



## **Ad Hoc Committee on Welfare Reform**

1. The Northern Ireland Human Rights Commission ('the Commission'), pursuant to Section 69 (4) of the Northern Ireland Act 1998, provided statutory advice to the Committee for Social Development in October 2012 and gave oral evidence on 30 October 2012. The Commission submits this further supplementary advice to the Ad Hoc Committee on Welfare Reform ('the Committee') following an oral evidence session in December 2012.
2. The Commission bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include:
  - The European Convention on Human Rights, 1950 ('ECHR') [UK ratification 1951];
  - International Labour Organisation Social Security (Minimum Standards) Convention, 1952 [UK ratification 1954];
  - European Social Charter, 1961 [UK ratification 1962];
  - The International Covenant on Civil and Political Rights, 1966 ('ICCPR') [UK ratification 1976];
  - The International Covenant on Economic, Social and Cultural Rights, 1966 ('ICESCR') [UK ratification 1976];
  - The Convention on the Elimination of Discrimination Against Women, 1979 ('CEDAW') [UK ratification 1986];
  - The United Nations Convention on the Rights of the Child, 1989 ('UNCRC') [UK ratification 1991];
  - The United Nations Convention on the Rights of Disabled Persons, (UNCRPD') [UK ratification 2009].
3. The Commission recalls that Section 6 and Section 24 (1) of the Northern Ireland Act 1998 require that all Acts of the Northern Ireland Assembly and Executive are compatible with the ECHR. In

addition, Section 14 and Section 26 also require compliance with international obligations.

4. The Commission welcomes the establishment of the Ad Hoc Committee ('the Committee'). The establishment of the Committee is an acknowledgement both of the importance of the Welfare Reform Bill and of the various legislative tools at the Assembly's disposal to ensure that legislation is in full compliance with international human rights law.
5. The Commission advises the Committee to follow the practice of the Joint Parliamentary Committee on Human Rights at Westminster. The Committee should examine both the legal terms within the Bill and its anticipated application.
6. The Commission advises that the Committee ensure that Regulations provided for by the Bill are enacted by way of the affirmative resolution procedure.

#### Detailed Analysis

7. The UK Treasury guidance for appraisal and evaluation of spending recommends that a distributional impact analysis be carried out during the appraisal of any financial policies and proposals to consider their impact on the Government's ability to fulfil its obligations under the international human rights treaties and refers specifically to International Covenant on Economic, Social and Cultural Rights.<sup>1</sup> It is not evident to the Commission that such distributional impact analysis has been carried out with respect to Northern Ireland.
8. The information generated by such analysis would assist the Committee in considering issues such as the proposed replacement of Disability Living Allowance with Personal Independence Payments (PIPs). It has been indicated that this move will save 20% from the current budget, it will have dramatic implications on the ability of disabled people in Northern Ireland to live independently, as protected by Article 19 of the UNCRPD.
9. **The Commission advises the Committee express its concern with regard to the absence of distributional impact analysis. The Commission advises the Committee ensure that the move to PIPs will not significantly undermine enjoyment of the right to independent living for disabled people.**

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<sup>1</sup> HM Treasury 'The Green Book: Appraisal and Evaluation in Central Government' 2003

10. The Commission advises the Committee that international human rights law and, in particular, the ECHR requires without exception non-discrimination and equality proofed legislation. The Commission notes that the Department has not carried out a full equality impact assessment with respect to the categories of race, religion and sexual orientation. In the absence of this proofing to ensure non-discrimination and equality the Bill may be subject to legal challenge on human rights grounds.
- 11. The Commission advises that the Committee ensure that full analysis of the equality implications of the Bill have been carried out, including with regard to the grounds of race, religion and sexual orientation and that measures have been taken to address any potential inequalities.**

#### Supporting People into Work

12. The proposed reforms have been developed with the stated aim of assisting people into work. International human rights law recognises the right to work and places an obligation on the state to ensure those seeking employment are able to gain the skills and qualifications necessary to obtain employment.
13. The latest unemployment rate for Northern Ireland is 7.6%.<sup>2</sup> Over the year, the number of people claiming unemployment benefit has increased by 4.8%, to 63,400, while in the UK as a whole the figure has fallen by 1.4%. This indicates that there are currently fewer employment opportunities in Northern Ireland and that programmes to assist the unemployed into finding work in Northern Ireland are not resulting in a reduction in the rate of unemployment.
- 14. The Commission advises that the Committee ensure that the Welfare Reform proposals are verifiably calibrated to support people into work.**

#### Sanctions Regime

15. A sanctions regime is proposed which will penalise those who fail to meet certain work related requirements with reductions in their benefit payments. Where a sanction has been applied and an individual is in or is facing hardship they may apply for a hardship payment. It is unclear how the Regulations will deal with the period between the imposition of the sanction and the availability of the hardship payment.

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<sup>2</sup> Department of Finance and Personnel, *Northern Ireland Labour Force Survey: July to September 2012* (Nov 2012)

16. The Government is under a positive obligation to prevent individuals from falling into destitution.<sup>3</sup> It is unclear how the Regulations will ensure that there is no gap in time between the imposition of a sanction and receipt of the hardship payment.
17. **The Commission advises that the Committee ensure that the Regulations governing the sanction regime provide that a sanction should not be applied where there is a risk of an individual or their dependents falling into destitution.**

### Child Caring Responsibilities

18. Those with children face a particular difficulty in exercising the right to work due to the need to arrange alternative childcare.
19. The Commission has identified a number of ways in which the current legal framework governing the provision of childcare in Northern Ireland is underdeveloped by comparison with England & Wales. Furthermore the Commission recalls that a number of stakeholders raised concerns with the Committee for Social Development regarding the availability and affordability of childcare in Northern Ireland.<sup>4</sup> The recent report of Employers for Childcare found that the average cost of a full time childcare place in Northern Ireland is £156 per week.<sup>5</sup> Furthermore, it identified a substantial gap in demand and supply, with one childcare place for every 7.4 children.<sup>6</sup>
20. **The Commission advises that the Committee ensure that the Regulations governing the sanctions regime will not be applied to penalise those who cannot reasonably access childcare.**

### Private Contractors

21. The Bill allows for contracted providers to exercise the functions of both Department for Social Development and the Department of Employment and Learning relating to work-related and connected requirements.
22. It appears that private contractors will exercise a significant role in the administration of the benefits system. Private actors, contracted by Government to perform functions of a 'public nature' are required to comply with the Human Rights Act 1998.

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<sup>3</sup> See discussion on Article 3 ECHR in NIHRC Submission to Committee Social Development Call for Evidence on Welfare Reform Bill

<sup>4</sup> See for instance Citizens Advice Bureau submission to Committee for Social Development Call for Evidence on Welfare Reform Bill 2012 pg 6

<sup>5</sup> Employers for Childcare (2012) Northern Ireland Childcare Costs Survey 2012, page 9

<sup>6</sup> Ibid, page 53

23. **In order to ensure legal certainty the Commission advises that the Bill be amended to make clear that those private contractors carrying out functions that properly belong to the state are subject to the jurisdiction of the Human Rights Act 1998.**

#### Housing Benefit

24. Residents of social housing properties which are deemed excessive to their need are to be penalised. Taking an average rent, a tenant on full Housing Benefit who is under-occupying by one bedroom would see their benefit reduced by £8.25 per week and for a tenant occupying by two or more bedrooms, the figures would be £14.70 per week.<sup>7</sup> It is estimated that potentially 32,668 tenants will be affected by this penalty. The Commission is concerned that due to the nature of the Northern Irish Housing stock, both in terms of unit size and segregation, it will be difficult for many tenants to avoid this penalty.
25. **The Commission advises that the Committee ensure that where an individual has engaged in best endeavours to find an alternative smaller dwelling and is unable to do so due to the nature of the Northern Ireland housing stock they should not be penalised.**
26. There are circumstances in which a tenant may legitimately require an additional room, for instance a disabled person may require accommodation for a carer or a parent who has custody of their children over the weekend.
27. In the joined cases of *Burnip, Trengove and Gorry*<sup>8</sup> the Court of Appeal found that a number of Local authorities' regulations governing housing benefits discriminated against disabled people, because they did not allow for an additional room to be paid for where a disabled person had a carer, or where two children cannot share a room because of a disability.
28. **The Commission advises that the Committee ensure that the Regulations governing housing benefits will allow for exceptional circumstances, such as an individual having an additional bedroom where this is required as a consequence of their disability or as a consequence of joint custody of a child.**

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<sup>7</sup> See Northern Ireland Housing Executive [http://www.nihe.gov.uk/welfare\\_reform](http://www.nihe.gov.uk/welfare_reform) [accessed 06.12.12]

<sup>8</sup> *Burnip v Birmingham City Council & Secretary of State for Work and Pensions* [2012] EWCA Civ 629