

Engender submission of evidence on the two-child limit for Tax Credits & Universal Credit to the Scottish Parliament Social Security Committee

1.0 INTRODUCTION

Engender welcomes the opportunity to present evidence to the Social Security Committee on the two-child limit. We have been working with other women's organisations in Scotland over the last few years to chart the impact of 'welfare reform', and the ways in which it is widening inequality between women and men.

Analysis of the two-child limit by Child Poverty Action Group calculates its impact as a loss of up to £2,800 every year per child.¹ 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 2019-20.²

2.0 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. Over the decade of austerity (2010 to 2020), 86 percent of net 'savings' raised through cuts to social security and tax credits will come from women's incomes.³ This is due to systemic issues that see women twice as dependent on social security as men.

Women have less access to resources, assets and occupational pensions than men. The pay gap persists at 32.2 percent for women's part-time work in Scotland, and women account for 66 percent of the paid workforce living in poverty.⁴ Women's economic independence is undermined by endemic violence against women, which includes domestic abuse and sexual

¹ Child Poverty Action Group. (2017). *Two-Child Limit for Universal Credit: 200,000 more children put in poverty.*

² Child Poverty Action Group. (2017). *Social Security Changes – April 2017.*

³ Women's Budget Group. (2016). *The Impact on Women of the 2016 Budget: Women Paying for the Chancellor's Tax Cuts.*

⁴ Child Poverty Action Group. (2014) *Poverty in Scotland 2014: The independence referendum and beyond.*

violence. Further, women who experience multiple discrimination are more at risk of extreme hardship, including disabled women, women from minority ethnic communities, rural women, and refugee women, who are all impacted by policy changes and cuts to services in particular ways.

As a result of social security reforms, women have been put at greater risk of deeper and sustained poverty. As one example of this, 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 2020.⁵

3.0 WELFARE REFORM AND WORK ACT

The UK *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 purpose of the ‘family cap’ is described as ‘behavioural change’ in the Department for Work and Pensions’ impact assessment of the policy, and a nudge to parents to ‘reflect carefully on their readiness to support an additional child’. This was amplified in a response that the Prime Minister gave to a question at Prime Minister’s Questions on 26 April 2017, in which she said that “We believe that **people who are in work have to make the same decisions as those people who are out of work**, so that people who are on benefits should have to decide whether they can afford more children, just as people in work have to make such a decision.” (Engender’s emphasis.)

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 joined a family as a result of ‘non-consensual conception’ (i.e., rape), sibling adoption, kinship care, or multiple births.

The exceptions came into force on April 6, 2017. They were passed by the UK Government via Statutory Instruments⁶ using a negative parliamentary procedure, which allowed for no debate or scrutiny of the policies by the UK Parliament.

⁵ Child Poverty Action Group. (2012). *Ending child poverty by 2020*.

⁶ Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376) and Child Tax Credit (Amendment) Regulations 2017 (SI 2017/387). The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 have been

4.0 THE 'FAMILY CAP' AND ITS IMPACT 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 per child.⁷ 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 2019-20.⁸

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 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.⁹ Women make up 95 percent of lone parents receiving Income Support.¹⁰

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. These provisions counter evidence showing that the forced disclosure of sexual violence can exacerbate post-traumatic stress disorder and increase a sense of shame and isolation.

5.0 THE 'FAMILY CAP' & EQUALITY IMPACT ASSESSMENT

Under the *Equality Act 2010*, there is a duty by public authorities to eliminate discrimination, and advance equality relating to protected characteristics in all of their functions. This includes advancing women's equality. In England, unlike Scotland, equality impact assessments must be undertaken but do not have to be published. At the time the *Welfare Reform and Work Act 2016* was introduced, the UK Government published what it described as an Impact Assessment, and which briefly considered the impact of the 'family cap' on protected groups. With respect to women, the Impact Assessment noted the following:

laid by the Department for Work and Pensions (DWP) principally under the Welfare Reform and Work Act 2016. The Child Tax Credit (Amendment) Regulations 2017 were laid under the Tax Credits Act 2002 Act.

⁷ Child Poverty Action Group. (2017). *Two-Child Limit for Universal Credit: 200,000 more children put in poverty*.

⁸ Child Poverty Action Group. (2017). *Social Security Changes – April 2017*.

⁹ NHS Health Scotland. (2016). *Lone parents in Scotland, Great Britain and the UK: health, employment and social security*.

¹⁰ 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, does not set out any steps that UK Government intended to take in mitigation of this clear gender inequality, and is merely an acknowledgement that vulnerable groups would be disproportionately harmed by the ‘family cap’.

The Equality and Human Rights Commission has written to Damian Hinds, Minister of State for Employment, to express its concerns about the policy and the quality of equality impact assessment. It notes:

The impact assessment published by the Department for Work and Pension for these changes **was not sufficiently detailed to support proper scrutiny of the legislation.** [...] There was no evidence provided to support DWP's assumption that the measures will incentivize families to only have two children if they cannot afford to have more.¹¹

6.0 INTERNATIONAL EXPERIENCE OF ‘FAMILY CAPS’

Research and evidence shows that the implementation of ‘family caps’ are a failed public policy.¹² In the 1990s, several states in the United States (U.S.) introduced a ‘family cap’ as part of Clintonian reforms to social security. The broad narrative around the introduction of ‘family caps’ was that they would encourage ‘responsibility’ in family planning. The exemptions set out by UK Government substantively mirror those adopted in the US, with one notable exception: women who are attempting to avoid pregnancy by use of contraception that then fails are not exempt from the UK version of the ‘family cap’. In the absence of an equality impact assessment or other explanatory materials it is not clear whether the UK Government has simply assumed that women whose contraception has failed will terminate any pregnancy. This has obvious significant and severe differential impacts on women from some faith and belief communities and women from minority ethnic or cultural communities in which abortion is unacceptable. It will also negatively impact on women who are forced to choose between impoverishment and terminating a wanted pregnancy.

Critically, in evaluations of the impact of the ‘family cap’, U.S. studies failed to find any relationship between the ‘family cap’ and a reduction in births.

¹¹ <https://www.equalityhumanrights.com/sites/default/files/letter-to-damian-hinds-child-tax-credits-rape-clause-21-april-2017.pdf>

¹² 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.

Instead, the assessment of the U.S. ‘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 evidence of their failure has mounted, several U.S. states have repealed ‘family cap’ policies, including Illinois, Maryland, Wyoming, and California.

6.0 THE ‘FAMILY CAP’, ‘RAPE CLAUSE’ AND HUMAN RIGHTS OBLIGATIONS

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.

United Nations

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.¹³ 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’.¹⁴ 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 their will. It is anticipated that the exceptions to the ‘family cap’ will breach privacy rights,

¹³ United Nations CEDAW Committee. (2013). *Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*.

¹⁴ 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*.

particularly when women would be forced to disclose rape to access social security for her children.

The Equality and Human Rights Commission, in its letter to Damian Hinds, notes that it:

[I]s also concerned by the Child Tax Credit (Amendment) Regulations 2017 and the operation of the exemption for children conceived as a result of rape. In our view the exception raises serious issues in relation to a child and mother's right to private life under Article 8 of the European Convention on Human Rights. The exception, which purports to prevent women from being penalised requires, in our view, invasive reporting requirements of intimate details. Children who may not be aware that they were born of rape may well become aware through this process and through the creation of a record.¹⁵

7.0 FURTHER CONCERNS AROUND THE EXCEPTIONS

There are no third-party referrers currently confirmed in Scotland, to Engender's knowledge. Specialist women's organisations and NHS staff have both declined to act in this capacity because of professional practice and ethical concerns. The DWP has unequivocally stated that it will not be making final decisions on whether exceptions should be awarded in the instance of 'non-consensual conception'.

Engender shares the foundational concerns of Scottish Women's Aid and Rape Crisis Scotland about the exceptions as they currently stand.

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.

¹⁵ <https://www.equalityhumanrights.com/sites/default/files/letter-to-damian-hinds-child-tax-credits-rape-clause-21-april-2017.pdf>