

## **Scotland Bill**

### **ENABLE Scotland**

#### **About ENABLE**

ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with around 5000 members in 44 local branches and via individual membership.

Around a third of our members have a learning disability. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers. ENABLE Scotland provides social care services to more than 2,000 people across Scotland who have learning disabilities or mental health problems.

Our vision is that all people who have learning disabilities have the choice and control to live the life that they choose, and have equal opportunities to take part in the life of their communities. ENABLE Scotland was founded on the principles of mutual support and community involvement. Our members have been pioneers in this area ever since our founder members set up ENABLE Scotland in 1954.

As a membership led organisation, ENABLE Scotland took a neutral stance during the Independence Referendum process, instead encouraging and supporting our members to take up their right to vote, and access the information they needed to make an informed choice. We look forward to continuing to work with the Scottish Government, the Scottish Parliament, the UK Government and other stakeholders to ensure that the voices of people who have learning disabilities in Scotland continue to be heard throughout progress of the Scotland Bill through Parliament.

ENABLE Scotland is actively working with MPs to inform the Scotland Bill as it progresses through Parliament. Our evidence to the Committee is in line with our briefings to MPs at Committee Stage, and will continue to be our focus as the Bill progresses through Commons and the House of Lords.

#### **Scotland Bill**

ENABLE Scotland welcomes the opportunity to comment on the Scotland Bill. ENABLE Scotland previously commented on the Draft Scotland Clauses which informed the current Bill. It is our priority that the development of the Scotland Bill is informed by the full engagement and participation of carers and disabled people, and results in positive outcomes for these groups.

ENABLE Scotland's evidence focuses on Scotland Bill Clauses relating to welfare and employment support.

#### **Clause 19: Disability and Carers Benefits**

ENABLE Scotland would like to draw the Committee's attention to Clause 19(4) and the definitions contained therein.

ENABLE Scotland is concerned as to the prescriptive nature of Clause 19(4) 'disability benefit' and 'carers benefit' and the impact of the restrictive definitions used within it. ENABLE Scotland would emphasise that it is not desirable for a constitutional document to define to whom benefits are payable.

It is our belief that the power of the Scottish Parliament to create new benefits for carers and disabled people in Scotland must not unduly restricted by clauses that pre-determine the criteria on which the new benefits can be distributed.

In its current form Clause 19(4) defines 'carers benefit' as a '*benefit which is normally payable in respect of the regular and substantial provision of care by a relevant carer to a disabled person with a "disabled person" defined as "a person to whom a disability benefit is normally payable"*' and 'relevant carer' defined '*as person who— (i) is 16 or over, (ii) is not in full-time education, and (iii) is not gainfully employed*'.

ENABLE Scotland would suggest this is a narrow definition of a 'relevant carer'. Our analysis of this section suggests that a consequence of this could be that the power of the Scottish Parliament would be restricted in their creation of a new carers benefit. This section, in its current form, prescribes to whom carers benefits would be payable, stipulating that the recipient would be over 16, not in full time education and not gainfully employed; and requiring that the cared-for person is in receipt of disability benefit. ENABLE Scotland would suggest that this drafting will impact on the discretion of the Scottish Parliament thereafter to create carers benefits that are fit for purpose and meet the needs of **all** carers in Scotland, and not just those who fit this narrow definition.

As per our analysis on 'relevant carer', the current definition of 'disabled person' used in the Bill is restrictive and could place unnecessary limits on the kind of replacement benefit the Scottish Parliament has the power to introduce. It may not, for example, allow the Scottish Parliament to introduce a benefit to assist people with low level disabilities.

The Command Paper stated that Clause 16, of the Draft Legislative Clauses, which informed Clause 19 of the Scotland Bill, provides the Scottish Parliament with legislative competence over provision for disability and carers benefits. Further, that *the Scottish Parliament will have the power to create new benefits or other payments to replace the existing benefits should they wish and the autonomy to determine the structure and value of these as set out in paragraph 54 of the Smith Commission Agreement*.<sup>1</sup>

These drafting concerns were identified by ENABLE Scotland in the Draft Legislative Clauses and raised with the then Secretary of State for Scotland, Alastair Carmichael MP, on 12<sup>th</sup> February 2015. It is unfortunate that the opportunity to amend the draft clauses before they formed part of the Bill was not taken however we continue to work with MPs in the hope that this can be rectified as the bill passes through Parliament.

ENABLE Scotland would suggest that the Committee scrutinise this clause to assess the impact on the discretion of the Scottish Parliament.

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<sup>1</sup> Scotland in the United Kingdom: An enduring settlement, HM Government, January 2015 at Paragraph 4.3.1

## Clause 23: Discretionary Payments

As a direct result of the welfare reform agenda:

- Households with disabled adults and children have faced a total reduction of £1,900 per year in annual income.<sup>2</sup>
- This is three times the reduction experienced by non-disabled households.

The Smith Commission Agreement stated the Scottish Parliament would have ‘*new powers to make discretionary payments in any area of welfare*’<sup>3</sup>.

This was understood by ENABLE Scotland, and many others, to mean the Scottish Parliament would have the power to top-up existing benefits and mitigate against the effects of the punitive sanctions that is pushing people to dangerous levels of poverty.

However, Clause 23 provides that any such payments must be for a ‘*short-term need that requires to be met to avoid a risk to the well-being of the individual.*’

This, arguably, somewhat curtails this power. ENABLE Scotland emphasise that financial help could be required by some people to avoid the risk to their well-being, and that this might not necessarily be a short term intervention. This clause should be amended to provide the necessary flexibility to authorities in Scotland who can make a judgement based on the individual’s circumstances rather than being time-limited in their support.

Clause 23 (lines 30-37) prescribes 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 (for example, non-compliance with work-related requirements relating to the benefit) unless the need for it arises from some exceptional event or exceptional circumstances, and the need is immediate as well as short term.*’

ENABLE Scotland understands that the current drafting would prevent the provision of discretionary payments where requirement for financial assistance is as a result of sanctions.

We would highlight that in 2014, six out of ten Employment Support Allowance (ESA) sanctions were applied to people with mental health problems and learning disabilities<sup>4</sup>. Recent evidence has shown that those who are currently ‘vulnerable’ are more likely to have difficulties complying with agency rules and therefore more likely to receive a sanction.<sup>5</sup>

ENABLE Scotland would emphasise that to not resolve this in the passage of the Bill would be a disappointing outcome for improving the lives of people with learning

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<sup>2</sup> Financial Impact of Welfare Reforms on Disabled People in Scotland, Scottish Government, 2014

<sup>3</sup> The Smith Commission: Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014 at 54

<sup>4</sup> UK Government FOI request March 2014

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/295384/foi-79-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295384/foi-79-2014.pdf)

<sup>5</sup> Note: view SFHA and HSEU, part of the Coalition of Care and Support Providers in Scotland via:

<http://paulspicker.wordpress.com/2014/12/13/the-sfha-submit-evidence-on-sanctions/>

disabilities, to whom the current sanctions regime has been particularly unfavourable.

### **Clause 26: Employment Support**

ENABLE Scotland would emphasise that the 'Access to Work' scheme is one of the most important elements of the employment support system for disabled people. It provides critical support to meet the practical support needs of disabled people in the workplace, for example, a British Sign Language interpreter for a Deaf employee during meetings, or a job coach for an adult with learning disabilities.

It is disappointing, therefore, that the Scotland Bill, in its current form, does not legislate to devolve responsibility of Access to Work in Scotland to the Scottish Parliament.

This is despite the relevant part of Clause 26 reading:

*'The making of arrangements for... (a) assisting disabled persons to select, obtain and retain employment'*

With 'arrangements' including: *'providing or arranging for the provision of facilities, support or services to any person'*

ENABLE Scotland believes that the devolution of Access to Work is necessary to deliver integrated and accessible Employment Support in Scotland. Failure to devolve Access to Work in parallel with the 'Work Programme' and 'Work Choice' will limit access for disabled jobseekers in Scotland and increase bureaucracy for specialist support organisations and employers.

'Access to Work' does not currently integrate well with employability programmes that are not delivered by the DWP. For example, if you are a person on Work Choice you can use Access to Work to get pre-employment support in interviews or agree support whilst transitioning into work. Persons supported by the Employability Fund, (Scottish Government's largest training programme), do not have access to that support and face increased negotiation and bureaucracy to get the support.

Given that post-devolution the employability programmes will not be delivered by the DWP, failure to devolve Access to Work in parallel will limit access for Scottish jobseekers and increase bureaucracy for specialist support organisations and employers.

Furthermore, Access to Work is currently delivered via call-centres with the intention to move to more online processes. Access can be very difficult for people who have learning disabilities in Scotland who need to phone up and answer questions on cost and support. Most often this is done with a support worker/family member, but this needs to be arranged in advance and be difficult to negotiate.

If Access to Work in Scotland is coordinated by the same body delivering the programme, the support is likely to be more accessible.

ENABLE Scotland would urge the Committee to seek clarity as to how the devolved and reserved elements of employment support would work together to ensure the best employment outcomes for disabled people.

Furthermore we would suggest the Committee examine how devolved employment support programmes will intersect with reserved employment support matters, for example, conditionality of Job Seekers Allowance (JSA) and Employment Support Allowance (ESA) which will continue to be assessed and implemented by the Department for Work and Pensions (DWP).

## **Conclusion**

While our evidence highlights some potential issues to be resolved, we would emphasise that the new powers to be devolved hold substantial potential to improve the lives of disabled people and carers in Scotland. The devolution of powers must put people at the centre, going beyond administrative and structural changes and seeking to make real change in people's lives.

ENABLE Scotland look forward to continuing our work with the UK Parliament and Scottish Parliament to see devolved powers delivered and exercised to produce the best possible outcomes for disabled people and carers.