



# WOMEN'S POLICY GROUP

## **Opposing the two child tax credit cap and rape clause**

A paper prepared by the Women's Policy Group Northern Ireland to provide expert analysis of the key equality and human rights impacts of the implementation of these measures that came into force in the UK on 6<sup>th</sup> April 2017.

### **1. 2-Child Tax Credit Cap – Welfare Reform & Work Act 2016**

#### ***General***

The Women's Policy Group is opposed to the 2-child tax credit cap for a number of reasons:

- The 2-child cap does not appreciate the fact that not all women have control over their reproductive destiny. Domestic violence often takes the form of a spectrum of sexual coercion and restriction of reproductive choices. Women may be forbidden from accessing contraception, or may be forced to make decisions to acquiesce to sex in order to protect themselves from physical violence, to prevent violence or to de-escalate violence. Society may not see this as rape, but neither is it freely consenting to sex. For many women in abusive situations, the choice of whether or not to have children is out of their hands.
- It is well-known and well-documented that abusers often use pregnancy, poverty and financial dependence as means of establishing control over victims. This policy will enforce and facilitate that control.
- Some women are also restricted in their ability to say no to sex, or insist on contraception, for cultural or religious reasons.
- The lack of access to abortion services due to Northern Ireland's restrictive law means that this policy will have significantly different implications for women in Northern Ireland compared to the rest of the UK.

#### ***Equality Issues***

The Equality duties in Northern Ireland were a core element of the Good Friday/ Belfast Agreement. It is a requirement under the equality duties in NI (Section 75 of the NI Act 1998) for any new or revised policy decision to be subject to equality screening to eradicate any adverse impacts on any of the 9 equality groups. This tax credit decision will have impacts on at least 3 of the 9 categories: Gender, Dependants and Religious Belief. Section 75 of the Northern Ireland Act exists to ensure that equality of opportunity is central to policy making and service delivery. These duties apply to designated public authorities including

government departments and agencies, local councils, health trusts, housing associations, colleges and universities, and education and library boards.

This policy should have been equality screened by the Northern Ireland Office as a designated public authority in Northern Ireland. Additionally, as there will be major impacts on at least 3 of the 9 categories, it is our view that a full equality impact assessment should have been carried out in order to look at mitigations or alternative policies. There is currently no evidence that any equality screening has been done by NIO which would, in our view, constitute a breach of the NIO equality scheme. An alternative remedy would be for the Equality Commission to make representations to the Secretary of State for NI for the designation of the UK Treasury under Section 75 in relation to its functions in Northern Ireland.

- The cap will mostly affect women, as women make up the majority of primary carers for children in the UK. This policy is therefore discriminatory on the grounds of sex or gender. Eligibility for child tax credits relies on the parent being the main carer for that child. Given that the majority of single parents and main carers for children are women, this rule will disproportionately affect women – according to the most recent survey by the Office for National Statistics, women account for 86% of 2.9million lone parents with dependent children in the UK<sup>1</sup> and 92% in Northern Ireland.<sup>2</sup> Yet no equality assessment has been carried out as to the impact of this change on women specifically.
- This policy will disproportionately affect families from specific cultural and religious backgrounds where there is a trend for bigger families or a moral opposition / conscientious objection to contraception, emergency contraception and abortion, such as Orthodox Jews, Catholics or Muslims. This may also breach Articles 9 & 14 of ECHR (freedom of religion and anti-discrimination).
- The introduction of polices into Northern Ireland with grave adverse impacts on matters such as child poverty, gender equality, dependants and religious belief in a manner which entirely bypasses the scrutiny of the Section 75 duties is unacceptable.

### ***Human rights issues***

The 2-child cap potentially violates a number of fundamental human rights of women and children:

- States have a positive obligation to protect women from domestic violence, as established by the European Court of Human Rights.<sup>3</sup> This policy creates a barrier making it harder for women to leave abusive relationships, as change of family circumstances will activate the 2-child rule even if all children are born before 6<sup>th</sup> April 2017. This will mean that women with 3 or more children will have to weigh up the negative impact of staying with an abuser against the negative impact of leaving and losing tax credits for some of her children, while at the same time facing the poverty caused by becoming a single parent and fleeing the home. This will be the case even for women with children before the 6<sup>th</sup> April cut-off, as change in family circumstances are not covered under transitional protection. Given that funding is also being cut for domestic violence support services across the UK at this time, women's options and safety net are ever-shrinking.

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<sup>1</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2016#what-has-changed-within-this-publication>

<sup>2</sup><http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2015/general/3415.pdf>

<sup>3</sup>[http://www.echr.coe.int/Documents/FS\\_Domestic\\_violence\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf)

- Abortion is not available in most circumstances in Northern Ireland. Abortion is legislated under the Offences Against the Person Act 1861, and the 1967 Act does not apply here as it does in GB. Therefore Northern Irish women will be more severely impacted by the policy than women in England, Wales or Scotland. The CEDAW Committee has already highlighted the UK's failure to protect the reproductive rights of women in Northern Ireland in its last examination – the 2 child cap is yet another demonstration of how the gap in Northern Ireland's human rights protections are victimising women.
- For women in the rest of the UK, there is a danger that the cap may force women to choose between poverty and having an abortion that they may not want to have. This is also a human rights issue and a case of curtailing women's reproductive choices and options.
- Socio-economic rights: the cumulative effect of welfare reforms, including the tax credit cap and ineffectiveness of the exceptions, restrict women's ability to seek work, get better jobs, and afford childcare while doing this. There is no childcare strategy in NI and very little childcare investment, which will also impact on this. Women are already caught between the cost of childcare vs the push to become 'economically active'. The effect of the multiple welfare reforms that disproportionately impact upon women are a barrier as opposed to an incentive for women to enter the workforce. This may impact on the right to family life (ECHR Article 8).

### ***Children's issues***

The 2-child cap will negatively impact upon children:

- Child poverty – this policy will detrimentally impact children in larger and poorer families. Children are being made the 'collateral damage' in a policy that appears to be seeking to punish people into keeping their family sizes smaller. It is fundamentally at odds with the requirement under international human rights law to prioritise the best interests of the child. (UNCRC Art 3)
- According to analysis by the Child Poverty Action Group (CPAG), the two child limit could force 200,000 additional children into poverty across the UK. The policy goes against the principle of objectively assessing and meeting the needs of children. Instead, children who are born into poor families with 2 older siblings will bear the consequences of something over which they have no control.
- Analysis for the Guardian reveals that a family whose third child is born before midnight on Wednesday 5<sup>th</sup> April could be up to £50,000 better off over 18 years than one whose child is born on Thursday.
- 24% of children in Northern Ireland are already living in poverty and the problem is forecast to increase. The Institute of Fiscal Studies has projected significant increases in child poverty in Northern Ireland until 2020, the primary driver of which is the impact of such tax and benefit changes.
- The policy stands in contravention to the principles of the UN Convention on the Rights of the Child: the right to life, survival, and development, non-discrimination, devotion to the best interests of the child, and respect for the views of the child. It also violates the right of the child to an adequate standard of living and social security.

- The NI executive is currently failing in its legal duty to adopt a strategy setting out how it will tackle poverty, social exclusion and patterns of deprivation based on objective need, as provided for in section 28(e) of the NI act 1998.

## **2. Rape Clause - Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (Statutory Instruments 2017 No. 376)**

### **General**

The Women's Policy Group is strongly opposed to the so-called 'rape clause'. Requiring women to prove that they conceived their 3<sup>rd</sup> or subsequent child through rape to access child tax credits will be extremely traumatic and re-victimising for rape victims. We also believe that the existence of the rape clause reveals the inherent flaws in the two child policy generally and is further evidence of why the cap should be repealed in its entirety.

- Many victims take years before they are ready to open up and talk about sexual violence that they've suffered. Forcing them to do so before they're ready, in order to access welfare, is profoundly cruel. Forced disclosure can exacerbate PTSD and mental health issues related to sexual assault, and will heighten the sense of shame and isolation felt by victims.
- We already live in a culture where women are not believed when they report sexual assault. This policy will only magnify the worry that rape victims have about being told that they are lying about what's happened to them. If women are not believed, they will then have to deal with the trauma associated with this in addition to the trauma of disclosing their rape and the fact that their child was conceived as a consequence of rape. There is also a significant possibility that the culture of victim-blaming and disbelieving rape victims who report will deter women from disclosing in the first place, even if this decision places them in a difficult financial position.
- The criteria set out in order to qualify for an exemption under the 'rape clause' requires that a woman no longer lives with the perpetrator. This fails to understand that much sexual violence occurs within domestic relationships. Many women in abusive relationships experience rape as a daily part of their lives. Rape in this context is often more difficult to prove and more difficult to disclose. It is complex as it involves a relationship where consent is often given for sex, and there is a societal presumption of consent. Therefore lack of consent is more difficult to prove, and there is a strong element of shame attached to admitting that one's partner rapes them, or that one of the family's children was conceived through rape.
- Disclosing that an abusive partner has raped you, and having to leave that abuser, to access tax credits, could place women in danger. The most dangerous time for a woman is when she attempts to leave an abusive relationship. On average 2 women per week are killed by their partner or ex-partner in England & Wales. Forcing women to disclose abuse without appropriate safety planning and risk assessment is irresponsible.

- Domestic violence often takes the form of a spectrum of sexual coercion and restriction of reproductive choices. Women may be forbidden from accessing contraception, or may be forced to make decisions to acquiesce to sex in order to protect themselves from physical violence, to prevent violence or to de-escalate violence. Society may not see this as rape, but neither is it freely consenting to sex. For many women in abusive situations, the choice of whether or not to have children is out of their hands.
- The existence of the rape clause proves the flawed thinking involved in introducing a 2-child tax credit cap in the first place. By introducing this exception, as well as exceptions on multiple births, even government policy makers have conceded that not all women have control over how many children they have. Unfortunately the rape clause doesn't go as far as understanding all the ways in which a woman's reproductive choice are curtailed in real life. Therefore the rape clause is not only re-traumatising for rape victims, it also fails in its own aim to overcome the shortcomings of the 2-child limit law.
- As the "rape clause" exemption cannot be delivered in a way that does not breach women's rights and undermine women's equality and safety, we call on the UK Government to repeal the "family cap" measures in the Welfare Reform and Work Act 2016, including all of its exemptions.

### ***Equality issues***

- The rape clause is discriminatory towards women – only those who can become pregnant after rape will be affected by this clause.
- This policy bypassed the equality screening duty provided for in the NIO Equality Scheme.
- The clause disproportionately impacts poorer women.
- The clause may impact more on particular religious groups or BME cultures which have larger families or object to contraception on religious grounds. This will raise child poverty levels and affect those children already living in poorer households
- This policy directly impacts women with dependants.

### ***Human Rights issues***

- The rape clause may infringe a woman's right to privacy and family life, due to the fact that women may feel forced to disclose against their will and identify the child in question to avoid poverty and access benefits they are entitled to (ECHR Article 8).
- The clause may violate rights to be free from inhumane or degrading treatment.
- Forcing a rape disclosure constitutes a form of structural violence against women.

### ***Children's issues***

- This law puts women in an unconscionable position of choosing between poverty and stigmatising their child as a 'rape child'. Women who rely on child tax credits to put food in their children's mouths will be faced with a Sophie's Choice of either re-living their trauma and stigmatising their child, or being further impoverished. No mother should be placed in this position. In Northern Ireland, which has a relatively small population, it may be especially difficult to protect women and children from being identified as rape victims and children of rape.

### ***Northern Ireland-specific issues***

- Lack of abortion access means that there will be even fewer choices for Northern Irish women who find themselves pregnant with a third or subsequent child after being raped.
- Women who rely on tax credits are unlikely to be able to afford to travel to England to obtain a legal abortion, which can cost up to £2000 including fees, flights and hotels. Women are more likely to access medical abortion pills, the taking of which carries a sentence of up to life imprisonment under the *Offences Against The Person Act 1861*. Women in Northern Ireland are therefore being placed in a situation where they must choose between poverty and criminalisation.
- **Section 5(1) of the Criminal Law (Northern Ireland) Act mandates that all serious crimes must be reported to the police and therefore the implementation of this policy has significantly different consequences for women in Northern Ireland compared to the rest of the UK.** Any woman who applied for this exemption should expect to have the case reported to the police. This aspect of the law could put women in an extremely dangerous position where they could face additional violence from their abuser. It will also put benefits assessors in a very difficult position whereby they must report the disclosure of rape to police or risk being charged with a crime themselves. Many women do not want to engage with the criminal justice system, or report someone that they are in a relationship with to police. They should not be forced to do so to access welfare.
- Northern Ireland is the UK region with the highest percentage of households with children (34%), compared to a UK average of 28%. As well as having more families with children, the region also has a higher proportion of larger families (with four or more children). This policy will disproportionately affect Northern Ireland for this reason.
- Many UK families are struggling to cope with the high cost of rising energy bills, food and the burden of unmanageable debt. A report by Save the Children analysing the needs of 5,000 families with incomes of up to £30,000 a year found that to ensure their children get enough food to eat, nearly two-thirds of parents skip meals, go into debt, avoid paying bills and put off replacing worn-out clothing. This policy will exacerbate already strained conditions for poorer families.