Implementing the Smith Agreement:

The UK Government’s Draft Legislative Clauses

Introduction

The Poverty Alliance is the national anti-poverty network in Scotland, formally established in 1992. We are an independent organisation with almost 200 members; with members drawn from the voluntary and public sectors, trade unions, researchers, faith groups and individuals with direct experience of poverty. Our aim is to work with others to enable communities and individuals to tackle poverty. We have a number of key policy areas that provide the focus for our activities; these are addressing low incomes, supporting services to address poverty, enhancing the participation of people with direct experience of poverty in policy development processes, and addressing attitudes to poverty. These concerns were reflected in our response to the Smith Commission.

The Smith Commission Report

The Poverty Alliance largely welcomed the recommendations of the Smith report, despite many of them falling short of what we had hoped for. We did not take a position on the independence referendum, but we believed that on both sides there was a clear appetite for change and for a new way of doing things, especially around welfare. The Poverty Alliance welcomed the prospects of new powers and looked forward to working alongside interested partners to find ways in which these could benefit the most vulnerable in our society.

Unfortunately, when the draft clauses were published it became apparent that the powers promised in the Smith report were to be much more restricted that we could have ever imagined. We believe the speed of these negotiations has been too fast and not allowed for the much need conversation and civil participation to enable the building of a system which works for those in poverty.

Poverty in Scotland

There are currently 820,000 people living in poverty in Scotland.\(^1\) Child poverty is at 19 percent, and almost two thirds of children in poverty live in a household where someone works.\(^2\) There are over 400,000 people in Scotland on low pay\(^3\), and recent research by the Poverty Alliance has identified over 167 emergency food

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\(^3\) Scottish Living Wage Campaign (2014) http://slw.povertyalliance.org/about/why_is_it_important
providers in Scotland. This is just a very brief overview of the current situation of poverty in Scotland, but it is important that these facts are at the forefront of our minds when thinking about new powers for Scotland and how they can improve the lives of the most vulnerable in our society.

The draft clauses

The Poverty Alliance has been disappointed by the narrow, restrictive nature of the draft clauses. We believe the powers recommended in the Smith report represented very real possibilities for change in how we do things in Scotland and we hope that the clauses will be amended to ensure that this is still the case.

Universal Credit

The Poverty Alliance welcomes the limited powers over Universal Credit that are to be devolved to the Scottish Parliament. We believe these represent opportunities to make meaningful changes to people’s lives, and especially for the lives of women, as it could allow the Scottish Government to make the payment to the main carer in the household, rather than the nominated individual.

However, we are uncomfortable with the clause that the Scottish Government should be required to consult with the Secretary of State before making any changes. The phrase ‘such not to be unreasonably withheld’ is open to interpretation and will depend very much on Governments of the day. The reality is that this power could be used as a veto against the Scottish Government making the changes it wants.

The power to create a new benefit

This is something which the Poverty Alliance called for in our recommendations to the Smith Commission and we welcomed it in the report. Paragraph 54 of the Smith Report was widely understood to suggest that as well as having the power to create new benefits in devolved areas, that the Scottish Parliament would also be given the ability to ‘top up’ reserved benefits. We do not believe that the draft clauses represent the intention of the Smith report. Instead, the Scottish Parliament has been given the power to create new benefits in only areas where welfare powers have been devolved such as disability and carer’s benefits.

In terms of reserved benefits, the clauses restrict this power to meet a short term need to avoid risk to the well-being of an individual. This means that the Scottish

http://povertyalliance.org/news_pubs/reports/connections_report

Government will be able to make payments to individuals on a case-by-case basis, but they will not be able to will create permanent entitlement to any new payments.\footnote{UK Government (2015) Scotland in the United Kingdom: An enduring settlement https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf}

The Poverty Alliance argued for the power to create a new benefit because we believed that it would be useful in tackling poverty. One example we gave was the re-creation of a lone parent grant which would help those families who are at high risk of being in poverty. The way the draft clauses are currently written would prevent this.

**Disability benefits**

The Poverty Alliance hopes that the powers to create new disability benefits will provide a real opportunity for us to create a system which has respect for the individual, and dignity at its heart. Alongside other colleagues in the third sector, we have called for the roll out of PIP to be halted in Scotland to minimise the stress for claimants who will potentially have to get used to a new system again in two years’ time. It is disappointing that the draft clauses did not recommend a halt in the roll out.

**Discretionary payments**

The Poverty Alliance is particularly concerned by the wording in Clause 18 which states that financial or other assistance can be made with the aims of meeting a short term need, but goes on to state that ‘this exception does not except providing assistance where the requirement for it arises from reduction, non-payability or suspension of a benefit as a result of an individual’s conduct…unless the need for it arises from some exceptional event or exceptional circumstances, and the need is immediate as well as short term’. The ultimate effect of this clause is that the Scottish Government cannot mitigate against the effects of the punitive conditionality and sanctions regime, being retained by the UK Government, and removes a final safety net for many. Unless this clause is amended, we can expect to see more people pushed into destitution as a result of the welfare reform regime.

**The Work Programme**

Clause 22 refers to the devolution of employment programmes. While we welcome this, it is difficult to see how meaningful change can be made when sanctions and conditionality remain reserved to the UK Government. We hope that whatever replaces the Work Programme will work more with claimants in a way that is suitable for them rather than issuing sanctions and expecting that to help people into the labour market. The following case study is about the result of a sanction from the Job Centre, however, we would argue that the impact remains the same regardless of where the sanction is issued.
CASTE STUDY: Craig's Experience: *Until this happened everything was fine, until my sanction.*

Craig is a man in his mid-30s who lives in East Ayrshire. He was interviewed during a visit to a food bank which is operated by a social enterprise project. Craig has accessed the food bank on a few occasions as a result of a recent sanction to his benefits. He was sent to the food bank by the Job Centre. This is an extract from the interview transcription in which he explains the situation which led to his sanction, an apparent miscommunication between state departments, and the impact which the loss of income has had.

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Over the last two month I was sanctioned by the DWP. Basically I’ve had no income, no means of getting food so I’ve been relying on the food bank and stuff like that, and see if it wasn’t for them, basically I’d have nothing at all.

At the time, I was meant to be doing a daily sign-in, but I told my coach worker that there’s nae way I can do this at all. I says I’ve got community service a Tuesday, Wednesday and a Thursday. I says I can come in and sign on a Monday and a Friday, that’s no problem at all, but the other days it’s just no convenient at all. I don’t finish community service until 4.30 and by the time I get to the Job Centre it’s closed. And the next thing I ken I got a text message through saying that my claim had been closed down so I had to go and open a new claim. I eventually got a payment today which was for £12, I was expecting like £140, so I’m going to have to phone them up again. £12. I’ve got two kids at home as well. It just doesnae dae me at all. I’ve told the job centre. I’ve put a reconsideration form in as well explaining the situation. To be honest I’ve been left high and dry, I’ve not had any feedback from them whatsoever, every time I’ve been in to speak to someone I’m getting nowhere, I’m getting passed from one person to the next person. I said to them today, how can you expect me to live for two weeks on £12? I get my kids every Friday, Saturday and Sunday, so I’ve got to have food. I got a food bank voucher on Friday for me and my two kids.

Like others, we also have concerns about the length of time it will take for the Work Programme to be devolved, and at what stage we will start to see the benefits for claimants.

Changes to carers benefit

The draft clauses restrict the Scottish Parliament’s ability to create a new benefit for Carer’s to those over 16, not in full time education and not gainfully employed. By removing any discretion from the Scottish Government on this, we are limiting the life opportunities for carers in Scotland.
Conclusion

The Smith Commission report had its critics from publication, but the Poverty Alliance was not one of them. We found much to welcome in the report and we were delighted to see the inclusion of the power to create a new benefit.

However, we were deeply disappointed with how this emerged in the draft clauses. The clauses have been restrictive and leave limited powers to make meaningful change in the fight against poverty.

We were also particularly disappointed to see what is ultimately a veto given to the Secretary of State over any future changes to the devolved elements of Universal Credit by the Scottish Government.

Devolving the work programme without powers over sanctions and conditionality make it difficult to see how meaningful change can be made for claimants.

It is not too late to make changes and we hope that both Governments will consider the feedback received from organisations in the third sector, representing Scotland’s most vulnerable people.

More information

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