent child poverty, wherever those powers lie. In seeking to inform the Smith Commission and wider deliberations on devolution we have made the following key points:

- 'welfare powers' must be matched with adequate fiscal and economic powers
- a clear delivery mechanism is needed to protect minimum entitlements across Scotland, and that provides adequate oversight, accountability and administrative efficiency
- care is needed to ensure devolution is not a cover for further cuts under the guise of localisation
- newly devolved powers must be used specifically to reduce child poverty and tackle wider inequalities.

2. CPAG believes that the draft clauses, if enacted, potentially provide real opportunities to reduce child poverty and wider socio-economic inequality in Scotland (see below). It is worth noting however that the bulk of social security powers will remain reserved – as will other levers for tackling poverty, including the national minimum wage and wider economic and fiscal powers.

3. We also note that the clauses take a narrow interpretation of some of the recommendations made by the Smith Commission. In particular paragraph 54 of the Smith Commission report was widely understood to suggest that a power to create new benefits in areas of devolved responsibility should be enacted. The Bill, however, does not confer such powers. Instead it allows the Scottish Government to create new benefits only in areas where *welfare* powers have been devolved (such as disability) and a power to make discretionary, short term payments in limited circumstances. The Bill does however go further than the draft clauses published on 22 January in creating a power to top up reserved benefits.

4. It is in this context that we highlight the following issues in relation to the Scotland Bill 2015 in advance of its second reading in the House of Commons.

Benefits for disabled people and carers

5. As introduced, the Scotland Bill 2015 would give the Scottish Parliament legislative control over certain benefits for disabled people, including the power to replace or amend benefits such as DLA, PIP and attendance allowance. Clause 19 would give the Scottish Parliament the power to introduce

'a benefit which is normally payable in respect of

(a) a significant adverse effect that impairment to a person's physical or mental condition has on his or her ability to carry out day-to-day activities (for example, looking after yourself, moving around or communicating), or

(b) a significant need (for example, for attention or for supervision to avoid substantial danger to anyone) arising from impairment to a person's physical or mental condition; and

for this purpose the adverse effect or need must not be short term.'

6. This definition of 'disability benefit' and the use of examples in clause 19(a) and 19(b) could potentially lead to an overly restrictive interpretation of the power and limit the kind of replacement benefit the Scottish Government has the power to introduce.

7. As well as constraining the Scottish Parliament's ability to take a different approach to the design of benefits for disabled people in Scotland, the provision could potentially prevent certain groups currently eligible from accessing devolved disability benefits. Terminally ill claimants with less than six months to live, for instance, currently have automatic eligibility to DLA or PIP under 'special rules' and from the Explanatory Memorandum (at para 149a) it seems that the government position is that the use of the word 'normally' would continue to allow access. It is not mentioned whether the automatic entitlements to DLA and AA for people undergoing regular dialysis and to the DLA mobility component for those with severe visual impairments, who are blind and deaf and double amputees would be included. This would seem to strain the word 'normally' to the point that the definition as a whole lacks coherence. In any event, it is not clear why the Scottish Parliament should not be able to choose to base entitlement to disability benefits on the condition that the claimant has. The Bill would therefore benefit significantly from a widening of the definition of 'disability benefits' to avoid this doubt.

8. The power to create a new benefit to replace carer's allowance is also un-necessarily narrow. Clause 19(4) currently states that the power to provide such a benefit only extends to people who are "16 or over, not in full-time education, and not gainfully employed". This drafting limits the Scottish Government's policy making discretion and prevents it from designing a benefit for carers balancing caring commitments with part time work or study.

9. There is a need for these restrictions to be addressed if the Scottish Parliament is to have sufficient flexibility to create benefits which are adequately responsive to the needs of disabled people and carers in Scotland.

Discretionary Payments – Top Up of Reserved Benefits

10. If passed, clause 21 of the Scotland Bill 2015 would confer a power on the Scottish Parliament to provide financial assistance to any person who is entitled to a reserved benefit and who also

“appears to require financial assistance, in addition to any amount the individual receives by way of reserved benefit, for the purpose, or one of the purposes, for which the benefit is being provided”.

11. This power relates to paragraph 54 of the Smith Commission Report which recommended that the Scottish Parliament be given *“new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP.”*

12. This clause is a welcome addition to the Bill, particularly given the Explanatory Memorandum confirms that the power could be used ‘to provide on-going entitlement to specific or all benefit claimants’ (para 159). CPAG in Scotland believe this could provide a means of augmenting the incomes of low income households. However, it is not clear that this power extends to topping up payments of tax credits (which was also left unclear by the Smith Commission report). This is important to clarify as tax credits provide only partial financial support with childcare costs and extra help for low income families with a disabled child, amongst other groups

13. Notably absent from the Scotland Bill 2015 is a power to create *‘new benefits in devolved areas’* as recommended by the Smith Commission. Paragraph 54 of the Smith Commission’s report was widely understood to recommend that a power to create new benefits in areas of devolved responsibility should be enacted. Instead, the Bill only confers a power to create new benefits where *welfare* powers have been devolved. Thus while new disability benefits might be created, new benefits relating to health, education or social care could not.

14. While we acknowledge that devolving a power to create new benefits in any area would not guarantee the alleviation of, nor a reduction, in child poverty; such a measure would provide the Scottish Parliament with an opportunity to directly augment the income of families by, for example, creating new health or education related benefits for families with children.

Discretionary Housing Payments

15. Discretionary Housing Payments (DHPs) are extra payments that can be made to claimants in receipt of housing benefit who need further assistance to cover their rent.

16. Clause 22 devolves powers over DHPs to the Scottish Parliament, allowing it to set eligibility criteria and limits on the amount spent on DHPs. As is currently the case, the power to make DHPs will only extend to those who are already in receipt of housing benefit (or universal credit) and who appear to require further financial assistance to meet housing costs.

17. We believe the requirement that applicants be in receipt of housing benefit should be removed. Removing this requirement would enable the Scottish Government to use DHPs to completely mitigate the impact of the bedroom tax. Currently, those who lose entitlement to housing benefit as a result of the bedroom tax are also precluded from accessing DHPs.

18. CPAG are also concerned that the Scotland Bill introduces a reservation not present in the draft clauses. Clause 22 precludes those who would otherwise be eligible from accessing discretionary housing payments if their need *“arises from reduction, non-payability or suspension of a reserved benefit as a result of an individual’s conduct (for example, non-compliance with work-related requirements relating to the benefit) unless (a) the requirement for it also arises from some exceptional event or exceptional circumstances, and (b) the requirement for it is immediate.”*

19. This potentially excludes people who have been sanctioned or had their benefits suspended due to perceived non-compliance with conditions attached to a reserved benefit from accessing DHPs.

Discretionary Payments and Assistance

20. Clause 23 of the Scotland Bill will devolve the power to make payments to households with short term needs in order to avoid risk to their wellbeing. It also allows grants to be made to those who might otherwise be in prison, hospital, a residential care establishment or other institution, or homeless or otherwise living an unsettled way of life, and who appear to require the assistance to establish or maintain a settled home.

21. Similar powers have already been devolved to the Scottish Parliament through the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013. These powers enable the Scottish Government to establish the interim Scottish welfare funds (which administers crisis grants and community care grants) and gave the Scottish Parliament competency to pass the Welfare Funds (Scotland) Act 2015 which gives the SWF legislative underpinning.

22. Our main concern in relation to clause 23 is that Exception 8 is narrowly drafted and does not include 'families under exceptional pressure' amongst the categories of person potentially eligible for 'occasional financial or other assistance'. This group is currently eligible for community care grants under the interim Scottish Welfare Fund and were also eligible for predecessor Social Fund administered by the DWP. Failure to reference this group in the Scotland Bill 2015, and put beyond doubt the protection of families under exceptional pressure as a priority group in their own right, could put the health and wellbeing of some of Scotland's most vulnerable families at serious risk.

23. Clause 23 also states that powers will not include the ability to make a payment, "*where the claimants entitled to reserved benefits has been reduced or suspended as a result of non-compliance.*" We urge the Parliament to remove this clause which explicitly prevents the Scottish Government from mitigating the damage caused by an increasingly punitive sanctions regime and provides a vital safety net for individuals and families who might otherwise find themselves destitute.

24. We are concerned that this clause would result in the needs of vulnerable people going unmet not only in relation to sanctions but also in other areas where 'conduct' is an issue. It is well documented, for instance, that people with mental health problems struggle to manage the processes necessary to make a successful claim to employment and support allowance and have benefit stopped through failing to return forms or attend medicals.

Universal Credit – Housing Costs

25. Clause 24 of the Scotland Bill 2015 will devolve power over certain aspects of the housing element of universal credit. These powers would enable the Scottish Government to, for instance, ensure that the housing element of UC is sufficient to cover the rent charged by the landlord and keeps up with increasing private rents. The power would also enable the Scottish Government to eradicate the bedroom tax. The clause would also enable claimants to have their housing benefit (or the housing element of universal credit) paid directly to their landlord.

26. If adequately resourced and carefully planned, this new power could have a direct impact on levels of child poverty (as measured after housing costs to reflect the actual disposable income of

families). It is worth noting, however, that once universal credit has been fully introduced, the housing element of pension credit will remain reserved. This means that responsibility for covering housing costs will shift from the Scottish Government when a person reaches pension credit age.

Universal Credit – Administration

27. Clause 25 devolves administrative powers over universal credit – though this power can only be exercised following consultation with and the agreement of the UK government. Devolution of this power could enable the Scottish Government to ensure, for instance, that the main carer in a household (rather than the ‘nominated individual’) receives the universal credit payment. The provision could also allow for universal credit to be received by claimants on a weekly or fortnightly, rather than monthly, basis. In determining these rules governing the frequency and nature of payments it is essential that the claimant preference is the starting point.

Employment Support

28. Clause 26 of the Scotland Bill contains powers which would devolve employment support programmes such as Work Programme and Work Choice to the Scottish Government. This could allow for initiatives to be developed that are more suited to the local labour market, local skills and local employers. This could help to minimise the imposition of arbitrary and inappropriate job-seeking tasks that can undermine claimants’ efforts to move into work and increase the individual’s chance of being sanctioned.

29. It is important to note that while the draft clauses devolve delivery of employment programmes, their policy and operation would still be restricted by UK Government policy in relation to conditionality, including when sanctions are applicable and what conditions must be met by job seekers.

General and administrative concerns

30. In addition to the substantive powers highlighted above, the following general aspects of the devolution of welfare powers that must be taken into account at every stage in the process of legislating for and implementing change. These considerations can be summarised as follows:

- It is vital that in devolving aspects of the social security system claimants and their families are not disadvantaged as a result of administrative difficulties stemming from the transfer of powers. The importance of this issue cannot be overestimated with existing and extremely common difficulties include poor information sharing between and within agencies (such as the DWP and local authorities), correspondence going missing or not being registered and staff error.
- Eligibility for one benefit (such as DLA or PIP) is often used as a ‘passport’ for access to another (such as employment and support allowance or universal credit for full-time students). Difficulties may arise where a ‘passporting’ benefit (such as DLA/PIP) is devolved, while the other (such as the disabled child element of universal credit) is not. This could result in a situation whereby the Scottish Government changes eligibility criteria for one benefit, thereby increasing entitlement to a second, administered by the UK Government. There is a need for the UK and Scottish Government to identify all relevant passported

benefits and ensure that working agreements and information sharing arrangements are in place.

- There is a need to ensure that individuals are aware of how their existing claims will be affected by the devolution of social security powers to Scotland. There has been great uncertainty over the last few years for many people in receipt of benefits (particularly DLA) as eligibility criteria and procedures for accessing benefits have changed repeatedly. It is therefore important that, where possible, claimants are not subject to even more uncertainty and financial insecurity.
- Devolution of policy responsibility needs to be accompanied by clear proposals for the delivery infrastructure required to ensure minimum standards of entitlement are protected across Scotland with adequate accountability and oversight. In the long term CPAG believes this is likely to be best achieved through establishment of a national Scottish benefits agency. A delivery agreement with the DWP is also an option, providing continuity during the transition period, but might restrict opportunities for policy divergence in the future. The other alternative, delivery by local authorities carries real risks, including the erosion of national standards of delivery, a lack of transparency and an increasingly confusing landscape for claimants.

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