Inquiry into Implementing the Smith Agreement - the UK Government’s Draft Legislative Clauses

SCVO response
3 March 2015

Summary

- Gift aid needs to be considered alongside the devolution of income tax; there are implications for charities relating to the collection and level of Gift Aid which need addressing immediately.

- There is no coherence across the draft clauses relating to welfare. They also appear to be restrictive with some needing further clarification. That said, we hope that the Scottish Parliament uses those powers it does gain to the full.

- SCVO strongly supports the devolution of the management and revenues of the Crown Estate.

- A number of issues with other clauses have also been raised buy third sector organisations, in particular relating to equalities law. The need for clarity in all clauses is essential.

- Democratic engagement over the content of the draft clauses and implementation of the final clauses must be wide, purposeful and inclusive. It is only with a high level of engagement that we will achieve the best we can from this process for all.

- Including within the Bill a review mechanism would give everyone the chance to highlight any issues that arise over the coming years, providing space and time for discussion, review and change.
Our response
SCVO welcomes the opportunity to respond to this consultation and would like to contribute to the following:

Tax
Gift Aid is a relief on income tax that benefits charities and community amateur sports clubs (CASCs); last year Gift Aid provided over £1 billion to the sector in the UK. Although the issue of Gift Aid is not covered in the draft clauses, income tax is. Therefore Gift Aid is clearly a practical issue in relation to the draft clauses on income tax that needs addressing.

If income tax rates were to differ between Scotland and the rest of the UK, and Gift Aid continued to be a direct relief on income tax, then there would be complications for charities and CASCs, and for donors. For example, a donor would likely need to declare at the time they make a donation whether they are a Scottish or rest-of-UK tax payer. Since this is calculated on where a tax-payer lives for the majority of the financial year, this may not always be clear to donors at the time of donation – what would happen, say, if they moved from one jurisdiction to another later in the year? Moreover, it is unclear whether tax-payers are currently aware that this is how their tax status for income tax purposes is defined – tax-payers would need to be educated that this is the case.

For charities and CASCs, other complications may arise. For example, complications would occur for UK-wide charities where it wouldn’t necessarily be clear whether they should be collecting tax under the Scottish, the rest-of-UK, or both systems. The question of what to do with donors who may live in the opposite nation to that in which the charity or CASC operates would also need to be addressed – which Government would pay which rate of Gift Aid? It would also need to be decided clearly who would hold the responsibility for keeping track of where donors reside – tax authorities, or charities and CASCs?

How all of this will operate within the new fiscal framework is clearly a complex matter, and we hope to see some solutions proposed that will make it as straight-forward as possible for our members to stay within the law, to claim what they are entitled to, and to ensure that organisations retain the trust and confidence of Scottish donors. SCVO has been working closely with the Charity Tax Group on these issues, and organised a seminar on the ins and outs of various options for Gift Aid with our sector earlier this month. We would be happy to share more detail of this with the committee if that would be helpful.

Welfare
Disappointingly there are issues of concern relating to the welfare draft clauses. The draft clauses appear in the main to be incredibly restrictive: rather than giving the power to the Scottish Parliament to design its own benefits system even within a limited number of welfare areas, the draft clauses circumscribe tight parameters which potentially limit the possibilities and options for real change. This is not really devolving power in a genuine sense.

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The Scottish Council for Voluntary Organisations (SCVO) is a Scottish Charitable Incorporated Organisation. Registration number SC003558.
Clarity now over the interpretation of some of the welfare clauses would also be helpful. There have been some concerns raised by members about how, if political tensions arise between the two Governments, the clauses concerning the agreement of Ministers (draft clauses 20 and 21) could enable political manoeuvring rather than ensuring the timely and smooth transfer of benefits. There have already been arguments between the two Governments about the interpretation of these clauses – we are concerned that if interpretations are not clear across all clauses then we will see significant delays and wrangling over their implementation, which will ultimately affect individuals in our society who are already facing poverty and destitution.

Having said that, with the new powers coming to Scotland as outlined in the draft clauses, there is plenty that the Scottish Government will be able to do to alleviate poverty. In previous submissions we asked for coherence of powers devolved to enable straightforward devolution and implementation. Whilst that hasn’t happened, like others in the sector we hope that the Scottish Government is as pro-active as possible in using these powers to the full.

**Specific welfare clause issues**

As explained above, we have concerns about the prescriptive nature of the welfare clauses, and about how they are listed as exceptions to Schedule 5 of the Scotland Act 1998. There are various concerns across the third sector about the workability or otherwise of the welfare clauses as they stand, and we relate some of those here (more details can be found in responses from others in the sector who work directly with claimants):

- **Employment Support** – draft clause 22 proposes that the Department for Work and Pensions (DWP) continues to control the ‘demand’ side of employment support programmes through its retention of the sanctions regime, while the Scottish Government will gain control of the ‘supply’ side through the running of the work programme. This clearly limits the scope of the Scottish Government to restructure employment support programmes: the Scottish Government will fund the Work Programme and be accountable for its performance, but providers will have to apply the UK sanctions system run by the DWP.

- **Benefit Restrictions** – benefits have been devolved with restrictions, potentially making it difficult to change those benefits. For example, draft clause 16 relating to Carers Allowance retains the following UK Government restrictions: you must be 16 or over, not in full-time education, and not gainfully employed. These restrictions will clearly limit the scope of the Scottish Government to redesign this benefit, and it is not clear why these restrictions have been retained.

- **Additional Income** - whilst the document accompanying the draft clauses makes it clear that any new benefits will result in additional income for an individual and not be lost to individuals through UK-level policy decisions, it is less clear whether additional income through changes to existing benefits will be protected.

Issues such as these clearly need to be resolved to ensure successful implementation of the new clauses.
Crown Estate
SCVO strongly supports the devolution of the management and revenues of the Crown Estate to the control of the Scottish Parliament. Following devolution to the Scottish Parliament, we would like to see immediate consultation undertaken by the Scottish Government on how these assets are managed and how the generated revenue is allocated. This should involve consideration of how Crown Estate assets could be further devolved to communities.

Other issues
Issues with other clauses
While noting that the committee is primarily concerned with issues arising from the implementation of tax, welfare and crown estate clauses, it is worth noting that there are other clauses which are ambiguous – such as draft clause 24 on equal opportunities – and so it may be worth the committee’s time to consider these as well. It is also worth noting that while details of the Barnett formula and the new fiscal framework is still to be worked out, careful consideration must be made too of the impact on poverty that changes could have.

The need for clarity
As has been discussed above in relation to welfare clauses, there has already been some political wrangling over interpretation of the clauses. Along with the need that has already been recognised for positive working relationships between the two Governments to make sure that this round of devolution is as successful as the last, consideration should be given to redrafting the clauses in such a way to provide greater clarity and reduce as much as possible the scope for alternative readings.

Democratic engagement
Throughout the Smith process, here in Scotland there has been unprecedented levels of engagement with democracy and politics. As the committee is aware, there were over 18,000 submissions to the Smith commission consultation, and numerous engagement events. The third sector in Scotland supported communities through listening to their members, service users and supporters, and relaying those messages in their own responses to the commission. SCVO too held an engagement event in Glasgow with Lord Smith, and supported our partners to do the same in Stirling and Inverness. This level of democratic engagement in what could otherwise have been a very closed process is something that we are glad of, and that we hope to see in the coming months on the draft clauses and as the new Scotland Bill moves through the UK parliament. It is only with this level of engagement that we will achieve the best we can from this process for all.

Review
The issue of including within the Bill a review mechanism for the changes has been raised by some of our members and partner organisations. The suggested time for this review is five years after the Bill has achieved Royal Assent. This would give everyone the chance to highlight any issues that arise from the contemporary mix of reserved and devolved powers, providing space and time for discussion, review and change.
Conclusion
It is clear that there are still a number of significant issues that need to be addressed to ensure the successful implementation of the Smith agreement, the UK Government’s current draft clauses, any mixture of the above or indeed another set of devolution related clauses that may or may not be formed post-May.

Whatever happens with the clauses, we stress: the need to consider coherence across policy areas and powers to enable the Scottish Parliament to have control in devolved areas in a way that is not overly complicated in its interplay with powers that remain reserved; the need for continued democratic engagement as these powers are being devolved and implemented so that the people of Scotland have a real voice in this current round of devolution; and clarity on any clauses that are introduced to prevent as much as possible political wrangling post-Royal Assent.
About us
The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers. The sector manages an income of £4.9 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1,600 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:
- has the largest Scotland-wide membership from the sector – our 1,600 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change.

Further details about SCVO can be found at [www.scvo.org.uk](http://www.scvo.org.uk).