

SCOTLAND BILL BRIEFING

The Scotland Bill 2015-16 is passing rapidly through the House of Commons with the minimum amount of scrutiny. This undue speed and lack of transparency means that the Bill's potential to enable progress towards gender equality is slipping by. However, opportunities remain to improve the Bill during the remainder of the Scotland Bill's passage onto the statute book.

Our organisations have advocated for a process of devolution that allows for democratic engagement with Scottish civil society. The debate on the division of power and responsibility between Holyrood and Westminster cannot just be a constitutional abstraction. The powers that are transferred will have the potential to change the lives of people in Scotland. We have argued for a participatory process, setting out how the Scotland Bill *could* signal progress for the realisation of women's rights.¹ New powers could be used to tackle women's extreme inequality within the social security system, to strengthen equalities legislation, to abolish employment tribunal fees, and to create a progressive abortion law for Scotland.

We are calling on the UK and Scottish Governments to consider the imperatives of reducing economic and social inequality within final negotiations. Critically, this includes equality for women, and for disabled people and other minority groups. In the context of austerity, women's and children's poverty are rising, and vital public services used predominantly by women are closing. The amendments that we set out would strengthen the bill in terms of gender equality, are in line with the policy intention of the Smith Commission Agreement, and would support both governments' broad range of commitments on gender issues at a time when women are particularly in need of support.

1. SOCIAL SECURITY

Women are twice as reliant on social security as men because of gender inequality. Between 2010 and 2014, 85% of the £26 billion worth of cuts made by the UK government fell on women's incomes.² We are therefore calling for the most expansive approach possible, to provide space for a divergent approach based on equality and dignity. Maximum policy

¹ Engender (2015) [A joint statement to the Joint Ministerial Working Group on Welfare](#)

² Engender (2015) [A widening gap: women and welfare reform](#)

discretion and flexibility will be vital in enabling the Scottish Parliament to create an integrated system alongside devolved policy areas and services.

Clause 19: Benefits for disabled people and carers

Disabled women face multiple discrimination in the social security system and the workplace. This is reflected in the fact that the pay gap for disabled women compared with non-disabled men is double that of disabled men.³ Women are twice as likely to claim carer's allowance as men, and are four as likely to give up paid work due to multiple caring responsibilities. Carers are also impacted by cuts to benefits for disabled people, as linked entitlements are lost despite circumstances remaining unchanged.

Clause 19 narrowly defines 'disability' to the exclusion of people with particular conditions. This would unnecessarily constrain the Scottish Parliament from designing new benefits to best meet the needs of all groups of disabled people, in line with devolved services. Clause 19 also limits receipt of a devolved carers' benefit to carers aged 16 or over, who are not in full-time education and not employed. These restrictions would undermine the opportunity for the Scottish Parliament to tackle women's economic inequality through a distinct approach to carers' benefits that recognised women's caring roles and supported women to balance paid and unpaid work.

- **We are calling for the restrictions on eligibility for carers' benefit to be removed from clause 19 of the Scotland Bill and for the definition of disability to be replaced with that used in the Equality Act 2010.**⁴

Clause 21: Discretionary payments: top-up of reserved benefits

The powers to create new benefits and to make discretionary payments with regard to reserved benefits hold great potential to creatively advance women's equality. Many devolved policy areas that relate to social security are crucial to our agenda, including employability, social care, delivery of childcare, housing and violence against women. The ability to increase women's disposable income in a targeted way would be manifestly beneficial to those most disadvantaged by public spending cuts, including disabled, refugee and older women, lone parents and carers.

The restrictions placed on these powers within clause 21, however, fundamentally differ from the recommendation made by the Smith Commission. This undermines the potential of new powers to prevent women from reaching the point of extreme need at which they would be eligible for this limited form of short-term support. It also undermines potential for increased coherence in Scotland's policy approach to gender equality and make progress against its commitments on gender issues.

³ The pay gap for disabled women is 22%. Inclusion Scotland (2013) *Women in work MSP briefing*

⁴ Previously tabled amendments 48, 112 and 128 address this.

- **We are calling for clause 21 to be redrafted to allow the creation of new benefits in devolved areas, and to remove restrictions on the ‘topping up’ of benefits.⁵**

Clause 22: Discretionary Housing Payments

Access to safe housing is crucial for women at risk of abuse. Low income, a lack of independent income and immigration status are major barriers for women seeking safety, and domestic abuse is the fourth most common reason given for homeless application in Scotland. Thousands of carers are losing an average of £105 per week in housing benefit as a result of the benefits cap and 49% of households subjected to the benefits cap are headed by single parents with children under five.⁶ The ‘bedroom tax’ and changes to the entitlements of EU migrants mean that many women separating from abusive partners can no longer claim housing benefit.

Clause 22 stipulates that eligibility for DHPs is contingent on receipt of housing benefit and restricts access for those who have been sanctioned. This does not fulfil the intention of the Smith Agreement. Women must have consistent access to safe accommodation, regardless of their entitlement to housing benefit or perceived non-compliance with conditionality for reserved benefits. This is especially important in the context of the huge cuts to housing support for women.

- **We are calling for restrictions over eligibility for Discretionary Housing Payments in clause 22 to be removed from the Scotland Bill.⁷**

Clause 26: Employment support

Many groups of women are far from the labour market. This includes women returning to work after supporting sick or disabled relatives or after taking extended leave to care for children. Employability programmes fail to take account of the barriers which prevent or restrict women’s labour market participation. The power over employment support offers potential to better support unpaid carers, lone parents, women experiencing domestic abuse, disabled, older and refugee women, in line with specific obstacles they face in accessing paid work. It also offers potential to mitigate the occupational segregation that sees women clustered in low-paid, insecure jobs.

Clause 26 includes restrictions that undermine this potential to tailor employability programmes in line with the support needs of different groups of women. The Smith Commission did not stipulate a limited form of support for those facing long-term unemployment that must last for a year. The anomalously excluded Access to Work scheme should also be devolved to increase the possibility of holistic support for disabled people.

⁵ Previously tabled NC31 addresses this.

⁶ DWP (2015) [Benefit Cap Quarterly Statistics: GB households capped to May 2015](#)

⁷ Previously tabled amendments 116, 117 and 129 would remove some of these restrictions.

Nor should support be restricted to people on reserved benefits, but be extended to those entitled to newly devolved benefits.

- **We are calling for restrictions in clause 26 on the form of employment support the Scottish Parliament could provide to be removed.**⁸

2. EQUALITY LAW

The transfer of responsibility for equalities legislation has the potential to enable gender equality in Scotland, in a range of ways. The capacity to challenge the actions of employers within an independent adjudication system is a key workplace right with clear gendered implications. The gender pay gap could be partly addressed with tools such as mandatory equal pay audits. Parliamentary quotas and temporary special measures are employed to great effect worldwide to increase the female representation rate.

Clause 32: Gender quotas

Women are underrepresented at all levels of political and public life in Scotland.⁹ Evidence from around the world shows that diverse representation better meets the needs of societies and that quotas are used to great effect globally in order to achieve balance.

The current clause 32 does not adequately reflect the Smith Commission Agreement that devolved competence over gender quotas should not be limited to public boards.

Furthermore, the current clause 32 is extremely unclear. Since the initial draft clauses and UK command paper were published in January 2014, we have sought clarity over what it enables the Scottish Parliament to do, in light of the way that equalities is currently reserved. Discussions with experts in equalities law have not produced a clear answer.

- **We are calling for clause 32 to be redrafted in order to clearly devolve the power to introduce gender quotas for public boards, as well as temporary special measures relating to all protected characteristics.**¹⁰

Clause 32: Full devolution over equality law

We believe that full devolution of equality law and regulation to the Scottish Parliament would be a more effective division of power. It would enable better scrutiny of equalities practice that is more sensitive to Scotland's distinct public sector architecture, by enabling the creation of a Scottish equalities regulator and decoupling our public sector equality duty from UK measures.

Full control over equality law would allow for a coherent approach between equalities policy and devolved domains. For example, the competence to introduce measures such as

⁸ Previously tabled amendments 114, 120, 121 and 122 address this.

⁹ 36% of MSPs and fewer than 25% of local councillors are women, four public boards have no female representation, and 10% of public boards have less than 20% of women sitting on them.

¹⁰ Previously tabled amendments 123 and 162 address this.

mandatory pay audits, which have featured in the current Fair Work agenda, or time-limited gender balancing measures in renewable energy-related frameworks of the modern apprenticeship programme.

- **We are calling for clause 32 to be redrafted in order to devolve full competence over equality law and regulation to the Scottish Parliament.**¹¹

3. ABORTION

Our organisations see potential for the devolution of power and responsibility around abortion to afford a more progressive law. Both pro-choice and anti-choice organisations have identified weaknesses with the 1967 Abortion Act that is currently in effect.

However, abortion is a politically polarising issue around the world. International experience suggests that nations infrequently revisit abortion law, that legislative processes attract significant amounts of international scrutiny and resources, and that myths around reproductive healthcare are widespread. We also note that Scotland currently has no organisation working specifically on reproductive health and rights, and there is no public discourse around abortion in Scotland. For these reasons, we are keen to see as much time as possible for civil society to build capacity to engage in the discussion about how women's reproductive health and rights should be realised in Scotland if abortion is devolved.

The original Smith Agreement suggested that all parties were committed to the devolution of abortion, but that this would not happen as part of the Scotland Bill.

CONCLUSION

The Scotland Bill could be strengthened to increase its potential as a lever for women's equality in Scotland. At present, it does not fully deliver the Smith Commission Agreement. The ability to create new benefits that relate to devolved areas is notably absent. The power to introduce gender quotas, for public boards and more widely, is not sufficiently clear.

Many clauses are unnecessarily restrictive and prescribe a degree of policy direction that we would not expect to see within the transfer of powers. This will significantly limit the Scottish Parliament in any attempts to design a more empowering and progressive social security system for those that need it the most, including many women. These narrow parameters also undermine the Scottish Parliament's ability to adopt a holistic approach that is integrated with devolved services and takes account of stakeholders' views.

The lack of meaningful scrutiny at the committee stage of the Bill to date has overlooked a wealth of experience and expertise in Scotland. All substantive amendments tabled on social security and equal opportunities were voted down, despite having received the backing of almost all of Scotland's MPs, and many anti-poverty, equalities and welfare rights organisations working on the frontline. This represents a democratic deficit for Scotland.

¹¹ Previously tabled NC49 addresses this.

We are calling for action that puts people ahead of politics in the final stages of the Bill. The amendments that we set out above would better enable the Scottish Parliament to engage new powers to advance equality and human rights, at a time when women are particularly in need of support and the Scottish Government faces deep challenges in meeting its commitments on gender equality.

Contact: Jill Wood, Policy Manager, Engender; Jill.Wood@Engender.org.uk, 0131 558 9596

This briefing is endorsed by the following civil society organisations:

