

# Engender submission to the Scottish Government on equality and socio-economic impacts of EU Exit ('Brexit')

May 2021

## 1. What are the main immediate impacts or issues from EU Exit affecting the people you support? Are you seeing increases in the number of people seeking support related to EU Exit?

Engender is a policy advocacy organisation and does not provide direct services to individuals. Our concerns listed below include issues that women have directly raised with us or other women's sector organisations as well as our analysis based on other forms of evidence, including survey data.

## 2. Do you see other potential impacts that are likely to happen over the course of this year, or beyond (medium and long term), because of EU Exit?

### Economic consequences

Women are situated differently in the economy to men. Women have access to fewer economic recourses and decision-making power, and are more likely to be streamed into underpaid and unvalued sectors, work part-time and be in precarious employment. The gender pay gap in Scotland is 10.0%. All of this means that women are more vulnerable to economic disruption than men.

It is extremely difficult to apportion caution in the current context. The pandemic has significantly impacted on many sectors that are also likely to experience some effects due to leaving the EU, such as sectors including tourism and hospitality. While the UK Government's furlough scheme has thus far prevented the significant scale of job losses and both Governments have made available business support including grants and credit deferrals, we do not yet know what the economic impacts of the last 18 months will be when they end, nor what policy choices to stimulate economic recovery

or to cut borrowing may be made. Finally, we cannot know whether the same choices would have been made in an economic disruption caused solely by leaving the EU, where travel and trade among other comparable states may have led to a regional rather than global crisis.

Prior to the pandemic, Engender and other women's organisations were concerned about the impact of any economic disruption for women's jobs in both the short and medium terms. Women are more likely to be employed in retail, tourism and hospitality – especially young women and women of colour – and are a majority of social care workers. Social care was already facing significant crisis, with high levels of vacancies in the sector, and a disproportionately high number of workers in the sector are migrant women, largely from EU states.

If the sector cannot recruit to ensure its sustainability, care is likely to be redistributed back to the household and onto women in particular, while staff in the sector – 83% of whom are women – are likely to see working conditions even further impacted. During the pandemic, work by Glasgow Disability Alliance and Inclusion Scotland has found that social care packages were reduced and stopped<sup>1</sup> and the Health and Social Care Alliance Scotland (the ALLIANCE) highlights instances where Health and Social Partnerships have increased their eligibility criteria for social care, making it harder to access.<sup>2</sup> By November 2020, as many as 39% of unpaid carers were providing more care due to local services reducing or closing due to Covid-19 and the number of unpaid carers in Scotland had increased by 392,000 since the start of the crisis.<sup>3</sup>

### Protections for migrant women

Women who have been a full-time caregiver for their children or other dependents, who have had breaks in their employment, or who have experienced domestic abuse and may therefore lack necessary paperwork, are all at particular risk of proving their right to reside in the UK through the new Settled Status Scheme.

The points-based system demands an applicant has a job offer from a Home Office licensed sponsor at the required skill level (RQF 3 or above) and proof of English language to a required level. In addition to this, the job offer must meet the applicable minimum salary threshold of at least £25,600. If the job offer is less than the minimum salary requirement, but no less than £20,480 (in line with national pay scales), the applicant may be able to trade characteristics to get the required number of points,

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<sup>1</sup> Glasgow Disability Alliance (2020) GDA's Covid-resilience engagement and response: Interim report. Glasgow Disability Alliance. Available at: <https://gda.scot/what-we-do/our-disabled-people-led-covid-response/>.

<sup>2</sup> The ALLIANCE (2020) Response to the Equalities and Human Rights Committee inquiry on the impact of Covid-19 pandemic on equalities and human rights. Available at: <https://www.alliance-scotland.org.uk/blog/opinion/coronavirus-covid-19-the-equality-response/>.

<sup>3</sup> Carers UK (2020) Carers Week 2020 Research Report. Available at: [https://www.carersuk.org/images/CarersWeek2020/CW\\_2020\\_Research\\_Report\\_WEB.pdf](https://www.carersuk.org/images/CarersWeek2020/CW_2020_Research_Report_WEB.pdf).

such as a job offer in a specific shortage occupation. This requirement has particular impacts for workers who may need to work part-time – a majority of part-time workers are women – or who are seeking work in an undervalued sector such as social care.

The UK Government has introduced a Health and Care Visa, which is part of the Skilled Worker route. While the UK Government has created an exemption for health and social care workers from the requirement to pay the Health Surcharge, frontline workers in the health and social care sector who are not eligible for the new Health and Care Visa will have to pay the Immigration Health Surcharge, and must utilise a reimbursement scheme, requiring them to have the cost upfront - £642, per person, per year, in addition to the cost of the visa. Most care workers will not be covered by the scheme or visa programme, which only applies to workers officially classed as 'skilled' and care workers are not defined as a shortage occupation.

Analysis by the Women's Budget Group has found that the impact of the new immigration system is substantially unequal for women and men due to the pattern of women and men's position in the economy. The new immigration system privileges sectors where men are more likely to be employed, including STEM careers. It then further devalues the highly skilled and vital roles in the care economy that are disproportionately filled by women.<sup>4</sup>

### Employment and equality protections

We are also concerned about medium to long term changes to UK employment law, as women continue to be overrepresented in part-time, temporary and insecure work, and among workers on zero-hours contracts and poverty wages. Women have therefore been the majority of workers to benefit from the legal protections that have come from the EU, such as the Part-Time Worker Directive (2000) and Fixed Term Worker Directive (2002), as well as protections for unpaid carers. Additionally, the EU has also been the source of many protections specifically utilised by women, such as maternity leave, the right to time for antenatal appointments, protections for breastfeeding mothers and protection against dismissal because of pregnancy discrimination. ECJ decisions have been a vital source of women's employment rights, and ECJ decisions after the end of the transition period are not binding on UK courts or tribunals (although account may be taken of them).

The EU has now adopted the Work-life Balance Directive,<sup>5</sup> which aims to support better work-life balance for parents and carers and encourage a more equal distribution of care between women and men while addressing women's under-

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<sup>4</sup> UK Women's Budget Group (2020) WBG statement on Immigration Reform: Discrimination by Design. Available at: <https://wbg.org.uk/analysis/wbg-statement-on-immigration-reform-discrimination-by-design/>.

<sup>5</sup> European Commission 'Work-life balance'. Available at: <https://ec.europa.eu/social/main.jsp?catId=1311&langId=en>.

representation in the labour market. Because this directive must be implemented by 2022, the implementation period for states overlapped with the date of the UK's transition period.

As a result, the UK Government has indicated that it will not transpose the directive, at least in full. Although UK law currently covers or is proposing to cover many of the requirements of the directive, it is unclear what underpinning the protections have. We are worried about protection for women's economic and social equality failing to keep pace with EU law or being incrementally weakened over time.

Similarly, equality and non-discrimination protections in the UK are deeply rooted in EU law, which has also provided a minimum floor for equality. The Equality Act includes anti-discrimination measures in employment, including equal pay, and in the provision of goods, facilities, and services. Additionally, the EU Charter of Fundamental Rights has embedded equality and non-discrimination standards and women's rights across EU Law. Future changes to the Equality Act or equality law more generally could reduce the standard of protection guaranteed by EU membership.

### Replacement funds

The availability of EU Funding programmes, including European Structural Investment Funds (ESIF) and the European Social Fund (ESF), has enabled organisations from a range of sectors to undertake projects that make a real difference to women's lives. Furthermore, gender mainstreaming is integrated into EU funds, meaning that organisations applying for funding for projects not primarily focused on gender equality have to consider and demonstrate the impacts of their proposals on women and girls, men and boys, and gender equality. The EU provides specific funding to combat gender stereotyping and occupational segregation, and the ESF has enabled countless feminist academics and research projects to do vital work on gender equality, including welfare and health services and those directly relevant to countering violence against women.

For the third sector, where women constitute a majority of the workforce, European funds from the ESF and the European Civil Protection and Humanitarian Aid Operations (ECHO) represent millions of pounds for services and projects that women depend upon. The Rights, Equality and Citizenship programme has directly supported UK domestic abuse services and over a third of REC-funded (Rights, Equality and Citizenship Programme) projects directly support people in the UK.

### Criminal justice

The EU has played a key leadership role with regards to various violence against women strategies, including a major initiative to tackle female genital mutilation and the Daphne Initiative to fund violence against women programmes. The latter has

enabled organisations in the UK to provide initiatives, services and research to combat violence against women and children on both a local and a cross-border basis. This funding must be preserved or replicated to ensure the sustainability of violence against women services and international collaboration and learning.

The system of European Domestic Protection Orders ensures that legal decisions which protect women from domestic abuse, harassment, violence and stalking are recognised across the EU. The UK's human trafficking laws are underpinned by the EU Trafficking Directive, which provides more protection for women who have been victims of trafficking or modern slavery than those currently provided for in UK law. The UK continues to recognise European Domestic Protection Orders post-Brexit, however the EU has not made reciprocal arrangements, requiring a separate procedure in national courts for recognition and enforcement, possibly putting women who move from the UK to an EU state or who travel to an EU state for leisure or business at risk if they have a Domestic Abuse Protection Order from a Scottish court.<sup>6</sup>

### **3. Have you got suggestions of mitigations that could be put in place to support people affected by EU Exit (immediate through to long term)?**

This is difficult to answer, as our major concern is that women will be negatively affected by the economic and social consequences of Brexit going forward, although some women such as those who run businesses that export to the EU or who have been required to seek settled status have clearly been immediately affected.

Regression, especially around employment and human rights law, is a key and ongoing concern, including working time rights and those applicable to part-time, temporary and agency workers and some maternity and parental rights. However, this is difficult to predict and the UK Government has said that it has no immediate intentions to change the law in relation to equality and employment (although this does not mean we will not fall behind through EU policy-making or ECJ jurisprudence) but it has embarked on a review of the Human Rights Act and did not keep the Charter of Fundamental Rights. Additionally, UK Ministers are now using rhetoric that hints at a shift from the anti-discrimination approach of the Equality Act 2010.

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<sup>6</sup> Domestic Abuse (Protection) (Scotland) 2021. Available at: <https://www.parliament.scot/bills-and-laws/bills/domestic-abuse-protection-scotland-bill>.

## We recommend that:

- Funding for women's organisations and providers of services used by women such as violence against women services is sustainable and guaranteed.
- Funding for research including cooperation between researchers in the EU is available to academics focused on gender and women's rights and safety.
- Replacements to structural funds should be used to support not only economic projects but citizen and social cohesion.
- Scotland should ensure women's rights are robustly protected in the proposed Scottish Human Rights framework through the incorporation of CEDAW.
- Pushing for the devolution of equality law to the Scottish Parliament, in addition to at least some employment law, ensuring that the protections in CEDAW are applied to both and it is harder to chip away at the minimum standard of protection.
- Using devolved regulations over the Public Sector Equality Duty to enhance gender mainstreaming in Scottish public policy.
- Scottish institutions use all available and legal means to mitigate No Recourse to Public Funds, while pushing for an end to the policy at source.

### FOR FURTHER INFORMATION

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### ABOUT US

Engender is Scotland's feminist policy and advocacy organisation, working to increase women's social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.