

## **Scottish Women's Aid response to the Scottish Government consultation on the Social Security (Scotland) Bill August 2017**

### **Introduction**

Scottish Women's Aid (SWA) is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

Domestic abuse is both a cause and consequence of women's inequality. This is embedded in Equally Safe<sup>1</sup>, the Scottish Government's strategy on violence against women and girls which makes an explicit commitment to addressing gender inequality as a significant route towards preventing and eradicating violence against women and girls.

Social security is in itself an important tool for combating domestic abuse: the availability of financial support is a factor that positively influences the ability of women experiencing domestic abuse to leave their abuser. Women's poverty is one of the critical enabling conditions for perpetration of domestic abuse. Social security policy should be used to redress disadvantages and discrimination associated with women's gendered roles and responsibilities

Scottish Women's Aid together with Engender, close the Gap, Carer's Scotland and the Scottish Refugee Council has highlighted the grotesquely disproportionate impact of welfare reform on women. We have consistently called for a gendered analysis in the development of social security policy and have set out ways in which new powers can be used to increase women's equality in Scotland.<sup>2</sup>

### **Q.1 The Bill framework - use of regulations**

- 1.1 Scottish Women's Aid welcomes the commitment in the Bill to social security as a human right. However we do have concerns that this approach is undermined by the over reliance on secondary legislation to provide specific details on the rules governing criteria, rights and obligations that will not be open to the same level of transparency, scrutiny or accountability.
- 1.2 Accountability is core to a human rights approach. A rights-based social security system requires that Ministers and officials responsible for the development and delivery of the system are held accountable for their decisions and that their decisions are judicially reviewable. The reliance on regulations that can be subject to change without consultation or parliamentary scrutiny will not ensure that individual rights can be realised or protected.

### **Q.2 Principles**

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<sup>1</sup> Scottish Government (2014) Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls

<sup>2</sup> Engender (2016) Securing Women's Futures: using Scotland's new social security powers to close the gender equality gap

- 2.1 Scottish Women's Aid welcomes the principles in the Bill particularly the importance of social security as a human right and essential to the realisation of other human rights. We believe the Bill should also include that the principle of social security as a human right is delivered and enjoyed equally and without discrimination. (see attached appendix on Equality Amendments).
- 2.2 Non-discrimination and equality are core elements of the international human rights framework.<sup>3</sup> States are required to ensure that social security systems are designed, implemented and monitored to take into account the differences in the experiences of men and women. The impacts of social security systems are not gender neutral and they need to respond to women's specific needs at all stages of women's lives.
- 2.3 CEDAW requires that women not only have the right to social security on the same basis as men but also that social security policy redresses disadvantages and discrimination associated with women's gendered roles and responsibilities. Many of the UK's social security policies discriminate against women who are unable to comply with qualifying conditions that fail to take into account women's caring responsibilities and resulting interrupted or undocumented employment history, gendered power relations or how resources are distributed within the household.
- 2.4 For example as a qualifying condition women from EEA countries are required to have a right to reside based on their employment history that disregards pregnancy, unpaid caring responsibilities or lack of affordable childcare. This has resulted in the entrapment of pregnant women and women with babies and young children with an abusive partner or facing destitution.<sup>4</sup>
- 2.5 Other examples include the single household payment of Universal Credit<sup>5</sup> the family cap on child tax credits and 'rape clause'<sup>6</sup>. Overall resulting in 86% of net 'savings' raised through cuts to social security and tax credits will come from women's incomes in the period 2010 – 2020.<sup>7</sup>
- 2.6 The need for equality and non-discrimination to be included as a principle is further highlighted by the Equality Impact Assessment (EQIA) of the Bill. The EQIA has not investigated how the Bill might specifically affect particular groups of people. It has not fully considered how women at different stages of their lives, disabled women, BME women, women as single parents – all of whom are more likely to experience poverty – will be impacted by these measures.
- 2.7 We have concerns that the Bill contains as a principle "a social security system that is efficient and delivers value for money". This principle appears counter to a human rights approach which should be based on the adequacy of benefits rather than efficiency and value for money.<sup>8</sup>
- 2.8 Together with Engender and other organisations, we want the Bill to include an overarching aim to address inequality and poverty in Scotland. This would then provide a clear objective for the underlying principles and legislative framework.

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<sup>3</sup> For example: UDHR, Article 2; CeDAW, Article 2; iCeSCR, Article 2.

<sup>4</sup> Scottish Women's Aid (2017) Submission to the Scottish Parliament Equality and Human Rights Committee Inquiry into Destitution, Asylum and Insecure Immigration Status in Scotland

<sup>5</sup> Engender (2016) Gender Matters in Social Security: Individual Payments of Universal Credit

<sup>6</sup> Scottish Women's Aid (2017) Two child limit for tax credits and universal credit written evidence to the Social Security Committee

<sup>7</sup> Women's Budget Group (2016) The impact on women of the 2016 Budget: Women paying for the Chancellor's tax cuts

<sup>8</sup> <http://socialprotection-humanrights.org/wp-content/uploads/2015/06/CESCR-General-Comment-19.pdf>

### **3. Social Security Charter**

- 3.1 Scottish Women's Aid supports the development of a social security charter which provides accessible information on how a system will work for the people using and those responsible for delivering it. However charters rarely provide any enforceable rights. A social security charter would need to include clear consequences for contravention as well as setting out the rights and responsibilities of those delivering and accessing the social security system.
- 3.2 The charter should be co-produced with people with direct experience of the social security system. It is essential that specific measures are taken to encourage the inclusion and participation of diverse groups of women in this process and of women's organisations that represent them. Meaningful participation should go beyond development and include implementation, monitoring and evaluation of the new social security system.
- 3.3 We believe that the bill should include a specific timescale for the charter to be reviewed, rather than from time to time, and recommend that this is every 3 years.
- 3.4 With Close the Gap and Engender, we recommend that the charter includes specific reference to the Public Sector Equality Duty (PSED) to ensure that a proactive approach to tackling gender inequality. The PSED requires gender mainstreaming in the design and delivery of policy. It is essential that the development of the charter considers the implications of social security policy on women's equality.

### **Q. 4 Rules**

- 4.1 The Bill does not contain timescales for decisions, this runs counter to a human rights based approach where transparency and access to information are essential components. Women and our members have told us of the months of delay in payment of benefits. This is a particular issue for women who have experienced domestic abuse and often results in women's enforced return to their abusive partner because of their destitution/impooverishment. The Bill should include specific timescales for decision making and what action will be taken if these timescales are not met.
- 4.2 We are concerned that the Bill sets out a similar process to the existing and much criticised Mandatory Reconsideration scheme. A human rights based approach requires that complaints procedures should include an appeal process that is independent, accessible, simple, fair and effective. While the Bill makes provision for the redetermination period to be time limited and for short term assistance to be available during this period the requirement for a second application creates an unnecessary barrier to a fair hearing.
- 4.3 The Bill as introduced includes liability on individuals to repay a social security payment(s) that have been made by an "official error". We do not believe repayments of benefit should be sought where an official error has been made. During our social security consultation events women told us that they did not know if they were receiving the correct level of benefits, that payment levels would be changed with no explanatory information and that "overpayments" would be reclaimed that they were unable to understand or challenge. Women felt this was

unfair “they are quick to take it off you – but if they make an error it will take 12 weeks to compensate you”.

4.4 We are also concerned about the proposal in the Bill to criminalise genuine error. Unlike the current system, the Bill does not differentiate between rules about reporting changes which might result in an overpayment, and other rules relating to fraud that might result in prosecution. There is just one set of rules all of which relate to fraud, despite fraud being statistically a minor issue in terms of benefit expenditure and delivery. We are concerned that the sanctions for the offences listed in sections 39, 40 and 41 are unduly punitive. Women experiencing domestic abuse often experience some form of financial abuse. This can include actions by the perpetrator to exploit women’s financial resources by using women to generate financial proceeds which they then appropriate, including coercing women into committing benefit fraud.<sup>9</sup>

## **Q. 5 Schedules in the Bill**

- 5.1 As the schedules contain little detail it is difficult to provide comprehensive comments at this stage. We do however have some specific concerns with some of the content of the schedules for Carer’s Assistance (Schedule 1) and Early Years Assistance (Schedule 5).
- 5.2 The schedule for Carer’s Assistance includes as part of the eligibility criteria whether or not an individual is in employment or education. We support Engenders call for the abolishment of restrictions on education and employment for carer’s allowance. Imposing this conditionality restricts women’s economic, social and cultural rights. Many women carers would welcome the ability to undertake paid work, increase their independent income, self-esteem and social life, and enable them to maintain or develop skills in the workplace.
- 5.3 The primary eligibility criteria for early years assistance includes the possibility that a partner could apply for and presumably receive the assistance. This fails to take into account that power and resources within households are not distributed equally. While the wording of the eligibility criteria may be intended to include others with responsibility for the care of a child e.g. kinship carers, it is crucial that gender sensitive eligibility criteria are utilised.
- 5.4 Many women experience financial abuse within domestic abuse and are denied access to independent income.<sup>10</sup> Domestic abuse also escalates during pregnancy and the period following childbirth. It is essential that new social security powers are used to support women’s financial independence and autonomy. This further emphasises the need to have equality and non-discrimination included as principles in the Bill.

## **Q.7 Top Up Powers**

7.1 As members of the Scottish Campaign on Welfare Reform (SCoWR) we believe there is an opportunity to use the Bill to legislate for a top up to child benefit. Child benefit has a high take-up rate and provides near-universal support with the costs of raising children. Increasing

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<sup>9</sup> Sharp-Jeffs, N. (2015) A Review of Research and Policy on Financial Abuse within Intimate Partner Relationships

<sup>10</sup> Women’s Aid (2015) Unequal, Trapped and Controlled

its value would protect family incomes from erosion. This would strengthen the role of universal benefits within the Scottish social security system in line with the SCoWR principle to 'radically simplify the social security system'.<sup>11</sup>

#### **Q. 8 Increase in carer's allowance to JSA level (from £62.10 to £73.10 a week).**

8.1 We welcome increase rate of Carers Allowance. However the increased rate represents a payment of £2 per hour for a minimum of 35 hours per week. 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.<sup>12</sup> Carers UK research showed that women were four times as likely as men to have given up paid work because of multiple caring responsibilities.<sup>13</sup> We support Engenders call on the Scottish Government to develop a staggered plan to uprate Carer's Allowance to recognise carers' contributions to the social and economic well-being of Scotland.

#### **Q.9 Discretionary Housing Payments**

9.1 Discretionary housing payments (DHP) are vital to women who have experienced domestic abuse and are trying to rebuild their lives. They support women to bridge payments when moving out of refuge into new homes, women who are affected by the two-child limit and changes brought in by universal credit. We know from our members that DHPs are not consistently awarded across Scotland and believe there should be a duty on local authorities to provide a DHP scheme.

9.2 We believe there is an opportunity to both review the expectations and intended outcomes of the scheme, whether it remains the best vehicle for mitigating the bedroom tax and benefit cap given their ongoing nature and whether the resources being allocated to it are adequate to meet the intended outcomes.

#### **10. Q. Is there anything else you want to tell us about this Bill?**

10.1 The recent EHRC research report set out the need for and clear benefits of an independent expert advisory committee on Scottish social security. The committee would be able to provide on-politically aligned detailed analysis of regulations as well as a wider view of the system itself.<sup>14</sup> The advisory committee should include a wide range of stakeholder expertise.

10.2 The Bill includes provisions that social security assistance 'may or may not take the form of money'. SWA believes that social security should always be provided in cash unless the claimant has made an informed choice that their cash entitlement is used to provide goods or services that they need. We believe the proposal in the Bill runs counter to human rights and dignity.

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<sup>11</sup> <http://www.cpag.org.uk/sites/default/files/SCoWR-Manifesto-Supplement-Holyrood-2016.pdf>

<sup>12</sup> Engender. (2016) Securing Women's Futures: Using Scotland's new social security powers to close the gender equality gap'.

<sup>13</sup> Carers UK (2014) State of Caring 2014

<sup>14</sup> <https://www.equalityhumanrights.com/en/publication-download/social-security-systems-based-dignity-and-respect>

10.3 Scottish Women's Aid in agreement with other equalities organisations, call on the Scottish Government to revise its EQIA to examine how its proposed social security policies and practices would impact each of the nine protected characteristics.

10.4 The Bill should require the collection of equality monitoring data disaggregated by gender and other equality characteristics. This data should be analysed and used to inform and develop social security and related policy areas.

10.4 The three flexibilities for universal credit 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 established in the Bill.

10.5 There is no legislative provision to prevent the use of private companies in benefit assessments in line with the stated Scottish Government policy intention.

10.6 The Bill's principle of social security as an investment in the people of Scotland needs to be backed by a statutory requirement for the annual uprating of benefits.

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## **Appendix: EQUALITY AMENDMENTS**

Together with Engender we propose that the following specific equality amendments are included within the 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.*