

Citizens Advice Scotland Briefing

Scotland Bill Part 3 - Welfare

Committee Stage

30 June 2015



generations of good advice

Citizens Advice Scotland (CAS), our 61 member bureaux and the Citizens Advice Consumer Service helpline form Scotland's largest independent advice network. Advice provided by the Scottish CAB Service is free, independent, confidential, impartial and available to everyone. Our website, Adviceguide, also provides the public with up to date information on a range of topics. We are champions for both citizens and consumers and in 2013/14 we helped over 330,000 people deal with over a million issues. We want a fairer Scotland where people as citizens and consumers are empowered and their rights respected.

Summary

This briefing focusses on Welfare amendments tabled to the Scotland Bill addressing areas where the Bill does not appear to meet the intent of the Smith Agreement. Citizens Advice Scotland is concerned that, as currently drafted, there are risks of detriment to CAB clients, who sought advice on 207,875 new benefits issues in 2013/14.

1. The power to create new benefits in areas of devolved responsibility
2. Definition of disability benefit
3. Definition of carer
4. Sanctions and the Scottish Welfare Fund
5. Universal Credit administrative 'vetoes'
6. Restrictions to employment programmes

1. The power to create new benefits in areas of devolved responsibility

Paragraph 54 of the Smith Commission Report stated 'The Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility.' This is entirely absent from the Bill. When the draft clauses were published, CAS was particularly critical of this omission, as our interpretation of Smith was that the Scottish Government could craft its own welfare system outside of Universal Credit, taking into account the needs of Scotland in areas such as education, health and transport, complementing its ability to top up reserved benefits included in the Bill.

CAS supports Labour and SNP amendment NC31 and would urge all MPs to vote in favour of it.

2. Definition of disability benefit

The Smith Commission Report (paragraph 49) provided that the Scottish Parliament should have powers over 'benefits for carers, disabled people and those who are ill'. Paragraph 51 of the Report stated that the Scottish Parliament 'will have complete autonomy in determining the structure and value [of these benefits] or any new benefits or services which might replace them'.

As currently drafted, clause 19 of the Bill defines 'disability benefit' as:

'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'.

This definition of disability benefit, as well as the use of examples in clauses 19(a) and 19(b), is unnecessarily restrictive and could limit the autonomy that the Scottish Parliament has over the kind of replacement benefit it can introduce.

As well as limiting the Scottish Parliament's ability to take a different approach to the design of benefits for disabled people in Scotland, this clause could potentially prevent certain people – many of whom are currently eligible for disability benefits – from accessing devolved disability benefits. For example, terminally ill claimants with less than six months to live are automatically eligible for DLA or PIP. The current definition of disability benefit in clause 19 would mean that such claimants would not be eligible, unless they could establish the impact of their condition on day-to-day activities or a significant need.

CAS supports Labour amendment 128 and would urge all MPs to vote in favour of it.

3. Definition of carer

The definition of carer in clause 19 is unnecessarily restrictive. It limits the definition of a carer to someone who is aged 16 or over, not in full-time education, not gainfully employed, and looking after a disabled person in receipt of a disability benefit. This definition reflects the existing criteria for Carer's Allowance. The clause as currently drafted would therefore limit any future development, for example, to support young carers or those who wish to study while undertaking a caring role. The clause should be amended to ensure that the Scottish Parliament is able to develop its own definition of a carer and therefore exercise full autonomy over the benefit being devolved as envisaged by Smith.

CAS supports Labour and SNP amendment 48 and would urge all MPs to vote in favour of it.

4. Sanctions and the Scottish Welfare Fund

Clause 23 devolves the power to make payments to people to meet a short-term need in order to avoid a risk to their well-being. It also allows grants to be made to those who have been or might otherwise be in prison, hospital, a residential care establishment or other institution, homeless or otherwise living an unsettled way of life, who appear to require assistance to establish or maintain a settled home.

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 enabled the Scottish Government to establish the interim Scottish Welfare Fund (SWF) and the Scottish Parliament to pass the Welfare Funds (Scotland) Act 2015, which gives the SWF a permanent statutory basis.

We are concerned that clause 23 adds a restriction to the existing devolved powers to exclude individuals who are subject to a benefit sanction, unless the requirement for it

arises from ‘some exceptional event or exceptional circumstances and the requirement is immediate.’

This provision would therefore significantly limit the ability of the Scottish Government to continue to provide assistance through the SWF to people who have had their benefit payments suspended or sanctioned. Current guidance explicitly clarifies that they should be able to apply for help “in the same way as any other applicant”¹. This is of particular concern given the harm caused by an increasingly punitive sanctions regime, which often puts people into crisis.

CAS supports SNP amendment 117 and would urge all MPs to vote in favour of it.

5. Universal Credit administrative ‘vetoes’

The Bill as introduced contains a so-called ‘veto’ over the Scottish Government’s devolved power to make regulations on certain areas of Universal Credit. Whilst CAS recognises the practical need for joint working where the Scottish Government has power to make regulations in this area but the UK Government is responsible for ensuring that those regulations are carried out in practice, as drafted the process does not appear to be equitable, does not appear to be consistent with the Sewel Convention and may have the effect of causing the same stand-off and claimant confusion as if no process were outlined in the clauses.

Whilst the intention appears that the timing of any changes needs to be subject to negotiation on what is practically possible to do, there is scope for wide interpretation of the circumstances in which it might be considered ‘reasonable’ for the Secretary of State to withhold their agreement to the Scottish Government utilising its devolved power to make regulations in this area. Differing priorities between the Governments could cause this to be a major area of contention in the future.

CAS believes the Bill should be amended to ensure that the Scottish Government can exercise its devolved function, whilst at the same time ensuring that practical considerations are reflected in the legislation.

CAS supports SNP amendments 118 and 119, and Labour amendments 5 and 6 which would have the same practical effect. We would urge all MPs to vote in favour of whichever is called.

6. Restrictions to employment programmes

The Smith Commission Report (paragraph 57) provided that the Scottish Parliament should have powers over **all** employment programmes currently contracted by the DWP. However, clause 26 of the Bill restricts the powers devolved to employment support programmes that last at least a year. It is unclear why this restriction has been included; the Bill as drafted would appear to only devolve the Work Programme and Work Choice, which is inconsistent with Smith. Clause 26 as currently drafted also does not clearly devolve powers over the Access to Work scheme.

CAS supports Labour amendments 113 and 114 and would urge all MPs to vote in favour of them.

¹ The Scottish Welfare Fund Guidance (paragraph 6.9)