

# Consultation on changes to the Discretionary Support Scheme

Consultation response by:

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## Background

We are pleased to have this opportunity to contribute to the Department for Communities consultation on Discretionary Support (DS). The contributors are academic researchers with expertise in social security law, policy and experiences, as well as wider legal and policy issues related to poverty, access to justice and human rights. We draw in particular on our recent research on:

- *Discretionary Support* – including the Independent Review commissioned by the Department, Chaired by Prof McKeever, with panel members Drs Fitzpatrick and Simpson;<sup>1</sup>
- *Destitution and paths to justice* (funded by Joseph Rowntree Foundation and Legal Education Foundation);<sup>2</sup>
- Universal Credit (UC) in Northern Ireland (funded by Joseph Rowntree Foundation and the Economic and Social Research Council);<sup>3</sup>
- Our involvement in the independent review of welfare mitigations, commissioned by the Department;<sup>4</sup>
- Women’s Experiences of the Cost-of-Living Crisis in Northern Ireland in collaboration with Women’s Regional Consortium.<sup>5</sup>

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<sup>1</sup> G McKeever, J Currie, C Fitzpatrick, K Higgins, U O’Hare, G McConville and M Simpson, *Independent review of discretionary support* (Belfast: Department for Communities, 2022); also G McKeever, A Chapman, C Fitzpatrick and M Simpson, ‘Dignity through discretion: a review of discretionary support schemes in the UK’ (2023) 30(1) *Journal of Social Security Law* 13

<sup>2</sup> G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (Legal Education Foundation/Joseph Rowntree Foundation, 2018); C Fitzpatrick, G McKeever and M Simpson, ‘Conditionality, discretion and TH Marshall’s “right to welfare”’ (2019) 41(4) *Journal of Social Welfare and Family Law* 445; M Simpson, G McKeever and C Fitzpatrick, ‘Legal Protection Against Destitution in the UK: the Case for a Right to a Subsistence Minimum’ (2023) 86(2) *Modern Law Review* 465

<sup>3</sup> R Patrick and M Simpson with UC:Us, *Universal credit could be a lifeline in Northern Ireland* (York: Joseph Rowntree Foundation, 2020) 13; R Patrick, C Fitzpatrick, M Simpson and J Redman with UC:Us members, ‘UC:Us now?’ in K Garthwaite, R Patrick, M Power, A Tarrant and R Warnock (eds), *Covid-19 collaborations* (Bristol: Policy Press, 2022)

<sup>4</sup> L Allamby, K Yiasouma, K Logan, L Devine, M Simpson, L Coyle, C Harrison, S McKinley and J Portes, *Welfare mitigations review: independent advisory panel report* (Belfast: Department for Communities, 2022); L Allamby and M Simpson, ‘Less parity – continued parrotry and plagiarism? The review of welfare mitigations in Northern Ireland’ (forthcoming) *Journal of Social Security Law*

<sup>5</sup> S Harding, C Fitzpatrick, A Chapman, ‘Women’s Experiences of the Cost-of-Living Crisis in Northern Ireland’ June, 2023. Available at: [Womens-Experiences-of-the-Cost-of-Living-Crisis-in-NI-2.pdf \(womensregionalconsortiumni.org.uk\)](#)

## Context

We emphasise the need to increase the overall budget for DfC to ensure that it can meet its statutory duties in respect of people who are in extreme poverty or are destitute. In the absence of a NI Executive, the NI Secretary of State, who bears responsibility for setting the NI Budget, must ensure that adequate funding is provided by HM Treasury to ensure DfC complies with its legal duties and can meet its stated functions. The current political vacuum is not conducive to effective public policy and the consequences for disadvantaged groups are vast and are likely to be long-term and wide-ranging.<sup>6</sup> The short-term policy view that is being enforced by the 'sub-optimal' budget allocation will have long-term implications for citizens health and well-being.<sup>7</sup>

We remain very concerned about the final budget allocation for the provision of Discretionary Support (DS). We believe that the significant reduction in funding in DS when compared to expenditure in 2022-23 poses serious a serious challenge to the main functions of the department – particularly:

- The maintenance of a social welfare system and including focused support to the most disadvantaged areas.
- Tackling disadvantage and promoting equality of opportunity, reducing poverty, protecting the interests of children, older people, people with disabilities and other socially excluded groups, addressing inequality and disadvantage.

Furthermore, as reflected in our response to [EQIA on the budget for the Department for Communities \(DfC\)](#), our research and expertise underscores the legal consequences of the cut to DS which poses a risk to rights under Article 3 (right to protection from inhuman and degrading treatment) and Article 8 (right to family life) of the European Convention on Human Rights (ECHR).<sup>8</sup> Based on the analysis carried out by Professional Services Unit (PSU) on the grants awarded in the 2022-23 year it is clear that women, lone parents (93% of whom are women), children, single claimants, and those with a disability/mental health condition are likely to be disproportionately exposed to social harm the restrictions proposed in the consultation document.

The budget allocated for DS is not adequate, in the context of the ongoing economic crisis. At the time the Independent Review of DS was conducted, the annual DS budget remained steady at approximately £16m per year. Since the Review, demand for DS has increased considerably and it is to DfC's credit that it responded appropriately by increasing the budget: to £40m in 2022-23. The 2023-23 budget for DS, however, is £20m and the Department's EQIA that notes the baseline budget of £13.7m will be gone by Autumn on current spend.<sup>9</sup> The remaining funds are unlikely to meet the need expected over the remainder of the financial year, which includes the cold weather period and

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<sup>6</sup> G Bramley, D Hirsch, M Littlewood and D Watkins, Counting the cost of UK poverty (JRF, 2016) Available at: <https://www.jrf.org.uk/report/counting-cost-uk-poverty#:~:text=this%20gives%20a%20total%20cost,that%20poverty%20damages%20people%27s%20lives.>

<sup>7</sup> DfC Permanent Secretary Colum Boyle comment on the Final Budget Allocation, 21 June 2023. Available at: [Department outlines final budget allocations | Department for Communities \(communities-ni.gov.uk\)](#)

<sup>8</sup> M Simpson, G McKeever and C Fitzpatrick, 'Legal Protection Against Destitution in the UK: the Case for a Right to a Subsistence Minimum' (2023) 86(2) Modern Law Review 465

<sup>9</sup> DfC, Consultation on changes to the Discretionary Support Scheme (2023), p8. Available at: <https://www.communities-ni.gov.uk/sites/default/files/consultations/communities/dfc-changes-to-the-discretionary-support-scheme-egia.pdf> See also: [Kevin Higgins "Why are we penalised for UC errors" on Twitter: "DID YOU KNOW Approximately half of the DS budget \(@£10m\) has already been spent in Q1, leaving the remaining £10m to cover 9 months including Christmas and winter period Consultation https://t.co/ltsBPh1ctN Respond here https://t.co/glyL9FfrHB #DiscretionarySupportCrisis" / X](#)

Christmas. It is imperative if any funds become available in upcoming monitoring rounds that DS is urgently prioritised.

We acknowledge the difficult position that the department finds itself, which has led to the implementation of new restrictions for receipt of DS, including limiting repeat awards to every 24 months. We are concerned that the new policy adopted by DfC in response to this budget crisis, which overrides the statutory provisions in regulation 10(3)(b) of the Discretionary Support Regulations (NI) 2016 that stipulates awards can be repeated within 12 months, is precariously balanced against the provisions in regulation 21(2)(e), that allows for the consideration of whether an individual award “does not exceed the budget allocation”.<sup>10</sup> While it is questionable whether the Department has the power to adopt this policy in the face of the punitive budget it faces, it is clear that it would not have such powers under an improved financial position. Our overriding concern, therefore, is that these changes become embedded in the system. We would take this opportunity to reinforce the recommendations in the review of DS which was commissioned by the Minister for Communities who was motivated to make improvements to the system.<sup>11</sup> The restrictions which have been implemented roll back on this position. We would welcome a commitment from the department that these measures will be temporary and if money becomes available in future that the restrictions will be immediately reversed. On this point we would also reemphasise the need for the SoS NI to reconsider the suboptimal budget in light of the state’s legal duties to individuals in NI.

#### Consultation questions:

- 1. Are there any data, needs or issues in relation to any of the Section 75 equality categories that have not been identified in Section 3 of the EQIA consultation document? If so, what are they and can you provide details?**

We strongly recommend that the Department measure the impact of the restrictions that are currently being implemented (as of 3 July 2023) on lone parents as this group is particularly exposed to the harm perpetuated by the cost-of-living crisis.<sup>12</sup> Furthermore, we emphasise the cumulative impact of spending cuts on this group, for example, the end of Free School Meal payments during holiday periods (Department of Education). The eligibility requirements mean that it is more likely that children living in single-earner households will be entitled to Free School Meals (FSM).<sup>13</sup> This cut has been executed at a time when food inflation is at a historic high and consequently access to basic needs is likely to be more challenging for this population.<sup>14</sup>

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<sup>10</sup> Discretionary Support Regulations (NI) 2016, SR 270.

<sup>11</sup> DfC, Communities Minister Hargey commissions Discretionary Support review, 7 June 2021. Available at:

<sup>12</sup> Analysis carried out by Labour on Office for National Statistics dataset on wealth in Great Britain found that Single parents with dependent children had the lowest average net wealth of all groups (£400), followed by single parents with non-dependent children, at £1,700 as reported by Tobi Thomas, ‘Single-parent families ‘most exposed’ to cost of living crisis in Great Britain,’ (*The Guardian*, 20 April 2022). Available at: [Single-parent families ‘most exposed’ to cost of living crisis in Great Britain | UK cost of living crisis | The Guardian](#); S Harding, C Fitzpatrick, A Chapman, ‘Women’s Experiences of the Cost-of-Living Crisis in Northern Ireland’ June, 2023. Available at: [Womens-Experiences-of-the-Cost-of-Living-Crisis-in-NI-2.pdf \(womensregionalconsortiumni.org.uk\)](#)

<sup>13</sup> Entitlement is based on receipt of certain means-tested benefits (e.g., Universal Credit/Income Support) and net income, which cannot be above £14,000 per year. [Nutrition and school lunches | nidirect](#)

<sup>14</sup> C Fitzpatrick, R Loader, S McCartney, B McConnell, J McMullen, C Murray, K Orr, N Purdy and V Simms, The Consequences of the Cuts to Education for Children and Young People in Northern Ireland (June 2023) Available at: [The-Consequences-of-the-Cuts-to-Education-for-Children-and-Young-People-in-Northern-Ireland-Final.pdf \(stran.ac.uk\)](#)

The research outlined in s.4 shows that 67% of those (29,646 respondents) who responded to the request for s75 information and were provided with a DS grant were women. It is also outlined that the majority of those who received support in 2022-23 were single, never married (68%); however this data is not disaggregated to assess the number of those who identify as single who may have dependants, who will also be impacted by the changes to DS during this period. It is however noted, that 29% of respondents had caring responsibilities for children.<sup>15</sup> Most lone parents are women (93%) and are likely to be disproportionately represented in data collected. As outlined below, lone parents and their children face significant risks to falling into extreme poverty/destitution and are more likely to require additional financial support from DS.

Lone parents and their children are particularly vulnerable to the cumulative impact of changes to social security since the introduction of the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016, including the implementation of the two-child limit for working-tax credits and the child element of UC. The Women's Budget Group outline that 44% of those impacted by the two-child limit are lone parents.<sup>16</sup> The childcare support for UC falls below the average childcare costs for children under 5 and there remains an absence of a childcare strategy in NI which has implications for lone parents who are seeking work/increase their hours of employment. The 'centrepiece' of the Review of Welfare Reform mitigations, published last year, is measures to offset the impact of the two-child limit which has been identified by the review team as bearing 'particularly hardest on the poorest families and, unchecked, would lead to a further damaging rise in child poverty.'<sup>17</sup>

We would also urge the Department to monitor the impact of the changes on larger families (those with three or more children) who will already be impacted by the two-child limit under UC and tax credits. Research with larger families in Britain (who will additionally be affected by the benefit cap) shows a clear and detrimental impact of the two-child limit and benefit cap policies which "disproportionally affect households that are less able to increase their income through employment, particularly single parent households and families with younger children."<sup>18</sup> The Welfare Mitigations review panel has also noted the disproportionate impact of the two-child policy in NI in its recommendation that the effects of the policy be mitigated.<sup>19</sup> In the absence of any mitigations, the role of DS is likely to become more critical for larger families who may be also be more vulnerable to the income threshold in DS than applicants from smaller households.

The department has confirmed in its announcement of final budget allocations that it will continue to carry 600 staff vacancies, which will have implications for service delivery. This staff deficit is occurring as people move to UC. The first group to move to UC are those claiming Tax Credits. Analysis on government statistics reveal that women make up the majority of single families for both

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<sup>15</sup> DfC, Consultation on changes to the Discretionary Support Scheme (2023), p8. Available at: <https://www.communities-ni.gov.uk/sites/default/files/consultations/communities/dfc-changes-to-the-discretionary-support-scheme-egia.pdf> p.12-15

<sup>16</sup> Women's Budget Group, The Two-Child Limit to Means Tested Benefits, 17 July 2023. Available at: <https://wbg.org.uk/analysis/the-two-child-limit-to-means-tested-benefits/#:~:text=Most%20families%20subject%20to%20the,are%20lone%20parents%5B7%5D.>

<sup>17</sup> L Allamby, K Yiasouma, K Logan, L Devine, M Simpson, L Coyle, C Harrison, S McKinley and J Portes, *Welfare mitigations review: independent advisory panel report* (Belfast: Department for Communities, 2022)

<sup>18</sup> R Patrick, K Anderson, M Reader, A Reeves, K Stewart, Needs and entitlements Welfare reform and larger families (2023, Nuffield Foundation), available at <https://largerfamilies.study/publications/needs-and-entitlements/>

<sup>19</sup> L Allamby, K Yiasouma, K Logan, L Devine, M Simpson, L Coyle, C Harrison, S McKinley and J Portes, *Welfare mitigations review: independent advisory panel report* (Belfast: Department for Communities, 2022)

in work (89%) and out of work (94%) claims for tax-credits.<sup>20</sup> Therefore, lone parents are more vulnerable to experiencing any administrative difficulties and income shocks associated with the move to UC (which includes the wait for first payment). Furthermore, as outlined in our previous response to the budget EQIA, analysis of the profile of new UC claimants between October 2021 and November 2022 showed that 72% of new universal credit claims to the Department for Work and Pensions were by lone parents.<sup>21</sup>

Research has also shown that women are more likely to be in debt. Christians Against Poverty (CAP) (who run 13 debt centres in NI) report that single women/single mothers make up 56% of their service users<sup>22</sup>, while Research carried out by the Women's Regional Consortium on Women Living with Debt showed women's vulnerability to debt.<sup>23</sup> The latter report also exposed women's vulnerability to exploitation through paramilitary lending.<sup>24</sup> The extension to the repeat item exclusion period to 24 months and the restriction of awards to 'basic needs only' may push women who have no access to financial support for essential needs towards dangerous forms of illegal lending.

**2. Are there any adverse impacts in relation to any of the Section 75 equality groups that have not been identified in Section 4 of the EQIA Consultation document? If so, what are they?**

Evidence cited above and indeed wider evidence demonstrates the cumulative impact of changes to social security (for e.g., the two-child limit) and more recent cuts to government budget in Northern Ireland (education, health, infrastructure etc.). It is also argued above that lone parents (women with dependants) are more likely to be represented in applications to DS in the current economic climate and therefore, the restrictions will have a disproportionate impact on this group, which includes dependent children. In the consultation document the department underline that support will be 'limited' and it is intended to be maintained throughout the financial year<sup>25</sup> – but there are significant risks that this will not be the case. Therefore, we recommend that the department carry out a full child rights screening to ascertain how specific risks to child's rights will be mitigated. Article 26 and 27 of the UN Convention on the Rights of the Child are particularly pertinent, namely the right of every child to benefit from social security and the right of every child to a standard of living for the child's physical, mental, spiritual, moral and social development. Art 27 further states that state parties, 'shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.'<sup>26</sup> This right is realised through the administration of social security, and through access to DS for those families who are financial crisis.

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<sup>20</sup> UK Government Statistics, Commentary – child and working tax credit statistics: personal awards April 2023 (29 June 2023). Available at: [Commentary - Child and Working Tax Credits statistics: Provisional awards - April 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/commentary-child-and-working-tax-credits-statistics-provisional-awards-april-2023)

<sup>21</sup> Action for Children, 'Action for children analysis of universal credit – May 2023' (Watford: Action for Children, 2023)

<sup>22</sup> Taking on UK poverty Client report, Christians against poverty, May 2023 Client-report-2023.pdf (capuk.org)

<sup>23</sup> Women Living with Debt, Women's Regional Consortium, September 2022

<https://www.womensregionalconsortiumni.org.uk/wp-content/uploads/2022/09/Women-Living-with-Debt1.pdf>

<sup>24</sup> Ibid.

<sup>25</sup> Changes to Discretionary Support Scheme EQIA, p. 16.

<sup>26</sup> UNCRC available here: <https://www.unicef.org.uk/wp-content/uploads/2016/08/unicef-convention-rights-child-uncrc.pdf>

**3. Please state what action you think could be taken to reduce or eliminate any adverse impacts in the allocation of the Department’s Discretionary Support grant budget.**

The department should make a public commitment that current restrictions are temporary. If additional money becomes available in upcoming monitoring rounds the restrictions should be reviewed immediately with a view to reversing them. It likely that the precarious balance that we have highlighted between the DfC’s new policy position and the statutory provisions will become much more difficult to justify. The restrictions have been made in the absence of an NI Executive, without Ministerial approval and represent a core policy change to the eligibility criteria. This temporary policy should not take precedence over a statutory entitlement where the budget provision in regulation 21 cannot justify this position.

The debt threshold was increased during the covid-19 pandemic from £1,000 - £1,500. This was universal to all claimants: those who were single, those who are partnered and those with dependents. We suggest exploring the potential to further increase the debt thresholds for cohorts of people who might have a higher debt tolerance, for example, for families where someone is in work and can demonstrate the propensity to re-pay a slightly larger amount. Providing controlled access to more regulated, interest free credit will further protect families from resorting to more dangerous forms of lending, like pay-day loans, loan sharks/paramilitary lenders.

Research carried out by Women’s Support Network and Ulster University revealed that the Healthy Start Scheme has the lowest uptake in Northern Ireland (55%) and can support pregnant women, and women who have infants (0-4) to buy milk, fruit, and vegetables.<sup>27</sup> It is acknowledged that promotion of this scheme falls under the remit of the Department of Health (DoH). However, as it is a form of social assistance which can contribute towards the prevention of poverty, it is suggested that DfC work in partnership with DoH to promote uptake more widely. This is particularly important in the context that 67% of respondents who benefited from DS in 2022/23 were women. Women and children are the key beneficiaries of the Healthy Start Scheme.

**4. Are there any other comments you would like to make in regard to this proforma or the consultation process generally?**

It is recommended that the department publish guidance to explain the difference between “basic needs” and “essential needs.” There are a couple of examples provided in the EQIA consultation government, but this is not sufficient to support a clear understanding of the difference. A sufficient understanding is particularly crucial for those who will be supporting more vulnerable claimants with an application.

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<sup>27</sup> S Harding, C Fitzpatrick, A Chapman, ‘Women’s Experiences of the Cost-of-Living Crisis in Northern Ireland’ June, 2023. Available at: [Womens-Experiences-of-the-Cost-of-Living-Crisis-in-NI-2.pdf \(womensregionalconsortiumni.org.uk\)](https://www.womensregionalconsortiumni.org.uk) p.31-32.