

OFFICIAL SENSITIVE

Advice to Cabinet Secretary

[REDACTED]

[REDACTED]

Official WASPI Position

WASPI is calling for a bridging pension that would provide assistance to unretired 1950's women, and for those that have now reached retirement age to receive compensation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Scottish Government's ability to help the WASPI Women

We have been clear that the Scotland Act 2016 does not give us the powers we would need to help the WASPI women.

Top up of reserved benefits using section 24 (exception 5)

This power to make discretionary payments only applies to people receiving a reserved benefit that can be topped up. The assistance has to be for one of the purposes for which the reserved benefit is being provided. As the WASPI group are not receiving a reserved benefit, ie State Pension, this power is of little use to assist the WASPI group.

Discretionary payments using section 26 (exception 7)

This power is limited to providing help with 'short term needs', and those needs must require to be met to avoid a risk to a person's well being. That would not readily allow assistance to the majority of the women most affected by the acceleration of the increase in their State Pension Age. Their needs and the risks to their well-being would have to be assessed individually.

Creation of a new benefit using section 28 (exception 10)

This power states that it cannot be used to provide pensions to persons who qualify by reason of old age. Given the women we are concerned with are seeking assistance specifically due to their age and lack of state pension it is hard to see how this provision could be used to support WASPI women.

[REDACTED]

Other types of pension are possible, such as those paid to persons who have suffered injury or bereavement, but those based on persons attaining an older age are not permitted.



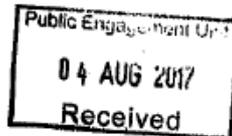
The Scottish Parliament
Pàrlamaid na h-Alba

Constituency Office
6 Church Street
Dumbarton
G82 1QL

Tel: 01389 734214

Email: Jackie.baillie.msp@parliament.scot

Jeane Freeman MSP
Minister for Social Security
The Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG



030817

2 August 2017

Dear Jeane

Discretionary payments under Section 26 of the Scotland Act

I am writing following the publication of the Freedom of Information requests which prove that the Scottish Government has the powers to provide financial assistance to the WASPI women.

As you will be aware, thousands of women born in the 1950s have been left facing real financial difficulty because of the lack of notice given by the Tory government about changes to the state pension.

Ahead of the 2016 Holyrood election Labour campaigned to use the social security powers of the Scottish Parliament to support some of the WASPI women who were losing out because of the Tories.

You have repeatedly stated, including to parliament in February, that the provisions in the Scotland Act do not allow for assistance for the WASPI women.

It has now been proven beyond doubt that this is simply not the case.

I am writing to you today urging you to apologise for misleading the Scottish Parliament and, more importantly, the WASPI women over the powers of the Scottish Government in this area.

The new powers delivered by the 2016 Scotland Act should be an opportunity to deliver radical policies in Scotland – instead of simply pursuing another grievance agenda with the UK government. You have the power to act. The question therefore, is not whether you can, but whether you will?

A public apology on this will be an important statement that this government will finally focus on embracing the new powers rather than misrepresenting them.

Yours sincerely

Jackie Baillie
MSP for Dumbarton

Jackie Baillie MSP
www.jackiebaillie.co.uk

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Minister for Social Security
Jeane Freeman MSP



T: 0300 244 4000
E: scottish.ministers@gov.scot

Ms Jackie Baillie MSP

Jackie.Baillie.msp@parliament.scot

Our ref: 2017/0027187

29 August 2017

I write in regard to your letter of 2 August about the Scottish Government's position on assistance to 'WASPI women'.

I am of course aware of the impact that changes to State Pension Age have had on women born in the 1950's. This applies not just to the deep financial cost, but also the cost of missing out on valuable time with their families and loved ones. The Scottish Government has raised this with the UK Government on several occasions and, as you know, my colleagues in Westminster have been campaigning on this issue for over two years pressing the UK Government for a fair transition.

You urge me to apologise for misleading the Scottish Parliament and WASPI women over the powers that the Scottish Government has to provide assistance to WASPI women. During the debate on the WASPI Campaign on 1 February 2017, you said, and I quote "that the Parliament now has the power to top up benefits or to create new benefits in devolved areas" and in response, I advised that:

"Section 28 of the Scotland Act 2016, on exceptions to reserved areas, says that top-up does not include pensions assistance or assistance by reason of old age."

It is hard to see how we can support WASPI women, who would qualify for assistance due to their age, when such restrictions apply.

The Freedom of Information request that I assume you are referring to came from the Department for Work and Pensions (DWP) and did not include the Scottish Government's correspondence, despite the Scottish Government giving them permission to do so.

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Please therefore, find attached the letters I sent to Richard Harrington and Guy Opperman, refuting their claims that we can use our powers in the manner they suggest.

I think it is interesting you chose to write to me in terms you have done, based only on the UK Government's correspondence and their interpretation and not the Scottish Government's written position. I would have thought that considering the track record of the UK Government with WASPI women, your attentions should be focused on them, and ensuring that the UK Government find a solution for the problems they have created for so many women across the UK.

In conclusion, while we welcome the powers that the Scotland Act 2016 provides, they do not provide the Scottish Government with a workable solution to fully support all the WASPI women.

Kind regards



JEANE FREEMAN

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

Text of the [REDACTED] Motion

That the Parliament regrets what it sees as the UK Government's inaction to end the injustice experienced by women affected by the changes to state pension laws; welcomes the campaign of the Women Against State Pension Inequality (WASPI) group to achieve fair transitional state pension arrangements for all women born in the 1950s affected by changes to state pension laws, and calls on the Scottish Government to urge the UK Government to provide a bridging pension that supplies an income until state pension age, which is not means tested, as well as compensation for the absence of a bridging pension to those who have already reached their state pension age, compensation to all those who have not started to receive a bridging pension by an appropriate date, which would be sufficient to recover lost monetary interest, and compensation to the beneficiaries of the estates of those who are deceased and failed to receive a bridging pension.

Previous Debates and WASPI Position

5. On 1 February 2017, there was a Member's Business debate in the Scottish Parliament on the WASPI issue. The debate carried the following motion (S5M-03344) put forward by Sandra White:

That the Parliament acknowledges what it considers the injustice facing women affected by the acceleration of the increase in the state pension age; welcomes the

[Redacted]

Landman Economics report on the impact of the changes to pension arrangements for women born in the 1950s, which identifies an affordable solution that would slow down that increase in order to give adequate time for women in the Glasgow Kelvin constituency and across Scotland who are affected to make alternative arrangements, and notes the calls on the UK Government to work with Women Against State Pension Inequality (WASPI) to explore transitional protection for those affected.

[Redacted]

The Scottish Government's ability to help the WASPI Women

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This power to make discretionary payments only applies to people receiving a reserved benefit that can be topped up. The assistance has to be for one of the purposes for which the reserved benefit is being provided. As the WASPI group are not receiving a reserved benefit, ie State Pension, this power is of little use to assist the WASPI group.

Discretionary payments using section 26 (exception 7)

This power is limited to providing help with 'short term needs', and those needs must require to be met to avoid a risk to a person's well being. That would not readily allow assistance to the majority of the women most affected by the acceleration of the increase in their State Pension Age. Their needs and the risks to their well-being would have to be assessed individually.

Creation of a new benefit using section 28 (exception 10)

This power states that it cannot be used to provide pensions to persons who qualify by reason of old age. Given the women we are concerned with are seeking assistance specifically due to their age and lack of state pension it is hard to see how this provision could be used to support WASPI women.

Other types of pension are possible, such as those paid to persons who have suffered injury or bereavement, but those based on persons attaining an older age are not permitted.

Advice to Cabinet Secretary

Westminster debate on State pension equalisation for women born in the 1950s

On Thursday 22 November Westminster MPs took part in a debate regarding State pension equalisation for women born in the 1950s, put forth by Patricia Gibson MP.

Throughout the debate members of the Conservative Party frequently suggested that the Scottish Government has the ability to deliver top-up benefits or to create new benefits for WASPI women via the Scotland Act (2016).

These suggestions were challenged by Mhari Black (MP) and by Alan Brown (MP), who discussed the specification within the Act that new benefits cannot be created for reason of old age.

Guy Opperman (MP) said:

*“Don’t take this from me, read the letter from Jeanne Freeman dated 22 June 2017 where she sets out that there are payments that are capable of being made under sections 28, 26 and 24 of the Scotland Act and I quote *“Under section 26, this power is limited to providing for short-term needs, and these needs must require to be met to avoid a risk to a person’s wellbeing. Their needs and the risk to the wellbeing would have to be individually assessed”*.*

On the creation of the benefit under section 28, the Pension’s minister in Scotland rebuts the point on old age and I quote again from paragraph 3 of the same letter: *“I accept that old age is not defined in the legislation and that most people would not regard this age group as old”*. With respect, there is the capability under section 28 to create a new benefit. It is the heading that she [Jeanne Freeman] gives: ‘the creation of a new benefit under section 28’.

“I accept that the Scottish Government cannot provide assistance by way of a pension to individuals who qualify by reason of old age. However, those who have not attained state pension age are by definition of working age and are not therefore being provided support by reason of old age. Therefore the restrictions that are relied upon by SNP do not apply”.

Mhari Black MP responded to these comments by bringing up the Scottish Welfare Fund and by querying whether the Minister was suggesting the Scottish Government should take responsibility for State Pension altogether, as he seemed to be suggesting they should take responsibility for the WASPI issue.

Mr. Opperman declined to comment the latter.

26 November 2018

Cabinet Secretary for Social Security and Older People

WESTMINSTER WASPI DEBATE

Purpose

1. To inform the Cabinet Secretary about the UK Parliament's debate to consider State Pension Equalisation for women born in the 1950s that took place on 22 November.

Priority

2. Routine

Background

3. The debate had been called by Patricia Gibson MP during which the UK government asserted again that the SG has powers to mitigate the effects of State Pension increase for women born in the 1950s

Main Issues

4. The UK Government continue to argue that the SG have the powers to mitigate the effect of the State Pension increase through the Scotland Act
5. There was also a lot of debate around the cost to reverse the changes made by the UK Government with many calling for women affected to be given compensation.
6. Guy Opperman MP, Minister for pensions and financial inclusion, said in his closing speech that reversing the changes already made would "undermine the principle of intergenerational fairness"
7. Life Expectancy took up a large part of the debate, with the UK Government citing them as a driver for their increase state pension age for women, and SNP MPs saying that low life expectancy rates in places such as Glasgow East mean that there are many women who will pass away before they reach retirement age.
8. The UK Government also continues to assert that they have spent £1.1 billion through concession to those on state pension, this figure was debated as well.

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The Scottish Government's powers to mitigate effects of State Pension increase

9. Alex Burghart, standing in for Guy Opperman, said that the Scotland Act gives the SG power to mitigate the effects of the pension changes and that that, "it is a fact that the Scottish Government' could do more
10. Patricia Gibson MP said argued that there is no power to mitigate UK Government policies and that "we already mitigate to the tune of tens of millions" . She asserted that section 28 of Scotland Act means that we cannot
11. Devolution means that different choices can be taken by those. Not just section 28 that gives Scotland power to act
12. Another Conservative MP argued that Article 26, which allows SG to make short term payments "to avoid the risk to the wellbeing of an individual." Would be another way that the Scottish Government could make direct payments to those affected.
13. Guy Opperman in his closing speech referenced a letter from the former minister for Social Security, Jeane Freeman MSP from 22nd June 2017, regarding payments that are potentially able to be made under sections 26, 28 and 24 of Scotland Act "This power is limited to providing help with 'short term needs', and those needs must require to be met to avoid a risk to a person's wellbeing... Their needs and the risks to their well-being would have to be assessed individually." He went on onto read out from the letter, "I accept that 'old age' is not defined in the legislation, and that most people would not regard this age group as old".
14. He went onto say, "Under section 28, there is the capability to create a new benefit. That is the heading that Jeane Freeman gives to the relevant part of the letter: 'Creation of a new benefit using section 28'."
15. Mhairi Black MP then rebuked these claims and asked that if the UK Government did want Scotland to bear the cost of pensions lost, would they be willing to give full devolution to the Scottish Government regarding pensions. Mr Opperman did not answer that question.

Recommendation

16. We recommend that the Cabinet Secretary notes the submission.

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Social Security and Older People Minister for Business, Fair work & Skills Cabinet Secretary for Communities and Local Government	X		X	X	X

Women Against State Pension Inequality (WASPI)

Key Messages

- In principle, the Scottish Government is supportive of an equalisation of the pension age for men and women, but cannot agree with the unfair manner in which the UK Government is imposing these changes.
- More than 2 million women paid their National Insurance contributions throughout their lives on the expectation that they would receive their state pension and receive that at a certain age, only for the goalposts to be moved by the UK Government.
- The effect of this pace of change is that many women who have had their retirement plans shattered are now forced to accept zero hours, temporary and low paid contracts, which offer little financial security.
- The women affected have felt the deep financial cost, struggling to go back to employment or make ends meet after having little time to prepare for a longer road to their state pension. Many of these women will also bear the human cost of missing out with planned valuable years with their families.
- **We have made representations to the UK Government on this issue on a number of occasions – then (then) Minister for Social Security writing to her UK Government counterpart four times in 2017/18 urging him to consider what transitional measures could be put in place by this shift in UKG policy.**
- Ms Somerville wrote to Jo Swinson MP (Lib Dem) on 26 July 2018, regarding the Scottish Government's position on WASPI and the equalisation of State Pension age.
- Ms Somerville also wrote to Guy Opperman, UK Government Minister for Pensions, on 19 February 2019. This letter covered changes to Pension Credit and the impact these might have on the WASPI women.
- **The Scottish Government strongly refutes the UK claims that the powers in the Scotland Act 2016 provide a workable solution to fully support all WASPI women.**

Background

The Pensions Act 1995 provided for the State Pension age (SPA) for women to increase from 60 to 65 over the period April 2010 to 2020. The Coalition Government legislated in the Pensions Act 2011 to accelerate the latter part of this timetable, starting in April 2016 when women's SPA was 63 so that it will now reach 65 in November 2018. The equalised SPA will then rise to 66 by October 2020. The reason was increases in life expectancy since the timetable was last revised.

The Government initially intended that the equalised SPA would then rise to 66 by April 2020. However, because of concerns expressed at the short notice of significant increases for some women (as much as two years compared to the timetable in existing legislation) the Government made a concession when the legislation was in its final stages. This limited the maximum increase under the Act at 18 months.

Some women born in the 1950s argue they have been hit particularly hard, with significant changes to their SPA imposed with a lack of appropriate notification. The campaign Women Against State Pension Inequality (WASPI) is calling for "fair

transitional state pension arrangements,” which they say translates into a ‘bridging pension’ paid from age 60 to SPA.

The issue has been debated in the UK Parliament on a number of occasions and a debate on the issue was held in the Scottish Parliament on 1 February 2017. A members debate on WASPI will be held in the Scottish Parliament on 3 April 2019.

The Scottish Government strongly refutes the UK claims that the powers in the Scotland Act 2016 provide a workable solution to fully support all WASPI women.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subject: FW: Powers of the Scottish Parliament with regard to WASPI (Women against state pension inequality)

Importance: High

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Private - Somerville S (Shirley-Anne), MSP <Shirley-Anne.Somerville2@parliament.scot>
Sent: 29 March 2019 11:02
To: Cabinet Secretary for Social Security and Older People <CabSecSSOP@gov.scot>
Subject: FW: Powers of the Scottish Parliament with regard to WASPI (Women against state pension inequality)

----- Forwarded message -----

From: Ballantyne M (Michelle), MSP <Michelle.Ballantyne.msp@parliament.scot>
Date: Mon, Mar 18, 2019 at 1:36 PM
Subject: RE: Powers of the Scottish Parliament with regard to WASPI (Women against state pension inequality)
To: Waspiscotborders <waspiscotborders@gmail.com>

Cc: LAMONT, John <john.lamont.mp@parliament.uk>, Hamilton R (Rachael), MSP
<Rachael.Hamilton.msp@parliament.scot>

Dear [REDACTED],

I am aware that this is a very emotive debate and whilst I have huge empathy (not least as a woman) for the situation that many women have found themselves John Lamont is stating the position as it stands. This issue has been debated repeatedly at Westminster and has been the subject of committee scrutiny – you are both probably more familiar with this than I am. The UK Government has made clear that it does not intend to change its position and this has I believe been supported by Labour.

With regard to the Scottish Government, they have also stated that they will not consider any support for the campaign other than to attack the UK Government's position. You state that there may be legal impediments to Scottish Government taking steps to address the unfairness of the situation but I am aware that one of my colleagues has in fact taken a complaint to the Scottish Commission for Human Rights under Elimination of All Forms of Discrimination Against Women (CEDAW).

My understanding is that the Scottish Government, Scottish Parliament and Scottish Human Rights Commission are bound by the United Kingdom's International Human Rights Obligations including the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

This is not happening in Scottish Parliament. A UN Women's Treaty in 1979 commonly called CEDAW was ratified by Margaret Thatcher's Government in 1986 (meaning deemed valid). But to date, not all of its provisions have been brought into domestic law in Scotland. Its commitments have not been included in the Equalities Act 2010 for example, nor has a separate Act been passed bring those protections to Scotland by Scottish Parliament.

A key part of CEDAW is the recognition of past injustices. Women born in the 1950's entered the workforce before many of the equal pay and equal treatment laws were passed. Now that they face a reduced pension due to the (rightfully) equalised retirement age they have been doubly burdened.

When they started work they could not take advantage of the laws that forbade discrimination based on sex. There was also no law that allowed part-time workers (mainly women) to sign up to a pension scheme, and crucially, there was no law that forbade employers to pay women less than men.

These examples of structural discrimination are still having an effect on these women: their pension pot is significantly smaller than any man who worked during this period. Women were expected to retire at 60 and men 65 which has now been changed. The Scottish Government were in agreement with England this could happen. These women were already being discriminated against they are already at a significant disadvantage which they can never catch up on. Now they are waiting longer for an unfairly small pension, all because of retirement age.

If the rights of CEDAW were embedded into domestic law, there would be a remedy for the WASPI women. The Scottish Government would have to recognise past inequalities and the effect of past policies and remedy them.

There is no impediment in law or society to the Scottish Government passing a separate Act that encompasses the provisions of CEDAW the UK promised to adhere to over thirty years ago.

So I think John Lamont is right when he points to the need to explore policy options with the Scottish Government, Sandra Whites motion makes no suggestion of a broader consideration of what the Scottish Government might be able or indeed want, to do – if she was really interested in supporting and resolving this complex issue one might have thought that she would.

In terms of notice of changes I will look into that as I am aware of some concerns that have been brought to my colleagues that very short notice periods have been given to some women that their retirement age has changed.

Kind regards

Michelle

Michelle Ballantyne MSP

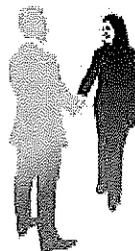
Scottish Conservative & Unionist for South Scotland

Shadow Cabinet Secretary for Communities and Social Security

T: 0131 348 5661 | <https://www.facebook.com/MichelleBallantyneMSTL> @MBallantyneMSP



From 12 March 2018,
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be registered. Find out more:



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