



Engender Response to the Scottish Parliament Social Security Committee on the Social Security (Scotland) Bill

1.0 INTRODUCTION

Engender welcomes the opportunity to respond to the Committee's call for views. Over the last two years, we have worked with our partners at Scottish Women's Aid, Close the Gap, the Scottish Refugee Council and Carers Scotland to highlight the link between women's inequality and the existing UK social security system. In our work, we have attempted to shed light on the factors that render women twice as a dependent on social security as men:¹

- ❖ Women provide approximately 60 percent of unpaid care, and are twice as likely as men to give up paid work to care.²
- ❖ On average, women in Scotland earn £182.90 per week less than men, and account for 75 percent of the part-time workforce.³
- ❖ Women make up two-thirds of workers earning below the Living Wage.⁴
- ❖ Inaccessible and unaffordable childcare is a barrier to women being able to work, study and access vocational training.
- ❖ In households where men are primary 'breadwinners', women 'may not get equal access to earnings. In some low-income households, parents, but especially mothers, forego their own consumption to meet the demands of their children'.⁵
- ❖ Economic dependency is particularly acute in households where women experience domestic violence.⁶ 'Mothers experiencing domestic violence are more likely to become lone parents, less likely to be earning independently, and more likely to report their families getting into financial difficulties'.⁷

¹ Fawcett Society, (2006) *'Who benefits? A gender analysis of the UK benefits and tax credit system'*.

² The National Carers Organisation, (2013) *'Submission to the Expert Group on Welfare'*.

³ Close the Gap, (2016) *'Gender Pay Gap Statistics'*.

⁴ Poverty Alliance, (2017) *'The Living Wage'*.

⁵ Bradshaw, J., et al.

⁶ Women's Budget Group, (2005) *'Women's and Child's Poverty: Making the Links'*.

⁷ Women's Budget Group, (2005) *'Women's and Child's Poverty: Making the Links'*.

- ❖ All of these factors are exacerbated for women who face multiple inequalities across society, including disabled women, Black and minority ethnic (BME) women and refugee women.

During the drafting of our response, several documents were cross-referenced, including our [submission](#) to the initial consultation on social security by the Scottish Government, the Equality Impact Assessment of the Bill, as well as the Scottish Government's '*Analysis of Written Responses to the Consultation on Social Security in Scotland*'.

2.0 SUMMARY OF ENGENDER'S RESPONSE TO THE SOCIAL SECURITY COMMITTEE - SOCIAL SECURITY (SCOTLAND) BILL

1. It is unclear whether the proposals in the Bill will reduce women's poverty and inequality in Scotland. However, amendments can be made to strengthen the proposed legislation to ensure that the policies and practices of the social security system in Scotland tackle women's poverty and inequality.
2. Social security policies should be subject to public and parliamentary debate and scrutiny (see paragraphs 1-4).
3. Introduce a purpose statement and strengthen existing principles, including adding the principles of equality and non-discrimination on the face of the Bill (see paragraphs 5-9).
4. A right to independent advice and advocacy should be embedded in the Bill (see paragraph 34).
5. Procedural fairness requirements must be incorporated into the Bill, which includes the right to a decision in writing (see paragraph 18).
6. Independent scrutiny of the social security system is essential (e.g., an independent statutory body providing impartial advice on social security matters) (see paragraph 33).
7. The charter should be subject to an Equality Impact Assessment; specifically require ongoing engagement with protected groups; be reviewed at regular, specified intervals; and provide a mechanism for redress (see paragraphs 12-16).
8. The reconsideration and appeals process too closely mimics existing DWP practice. A single application should be required for reconsideration and appeal (see paragraph 19).

9. The default payment for each type of assistance should be in cash, not in kind, and assistance provided by the Scottish Government should keep pace with the cost of living (see paragraphs 37 and 38).
10. Overpayments caused by official error should not be recovered, and imprisonment under 12 months conflicts with Scottish Government commitments to reduce short-term sentences. Alternatives to custody must be considered (see paragraphs 20-23).
11. Carers Allowance must be uprated and must not include restrictions on education and employment opportunities for carers (see paragraphs 25-27).
12. Eligibility for Early-Years Assistance must not exacerbate power imbalances within households. Instead, payment structures should contribute to women's financial independence (see paragraphs 28 and 29).
13. The Equality Impact Assessment (EQIA) of the Bill is inadequate, failing to consider how policies might have an impact on a particular group. The EQIA should be revised (see paragraphs 9 and 39).

3.0 SPECIFIC QUESTIONS

Question 1: Rules in regulations

1. Fundamental elements of the future social security system in Scotland are not sufficiently detailed in the Bill. The absence of specific rules relating to, for example, decision-making standards and new programs, make it difficult to review and provide a fulsome assessment of the design and operation of the future social security system.
2. It is cause for concern that the development of the social security system will rely so heavily on secondary legislation, as the regulatory process is not subject to the same debate and scrutiny as the legislative process. We believe that rules (e.g., eligibility criteria) should be on the face of the Bill.
3. Building a social security system that responds to the needs of women in Scotland requires input from women in Scotland. To follow-through on the commitment to 'design the social security system with the people of Scotland', we recommend the Scottish Government reconsider its reliance on the use of secondary legislation to develop the social security system.

4. Precedent exists for the details of social security programs to be in legislation. Canada is one example where rules, such as eligibility criteria, are prescribed in primary legislation.

Question 2: Principles

5. We welcome the principles in the Bill, in particular those which recognise social security as a human right and an investment in society. However, amendments could be brought forward to strengthen the principles which will act as the foundation to the social security system.
6. International covenants provide an obligation for states ‘to guarantee that the right to social security is enjoyed without discrimination and equally between men and women’.⁸ Equality and non-discrimination should be included as principles on the face of the Bill (see Annex A).
7. Social security aims to provide people with the means to live a safe, fulfilling and dignified life, to reduce inequalities, and to build a more equal society. The social security system should seek to achieve equality, and by virtue of there being a disproportionate number of women relying on social security for their safety and well-being, it should seek to achieve a more gender-equal society.
8. Over the past year, the UK has witnessed the kinds of policies that are developed when women do not figure into policy development. A prime example is the UK ‘family cap’ and ‘rape clause’. Building equality and non-discrimination into the principles of the social security system in Scotland, and ensuring gender is considered from policy development to practice, would be one measure to protect women and foster women’s equality in Scotland.
9. The Equality Impact Assessment (EQIA) of the Bill stands as another example of why equality and non-discrimination should be included on the face of the Bill. The EQIA fails to consider how the proposed social security policies might impact particular groups. While the EQIA references women, it does so in broad strokes, such as acknowledging that women make up the majority of carers in Scotland and the majority of people in receipt of the Best Start Grant. The EQIA does not investigate how the proposals would impact women specifically, nor does it examine how the proposals will impact young women, disabled women, and BME women, who are all more likely to experience poverty.

⁸ UN General Assembly, (1966) ‘*International Covenant on Economic, Social and Cultural Rights*’.

10. The Bill refers to social security as a human right, but shortly thereafter states that the social security system is to be efficient and deliver value for money. These principles would appear to be at odds with one another, raising questions about the interplay between the principles (e.g., would efficiency and value for money trump the right to social security? Or vice-versa?).
11. The Bill does not set out the overarching aim of the social security system. As such, it is not clear what objective the principles support. Including a purpose would help define and guide the policies and practices of the system. Similarly to other organisations, we would expect reference to be made to addressing inequality and poverty in the statement of purpose.

Question 3: Charter

12. Engender supports the Scottish Government's intention to use the charter to translate the principles of the social security system into a 'format that can be easily understood'.⁹ At this time, however, there are a number of outstanding questions, including:
 - What type of document will it be? Will it be legally binding?
 - What redress mechanisms, if any, would be in place if and/or when there is a failure to comply with the charter?
 - How will the Scottish Government ensure the charter is accessible to all?
13. We support the proposal that a review of the charter include the voices of those with lived experience of social security. However, we believe that the consultation process should include the voices of women, including disabled women and BME women who are more likely to face poverty (see Annex A). Further, third-sector organisations which provide support and assistance to those who receive social security should also be consulted.
14. The Bill proposes that the charter would be reviewed 'from time to time'. A clear timeline for review should be included in the Bill. We recommend every three years.
15. Along with Close the Gap, we recommend that reference in the charter be made to the requirements of the public sector equality duty to ensure it takes a proactive approach to tackling gender inequality. The mainstreaming duty provides an ideal framework for the consideration of gender in the design and delivery of policy. Gender mainstreaming is a requirement of the public sector equality duty. It is

⁹ Scottish Government, (2017) 'Social Security (Scotland) Bill Policy Memorandum'.

essential that the development of the charter considers the implications of social security policy on women's equality.

16. The charter should include a mechanism via which claimants could contest a breach of rights. In the absence of a redress mechanism, the charter could only have limited value.

Question 4: Proposed rules (e.g., applications, decision-making)

17. The Bill does not specify timeframes for decision. Anecdotally, Engender is aware of women waiting up to 42 weeks for a first social security payment. Women are more likely to be living in poverty than men, and there is a particularly high risk of poverty among BME women, disabled women, and refugee and asylum-seeking women.¹⁰ A system based on principles such as dignity and respect requires a timely decision on an application for social security, and alternate routes to a decision if timeframes are not respected.
18. It is not clear that the Bill meets procedural fairness requirements, including the right of an applicant to know the case against them, the right to be heard, and the right to reasons for decision in writing. Procedural fairness requirements should be incorporated into the Bill.
19. In the social security consultation conducted by the Scottish Government, respondents advised that the existing redetermination process under the DWP (i.e., Mandatory Reconsideration) was:
 - not always based on a fair appraisal of all evidence;
 - hindered the process of challenging decisions; and
 - caused hardship, uncertainty and poverty due to lengthy reconsideration.

The Bill proposes a similar process to the existing Mandatory Reconsideration and appeals scheme, and concerns have been raised that the proposed system would replicate existing barriers to justice. The process should be amended to provide that one application is required for reconsideration and appeal. If an application for redetermination is denied, the application would automatically move to the appeals stage. Instead of opting-in for the appeal stage (i.e., filling out a second application), the applicant would need to opt-out.

¹⁰ Bradshaw, J., Finch, N., Kemp, P., Mayhew, E. & Williams, J., (2003) '*Gender and Poverty in Britain*', Manchester: Equal Opportunities Commission.

20. The Bill provides that an individual would be liable to repay the Scottish Government in cases where a social security payment(s) was made in error. Repayments should not be sought where fault is due to inaction, delay or mistaken assessment by officials. Women in receipt of social security should not be held accountable for errors made by government officials. This position is supported by those who responded to the social security consultation by the Scottish Government.¹¹ A further rationale for this view is that it would foster a culture within the social security agency of 'getting decisions right the first time'.¹²
21. Although fraud within the social security system is grossly exaggerated by the UK Government, and skewed by media, several pages of the Bill are dedicated to offences and investigations. It is disappointing to see an emphasis on fraud within the Bill, as it does not reflect the approximately 0.7 percent of social security spending that is linked to fraud.¹³
22. The Scottish Government has committed to reducing its female imprisonment rate, which is one of the highest in Northern Europe.¹⁴ In 2016, the Scottish Government wrote 'The Scottish Government has a stated commitment to reducing the use of short-term custodial sentences, with the aim of using prison primarily for those individuals who have committed serious offences and those cases involving issues of public safety'.¹⁵ This statement was based on evidence that short-term sentences do not lead to reduced reoffending. Proposing that punishments for summary convictions include imprisonment under 12 months conflicts with Scottish Government commitments to reduce imprisonment rates, increase the use alternatives to custody, and reduce the number of short-term sentences.
23. In the *Justice Vision for Scotland*, released in July 2017, the Scottish Government acknowledged that it understands the 'associations between poverty, victimisation and imprisonment'.¹⁶ However, introducing imprisonment as a form of punishment for summary convictions appears to conflict with this understanding. Imprisoning women has significant ramifications, including the loss of tenancy, loss of employment, and in many cases the loss of custody of children. These consequences last long after a woman has left prison, often leaving her living in poverty as she attempts to rebuild her life.

¹¹ Scottish Government, (2017) '*Analysis of Written Responses to the Consultation on Social Security in Scotland*', p.281.

¹² Scottish Government, (2017) '*Analysis of Written Responses to the Consultation on Social Security in Scotland*', p.283.

¹³ Department of Work and Pensions, (2014) '*Fraud and Error in the Benefit System 2013/14 Estimates (biannual)*'.

¹⁴ Prison Reform Trust, (2015) '*Why focus on reducing women's imprisonment?*'.

¹⁵ Scottish Government, (2016) '*Consultation on Proposals to Strengthen the Presumption Against Short Periods of Imprisonment*'. Most recently, the Chief Inspector of Prisons in Scotland called for the presumption against short-term sentences to increase to 12 months.

¹⁶ Scottish Government, (2017) '*Justice in Scotland: Vision and Priorities*'.

Question 5: Schedules in the Bill

24. It is difficult to provide substantive comments on the schedules, as the detail included in the schedules are a framework rather than a full picture of what each type of assistance will look like. That said, we have set out a few of the concerns we have with the existing framework for the carers and early years assistance.
25. The proposed schedule related to carers allowance suggests that a person providing care could only access social assistance if the person to whom she provided care was in receipt of a disability benefit. In other words, the proposal would exclude all carers who provide care to a person not in receipt of a disability benefit. Linking eligibility for Carers Allowance to someone else's eligibility for disability allowance may leave people unable to access their rightful entitlement. This is particularly concerning in the absence of information about the assessment process for disability allowance.
26. The schedule for carers allowance also proposes making education and employment part of the eligibility criteria. Engender continues to call for the abolishment of restrictions on education and employment for carers allowance. Many women carers would welcome the ability to undertake more and better paid work, as it would increase their independent income, self-esteem and social life, and enable them to maintain or develop skills in the workplace ahead of the possible need to return to work after their 'carer journey'.¹⁷ Further, restricted access to education for carers undermines women's equality of opportunity and future earning potential.
27. In addition, the inclusion of education and employment in the schedule for carers allowance does not reflect the findings of the Scottish Government's consultation on social security. In the analysis, the Scottish Government found that 'Respondents felt that carers should be encouraged to pursue personal goals and develop skills they would need to return to the labour market when their caring role ended'.¹⁸
28. The proposed schedule for early-years assistance includes the possibility that a partner could apply for the assistance. We strongly advocate for a social security system that recognises and addresses the imbalance of power in a many Scottish households. Income and other resources are often not shared or controlled equally, which is a significant factor in women's economic inequality. Eligibility criteria and payment structures must support women's financial independence. At this time, it is

¹⁷ Engender and Carers Scotland focus groups: October 2015 and October 2016.

¹⁸ Scottish Government, (2017) '*Analysis of Written Responses to the Consultation on Social Security in Scotland*', p.156.

not clear that the early-years assistance schedule would foster women's financial autonomy.

29. While the early-years assistance program must include eligibility for those who are responsible for a child (e.g., kinship carers), this criteria should not come at the cost of women's financial independence.

The Bill proposes that carers allowance should be increased as soon as possible to the level of jobseeker's allowance (from £62.10 to £73.10 a week).

30. Engender welcomes the increase to the weekly payment. That said, the increased rate represents a payment of £2 per hour for a minimum of 35 hours per week. During one of Engender's focus groups on the subject of caring, carers informed us that they did not feel that the increased rate treated them with dignity or respect.¹⁹
31. Unpaid carers, around 60 percent of whom are women, save Scotland an estimated £10.8bn per year, which amounts to over a third of the national budget.²⁰ Women are four times as likely to give up paid work due to multiple caring responsibilities, and are more likely to be in low-paid, part-time employment than male carers. The responsibility of care has significant ramifications on women's access to employment, career development and progress, access to training and higher education, as well as on physical and mental health.
32. We continue to call on the Scottish Government to develop a staggered plan to uprate Carers Allowance to recognise carers' contributions to the social and economic well-being of Scotland.²¹ This call was supported by respondents to the social security consultation.²²

Question 10: Additional concerns

33. Independent scrutiny of the social security system is required, particularly if the Scottish Government continues to pursue its plan to rely on secondary legislation for the implementation of social security programs. An independent statutory body could provide impartial advice on social security matters, including reviewing and scrutinising draft guidance.

¹⁹ Engender and Carers Scotland focus groups: October 2015 and October 2016.

²⁰ Engender, (2016) '*Securing Women's Futures: Using Scotland's new social security powers to close the gender equality gap*'.

²¹ Engender, (2016) '*Securing Women's Futures: Using Scotland's new social security powers to close the gender equality gap*'.

²² Scottish Government, (2017) '*Analysis of Written Responses to the Consultation on Social Security in Scotland*', p.155.

34. Independent advice and advocacy services should be available to women interacting with the social security system in Scotland. Women have repeatedly highlighted the complexity of the social security system and the challenges in navigating the system to secure their rights and entitlements. A right to independent advice and advocacy should be embedded in the Bill, and resources allocated to sustainably support these services.
35. The Bill is silent on whether the assistance provided by the Scottish Government will keep pace with the cost of living. As such, it is not possible to comment on the adequacy of the system. Devolved programs should be increased in line with the Retail Price Index. Failing to do so would hinder the Scottish Government's capacity to tackle women's poverty and inequality, and would undermine gender equality.
36. Along with the Coalition of Racial Equality and Rights, we call on the Scottish Government to collect equality monitoring data at each stage of the social security process to ensure equality groups are not being discriminated against (see Annex A). Data disaggregated by gender and other equality characteristics should be collected, analysed, reported on, and made publicly available.
37. The Bill proposes to offer assistance in cash or in kind. An element of treating women with dignity and respect is allowing them to make their own choices. The provision of assistance in cash would give women the flexibility to decide where the money should be spent, which may include childcare, rent, transportation, food, or heating costs. Removing choice from those in receipt of social security does not conform to one of the proposed principles of the social security system, namely respect for the dignity of individuals.
38. During the consultation on social security, the Scottish Government asked 'Should the social security agency in Scotland be responsible for providing benefits in cash only or offer a choice of goods and cash?'.²³ The majority of respondents stated they favoured cash only or cash as the default option for the following reasons: 1) allows people choice and flexibility; 2) encourages greater independence; and 3) is in line with the principles of dignity and respect.²⁴ Engender calls for a cash payment to be the default option for each type of assistance, and that only individuals in receipt of social security could decide to receive an in-kind payment as an alternative to a cash payment.

²³ Scottish Government, (2017) p.46.

²⁴ Scottish Government, (2017) p.46.

39. Similarly to other equalities organisations, we call on the Scottish Government to revise its EQIA to examine how its proposed social security policies and practices would impact particular groups, including women.
40. The three universal credit flexibilities are not listed in the Bill, raising questions as to whether or not the flexibilities will be subject to, for example, the principles of the social security system.

4.0 CONCLUSION

41. Scotland has the unique opportunity of building a social security system from the ground up. It is our firm belief that it is possible to develop a social security system in Scotland that responds and meets the needs of women. We believe that amendments could improve and strengthen the proposed legislation, which would in turn contribute to women's safety and well-being.
42. We look forward to working with the Social Security Committee on its study of the Bill, and to ensuring that the social security system stands as pillar towards achieving women's equality in Scotland.

For Further Information

Contact: Emma Trottier, Policy Manager, Engender
Email: emma.trottier@engender.org.uk
Mobile: 07889 805787

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. Engender is a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.

ANNEX A: EQUALITY AMENDMENTS

Engender has a number of amendments we would like to see brought forward in the Bill, but there are a few specific equality amendments we would like to see in the proposed legislation:

Part 1, section 1, include as a stand-alone principle on the face of the Bill:

Equality of outcome for groups facing discrimination, inequality, and disadvantage is to be embedded in the Scottish social security system.

Part 1, section 3, subsection 3, add after (g):

(h) persons who share a protected characteristic under the Equality Act 2010.

Part 1, section 5, add at the end of subsection 3:

and persons who share a protected characteristic under the Equality Act 2010.