



Child Poverty Action Group (CPAG) in Scotland

Proposed amendments to the Scotland Bill 2015 Clauses 19-30 Part 3

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. We have set out elsewhere¹ the potential opportunities and risks the proposed devolution of social security powers creates for tackling child poverty, and the issues that we believe need to be considered to ensure low income families' ability to access financial support is protected and enhanced. Our second reading briefing on the Scotland Bill² also set out the opportunities the social security related clauses of Scotland Bill present in relation to the potential to prevent and reduce child poverty, as well as the key issues that need to be considered as the Bill progresses. These issues include:

- the implications of a the narrow definition of 'disability' at clause 19
- the limitations placed by clause 19 on the eligibility criteria for any new devolved carers' benefit
- the limitation on eligibility for discretionary housing payments within clause 22
- the limitations placed on eligibility for discretionary payments in clause 23 e.g. when someone has been sanctioned
- the failure to include 'families under exceptional pressure' amongst the categories of person potentially eligible for 'occasional financial or other assistance' at clause 23.

We therefore urge MPs to support the following amendments to the Scotland Bill 2015, which we believe both reflect the policy intentions of the Smith Commission and better protect the ability of families in Scotland to access the financial support they need.

Clause 19: Benefits for disabled people (amendment 128)

2. As introduced, clause 19 would give the Scottish Parliament legislative control over certain benefits for disabled people, including the power to replace or amend benefits such as disability living allowance (DLA), personal independence payment (PIP) and attendance allowance (AA).

¹ [http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/Meeting%20Papers/Public_Papers\(7\).pdf](http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/Meeting%20Papers/Public_Papers(7).pdf)

² <http://www.cpag.org.uk/content/cpag-scotland-briefing-advance-second-reading-scotland-bill-2015>

3. CPAG in Scotland believes that the definition of 'disability benefit' used in the Bill is overly restrictive and could place unnecessary limits on the kind of replacement benefit the Scottish Government has the power to introduce. It may not, for example, allow the Scottish Government to introduce a benefit to assist people with very low level disabilities or those for whom the effect of their disability is largely financial.

4. Consider, for example, a person who had incontinence at night as a result of a damaged bladder. S/he might face additional weekly costs as a result of the need to wash sheets every day and frequently replace his/her mattress. It is feasible that the Scottish Government may wish to introduce a benefit that could provide support to people in circumstances such as these, where the main effects of an impairment are financial. Clause 19, as it stands however, would make this problematic, given its focus on 'day to day tasks' and 'significant needs (for example a need for supervision to avoid risk)' used in the definition.

5. 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.

We urge MPs to support amendment 128 which removes these potentially damaging restrictions

Clause 19: Benefits for Carers (amendment 48)

6. The power to create a new benefit to replace carer's allowance is 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.

7. 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.

We urge MPs to support amendment 48 which would remove these unnecessary restrictions.

Clause 22: Discretionary Housing Payments (amendments 116 and 129)

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 would devolve power over DHPs to the Scottish Parliament, allowing it to set eligibility criteria and place 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. CPAG in Scotland believes the requirement that applicants be in receipt of housing benefit should be removed. This would enable the Scottish Government to use DHPs to completely mitigate the impact of the 'bedroom tax' (as is its current policy intention). Currently, those who lose entitlement to any housing benefit as a result of the 'bedroom tax' (because the percentage deduction reduces their eligible rent to the point that it is considered affordable) are precluded from accessing DHPs. We therefore believe that the requirement that a person be in receipt of housing benefit should be removed.

18. CPAG in Scotland is also concerned that clause 22 of the Bill would preclude those who would otherwise be eligible for DHPs from accessing them if their need "*arises from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct*", other than in exceptional circumstances where the need for the payment is urgent.

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. This could be problematic for claimants who, for example, have had their housing benefit wrongly suspended as a result of the application of a sanction relating to a reserved benefit. This is a common occurrence in which the claimants need for a DHP could be said to result as 'arising from' non-payability of a reserved benefit.

We therefore urge MPs to support amendment 116 removing this restriction, and to support amendment 129 removing the requirement to be entitled to housing benefit to get a DHP.

Clause 23: Discretionary Payments and Assistance (amendments 117, 130 and 131)

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 fund (SWF - paying 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 SWF 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.

CPAG in Scotland therefore urges MPs to support amendments 130 and 131.

23. Similarly to the concerns outlined above, the restriction of the exception in cases where a claimant has been sanctioned or failed to meet conditions attached to a reserved benefit is unwarranted. It also restricts the powers already devolved to the Scottish Parliament, by seeming to require that to access a crisis grant an applicant must face a further emergency or disaster in addition to having been sanctioned, as clarified in para 166 of the Explanatory memorandum.

CPAG in Scotland therefore urges MPs to support amendment 117.

For more information contact

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