Further Written Evidence from CPAG in Scotland in response to Call for Evidence on Welfare Reform (Further Provision) (Scotland) Bill

1.0 General comments on the Bill and its provisions

As stated in oral evidence to the Committee on 17th April 2012 the Child Poverty Action Group (CPAG) in Scotland is in favour of the Bill and the acknowledgement of the need for a tight timetable – to ensure devolved provisions can be amended consequential to the changes set out in the UK Welfare Reform Act 2012.

However as the Committee has recognised, the Bill deals with only one of the areas where the Scottish Parliament and Government needs to act to respond to, and mitigate, UK welfare reform.

CPAG in Scotland would urge the Committee to ensure that equal, if not more, urgency, attention and scrutiny is given to:

- the detailed regulations that will follow on from the Bill in relation to passported benefits
- the legislative framework that will be required to underpin adequate successor schemes to replace the discretionary Social Fund (community care grants and crisis loans) and council tax benefit. Along with Shelter, CAS, Poverty Alliance, Save the Children and many others CPAG believes that however the replacement social fund scheme is delivered, there must be a clear, national framework established in law setting out who is eligible for help.
- the wider action needed to mitigate the impact of reforms, in particular ensuring frontline agencies are supported to ensure families across Scotland have access to high quality advice and information on the changes and the benefits that they will be entitled to.

Given the evidence submitted to the Committee by Professor Paul Spicker we would also urge the Committee to seek confirmation that the Scottish Government is satisfied that it has the legislative competence to both amend passporting arrangements and ensure adequate legislative underpinning for social fund and council tax benefit replacement.

2.0 Passported benefits and changes to ESA

It is also important to note that the Bill only covers changes relating to the introduction of universal credit and personal independence payments, and does not include provisions relating to the time limiting of contributory ESA and the abolition of ESA in youth. However there are passported entitlements that include these as qualifying benefits (e.g., individual learning account (see Explanatory Note para 46). CPAG would like assurance to be sought that powers exist that allow these to be amended (e.g. to provide for national insurance credits to act as a qualifying benefit where ESA entitlement has run out).
3.0 Information sharing

CPAG would urge the Committee to seek assurance that Scottish Ministers are satisfied that the UK Welfare Reform Act 2012 allows for adequate information sharing between the DWP and welfare service providers in Scotland. Section 131 of Welfare Reform Act 2012 does include reference to local authorities in Scotland but it would be useful to clarify that this reference is sufficient to allow the information sharing required in Scotland to administer devolved arrangements for social fund, council tax benefit and passporting. This is particularly relevant to any national framework for provision that the Scottish Government might wish to make. Section 131(11) does not appear to include Scottish Ministers in the categories of ‘qualified persons’ with whom data can be shared, unless specifically prescribed as such by the Secretary of State, or accepted as ‘providing services to a local authority’. We would suggest that urgent clarification should be sought on a) whether the UK Act allows the Secretary of State to share information with Scottish Ministers or others providing services to them for this purpose on its face; or b) whether he is prepared to prescribe as such to assist the Scottish Ministers in developing or delivering devolved welfare schemes.

4.0 Proposed Subordinate Legislation

CPAG in Scotland understand it is usual for amendments to secondary legislation to be made by negative procedure and the Bill reflects this. However given the scale of the changes required, the importance to so many families and the link to achievement of the Scottish Government’s wider national outcomes (in relation to, for example, improving life chances, reducing inequality and improving health) we would urge the Committee to consider whether it is possible for the first regulations made under the new powers in the Bill that amend existing regulations to be subject to the affirmative procedure. It is worth noting that this kind of approach was taken in the UK Act in relation to universal credit regulation making powers for the UK Government. The Act (s 43), gives a list of the areas covered by affirmative resolution, for example, calculation of income and capital, though it does not include passporting benefits. To give a Scottish example, the extension of Free School Lunches to low income working families did involve an amendment to primary legislation – the Education (Scotland) Act 1980. However, the amendment simply referred to a tax credit as may be prescribed. The detail of who would actually benefit from the power was entirely left to secondary legislation.

Given that in either case, the regulations can only be accepted or rejected in their entirety and there is no provision for amendments we also believe it is worth considering the super-affirmative procedure where, as we understand it, Parliament has an initial opportunity to comment on a draft before a final version is laid for approval in the normal way.

Whichever approach is taken it is absolutely vital that draft regulations are made available and adequate opportunity given to scrutinise and suggest amendments before they are laid. CPAG in Scotland’s view is that without
such scrutiny the Committee will be unable to consider the impact of the use of these powers on the people of Scotland.

If the UK Government is able to provide full details of its plans for universal credit to the Scottish Government in June 2012 we believe this should give ample time for scrutiny of the Scottish plans for passporting before April 2013.

In the meantime we look forward to the Scottish Government consultation on the approach to be taken to passporting, committed to by the Cabinet Secretary in her evidence to the Health and Sport Committee in November 2011 and we would welcome further information on the timetable for such consultation.

5.0 Further comment on regulations to follow this Bill on ‘passported’ benefits and eligibility for them

CPAG in Scotland believes that the need to review passporting arrangements for devolved benefits is a real opportunity to maximise the level of support offered to families in the face of massive pressures and maximise the take up of for example free school meals, school clothing grant, energy assistance and support with access to leisure and transport. Such benefits play a crucial role in supporting families and contributing to national anti-poverty and solidarity objectives. We therefore urge the Committee to seek assurance that the approach of government in Scotland will be to:

- at the very least ensure that current levels of entitlement are maintained when universal credit and personal independence payment are introduced
- ensure that new passporting arrangement avoid early cliff edges and work disincentives inevitable if support is withdrawn as parents enter work or begin to increase their incomes
- Ensure access to passported benefits is simple to administer and access. For example universal credit should provide all the information needed to trigger passported education and health benefits without the need for additional form filling and applications
- take full account of the wider role of passported benefits and models the costs and benefits of more inclusive approaches to passporting and the role they can play in meeting wider health, education, fuel poverty and inclusion objectives
- ensure minimum eligibility criteria for key benefits such as free school meals are set nationally to ensure fairness and consistency for low income families across Scotland
- ensure that passported benefits are looked at alongside support for council tax and the social fund replacement, in order that their
interaction and withdrawal do not combine to create even greater work disincentives.

Having analysed different approaches to passporting CPAG believes receipt of any universal credit or any personal independent payment should generally be enough to trigger entitlement to relevant passported benefits. Our modelling of alternative approaches suggests that all of the alternatives are problematic - inevitably creating additional complexity, work disincentives, a risk of reduced take-up and associated reduction in impact.

Existing alternative gateways to passported benefits that are not based on benefit entitlement should also be maintained, to ensure that no-one loses out. This is particularly pressing in the case of PIP, which will redefine many people as no longer ‘disabled’ for the purposes of the benefit system, without any change in their needs.

CPAG therefore urges the Committee to, at the very least, call on Scottish Government to model and make public the costs and benefits of passporting on the basis of any receipt of universal credit or PIP for comparison with the costs of developing additional means testing, associated administration and reduced impact on wider objectives.

John Dickie
Head of CPAG in Scotland
jdickie@cpagscotland.org.uk
0141 552 3656

23 April 2012
s.53, amended by the Education (School Meals) Scotland Act 2003

For example, Regulation 3 of SSI 2009/178

Scottish Parliament Health and Sport Committee, 4th Report, 2011 (Session 4), para 170