CPAG in Scotland Parliamentary Briefing
Stage 1 Debate: Welfare Reform (Further Provision) (Scotland) Bill
Wednesday 23 May 2012

1.0 General comments on the Bill and its provisions

The Child Poverty Action Group (CPAG) in Scotland is in favour of the Bill - to ensure devolved provisions can be amended consequential to the changes set out in the UK Welfare Reform Act 2012.

Analysis\(^1\) suggests that the overall impact of UK government tax and benefit changes will be to increase child poverty across the UK by 800,000 by 2020, a trend that would wipe out the progress made in Scotland since 1998/99. Whilst the new Universal Credit introduced by the UK Act should, considered in isolation, reduce child poverty this reduction is, according to the independent Institute for Fiscal Studies (IFS) ‘more than offset’ by wider changes to tax and benefits. UK welfare reforms clearly pose a substantial threat to the wellbeing of children across Scotland.

In the face of damaging UK welfare policies CPAG therefore urges the Scottish Parliament to ensure that devolved powers are used, in the face of UK cuts, to protect, and where possible enhance, the support available to low income families both in and out of work.

As the Welfare Reform Committee has recognised, the Welfare Reform (Further Provision) (Scotland) Bill deals with only one of the areas where the government in Scotland needs to act to respond to, and where possible, mitigate, UK welfare reform.

**CPAG urges Parliament 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 and funding settlement 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. CPAG welcomes the current commitment that social fund interim successor schemes will be set within a national framework of criteria with a single application and ring fenced funding, with permanent arrangements to be put on a statutory footing. We urge MSPs to ensure that a clear, national framework is established in
law setting out who is eligible for help, with an independent review process for challenging decisions, as soon as possible.

- 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.

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

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 to maximise the take up of, for example, free school meals, school clothing grants, 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 MSPs 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 the early cliff edges and work disincentives inevitable if support is withdrawn too early 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 MSPs to, at the very least, call on the Scottish Government to model 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 the reduced impact on wider objectives.

3.0 Passported benefits and changes to ESA

It is 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 Employment Support Allowance (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 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).

4.0 Precudure for scrutinising proposed subordinate legislation

CPAG welcomes the Welfare Reform Committee’s recommendation that stakeholders should be actively engaged in shaping and amending the detailed regulations that will determine whether families are entitled to vital devolved benefits like free school lunches, clothing grants and fuel poverty programmes, and the Cabinet Secretary’s commitments in this regard.

Furthermore we 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 urge MSPs to consider ensuring the first regulations made under the new powers in the Bill that amend existing regulations are 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 Parliament 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 welcome and look forward to the Scottish Government consultation on the approach to be taken to passporting.

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

CPAG is supporting frontline agencies to maximize family incomes in the face of UK welfare reform. We have produced information materials, a Universal Credit Handbook and are delivering oversubscribed training courses across Scotland on the detailed implications of the changes set out in the UK Welfare Reform Act 2012.

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