

# Honouring the vow

**The prospect of independence in Scotland was likened by some to that of a messy divorce. Yet the negotiations involved in continued union and constitutional reform may prove messier still. The *Smith Commission Report* and publication of draft clauses that followed have forced both UK and Scottish governments to confront the questions familiar to many couples involved in a power struggle. Can they reach a workable arrangement? How will they split the Bills? And, most importantly, how will this affect the kids? Hanna McCulloch looks at whether Scotland and Westminster can learn to live together for the sake of the children.**

**C**HILDREN, particularly children living in poverty, could well feel the impact of this constitutional uncoupling for years to come. Despite the fact that the aspects of social security earmarked for devolution account for only 14 per cent of the sum currently spent by the UK government on social security in Scotland,<sup>1</sup> they still have the potential to significantly alter the incomes of many families.

Furthermore, given that child poverty was such an important issue during the referendum campaign (Nicola Sturgeon referred to the ability to end child poverty as one of the ‘big prizes’ of an independent Scotland<sup>2</sup>), the question now is whether devolution of these particular powers could provide the chance to take a different approach in Scotland. At a time when UK cuts to social security benefits are arguably the most significant factor contributing to an increase in child poverty, to what extent will the Smith Commission’s recommendations and subsequent legislation give the Scottish Parliament the power to move in a different direction, away from the policies which, according to the Institute for Fiscal Studies, will see up to 100,000 more children living in poverty in Scotland by 2020? And what impact will further devolution of benefits have on social security and its role in preventing child poverty across the rest of the UK?

Regardless of the outcome, the increased public engagement on socio-economic equality and poverty that emerged over the course of the ref-

erendum debate was very welcome. The run up to the vote was characterised by positive messages about the future of social security, whether in the language of ‘social protection’ used by the Scottish government<sup>3</sup> or the idea of constitutionally enshrined ‘social and economic rights’ championed by Gordon Brown in the closing days of the campaign.<sup>4</sup> This engagement was invigorating and looks likely to continue to remain a feature of Scottish politics. Surely increased public concern at the scandal of child poverty is another of the ‘big prizes’ won during the process of referendum – a prize that campaigners and politicians alike must now capitalise on.

## The vow and the veto

With the votes counted, it was clear that Scotland would remain in the UK. However, there was also a clear expectation that substantial further powers would soon be devolved to Scotland, including control over aspects of ‘welfare’. This expectation stemmed from ‘the vow’, a pledge made by the main UK parties in the days before the referendum, setting out a process and timetable for the delivery of further devolution if Scotland voted to stay within the UK.<sup>5</sup> Following the referendum, the Smith Commission was established to consider, in the cold light of day, what those powers might include. It was tasked with bringing together the five parties represented in the Scottish Parliament to agree which ‘financial, welfare and taxation’ powers should be devolved to Scotland. Its report was published in November

2014, and draft clauses intended to give its recommendations effect were published by the UK government on 22 January.<sup>6</sup>

The *Smith Commission Report* was produced almost impossibly quickly, given the significance of its contents. Recommendations included the devolution of the main disability benefits and the housing element in universal credit, and administrative control over employability programmes such as the work programme. The draft clauses broadly reflect the contents of the report, although appear to take the narrowest interpretation of the proposed social security-related powers to be devolved. For instance, like many others, CPAG in Scotland had interpreted the recommendation that Holyrood have the power ‘to create new benefits in areas of devolved responsibility’ as being intended to give the Scottish Parliament the power to create new benefits in *all* areas of devolved responsibility. While this would not have guaranteed a different approach north of the border, it may have provided an opportunity for Scotland to take targeted action to reduce child poverty by creating new child and family benefits or by reinstating benefits, such as the health in pregnancy grant, that have been scrapped in recent years. But the UK government has translated it more narrowly, drafting a clause that would only give Holyrood the power to create new benefits in areas where *welfare* powers are devolved. This appears to rule out the possibility of new child and family benefits, unless they are expressly housing or disability related.

The draft clauses also place a duty on Scottish ministers to consult the UK Secretary of State about ‘the practicality of implementing the regulations’ relating to Scotland’s equivalent of the housing element in universal credit. They state that the Secretary of State must give ‘his or her agreement as to when any change made by the regulations is to start to have effect.’<sup>7</sup> Those in favour of maximum devolution immediately protested that this clause would give the UK government a *de facto* veto over Scotland’s new benefits. Alistair Carmichael, Secretary of State for Scotland, responded by insisting that it was no more than a practical precaution, intended to ensure that the Scottish government did not introduce measures that were technically unfeasible, given the need for computer systems to be co-ordinated.<sup>8</sup> Scottish lawyers have already expressed their relish at the prospect of judicial review in the event that consent is denied,<sup>9</sup> particularly given that the draft clauses state that it should not be ‘unreasonably withheld’. Given the thorniness of the much litigated question of what is and what is

not reasonable, it is a provision that could keep them busy for quite some time.

### CPAG’s role

Throughout October 2014, the Smith Commission took steps to engage with the public, calling for views and proposals. While the timescale for resolving such complex and important issues was arguably insufficient to ensure genuine civic engagement, CPAG used the opportunity to ensure that our expertise on social security and understanding of child poverty were brought to bear on the Commission’s negotiations.<sup>10</sup>

We drew the Commission’s attention to a number of principles that we felt must be considered if its findings were to contribute to the eradication of child poverty. First, any further devolution of power should be underpinned by clear strategic objectives, including the eradication of child poverty in Scotland. This was based on a belief that, if it was to be effective, any package of powers must be coherent and fulfil a purpose, rather than being a disparate and arbitrary collection of capabilities.

Second, the devolution of social security powers should not be considered in isolation from all those wider areas of government policy that have an impact of poverty, such as taxation, the minimum wage and parental employment rights. There was a risk that, if the Commission failed to consider these links, the result could be a Scottish Parliament with the power to design and implement social security benefits, but no control over UK government poverty-generating policies that drive their demand. Furthermore, it was important to recognise the political difficulties that would be faced in attempting to invest in devolved social security in line with expectations raised during the referendum campaign with, for example, only limited income tax levers and without the powers to reduce pressures on the system.

We also suggested that, in order to have a good chance of being workable and meaningfully contributing to the eradication of child poverty in Scotland, any settlement would need to allow for certain questions to be answered satisfactorily. Though the ink is barely dry, the time has come to consider these questions, and ask whether the proposed new settlement can withstand a little scrutiny on the issue of child poverty.

### Has the implementation been thought through?

Just as important as the extent of the new powers is the issue of whether they can be implemented fairly and efficiently, without causing

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technical or administrative chaos.

The housing element of universal credit, for instance, might appear relatively straightforward to administer at Scottish or local level. It aligns with an area of policy that is already devolved and, given that housing benefit is already administered by local authorities, will build on the local knowledge of the issues involved in delivering a housing-related benefit.

There are, however, also practical challenges, which will require immediate consideration. Above all, changes to the housing element in Scotland will require ongoing changes to a new and already stretched UK-wide IT system. It will also be crucial for the two governments to work closely on this issue in order to ensure that any new administrative interfaces do not increase potential for misunderstanding, missing information and maladministration.

Similar challenges exist in relation to the proposed devolution of disability benefits. Both governments will have to negotiate the fact that changing eligibility criteria for disability benefits in Scotland will have an impact on entitlement to other benefits administered at UK level. It is vital that people who qualify for a Scottish disability benefit continue to access these additional sources of income. Again, ensuring that this is the case will require both governments to work together on the technical, financial and political difficulties that could arise.

Though far from insurmountable, these complex interactions must be thrashed out sooner rather than later if low-income families in Scotland are to avoid falling down new administrative cracks.

#### **Has the case been made for the devolved powers to be used specifically to reduce child poverty?**

The Smith Commission was concerned with which powers should be devolved to Scotland, not how they should be used. But do the powers offer an opportunity to reduce child poverty in Scotland?

If adequately resourced and carefully planned, the devolution of the housing element of universal credit could help reduce housing costs for families, with a direct impact on levels of child poverty as measured after housing costs. At the same time, administrative powers in relation to universal credit could ensure that main carers are paid directly and that payments are made in ways that help families to budget.

#### **Draft Scotland clauses 2015**

- The Scottish Parliament will have the power to set income tax rates and bands for Scotland.
- The Scottish Parliament will receive a proportion of the VAT raised in Scotland. This will amount to the first 10 percentage points of the standard rate – ie, 50 per cent of the current 20 per cent VAT rate. The Scottish Parliament will not have the power to influence the level of VAT.
- The Scottish Parliament will have increased borrowing powers, to be agreed with the UK government. This is intended to support capital investment and budgetary stability.
- The Scottish Parliament will have the power to vary the housing costs element in universal credit, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependants. The UK Secretary of State must be consulted and approve timeframes for any such measures.
- The Scottish government will be given the administrative power to change the frequency of universal credit payments, vary the existing plans for single household payments, and pay landlords directly. The UK Secretary of State must be consulted and approve timeframes for any such measures.
- Powers over the following benefits will be devolved to the Scottish Parliament:
  - benefits for carers, disabled people and those who are ill: attendance allowance, carer's allowance, disability living allowance, personal independence payment, industrial injuries disablement allowance and severe disablement allowance;
  - benefits which currently comprise the regulated social fund: cold weather payments, funeral payments, Sure Start maternity grants and winter fuel payments;
  - discretionary housing payments.
- It will have all powers of support for unemployed people through employment programmes, mainly those currently delivered through the work programme.

However, as noted, the power to create new benefits in areas other than those where welfare is specifically devolved is absent. This could have provided a chance to make a real difference to families living in poverty. The Commission also recommended that Scotland be given the power to supplement existing Department for Work and Pensions (DWP) benefits. Again, this is absent from the draft clauses and could have provided an excellent opportunity to supplement family incomes. For instance, the value of many family benefits has been eroded in recent years by the cap on uprating. These powers could have provided an opportunity to restore their value and bring them into line with the cost of living in Scotland, helping to put money directly into the pockets of young families.

Also notable is the fact that neither the report nor the draft clauses have made any suggestion that the Scottish Parliament might be given the power to top up benefits administered by HM Revenue and Customs. Child benefit is one

such benefit which, given its high take-up rate, could arguably be one of the more effective tools at the disposal of the Scottish Parliament in terms of combatting child poverty.

### **Is the proposed package likely to result in increased respect for the dignity of people claiming benefits?**

Again, the devolution of power to Scotland provides no guarantees, but offers plenty of opportunities to increase respect for the dignity of claimants. Devolution of employment programmes, for instance, potentially allows for programmes to be developed in Scotland that are more suited to the local labour market, local skills and local employers. It could also minimise the imposition of arbitrary and inappropriate job-seeking tasks that undermine the dignity of claimants as well as their efforts to move into work.

That being said, devolving employment programmes without wider powers relating to social security benefits and the operation of Jobcentre Plus will limit the Scottish Parliament's ability to effect change. While a Scottish 'work programme' might better react to local skills and employment opportunities (and perhaps be better at reducing the number of work programme-related sanctions), its policy and operation would still be limited, and even dictated, by UK government policy in relation to when sanctions are applicable and what conditions must be met by job seekers.

The proposed devolution of disability benefits also provides an opportunity to develop a fairer and more dignified system for determining eligibility. The method of delivery will be central to the success or failure of any new benefit, and options might include delivery agreements with the DWP, a new Scottish benefits agency, or an extended role for local authorities.

Local authorities (which already carry out assessments to determine eligibility for social care services) may be an obvious choice. However, there is a very real risk that handing funding for disability benefits to local authorities could result in those resources being pooled with existing social care budgets, potentially depriving many disabled people of control as to how their money is spent. Furthermore, given that many disability living allowance and personal independence payment claimants are not currently receiving any social care service from the local authority, there is a risk that many vulnerable people would lose out completely on a vital source of income. This is particularly worrying at a time when resources are being

squeezed. Care needs to be taken to ensure that any devolution is not a cover for further cuts to social security under the guise of 'localisation' – with the well-documented hardship this has caused families, particularly in England, as a consequence of council tax reduction and social fund localisation. While Scotland has, to date, largely avoided this by establishing national replacement schemes, local delivery of the discretionary Scottish welfare fund has, in itself, led to significant variation in how support is accessed and provided dependent on where people live, a pattern that must be avoided as further welfare powers are devolved. Whatever delivery mechanism is developed then, it must be accompanied by clear proposals for the infrastructure required to ensure Scottish-wide minimum standards of entitlement are protected.

### **Conclusions**

So it seems that many of our questions remain unanswered and, amidst such uncertainty, that only one thing is clear – devolution comes with no guarantees. The ongoing negotiations, their eventual outcome and the legislation that follows will, however, provide a real opportunity to take a different approach to elements of social security that we cannot afford to miss. Nevertheless, the vast bulk of benefit support for families both in and out of work looks set to remain reserved, along with other key levers for tackling poverty, including the minimum wage, child benefit and wider economic and fiscal powers. Anti-poverty campaigners will need to continue to focus attention on the fundamental changes needed in the approach of UK politicians to social security, low pay and job insecurity, as well as to the opportunities opened up through devolution of powers to Scotland. ■

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- 1 Scottish Parliamentary Information Centre Briefing, January 2015, [www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/)
- 2 Nicola Sturgeon Speech, March 2014, [www.scotland.gov.uk/News/Speeches/nicola-sturgeon-childpoverty](http://www.scotland.gov.uk/News/Speeches/nicola-sturgeon-childpoverty)
- 3 <http://www.scotland.gov.uk/Publications/2013/11/9348/8>
- 4 "Gordon Brown 'this is Scotland's moment of destiny'", the *Guardian*, 12 September 2014
- 5 'The Vow', *The Daily Record*, 15 September 2014
- 6 *Scotland in the UK: an enduring settlement*, HM Government, 2015, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397079/Scotland\\_EnduringSettlement\\_acc.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf)
- 7 ss20(4) and 21(3) Draft Clauses Scotland 2015
- 8 BBC News, 'No veto on proposed welfare changes', 25 January 2015
- 9 *Draft Clauses on Scotland's Constitutional Future*, Brodies, 22 January 2015
- 10 CPAG's submission to the Smith Commission can be found at [www.cpag.org.uk/content/cpag-scotland-submission-smith-commission](http://www.cpag.org.uk/content/cpag-scotland-submission-smith-commission)

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