

## **Barnardo's Scotland response to the Smith Commission's call for views from civic society on further Scottish devolution**

### **Key Points**

- Our suggestions for further devolution are based on our experience of working with some of the most vulnerable children, young people and families in Scotland. Our suggestions are underpinned by the principle of creating greater coherence in support for vulnerable children, young people and families. We suggest that the debate, rather than centring on which body administers which powers, should focus on how support can most effectively and coherently be delivered to those who need it most. This should be one of the key principles to inform the Smith Commission's final recommendations.
- From this principle, we suggest a number of further powers that should be devolved into the competence of the Scottish Parliament.
- On welfare, we suggest that the full range of working age benefits should be devolved, in order to create greater coherence between Scottish public authority policy and practice, and the policies and practice of Job Centre Plus and other agencies currently run by the DWP. The Universal Credit policy also creates a barrier to effectively devolving only some parts of the welfare system. The necessary fiscal and borrowing powers to facilitate the delivery of working age benefits should also be devolved.
- On employability, job search and support powers should be devolved in order to create greater coherence between what is currently known as the Work Programme and the programmes of Skills Development Scotland.
- On employment rights, we believe there is a case to be explored for giving the Scottish Parliament the ability to 'top-up' employment rights, so that there can be greater coherence between childcare policies and parenting support policies, such as parental leave.
- Lastly, we call on all political parties to state that they will use any additional powers to address inequalities and child poverty in Scotland, and to make Scotland the best place in the world to grow up.

### **Introductory Summary**

Barnardo's Scotland remained neutral on the referendum question of whether Scotland should become an independent country. However, now that the referendum has been concluded, we would like to offer our views to the Smith Commission on further devolution. We believe that, given the referendum result and the desire of all of the political parties to gift further powers to the Scottish Parliament, there is a significant opportunity to learn from recent experience of the devolution settlement

We are particularly keen to contribute to the Smith Commission's deliberations, and the cross-party talks that will underpin the Commission by sharing some of our experiences of working with the most vulnerable young people and families in Scotland, and highlight how that experience has shaped our perspective on how the devolution settlement for Scotland can be improved.

Lord Smith of Kelvin has expressed his wish that there is a principles-led approach to further devolution to the Scottish Parliament<sup>1</sup>. The underpinning-principle to our recommendations for further devolution is one of coherence. The experience of devolution, thus far, has inevitably identified a number of areas where there is not a clear division in powers between the Scottish Parliament and the Westminster Parliament. We are concerned that this can sometimes contribute to a lack of coherence in the support that vulnerable families receive and their experiences of public services in Scotland.

Ultimately, it is our view that any new powers delivered to the Scottish Parliament should work for the most vulnerable children, young people and families in Scotland. Similarly, we call on all the political parties to state their commitment to using any new powers that come to the Scottish Parliament to tackle Scotland's significant inequalities, to address child poverty in Scotland and to make Scotland the best place in the world to grow up for the most vulnerable children.

Therefore, our suggested guiding principle for the Smith Commission is that the additional powers that are recommended for the Scottish Parliament should be selected on the basis that they deliver greater coherence of support for families in Scotland.

## **Specific areas for further devolution**

We have set out below several areas where we believe the Smith Commission should recommend devolution of powers into the competence of the Scottish Parliament. Where a particular area is reserved under Schedule 5 of the Scotland Act 1998 and we have not mentioned it below, this should be understood as a 'No comment' from Barnardo's Scotland, and should not be understood as Barnardo's Scotland expressing either a view that that power should remain in the competence of Westminster or that it should be transferred to the Scottish Parliament.

### **Welfare**

We believe there are a number of reasons why the full range of working age benefits should be devolved into the competency of the Scottish Parliament.

Cross-organisational working is a significant theme of the approach to public service reform in Scotland, supported by all political parties. This frequently means different agencies are required to plan jointly how they address poverty in Scotland and support families who are in crisis – for example in Community Planning or in the implementation of the Getting It Right For Every Child (GIRFEC) approach to children's services. However, Job Centre Plus are often the missing-link in this jigsaw, whether that is because they are not in attendance, or they have insufficient local flexibility to adapt

---

<sup>1</sup> In his letter to each of the five Political Parties on the 26<sup>th</sup> of September: <https://www.smith-commission.scot/news/lord-smith-kelvins-letter-five-political-parties-26-september-2014/>

their approach to the different Scottish policy context. We understand from Barnardo's work in Northern Ireland with vulnerable families, that the operation of a separate welfare system in Northern Ireland has enabled closer co-operation between agencies, even though there has so far been a policy of parity with the remainder of the UK welfare system. We therefore think that there are potential benefits in terms of coherence for families from a devolved welfare system in Scotland, regardless of whether there are significant changes in the level and types of benefits available.

Each of the political parties that published proposals for further powers for a devolved Scottish Parliament, remaining in the UK, suggested devolving some responsibility to the Scottish Parliament for some elements of the welfare system. Each of these sets of proposals included some element of Universal Credit. However, devolving further welfare powers on a piece-meal basis, we believe, is likely to only cause additional problems for the Universal Credit policy of keeping welfare payments as unified as possible. This would also be more in keeping with Lord Smith of Kelvin's letter to the political parties saying, 'It is imperative that our eventual recommendations do not seem, to the people of Scotland, to be a list of apparently unrelated powers'<sup>2</sup>.

Lastly, for the Scottish Parliament and Scottish Government to be able to effectively implement these powers there is clearly a need for some financial safeguards to be put in place. Devolution of Scottish welfare policy to the Scottish Parliament must also come hand in hand with assurances around the security and sustainability of funding streams to enable the Scottish Government to cover the costs of whatever policy is implemented. Primarily, welfare should continue to be funded through Annual Managed Expenditure (AME), which would protect the sustainability of Scottish welfare payments in the case of an asymmetric economic shock to the UK, although another priority would be to grant sufficient borrowing powers to the Scottish Parliament, so that a Scottish Government could make long term investments in interventions that would increase employability and create jobs. Additionally, the devolution of Scottish welfare needs to take into account UK government fiscal policies such as the cap on AME welfare spending, and ensure that these policies do not over-rule devolved welfare policy decisions.

We also note the commitment from pro-union political parties, during the referendum campaign, to protecting the Barnett Formula, which we understand to mean that any further devolution settlement should incorporate reasonable income and spending ability for a Scottish Parliament to deliver its policies, and that macro-economic policy in Scotland will continue to be part of UK macro-economic policies. Given that welfare policy is already devolved to Northern Ireland, our view is that the Parliaments of the UK need to work together to determine what shared infrastructure is needed, so that distinctive welfare policies can be delivered in different parts of the UK. Having appropriate infrastructure to deliver a separate welfare system in Scotland will be crucial to the success of this element of further devolution.

On this basis we suggest that Section F1, 'Social Security', and Section F2, 'Child Support', be removed from the list of reserved powers in the Scotland Act 1998.

## **Employability**

---

<sup>2</sup> <https://www.smith-commission.scot/news/lord-smith-kelvins-letter-five-political-parties-26-september-2014/>

In our experience there can be a complicated interaction that takes place between education, training and skills development policy (decisions taken by Holyrood) and employment and welfare to work policy (where Westminster has most of the responsibility). This creates incoherence in support for job seekers, which does not serve the vulnerable young people we work with. For example, in our experience there is little compatibility between the Work Programme and the Employability Fund programmes of Skills Development Scotland, it is therefore very difficult for a young person to switch from one form of support to another, even when it would be beneficial for them to do so.

The further devolution of the Work Programme to Scotland would allow it to become a more coherent part of the Strategic Skills Pipeline<sup>3</sup> approach, which is prevalent in Scotland. This was also the one area of the constitution where the Christie Commission suggested change:

*"We recommend the full devolution of competence for job search and support to the Scottish Parliament to achieve the integration of service provision in the area of employability."* (Paragraph 6.24)<sup>4</sup>

It has been the long-held view of Barnardo's Scotland that this is one area where devolution, manifesting as mixed responsibility, was not as effective as it could be, and it would make much greater sense for all of the powers to lie within the jurisdiction of one Parliament. This also applies for those parts of the welfare system that relate to those seeking work.

We therefore believe that 'Job Search and Support', section H3 of Schedule 5, be removed from list of reserved powers in the Scotland Act 1998.

## **Employment rights**

Section H1 of Schedule 5 of the Scotland Act 1998 reserves a number of areas of policy to Westminster, including parental leave legislation and right to request flexible working legislation. We believe that there is a case to explore, for giving the Scottish Parliament the ability to 'top-up' these rights, if there is a democratic will in the Scottish Parliament. This approach would allow rights to be increased, where it made sense to do so in coherence with other government policies, but not for a 'race to the bottom' in terms of employment rights to occur.

Childcare was a major part of the referendum debate, with both sides advancing their arguments about how it could be improved, and generally there was a focus on how children are given the best start in life during the debate. Whilst childcare is an important part of this debate, for the vulnerable families that we work with, the opportunity to make a positive choice to spend time with their children is just as important, not least because of the scientific evidence of the importance of contact between children and their parents. We believe that when considering how children are cared for, from the point of view of what is best for the child, it is necessary to consider formal (paid for or state-funded) childcare and parenting (and other forms of informal

---

<sup>3</sup> <http://www.scotland.gov.uk/Publications/2012/06/9210/8>

<sup>4</sup> Commission on the Future Delivery of Public Services, Dr Campbell Christie and others, 2011, <http://www.scotland.gov.uk/resource/doc/352649/0118638.pdf>

childcare) together, holistically. We therefore believe that there is a case to explore, for giving the Scottish Parliament appropriate powers that would allow it to create greater coherence between its childcare and parenting strategies, and the relevant employment rights.

We therefore believe that the Scottish Parliament should have the ability to 'top-up', or increase, the level of rights provided in 'Employment and industrial relations', Section H1 of Schedule 5 of the Scotland Act 1998.

### **Involvement of Children and Young People**

We would particularly like to welcome the fact that Lord Smith has agreed to ensure that there are opportunities for the public to inform the Commission's work, despite the difficult timeframe that the Commission has to work within. However, whilst we appreciate the political importance of the tight timeline set for the Smith Commission we believe that this should not overshadow the importance of making particular effort to involve children and young people, particularly those from disadvantaged backgrounds, whose views are normally most likely to be ignored in this kind of process. We would urge the Commission to take cognisance of the positive input of young people in the referendum debate and would be disappointed to see opportunities missed for young people to be involved by the time the whole process of further devolution is concluded.

### **About Barnardo's Scotland**

Barnardo's Scotland is Scotland's largest children's charity, running over 120 services across Scotland and working with over 20,000 children and families every year. We work with some of the most vulnerable and disadvantaged children and families in Scotland.

We believe in children and we believe every young person has a right to thrive. Our vision is to realise Thomas Barnardo's dream of a world where no child is turned away from the help that they need.

**For more details please contact:**

**Mark Ballard, Head of Policy, Barnardo's Scotland**

111 Oxfords Road North, Edinburgh, EH14 1ED

[mark.ballard@barnardos.org.uk](mailto:mark.ballard@barnardos.org.uk) / 0131 446 7028