



## Engender submission to the Smith Commission on devolution October 2014

### EXECUTIVE SUMMARY

Engender welcomes this opportunity to submit our views to the Smith Commission on further devolution of powers to the Scottish Parliament. We engaged widely with our members and a broad range of stakeholders on women's rights and gender equality issues ahead of the referendum. We have surveyed our members and other women and men in preparing this submission, and have received over a thousand responses. The resounding message to emerge was that **greater equality for women in Scotland is contingent on fundamental change across our political and economic institutions.**<sup>1</sup> One way that this could be partly achieved is through further devolution of key powers that influence women's current inequality in Scotland.

There are many significant challenges faced by different groups of women in Scotland, on account of their gender, and often due to multiple and intersectional discrimination. The gendered issues that drive this disadvantage cut across all areas of social and economic policy, both devolved and reserved. Lack of effective gender mainstreaming and policy coherence explains the glacial rate of progress we have seen over recent decades, and to some extent the ongoing regression of women's equality at UK-level.<sup>2</sup> The interdependence of competences highlighted in the Smith Commission's guidelines are particularly pertinent to a gendered analysis of constitutional power, because **the root causes of gender inequality are systemic and responsibility cannot be neatly ascribed to distinct policy areas.**

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<sup>1</sup> Engender (2014) *Gender equality and Scotland's futures*

<sup>2</sup> *ibid*

A number of combined factors suggest that further devolution of relevant powers could bring real change to women's lives. The following trends all exemplify the distinct political, historical and legal context within which decisions are made and votes are cast in Scotland:

- The inherent potential for progressive change within any transfer of power and the development of new policy, programmes, and institutions in Scotland
- The comparatively progressive structures of the Scottish Parliament, including the Equal Opportunities Committee of the Scottish Parliament and the cross-party bill scrutiny role of subject committees
- The strong track record of active women's and equalities sectors within a comparatively influential civil society context
- Policy divergence in critical areas such as violence against women, and
- Extremely concerning regression on gender and broader social justice issues at UK-level.

## **CALL FOR FURTHER POWERS FOR SCOTLAND**

We are calling for transfer of the following powers to the Scottish Parliament:

1. To legislate and regulate around equality law, including the power to establish a Scotland-specific equalities regulator, akin to the Equality Commission in Northern Ireland.
2. To legislate and regulate around employment, including around maternity, paternity and parental leave; flexible working; the national minimum wage; and the employment tribunal service.
3. The social security, benefits and taxation system, including the power to legislate and regulate, in addition to administration and delivery.
4. To establish employability programmes that link with Scotland's economic development strategy to be devolved to the Scottish Parliament.
5. To regulate broadcasting and advertising in Scotland.
6. The administration of all reserved tribunals operating in Scotland, including the Immigration and Asylum Tribunal should be devolved.

## CALL FOR GENDER-SENSITIVE PROCESS

In recognition of the complexity of the task before the Commission, and the abbreviated timescales in which it has to be delivered, we propose three process recommendations.

1. That an explicit commitment to gender equality form part of the heads of agreement, so that this becomes a principle as the detail is worked through.
2. That cumulative equality impact assessment, including an assessment of the impact on women, forms part of the development process.
3. To ensure policy coherence in the medium term, UK Government policymaking include a devolution impact assessment, which assesses the impact of policy on people in Scotland, Northern Ireland, and Wales, and which involves civil society in those three nations in identifying the likely impact of interactions with policy in each nation.

Women are more than half of all people in Scotland. As power shifts, the impact of those shifts on women must be explicitly acknowledged and understood. In all of the Commission's work, we call for gender to be at the centre of analysis and development.

As an annex to this paper, we add a briefing paper, *Gender equality and Scotland's futures*, that we prepared for our members and gender equality stakeholders in Scotland in advance of the referendum. This sets out, in greater detail, how power to address women's inequality is divided between Holyrood and Westminster, and what the implications of that division of power are.

## 1. INTRODUCTION

Engender welcomes this opportunity to submit our views to the Smith Commission on further devolution of powers to the Scottish Parliament. We engaged widely with our members and a broad range of stakeholders on women's rights and gender equality issues ahead of the referendum. The resounding message to emerge was that greater equality for women in Scotland is contingent on fundamental change across our political and economic institutions.<sup>3</sup> One way that this could be partly achieved is through further devolution of key powers that influence women's current inequality in Scotland.

There are many significant challenges faced by different groups of women in Scotland, on account of their gender, and often due to multiple and intersectional discrimination. Persistent gender inequality means that women have less access to power, resources, participation in society, and physical safety. Particular barriers are faced by lone mothers, disabled women, black and minority ethnic women, refugee and asylum seeking women, older women, carers, women struggling to access the labour market, women at risk of domestic abuse and other forms of violence, and more.<sup>4</sup>

The gendered issues that drive this disadvantage cut across all areas of social and economic policy, both devolved and reserved. Lack of effective gender mainstreaming and policy coherence explains the glacial rate of progress we have seen over recent decades, and to some extent the ongoing regression of women's equality at UK-level.<sup>5</sup> The interdependence of competences highlighted in the Smith Commission's guidelines are particularly pertinent to a gendered analysis of constitutional power, because the root causes of gender inequality are systemic and responsibility cannot be neatly ascribed to distinct policy areas.

We are calling on the Commission to apply robust gender analysis to its own deliberations and reporting, far beyond a retrospective Equality Impact Assessment of the Draft Bill. This would take into account the cumulative

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<sup>3</sup> Engender (2014) *Gender equality and Scotland's futures*

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

implications of any new package of powers for women and shape the recommendations made. The drivers of gender inequality are multiple and complex; as a result, so are the impacts of public policy on women and gender relations. Given the resources available to the Commission, implementing a gender mainstreaming approach may therefore require additional technical support.

Our response to the Commission's questions on principles and financial implications is overarching.<sup>6</sup> The principles that underpin this submission are advancement of gender equality and justice, and the realisation of women's rights. From this it follows that promoting and safeguarding women's rights should not be predicated on a cost-benefit analysis of implementing new structures in order to achieve this. This includes the given example of likely start-up and administrative costs. Questions put forward by the Commission, in terms of our assessment of the current situation, key issues under debate and particular interdependencies with other powers are integrated throughout.

The Commission, political parties who have submitted responses to the Commission, and civil society stakeholders are all concerned with the coherence of additional powers that are devolved to Scotland. We agree that further devolution should simplify the policy boundaries that exist between reserved and devolved powers, if possible, but recognise that the best way to ensure this is 'devo-max', the devolution of all revenue-raising and decision-making powers other than foreign affairs and defence. Although a significant number of women who have engaged with our consultation paper have advocated for devo-max, we do not believe that the quest for coherence should mean that no further devolution short of devo-max is considered. We suggest a possible mechanism for facilitating greater policy coherence between Westminster and Holyrood in section 4 of this paper.

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<sup>6</sup> To what extent do the **advantages outweigh the disadvantages** (or vice versa)? *For example, if there are financial costs involved in devolving the power, to what extent are those costs likely to be recovered through efficiencies or improved economic or social outcomes? What would be the **financial advantages or costs** involved in **implementing** the proposal, and who would bear or benefit from these? For example, how much might start up costs be? What would administrative costs be likely to be on an ongoing basis?*

## 1.1 WHAT ADDITIONAL DEVOLUTION MIGHT MEAN

We do not suggest that additional devolution would automatically lead to greater gender equality in Scotland. Clearly constitutional arrangements do not dictate or guarantee policy direction, much less specific outcomes. Indeed, there is a clear and necessary distinction to be made between the powers the Scottish Parliament should have and how these are used. We will scrutinise the gendered implications of any further devolution in due course.

In order for new powers to be effectively levered for change, it will also be vital for all stakeholders to critically address what has not been achieved within the current settlement and where devolution has failed to deliver for women.

However, a number of combined factors suggest that further devolution of relevant powers could bring real change to women's lives. The following trends all exemplify the distinct political, historical and legal context within which decisions are made and votes are cast in Scotland:

- The inherent potential for progressive change within any transfer of power and the development of new policy, programmes, and institutions in Scotland
- The comparatively progressive structures of the Scottish Parliament, including the Equal Opportunities Committee of the Scottish Parliament and the cross-party bill scrutiny role of subject committees
- The strong track record of active women's and equalities sectors within a comparatively influential civil society context
- Policy divergence in critical areas such as violence against women, and
- Extremely concerning regression on gender and broader social justice issues at UK-level.

This context underpins the main body of our submission, which is structured around reserved powers that have a direct impact on women's existing inequality, and highlights why there is urgent need for action from a gender perspective in each case. Along with the complex interdependency between key reserved and devolved policy areas, and the links with systemic gender inequality it also represents the thrust of our argument in recommending that these should be devolved to the Scottish Parliament.

We do not focus in detail on the tax-raising and borrowing powers that would resource their implementation, but do advocate for proportionate devolution of economic policy levers in order to maximise policy coherence and provide financial accountability. We endorse the Scottish Women's Budget Group statement to the Smith Commission, which sets out how any such new levers should be fair and progressive. In the event that this does not occur, evidently any additional powers that are devolved must be adequately financed by the UK Government. Any further cuts to the Scottish Government's Budget will be borne by women and other marginalised groups.

## 2. CONSULTATION

In establishing our position, we consulted with our members, the women's sector and the wider community of women and men in Scotland with an interest in gender equality issues. This partly took the form of a survey (see annexe), which was completed by 1013 people between 8 October and 15 October. Of these, 21 responded on behalf of organisations, 163 left additional comments, 803 identify as women and 125 identify as men. This reflects the ongoing degree of deep engagement across Scotland with constitutional issues.

The substantive results of the survey overwhelmingly support the view that prospects to advance gender equality in Scotland are stronger if powers to effect change are devolved to the Scottish Parliament. These are integrated throughout our response.

We also hosted a discussion event with representatives of the Smith Commission secretariat, representatives from women's sector organisations, and Engender's members. Twenty women attended, and set out thinking within their organisations and personal opinions on the process and specific policy areas from gender perspectives. Some of the nuance of that discussion is reflected in our own detailed response below.

Finally, we are concerned by the extremely tight timescale within which the broader process is taking place, and believe that this undermines meaningful consultation with civic society. During our consultation process women raised substantial additional points, including around international development and the possibility of devolving additional powers in areas for which DfID currently

bears responsibility, which were impossible to develop consensus around within the period before submissions were to be made to the Commission.

A key recommendation of our submission is that the Commission advocates for further scope for civil society to feed into the shape and detail of such powers that are ultimately devolved in its report to the UK Government.

### 3. POWERS

#### 3.1 ANTI-DISCRIMINATION LAW AND AN EQUALITIES REGULATOR FOR SCOTLAND

**Should powers to legislate around equalities be transferred to the Scottish Parliament?**

Strongly disagree 8.7%, Disagree 0.5%, Neither 3%, Agree 17.8%, **Strongly agree 70.0%**

**Should powers to establish an equalities regulator in Scotland be transferred to the Scottish Parliament?**

Strongly disagree 8.1%, Disagree 1.2%, Neither 3.3%, Agree 17.6%, **Strongly agree 69.8%**

#### POWER AND RESPONSIBILITY

The power to legislate on anti-discrimination, equalities and employment law is reserved to Westminster. The UK Government is also responsible for laws regulating trade unions, for determining whether fees should be paid to access tribunals, and the level at which those fees should be set.

The Human Rights Act 1998 and Equality Act 2010 incorporate overarching protection of women's rights, and provide protection from direct and indirect discrimination on the grounds of sex, including in employment, and in the provision of goods, facilities, and services. The public sector equality duty (PSED) is a pillar of the Equality Act that obliges proactive due regard for equalities issues across all public authority activities. The Equality and Human



Rights Commission in Scotland is the equalities regulator, and is responsible for all human rights issues that relate to reserved matters, but it is not accountable to the Scottish Government or Parliament. It was established as part of the Equality Act 2006.

Use of parliamentary quotas and temporary special measures in the Scottish Parliament is currently reserved under the provision on political parties in the Scotland Act. Some temporary special measures, including all-women shortlists, and parliamentary quotas themselves, require amendments to the Equality Act 2010, which prohibits discrimination on the grounds of sex. This would also be true of quotas for local government councillors, and membership of public sector boards. Quotas for membership of private sector boards would also engage companies law, which is reserved.

Scottish Government is responsible for the specific Scottish regulations of the public sector equality duty (PSED), which place responsibility on public bodies as employers to publish their gender pay gap, occupational segregation information, and equal pay statement, and equality outcomes. Employers must also equality impact assess all significant employment policies.

### **WHY IT MATTERS FOR WOMEN**

This legislation has major implications for women and prospects for achieving gender equality, in a range of ways. The right to challenge the actions of employers within an independent adjudication system is a key workplace right with clear gendered implications. Unfair dismissal or discrimination against pregnant women and women in certain age brackets, for instance, has been a significant and well-documented barrier to gender equal employment practices.<sup>7</sup>

The gender pay gap in Scotland persists at 17%, despite over 39 years of statutory obligation to provide equal pay under the Equal Pay Act 1970. This single indicator reflects multiple barriers to economic equality for women, but could be partly addressed with tools such as mandatory gender pay audits.

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<sup>7</sup> Project 28-40 (accessed 19/2/14) <http://opportunitynow.bitc.org.uk/leadingchange/project28-40>; Alliance against pregnancy discrimination in the workplace (accessed 19/2/14) <http://www.maternityaction.org.uk/wp/wp-content/uploads/2013/09/allianceagainstpregnancydiscrimination.pdf>

At Holyrood, the female representation rate is only 36% and fewer than 25% of local councillors are women. Yet evidence from around the world shows that diverse political representation better meets the needs of societies and there is a correlation between greater parliamentary gender balance and the political profile of women's rights issues and social policy more broadly.<sup>8</sup> Parliamentary quotas and temporary special measures are employed to great effect worldwide to increase the female representation rate.

### CALL FOR DEVOLUTION OF POWERS

**Engender is calling for powers to legislate and regulate around equality to be devolved**, including the power to establish a Scotland-specific equalities regulator, akin to the Equality Commission in Northern Ireland. This will enable better scrutiny of equalities practice in Scotland that is more sensitive to the distinct public sector architecture. It will also enable better links to be made between action to encourage and sustain good equalities practice and Scotland's economic development policy.

Transfer of the powers enumerated above will give Scotland competence to introduce measures such as mandatory pay audits, as well as temporary special measures such as quotas in any area of Scotland's representative structures, as well as in public and corporate governance.

### 3.2 MATERNITY, PATERNITY, AND PARENTAL LEAVE, AND FLEXIBLE WORKING

**Should powers to legislate around employment be transferred to the Scottish Parliament?**

Strongly disagree 7.7%, Disagree 1.4%, Neither 1,7%, Agree 14.6%, **Strongly agree 74.6%**

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<sup>8</sup> International Institute for Democracy and Electoral Assistance (2005) *Women in Parliament: Beyond Numbers*; UN Division for the Advancement of Women (2005) *Equal participation of women and men in decision-making processes, with particular emphasis on political participation and leadership*; OSCE Office for Democratic Institutions and Human Rights (2011) *Gender equality in elected office: A six-step action plan*

## POWER AND RESPONSIBILITY

Employment law, including the power to determine statutory maternity, paternity and parental leave is reserved to Westminster. Power to determine the fees for accessing the employment tribunal service in Scotland is also reserved to Westminster.

## WHY IT MATTERS TO WOMEN

A key reason for women's disadvantaged position within the labour market is gender roles within the home. Women's unpaid care and reproductive work props up the so-called 'real' economy, yet it is economically and culturally undervalued and the 'motherhood penalty' and 'carers' penalty' see women's career progression and earning potential undermined. As Scotland's population, demography and families change, the need for unpaid care will increase. Unless gender roles within the home are successfully addressed, this will fall disproportionately on women who undertake the majority of dual caring roles for elderly relatives and children.

Progressive employment law and working practices are vital to ensure that women with caring responsibilities can also access paid work in line with their skills and contribute efficiently to a sustainable economy, and to encourage and facilitate men's sharing of parenting and other care responsibilities. The OECD calculates the UK gender gap in unpaid work at around two hours per day.<sup>9</sup> Flexible parental leave that can be shared by women and men can help to challenge the pervasive culture of a gendered division of labour. This must also be allied to developing effective carers' leave, and to carers' rights.

The persistent gender pay gap is a drag on growth, and gendered allocative inefficiency prevents growth in a number of Scotland's key economic sectors, including renewables. Bringing employment law within the competence of the Scottish Parliament would enable this to be more closely aligned with Scotland's economic development policy.

The introduction of fees to access the employment tribunal service in Scotland has resulted in a 75 per cent drop in sex discrimination cases. The medium-run impacts of this fall in the number of cases are not yet known, but it is

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<sup>9</sup> Miranda, V. (2011), "Cooking, Caring and Volunteering: Unpaid Work Around the World", OECD Social, Employment and Migration Working Papers, No. 116

important that poor employers can be held accountable for the damage that they do to individual women, to local economies, and to businesses that are law-abiding and offer decent employment.

### CALL FOR DEVOLUTION OF POWERS

**Engender is calling for power to legislate around employment to be transferred to the Scottish Parliament.**

This would include power to:

- Determine maternity, paternity, and parental leave and pay;
- Set the minimum wage; and
- Ensure access to justice for breaches of employees' rights, including the tribunal service and judicial review

### 3.3 SOCIAL SECURITY

**Should powers to legislate around social security be transferred to the Scottish Parliament?**

Strongly disagree 8.1%, Disagree 0.9%, Neither 1.2%, Agree 7.1%, **Strongly agree 82.7%**

### POWER AND RESPONSIBILITY

Social security and related benefits and taxation systems are reserved to Westminster.

### WHY IT MATTERS FOR WOMEN

Social security and gender are interlinked. Women are more reliant on the welfare system, with benefits comprising 20% of the average woman's income, compared to 10% for men in the UK.<sup>10</sup> In parallel, due to caring roles and gender segregation, women are more reliant on key public services and routinely bear the brunt of public spending cuts. Cuts to public spending on the benefits and taxation system under the banner of 'welfare reform' have predominantly been taken from women's incomes. Analysis by the House of Commons Library shows that of the initial £8 billion raised in changes to taxes

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<sup>10</sup> The Fawcett Society (2006) *Who benefits? A gender analysis of the UK benefits and tax credit system*

and benefits by the UK Government £5.8 billion will be paid by women and £2.2 billion by men.<sup>11</sup>

Women have fewer financial assets and less access to occupational pensions than men and there are considerably more women than men in the lowest income decile in the UK.<sup>12</sup> 92% of lone parents are women, and women make up 95% of lone parents dependent on Income Support.<sup>13</sup> Women comprise nearly 60% of care providers within the home and 64% of care providers in the wider community. The gender pay gap in Scotland, (13% for full-time work and 34% for part-time work),<sup>14</sup> signifies persistent and widespread differences in women's experience of the labour market.

This profile is the result of the entrenched structures that limit women's access to resources, decision-making and physical safety. The UK's social security system is a facet of this, as demonstrated by the highly gendered impact of 'welfare reform'. Women and their children are penalised by this raft of policies and many face increased risk of poverty, abuse, violence and physical and mental health issues. Disabled, BME, refugee and older women, lone mothers and carers are at risk of multiple discrimination and are particularly vulnerable to harm.<sup>15</sup>

Furthermore, where women's disposable income is reduced, spending on children decreases and links between women's and child poverty are widely recognised.<sup>16</sup> Child poverty shapes life chances, development and wellbeing, and subjects children to extreme stigmatisation.

Recent polling has demonstrated that 75% of people questioned support the devolution of welfare and benefits.<sup>17</sup> The fact that 82.7% of 1013 respondents to Engender's survey strongly support the devolution of welfare clearly highlights the importance of social security for women and as a gender issue.

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<sup>11</sup> House of Commons Library (2012) [How have Coalition budgets affected women?](#)

<sup>12</sup> Women's Budget Group (2013) *The Impact on Women of Budget 2013: A budget for inequality and recession*

<sup>13</sup> Engender (2012) *Multiple Jeopardy: The impacts of the UK Government's proposed welfare reform on women in Scotland*

<sup>14</sup> Office for National Statistics (2013) *Annual Survey of Hours and Earnings, 2013 Provisional Results*

<sup>15</sup> Engender, Close the Gap, Scottish Women's Aid (2014) *Gender and social security: A joint position paper*

<sup>16</sup> Women's Budget Group (2005) *Making the links: Women's and Children's Poverty*

<sup>17</sup> <http://blog.whatscotlandthinks.org/2014/10/panelbase-snp-devolution-labours-prospects/>

## CALL FOR DEVOLUTION OF POWERS

**Engender is calling for devolution of the social security, benefits and taxation system to be transferred to the Scottish Parliament. This must include the power to set policy, in addition to administration and delivery.**

There appears to be broad consensus across the third sector that additional control over social security is desirable and would better enable prospects to create a fairer system that guarantees basic security, dignity and rights. This is partly due to the current UK government's ongoing reforms, opposition parties' policy on welfare going into the General Election, and Scottish Government commitments to mitigate the worst impacts of welfare reform that are supported by Scottish Parliament.

However, the sheer scale and complexity of the welfare system is prompting debate about the exact form this should take. The necessary infrastructure for delivery is vast and currently overseen cross-departmentally and by a range of bodies, including HMRC, the Department for Work and Pensions (DWP) and Jobcentre plus. In practice the transition period would therefore be complicated and costly.

There is also a diverse set of proposals on how different elements of the welfare system might be carved up, to minimise perceived disadvantages and most effectively be brought to bear on tackling poverty and inequality. These include concerns, for instance, over the Labour Party's proposal to devolve Housing Benefit, on grounds that extricating one element of Universal Credit would be impractical. Other stakeholders advocate that Child Benefit might usefully be devolved as a standalone benefit or that there is less clear potential advantage to devolving power over pensions. Many stakeholders are advocating for the ability to top up benefits, in the event that substantial additional powers are ultimately not devolved; this is a position that we endorse on the gendered grounds outlined above.

Our view is that the complexity and interdependency within the benefits and taxation system supports the case for its wholesale devolution, as do the extreme interdependencies between social security, employment and equality. As above, we do not believe that poverty and inequality reduction should be predicated on cost-benefit analyses. Fundamentally, women are so egregiously

discriminated against within the current system, that there are very clear chances to make progress within a transfer of powers. The social security system is failing women and reinforcing their economic inequality. One way or another, reform is urgently needed, to reverse the Welfare Reform Act 2012 and establish an equitable system that is designed to deliver gender equality in access to economic resources.

### 3.4 EMPLOYABILITY PROGRAMMES

**Should powers to legislate around social security be transferred to the Scottish Parliament?**

Strongly disagree 8.1%, Disagree 0.9%, Neither 1.2%, Agree 7.1%, **Strongly agree 82.7%**

#### POWER AND RESPONSIBILITY

Employability is principally the responsibility of the Scottish Government and its agencies, with the exception of funding arrangements for pan-UK employability programmes linked to social security. These include the current UK Government's Work Programme and Work Choice programme for disabled people.

#### WHY IT MATTERS FOR WOMEN

In advance of the rollout of Universal Credit, a new regime of sanctions and conditionality has been introduced by Job Centres. This places intense pressure on Jobseeker's Allowance (JSA) recipients to participate in employability activity that is supposed to move participants closer to the labour market. The quality and effectiveness of these programmes has been widely criticised,<sup>18</sup> and they discriminate against women in two key ways.

Firstly, the new JSA rules require single mothers to take part in work-focused interviews and mandatory work activity when their youngest child is one year old. Current childcare provision is insufficient to meet the needs of all women who are categorised as 'economically inactive', which guarantees that women will not all be able to meet the requirements of the programme and will

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<sup>18</sup> Joseph Rowntree Foundation (2010) *A Review of Benefits Sanctions*  
SCVO (2013) *Independent Review of Jobseekers' Allowance Sanctions*  
Citizens' Advice Bureau (2011) *Conditionality and sanctions in the Welfare Reform Bill*

therefore be subject to sanction. Secondly, the programme completely ignores the occupational segregation that characterises the Scottish labour market when pairing job seekers with mandatory work activity (workfare). We know that generic skills and employability programmes are likely to replicate gendered patterns of skills acquisition and employment. The methods that can be used to mitigate this have not been applied with regard to Jobseeker's Allowance. This all but ensures that the implementation of JSA will entrench occupational segregation, and therefore perpetuate the gender pay gap, in Scotland.

More effective employability support for disabled people could also have a positive impact on the underemployment of female carers, who often face limited career prospects and are forced to take low-paid, part-time work.

### CALL FOR DEVOLUTION OF POWERS

**Engender is calling for power to establish employability programmes that link with Scotland's economic development strategy to be devolved to the Scottish Parliament.** This must be linked with existing infrastructure for skills, training and economic development.

## 3.5 REGULATION OF BROADCAST MEDIA AND ADVERTISING

**Should powers to regulate broadcast media and advertising be transferred to the Scottish Parliament?**

Strongly disagree 10.0%, Disagree 2.3%, Neither 5.1%, Agree 10.6%, **Strongly agree 71.9%**

### POWER AND RESPONSIBILITY

Broadcasting policy is reserved to the UK Government. This includes responsibility for the legal obligations of the communications regulator, Ofcom.

The Advertising Standards Authority (ASA) is a self-regulatory organisation, and is funded by levy on the advertising industry. It has no sponsor department, and is not accountable to government or to any parliament.



Regulation of the print media is limited to voluntary codes of practice and the influence of related non-statutory industry regulators, such as the ASA. The BBC, however, is subject to English regulations of the public sector equality duty. This applies equally to BBC Scotland as a subsidiary of the BBC.

### WHY IT MATTERS FOR WOMEN

The negative impact of the media on women is profound. Across UK national daily newspapers only 5% of editorial positions and 0% of political editorial positions were held by women in 2013.<sup>19</sup> This is reflected in widespread stereotyping of women in the print and broadcast media, and lack of gender balance on screen. In turn, this reinforces cultures of male dominance in the public domain. The absence of quality reporting on gender issues contributes to low awareness of women's inequality and thus to sustaining it. Meanwhile, the media provides a platform for backlash against the women's movement and the moderate progress made.

The subordinate representation of women in the media and popular culture is acknowledged to be damaging to girls' and women. Sexualised imagery of women and girls across media platforms is so commonplace and widely accepted that it generally fails to resonate as an equality issue. This objectification of women's bodies shapes how our cultural sees and values women, reinforces sexist attitudes and has negative individual impacts in terms of body image, self-worth and health. These issues have been widely documented and challenged by various organisations and campaigns across Scotland and the UK.<sup>20</sup>

The BBC has come under increasing scrutiny over the considerable underrepresentation of women across its programming. As state broadcaster, it should provide an equal voice to all sections of society, ensure gender balance on its platforms, aim to avoid reinforcing gender stereotypes and encourage parity as an employer.

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<sup>19</sup> Centre for Women and Democracy (2013) Sex and Power 2013: Who runs Britain?

<sup>20</sup> Including Zero Tolerance Briefings on Media, and Sexualisation of young people in the media, OBJECT, NoMore Page Three

## CALL FOR DEVOLUTION OF POWERS

Core debates over freedom of the press aside, **Engender is calling for the transfer of powers to regulate broadcasting in Scotland to the Scottish Parliament.**

### 3.6 IMMIGRATION AND ASYLUM

**Should powers to act around immigration and asylum be transferred to the Scottish Parliament?**

Strongly disagree 8.4%, Disagree 2.0%, Neither 2.0%, Agree 14.3%, **Strongly agree 73.3%**

## POWER AND RESPONSIBILITY

Immigration law is reserved to Westminster, with some aspects relating to the reception, treatment and integration of asylum seekers within the remit of the Scottish Government.

## WHY IT MATTERS FOR WOMEN

Many refugee and asylum seeking women seek protection in the UK from diverse forms of violence that include torture and sexual violence, whilst human trafficking for the purpose of sexual exploitation is thought to be increasing in Scotland.<sup>21</sup> Some of these women have no recourse to public funds, face destitution and are amongst the most vulnerable to harm in our society. Research by the Scottish Refugee Council found that 70% of asylum-seeking women had experienced physical or sexual violence in their lifetimes.

## CALL FOR DEVOLUTION OF POWERS

We support the Scottish Refugee Council's position that assessment of asylum applications should remain a function of the UK Government, with additional operational responsibility for the provision and delivery of reception conditions to asylum seekers in Scotland. This should include provision of accommodation, advice and asylum support, which in turn should include services for victims of trafficking and gender based violence.

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<sup>21</sup> EHRC (2012) *Inquiry into Human Trafficking in Scotland, Follow report* (finds majority of victims are adult women trafficked for commercial sexual exploitation); Human Trafficking (Scotland) Bill (2013) (finds indications of a rise in trafficking to Scotland)

## **The administration of all reserved tribunals operating in Scotland, including the Immigration and Asylum Tribunal should be devolved.**

Engender's work on immigration and gender has focussed on the asylum system. Therefore, whilst we are aware of highly gendered patterns of economic migration, we do not have any specific recommendations for further devolution of aspects of immigration law or policy. We do, however, call for any such deliberations to be scrutinised from a gender perspective.

## **4. WESTMINSTER**

We are mindful of the fact that devolution of new powers would have the potential to maintain, or even increase the complexity of the devolution settlement, and make it more challenging for Whitehall departments and ministries to get to grips with the Scottish implications of policy development. The experience of Engender, and other civil society organisations, is that the interrelationships between policy developed in Whitehall and by the Scottish Government is poorly understood within the UK Government.

Along with others, **we are therefore proposing the introduction of something akin to a 'devolution impact assessment', which would require UK Government policymakers to consider the unintended consequences of their policy on people in Scotland, Wales, and Northern Ireland.** This would require UK policymakers to engage with Scottish Government civil servants with responsibility for specific policy areas, and also, critically, to engage with Scottish civil society.

## **5. CONCLUSION**

The independence referendum saw unprecedented political engagement in Scotland, and this engagement has continued in various forms through civil society's development of responses to the Smith Commission.

Engender is very concerned, though, about the brevity of the timescales to which the Smith Commission is working, and the fact that these militate against participation in the process. We have consulted as widely as has been possible during the time available, and received over a thousand responses to our survey on additional powers, but recognise the limitations of what we have been able to achieve.

Women and men who have taken part in the consultation have been clear in supporting the devolution of powers to tackle women's inequality to Scotland. The detailed comments that have been submitted to us reflect our understanding that further devolution will enable institutions, programmes, policy, and processes to be considered anew; will mean that the progressive structures of the Scottish Parliament, including the Equal Opportunities Committee, will scrutinise bills that set out the detail of new powers; will allow Scotland's active women's and equalities sectors to influence the shape of implementation and delivery; and will increase coherence between policy areas that are currently messily divided between Holyrood and Westminster.

We have set out in some detail our rationale for the devolution of equalities, some aspects of employment law, employability, social security, regulation of broadcast media and advertising, and some elements of immigration and asylum.

We have also made an additional recommendation for a process to increase policy cohesion between reserved and devolved matters, which would bring Scottish civil society into UK Government policymaking.

Women are more than half of all people in Scotland. As power shifts, the impact of those shifts on women must be explicitly acknowledged and understood. In all of the Commission's work, we call for gender to be at the centre of analysis and development.

## **ENDORSED BY**

This submission is endorsed by **Scottish Women's Aid**, and **Zero Tolerance**.

**Close the Gap**, which works on issues around women and the labour market, endorses Engender's position on employability programmes; social security; equalities legislation and regulation; and maternity, paternity and parental leave, and flexible working.

## ABOUT ENGENDER

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions that seek to achieve gender equality and justice.

**For further information please contact Jill Wood, Policy Manager, Engender**  
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