

## Parliamentary Briefing: Child Tax Credit and Child Element of Universal Credit

### BACKGROUND

#### 1. Women and social security

Social security cuts and the wider austerity agenda are having a disproportionate impact on women's access to resources, as well as their safety, security and well-being. In the years of austerity since 2010, **86 percent of net 'savings' raised through UK Government cuts to social security and tax credits will come from women's incomes.**<sup>1</sup> This is due to systemic issues that see women twice as dependent on social security as men.

As a result of social security reforms, women have been put at greater risk of deeper and sustained poverty. Women who are lone parents will experience an estimated loss of £4,000 per year, a 20 percent drop in living standards, and a 17 percent drop in disposable income by 2020.<sup>2</sup>

#### 2. Welfare Reform and Work Act 2016

The *Welfare Reform and Work Act 2016* received royal assent on March 16, 2016.

Sections 13 and 14 of the Act limit entitlement to the child element of Child Tax Credit (CTC) and Universal Credit (UC) to a maximum of two children in each household. The limit for CTC applies to a third or subsequent child born after April 6, 2017. For UC, the limit applies to all new claims made after April 6, 2017, unless a child element was payable for that child within the last six months. These policies are referred to colloquially as the 'family cap'.

The Act allows the Secretary of State to introduce exceptions in regulations. In 2017, exceptions to the 'family cap' were introduced by the UK Government, providing that social security for a third or subsequent child would be provided if the child was born as a result of 'non-consensual conception' (i.e., rape), sibling adoption, kinship carers or multiple births.

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<sup>1</sup> Women's Budget Group. (2016). *The Impact on Women of the 2016 Budget: Women Paying for the Chancellor's Tax Cuts*.

<sup>2</sup> Child Poverty Action Group. (2012). *Ending child poverty by 2020*.

The exceptions came into force on April 6, 2017. They were passed by the UK Government via two Statutory Instruments, which allowed for no debate or scrutiny of the policies by the UK Parliament.

## SPECIFIC CONSIDERATIONS

### 1. What impact will the ‘family cap’ have on women?

The ‘family cap’ will exacerbate women’s and children’s poverty by reducing family income. Analysis of the policy demonstrates that **the two-child limit will mean a loss of up to £2,800 every year for each additional child<sup>3</sup>**, and this figure may not take into account losses in housing benefits and other welfare.

In addition, it is projected that these deep cuts to social security for families with more than two children will **push up to 200,000 more children into poverty, and will impact approximately 510,000 families in 2019-20.<sup>4</sup>**

Though the policy will have an adverse effect on all families who have a third or subsequent child born after April 6, 2017, it will have a disproportionate impact on families where larger numbers of children are more usual, including those from some religious and faith communities, black and minority ethnic families, and refugee families. It will also have a disproportionate impact on lone parents who are women. Lone mothers are most likely to experience poverty, and tend to be more disadvantaged than parents in couple households. **In 2015, nine out of ten (91 percent; 128,400) lone parents in Scotland were women.<sup>5</sup> Women make up 95 percent of lone parents receiving Income Support.<sup>6</sup>**

In addition to pushing women and their families into further poverty, the ‘family cap’ exceptions, specifically the provisions surrounding forced disclosure of sexual violence to gain access to social security, will re-traumatise individual women who have survived rape by forcing them to disclose sexual violence at a time and in a context not of their own choosing, on pain of deeper impoverishment. **Forced disclosure of sexual violence can exacerbate post-traumatic stress disorder and increase a sense of shame and isolation.**

### 2. Did the UK Government assess what impact the ‘family cap’ would have on women?

Under the *Equality Act 2010*, there is a duty by public authorities to eliminate discrimination, harassment and victimisation related to protected characteristics including sex. At the time the *Welfare Reform and Work Act 2016* was introduced, the UK Government published an impact assessment, which briefly considered the impact of the ‘family cap’ on protected groups. With respect to women, the impact assessment noted the following:

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<sup>3</sup> Child Poverty Action Group. (2017). *Two-Child Limit for Universal Credit: 200,000 more children put in poverty*.

<sup>4</sup> Child Poverty Action Group. (2017). *Social Security Changes – April 2017*.

<sup>5</sup> NHS Health Scotland. (2016). *Lone parents in Scotland, Great Britain and the UK: health, employment and social security*.

<sup>6</sup> Engender. (2012). *Multiple Jeopardy: The impacts of the UK Government’s proposed welfare reform on women in Scotland*.

*The Universal Credit payment is made to the benefit unit, however on an individual basis women may be more likely to be affected than men. Around 90% of lone parents are women, and a higher proportion of this group are in receipt of CTC. Therefore they are more likely to be affected, in the absence of behavioural change.*

This excerpt, which is the only direct reference to women, serves to demonstrate that women were given a cursory nod in the development of the ‘family cap’, and that the discriminatory nature of the policy was not seriously considered by decision-making authorities. **The UK government’s impact assessment provided nothing more than an acknowledgement that protected groups, including women, would be disproportionately harmed by the ‘family cap’.**

### **3. Does the ‘family cap’ conform to international human rights standards?**

The UK has a wide range of commitments to advance gender equality and eradicate violence against women and girls. These commitments, however, are undermined by social security policies that are developed in the knowledge that they will adversely impact women’s rights.

#### UN treaties

UN treaty bodies that have assessed UK compliance with its international obligations have **repeatedly identified failures to consider women’s rights in ‘welfare reform’**.

In 2013, the United Nations Committee on the Elimination of Discrimination against Women recommended that the UK continuously assess the impact of austerity measures on women’s rights.<sup>7</sup> This recommendation was echoed by the Committee on Economic, Social, and Cultural Rights in 2016, which reminded the UK Government that austerity ‘measures must be temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the rights of disadvantaged and marginalized individuals and groups and respect the core content of rights’.<sup>8</sup> The Committee further called on the UK Government to conduct a cumulative impact of its austerity measures on the rights of disadvantaged and marginalised groups, including women, children and persons with disability.

These calls by United Nations committees have not yet resulted in action.

#### European Convention on Human Rights

Article 8(1) of the European Convention on Human Rights (ECHR) states that ‘everyone has the right to respect for his private and family life, his home and his correspondence.’ The exceptions to the ‘family cap’, however, will create situations where women are forced to disclose information about their private lives and the private lives of their children against

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<sup>7</sup> United Nations CEDAW Committee. (2013). *Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*.

<sup>8</sup> United Nations Committee on Economic, Social, and Cultural Rights. (2016). *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*.

their will. It is anticipated that the exceptions to the 'family cap' will breach privacy rights, particularly when women would be forced to disclose rape to access social security for her children.

#### **4. Is there an evidence-base for the 'family cap'?**

In its impact assessment, the UK Government justified the 'family cap' policy on the basis that families on social security should consider whether they can afford additional children, and should modify their behaviour and family choices based on their economic circumstances.

Research and evidence shows that the implementation of **'family caps' are a failed public policy**.<sup>9</sup> In the 1990s, several states in the United States introduced a 'family cap' as part of their reforms to social security. In evaluations of the impact of the 'family cap', US studies failed to find that women receiving social security had more children. Further, there was no relationship between the 'family cap' and a reduction in births.

The assessment of the US 'family cap' policies found that they **pushed families into further poverty, worsened health and social outcomes for children, and increased the risk of homelessness** as well as other hardships associated with severe poverty. In addition, women whose social security payments were capped reported higher levels of housing and food insecurity; struggles to pay for transport and utilities; and difficulty in finding funds for basic necessities for her children, including nappies and clothes.

As 'family cap' policies were assessed as a failed public policy, numerous U.S. states have repealed the policy, including Illinois, Maryland, Wyoming, and California.

#### **5. How will the exceptions to the 'family cap' work in practice?**

It is not clear yet how the exceptions to the 'family cap', specifically the policies surrounding disclosure of rape, will be addressed in Scotland. The Department of Work and Pensions developed a scheme whereby women who have a third or subsequent child as a result of 'non-consensual conception' (i.e., rape) could apply for an exemption to the cap. Their application would require to be endorsed by expert agencies, 'healthcare providers' or social workers.

Women's organisations in Scotland, including Rape Crisis Scotland and Scottish Women's Aid, have unequivocally stated that they will not collude with the exception of 'non-consensual conception' (i.e. rape clause). In addition, NHS Scotland has written to the UK Government stating that it refuses to cooperate with the exception and demanding that the UK Government reconsider its policy before 'serious harm is done'. The Department for Work and Pensions has not identified any third-party assessors that have agreed to carry out this function in Scotland. Engender does not consider that it is possible to create a third-party assessment model that does not amount to a breach of women's human rights, and that will not undermine women's equality.

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<sup>9</sup> Gutiérrez, E.R. (2013). *Bringing Families out of 'captivity: The need to repeal the Calworks maximum family grant rule*. Berkeley Law. & Donovan, P. (1998). *Does the Family Cap Influence Birthrates? Two New Studies Say 'No'*. The Guttmacher Report.

## **6. How do we support women who rely on social security for their well-being and the well-being of their children?**

UK-wide social security reforms have been developed and implemented without consideration of women. Their realities have been ignored and they will be made to suffer the brunt of cuts to social security programs. However, women with more than two children will bear an even greater burden as a result of the ‘family cap’ and its exceptions.

**To ensure that women are not left to live a life in poverty and to ensure that they are provided with a sufficient income to lead a dignified life, the ‘family cap’ and its exceptions should be repealed.**

In Scotland, Engender has joined with a coalition of women’s and human rights organisations<sup>10</sup> to call for gender to be at the heart of the development of social security payments, systems, and processes<sup>11</sup>. Gender-sensitive policy development and implementation is vital if Scotland’s new powers are to be used to advance women’s equality, and enable women’s human rights to be realised.

### **FOR FURTHER INFORMATION**

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### **ABOUT ENGENDER**

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. We are a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.

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<sup>10</sup> Including Close the Gap, Scottish Women’s Aid, Carers Scotland, and Scottish Refugee Council

<sup>11</sup> <https://www.engender.org.uk/content/publications/Securing-Womens-Futures---using-Scotlands-new-social-security-powers-to-close-the-gender-equality-gap.pdf>