



Northern Ireland
Assembly

Ad-Hoc Committee

Report on whether the Provisions of the Welfare Reform Bill are in Conformity with the Requirements for Equality and Observance of Human Rights

Together with the Minutes of Proceedings of the Committee relating to the Report,
the Minutes of Evidence and Written Submissions

Ordered by The Ad-Hoc Committee to be printed on 21 January 2013
Report: NIA 92/11-15 Ad-Hoc Committee

**REPORT EMBARGOED
UNTIL COMMENCEMENT OF THE
DEBATE IN PLENARY**

Committee Powers and Membership

Powers

The Committee was established by resolution of the Assembly on Tuesday 20 November 2012 in accordance with Standing Orders 53(1) and 60(1). The remit of the Committee was to consider and report on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights.

The Committee had power to call for persons and papers; and to report to the Assembly by 22 January 2013.

Membership

The Committee had eleven Members, including a Chairperson and Deputy Chairperson. The quorum was five. The membership of the Committee was as follows:

Mr Trevor Lunn – Chairperson
Mr Robin Swann – Deputy Chairperson
Ms Paula Bradley
Mr Mickey Brady
Mr Colum Eastwood
Mr Tom Elliott
Ms Bronwyn McGahan
Lord Morrow of Clogher Valley
Mr Alastair Ross
Ms Caitriona Ruane
Mr Peter Weir

It was agreed by the Committee that where Members were unable to attend meetings they could nominate MLA colleagues to do so.

Mr Conall McDevitt attended the meetings of 3 December 2012 and 4 December 2012 on behalf of Mr Colum Eastwood.

Ms Megan Fearon attended the meeting of 3 December 2012 on behalf of Ms Caitriona Ruane.

Mr Fra McCann attended the meetings of 4 December 2012 and 14 January 2013 on behalf of Ms Caitriona Ruane.

Mr David McIlveen attended the meeting of 10 December 2012 on behalf of Mr Alastair Ross.

Ms Michelle McIlveen attended the meetings of 11 December 2012 and 15 January 2013 on behalf of Mr Alastair Ross.

Mr Michael Copeland attended the meeting of 8 January 2013 on behalf of Mr Tom Elliott.

Mr Sydney Anderson attended the meeting of 21 January 2013 on behalf of Mr Peter Weir.

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List of abbreviations used in the Report

'Ad Hoc Committee'	The Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill
'The Act'	The Northern Ireland Act 1998
'The Bill'	The Welfare Reform Bill
'The Commission'	The Equality Commission
'The Committee'	The Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill
'The Department'	The Department for Social Development
'The Joint Committee'	The House of Lords and House of Commons Joint Committee on Human Rights
DHP	Discretionary Housing Payment
DLA	Disability Living Allowance
DSD	The Department for Social Development
ECHR	European Convention on Human Rights
EEA	European Economic Area
EQIA	Equality Impact Assessment
JCHR	The House of Lords and House of Commons Joint Committee on Human Rights
LGB	Lesbian Gay Bisexual
NICCY	Northern Ireland Commissioner for Children and Young People
NICEM	Northern Ireland Council for Ethnic Minorities
NIHRC	Northern Ireland Human Rights Commission
PIP	Personal Independence Payment
S.75	Section 75 of the Northern Ireland Act 1998
Schedule 9	Schedule 9, Northern Ireland Act 1998
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Disabled Persons
WRB	Welfare Reform Bill

Executive Summary

1. The Committee for Social Development began its scrutiny of the Welfare Reform Bill on 10 October 2012. During evidence sessions from a range of stakeholders, the Committee became increasingly concerned that the Bill was not fully compliant with equality and human rights considerations. The Committee therefore agreed to bring a motion to the Assembly under Standing Order 35 to set up an Ad Hoc Committee to specifically address these concerns.
2. This Ad Hoc Committee was established by the Assembly on 20 November 2012 to consider only, and to report only, on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights, and to submit a report to the Assembly by 22 January 2013. The Committee for Social Development suspended its scrutiny of the Bill for this period.
3. The Ad Hoc Committee took oral evidence and accepted written submissions from a number of representative bodies, including the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission. Officials from the Department for Social Development briefed the Committee on two occasions and provided written responses to queries raised. The Committee invited the Equality Unit of OFMdfM to present or give evidence but no official response was received to this request.
4. The Chairperson and Deputy Chairperson met with the Chairperson of the House of Lords and House of Commons Joint Committee on Human Rights to gain an insight into the approach used by that Committee in its scrutiny of Westminster legislation.
5. The Committee believed that its scrutiny had revealed a number of areas of concern and accordingly it made recommendations which it considers will promote the continued monitoring of equality and human rights considerations in the on-going introduction of Welfare Reform. The Committee, however, concluded that it cannot identify any specific breaches of equality or human rights aspects of the Welfare Reform Bill. This decision was reached by majority vote.

Conclusions and Recommendations

6. The Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill, reached the following conclusions and made the following recommendations as detailed below.

Recommendations 1 and 2

7. **The adequacy of the EQIA**

A number of responses, most notably that from the Equality Commission, raised concerns regarding the process and adequacy of the EQIA, specifically the lack of consideration of up to date and relevant data, and the absence of the identification of adverse impacts or alternative policies.

8. Although some members were content to acknowledge these concerns, they did not accept that the EQIA was either inadequate or insufficient. They were content for the Department to regard the EQIA as a living document which is flexible and can be changed to meet changing circumstances; they also accepted the Department's view that there was no need to assess the impact on all nine S.75 groups because this was not relevant to benefit entitlement. The view was also expressed that the ultimate test would be in a court of law.
9. Other members considered that the EQIA did not comply with the Department's statutory obligation because an impact assessment had not been carried out on four of the nine S.75 groups, specifically religious belief, political opinion, racial background and sexual orientation; these members also felt that the impact on people with disabilities had not been fully assessed. They believed that, since the Department has recognised a lack of appropriate data, the EQIA is not adequate or sufficient; and that qualitative data should be obtained to assess the impact on the some S.75 groups. They felt that the existing EQIA was not a proper basis for a living document. They accepted that the legislation may well be tested in a court of law but felt that vulnerable individuals who are adversely impacted may not be in a position to bring a case, and that, in the past, relatively few cases have been taken.
10. The Committee failed to agree on whether or not the potential adverse impacts associated with the Welfare Reform Bill were reflected in the actual provisions of the Bill, rather than in the relevant Regulations. Some members believed that the provisions of the Bill were a flawed basis on which to bring forward subordinate legislation, whereas other members felt that specific adverse impacts could not be identified in the wording of the Bill.
11. The Committee also failed to find agreement on the extent to which a flexible and responsive EQIA – the “living document” proposed by the Department for Social Development – could address adverse impacts yet to be identified, as additional data is added. Some members felt that this flexibility actually provided an additional strength, whereas other members believed that the Bill should be subject to a full and complete EQIA before it was agreed by the Assembly.
12. The Committee agreed that there was scope for the inclusion of further data, but there was no accord that the Department should consider extending its evidence gathering process to include data – perhaps qualitative rather than quantitative – on the four other S.75 equality strands that are currently not represented in the EQIA.
13. **The Committee recommends that the Department for Social Development should continue its efforts to address the data deficits it has recognised in its EQIA by collating and analysing additional data.**

14. **The Committee recommends that close and continued monitoring by the Equality Commission should continue to ensure that any potential adverse impacts identified by the evolving EQIA are addressed and mitigated.**

Recommendation 3

15. **Regulations**

The Welfare Reform Bill is essentially enabling legislation, and it is difficult to consider the equality and human rights implications separately from the subsequent subordinate legislation. A number of stakeholders suggested that the level of Assembly control over the Regulations should be strengthened from confirmatory to affirmative resolution.

16. Members sought to clarify the distinction between the affirmative and the confirmatory procedures, and which procedure was to be used by the Department. Some Members believed that the affirmative resolution procedure for implementing Regulations would be used where there is a policy change. Other Members believed that the confirmatory procedure may be used, and expressed concerns that any issues arising from the Regulations could only be addressed six months after they had been in operation. These Members did not accept the notion put forward by the Department that the use of the affirmative procedure would waste the time of the Assembly or the Committee.
17. The Committee voted on the motion, “That Regulations should follow the affirmative procedure where there is a policy change”, and on the motion, “That Regulations should follow the affirmative procedure”; neither motion was carried.
18. During subsequent discussions the Committee agreed that the affirmative resolution procedure should be used where a policy change is introduced by Regulations; the Committee felt that it was outside its remit, however, to make a decision on what would constitute policy change rather than a technical amendment.
19. **The Committee recommends that the Regulations relating to the provisions of the Welfare Reform Bill should be introduced under the affirmative resolution procedure where there is a policy change, in order to offer the Assembly a more effective scrutiny of the equality and human rights implications.**

Recommendation 4

20. **Sanctions**

Concerns have been expressed, particularly by the Human Rights Commission, that sanctions imposed for failure to meet benefit requirements may result in extreme hardship, or even destitution, for certain vulnerable groups.

21. The Committee discussed the potentially disproportionate effect of sanctions on lone parents, on children and those with mental health issues, and agreed that it was concerned that such sanctions should not be overly punitive or result in destitution. Some members also agreed that sanctions should not be applied for lack of affordable or accessible childcare, and that this exemption should not be dependent on assurances from the Department but that it should be formally included in legislation.
22. **The Committee recommends that the Department for Social Development should ensure that the provisions of the Welfare Reform Bill are appropriately amended to mitigate the impact of any sanctions imposed on lone parents, those with mental health issues and children, in order to minimise the potential for extreme hardship and avoid destitution for anyone.**

Recommendation 5

23. **Nominated Claimant**

The nomination of a single claimant has been perceived as adversely impacting on women, but the Department has power to divide the payment, or to make the payment to the female partner if it is considered appropriate.

24. The Committee discussed the possible adverse impact on women, particularly those in abusive relationships, where split payments would only be made if the abuse was disclosed by the victim. The Committee agreed that the most operationally effective way of minimising an adverse impact on women was to treat the 'parent with care' as the nominated claimant.

25. **The Committee recommends that the Department for Social Development should make payment of benefits to the parent with care of dependent children its default position in identifying a nominated claimant, in order to minimise any potential adverse impacts on women and children.**

Recommendations 6 and 7

26. **Universal Credit**

The main focus of the Bill is on the promotion of individual responsibility and the encouragement of people into work. The Committee learned from the Human Rights Commission, that while it does not disagree with this fundamental premise, it raises concerns that the lack of employment, and corresponding ineffectiveness of employment programmes, renders this unattainable.

27. The Committee was broadly in agreement that the loss of help with mortgage interest for a claimant who is working no more than a few hours a week runs contrary to the rationale of the Bill and acts as a disincentive to work. The Committee also discussed the frequency of benefit payments – monthly or bi-monthly – and noted that the current default is for monthly payments; it appeared that, although the claimant may be able to apply for bi-monthly payments, these are made at the discretion of the Department.

28. In addition, the Committee shared the concerns of a number of organisations regarding the possible adverse impact on migrant workers of Schedule 1 Paragraph 7. Some Members felt that the requirements of S.75 meant that there may be particular difficulties with this aspect of the legislation in Northern Ireland, but other Members believed that, if this provision proved to be contrary to EU law, it would be incompatible across the whole of the UK and not just Northern Ireland.

29. **The Committee recommends that the Department for Social Development should ensure that claimants of Universal Credit have the right to opt for payment of benefit on a bi-monthly basis, in order to minimise any potential adverse impacts on women and children.**

30. **The Committee recommends that the Department for Social Development should closely monitor the outcome of any infringement proceedings instituted under EU law relating to the rights of migrant workers, in order to mitigate any potential adverse impacts on the grounds of race.**

Recommendation 8

31. **Lone Parent Conditionality**

The issue of lack of affordable childcare and statutory childcare provision in Northern Ireland appears to adversely and disproportionately impact on female jobseekers, although the

Department has given assurances that claimants will not be sanctioned for citing lack of childcare as a reason why they are unable to comply with work-related requirements.

32. Some members agreed that they were content to accept the Department's assurances that lone parents would not be sanctioned, in view of the lack of affordable or accessible childcare and the absence of statutory provision in Northern Ireland in comparison with England, Scotland or Wales. Other members felt that it was not sufficient to rely on such assurances and that such sanctions should not have a legislative basis. It was also suggested that a monitoring exercise should be carried out to examine the reasons why lone parents are sanctioned, and to ensure that these sanctions are not disproportionate.
33. **The Committee notes assurances from the Department for Social Development that lone parents will not be penalised for lack of affordable and accessible childcare; and recommends that the Department puts in place procedures to monitor sanctions against lone parents in order to identify and minimise any potential adverse impacts on women and children.**

Recommendations 9 and 10

34. **Benefit Cap**

The benefit cap is based on the premise that families should not be better off on benefits than in work. Respondents have identified a possible disproportionate adverse impact of a benefit cap on children in large families, single women including lone parents and ethnic minorities.

35. The majority of the Committee voted in favour of the introduction of a benefit cap based on the current estimates of £26,000 net per annum (equivalent to £35,000 before tax) and believed that the cap has no human rights or equality implications.
36. The minority opinion held that a benefit cap, set at the level currently suggested, would have human rights or equality implications by denying larger families the same rights as smaller families.
37. **The Committee recommends that the number of households affected by the benefit cap in Northern Ireland is quantified, collated and assessed in line with Section 75 groupings in order to ensure that there are no equality implications for any particular sections of society.**
38. **The Committee recommends a benefits cap at the suggested level.**

Recommendations 11, 12 and 13

39. **PIP/DLA Benefit**

A range of concerns were expressed regarding the transition from DLA to PIPs. The Committee considered whether these concerns related to possible breaches of human rights for disabled people (e.g. the right to independent living) or had equality implications.

40. The main issue which exercised the Committee was the current assessment process used to determine eligibility for DLA, particularly when medical evidence is often not presented until the appeal stage. Some members believed that medical evidence should be given primacy in making an assessment for PIPs. The Committee agreed that the implementation of the assessment process needed to be closely monitored in the light of the high level of successful appeals against work capability assessments.
41. The Committee also discussed the proposed 20% cut in DLA/PIPs, and how this is to be achieved. Members were concerned that benefits should be entitlement-based, rather

than target-driven. The Committee was also concerned regarding the need for clarity on the responsibilities under the Human Rights Act of private contactors who will exercise a significant role in the administration of the benefits system.

42. **The Committee recommends that the Department requests medical evidence in the first instance for Personal Independence Payment (PIP) claims.**
43. **The Committee recommends that the Department for Social Development puts in place an assessment process for the determination of entitlement to Personal Independence Payments in order to avoid any potential human rights implications for disabled people.**
44. **The Committee recommends that the Department for Social Development provides legal clarity that private contractors carrying out functions that properly belong to the state are subject to the jurisdiction of the Human Rights Act 1998.**

Recommendations 14 and 15

45. **Housing Benefit**

Submissions raised concerns that the so-called 'Under Occupancy' penalties may have serious implications, particularly for the disabled and for children, especially in view of the current Northern Ireland housing stock.

46. The Committee discussed the problems of inadequate housing stock and segregated housing in Northern Ireland. Members agreed that claimants should not be penalised when they are unable to find an alternative smaller dwelling, or when they require an additional bedroom to meet the requirements of a disabled person or a child for whom they exercise joint custody. The definition of appropriate or suitable accommodation was suggested as 'reasonable' in the sense that it is currently used by the Northern Ireland Housing Executive.
47. The Committee also agreed that a further exemption should be made for foster carers who need to have accommodation available at short notice, and that the introduction of under occupancy penalties in this situation would be a disincentive to fostering.
48. **The Committee recommends that the Department for Social Development takes into account in its calculation of housing benefit exceptional circumstances, such as additional room requirements for those who have joint custody of a child, who are foster carers, or who require additional space because of a disability, in order to respect the human rights of disabled people and children.**
49. **The Committee recommends that the Department for Social Development should not apply sanctions in situations where no reasonable alternative accommodation is available, in order to comply with human rights legislation.**

Introduction

Background

50. The purpose of the Welfare Reform Bill is to make provision for Northern Ireland corresponding to the Welfare Reform Act 2012 in Great Britain.
51. The policy intention underlying the Bill is to extend the process of the reform and modernisation of the benefits system. The Bill introduces Universal Credit, a new benefit that will be paid to people both in and out of work, replacing a number of existing benefits. The aim of Universal Credit is to promote and support a transition into work, and it is underpinned by specific claimant requirements.
52. The Bill will also replace Disability Living Allowance with a new benefit, Personal Independence Payment, for long-term disabled people.

The Committee's Approach

53. The Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill, was established under Standing Orders 53(1) and 60(1) on 20 November 2012 to consider and report on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights.
54. The Committee met first on 26 November 2012 to elect a Chairperson and Deputy Chairperson, and to determine how it would approach its deliberations. The Committee agreed initially to invite the Department for Social Development to provide an overview of the Welfare Reform Bill and its Equality Impact Assessment. The Committee also agreed to schedule a small number of oral evidence sessions and, in addition, to consider any written submissions received by 12 December 2012.
55. As part of its earlier scrutiny of the Bill, the Committee for Social Development had requested submissions from relevant stakeholders, and these, together with Hansard transcripts of oral evidence, were available to the Ad Hoc Committee. The Equality Impact Assessment on the Welfare Reform Bill, which included a summary of issues raised by consultees and Departmental responses, was published by the Department for Social Development in April 2012 and was also made available to the Ad Hoc Committee. These papers are included at Appendix 6.
56. The Committee agreed that the Chairperson and Deputy Chairperson should meet with the Chairperson of the Joint Committee on Human Rights at Westminster 5 December 2012 to discuss the procedural aspects of his Committee's scrutiny. The Report of the Joint Committee on the Welfare Reform Bill was considered by the Ad Hoc Committee at its meeting on 10 December 2012 and is included at Appendix 5. The Committee agreed at that meeting that it should write to the Joint Committee to ask its members to consider widening their future scrutiny to include the specific circumstances of the devolved regions.
57. The Department for Social Development briefed the Committee on the purpose and the main provisions of the Bill on 27 November 2012, and returned on 11 December 2012 to respond to issues raised by Members during oral evidence sessions.
58. At the Committee meeting on 3 December 2012, the Equality Commission for Northern Ireland outlined its role and responsibilities, and highlighted its concerns with the Bill. The Committee requested copies of correspondence between the Commission and the Department for Social Development in relation to the EQIA, and these were subsequently provided by both the Equality Commission and the Department (See Appendix 5)

59. The meeting on 3 December 2012 continued with a briefing from the Northern Ireland Human Rights Commission which identified relevant legislation and specified areas of the Bill with possible human rights implications; the Committee agreed to ask the Department for a copy of the Memorandum on the compatibility of the Welfare Reform Bill with the European Convention on Human Rights.
60. The Committee also agreed to write to the Department of Finance and Personnel (DFP) to ascertain if it had carried out an analysis of Welfare Reform legislation and policy, in compliance with HM Treasury Green book guidelines. The Committee noted the response from DFP at its meeting on 7 January 2013 which is included at Appendix 5.
61. The Northern Ireland Council for Ethnic Minorities briefed the Committee on 4 December 2012, as did Disability Action and Mencap, on human rights and equality issues which particularly impact on their community sectors.
62. On 10 December 2012 the Law Centre NI expressed its concerns to the Committee regarding specific human rights and equality issues in the Bill. The Committee had also invited the Equality Unit of the Office of the First Minister and Deputy First Minister to give oral evidence on its role and remit in relation to primary legislation generally, and in relation to the Welfare Reform Bill in particular, but the Equality Unit did not respond to this invitation.
63. The Committee also agreed at its meeting on 10 December 2012 to request the Department for Social Development to provide a draft plan, including a timetable, for the publication of the Regulations to be made under the Welfare Reform Bill, and the related Guidance. The Department supplied a proposed timetable and details of the packages of Regulations on 4 January 2013, on a confidential basis only (it has not been included in this Report); the Decision Makers' Guidance was not yet available.
64. After initially declining to provide any detailed information on the Memorandum on the compatibility of the Welfare Reform Bill with the European Convention on Human Rights, the Department wrote to the Committee on 4 January 2013 to confirm that a summary of the Memorandum would be provided on an 'In Confidence' basis (this document was not available for inclusion in this Report). The Committee agreed at its meeting on 7 January 2013 to request the Northern Ireland Human Rights Commission to attend its meeting on 14 January 2013 to respond to its queries on the Memorandum – this briefing session was held in private because of the confidential nature of the Memorandum, and it was not recorded.
65. The Committee commenced its consideration of evidence presented on 7 January 2013 with a scrutiny of all written submissions received (See Appendix 3). A number of common issues were identified by stakeholders and these formed the basis of a Committee discussion which continued at its next meeting the following day.
66. The Committee reached a consensus on the equality and human rights implications of a number of issues including proposed sanctions, the identification of a Nominated Client, the introduction of Universal Credit, Lone Parent Conditionality, the impact on disabled people and changes to Housing Benefit,
67. The Committee failed to reach agreement on the adequacy of the EQIA, and, on the form of Assembly resolution to be used for Regulations. After a vote, the majority view was carried on the introduction of a benefit cap. Members also requested clarification on a number of points in oral and written stakeholder evidence.
68. On 14 January 2013 the Committee reviewed the outcome of its previous discussions and agreed a number of recommendations for its Report; the Committee considered the first draft of the Report on 15 January 2013, and agreed that Members should highlight any possible amendments and suggest alternative wording, for incorporation into the final draft to be considered on 21 January 2013.

69. The last meeting of the Committee took place on 21 January 2013, when the final draft of its Report was agreed and ordered to print. The Committee also agreed the wording of a motion to report to the Assembly on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights.

Key Issues

Background

70. Section 75 of the Northern Ireland Act 1998 stipulates that a public authority, in carrying out its functions, shall “have due regard to the need to promote equality of opportunity — .
- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - (b) between men and women generally;
 - (c) between persons with a disability and persons without; and
 - (d) between persons with dependants and persons without.”
71. In order to fulfil this duty, a department should assess and consult on the likely impact on equality of opportunity of its policies; a department must also publish this assessment and monitor for any adverse impact of the implementation of policies.
72. The Equality Commission was appointed under Schedule 9 of the Act to review the effectiveness of the duties imposed by Section 75, and to offer advice in connection with those duties. The Commission also has the power to initiate investigation where it believes that there has been a failure by a public authority to properly comply with an Equality Scheme.
73. Similarly, The Northern Ireland Human Rights Commission is empowered under the Act to “keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights” (Section 69 (1)) and shall also “advise the Assembly whether a Bill is compatible with human rights” (Section 69 (4)).
74. The Ad Hoc Committee on Conformity with Equality Requirements was established to consider whether the provisions of the Welfare Reform Bill as introduced by the Department for Social Development are in conformity with the requirements for equality and observance of human rights.
75. The key issues that were identified by the Committee are detailed below.

The Equality Impact Assessment

76. In September 2011 the Department for Social Development issued for public consultation a Draft Equality Impact Assessment (EQIA) on the Welfare Reform Bill. The consultation period ran from 5 September 2011 to 30 November 2011; 27 responses were received and the Department acknowledged that “many of the respondents indicated that they were unhappy with the proposed reforms and the lack of suitable data on which the assessment was based”¹.
77. The Final Equality Impact Assessment, which was substantially unaltered from the original document, was published on 4 May 2012. The Department concluded that there was “evidence of some differential impact in respect of some section 75 categories. Impacts have been considered against the backdrop of available data and the stated policy intent to determine whether differential impacts identified are adverse. Where this is the case, consideration has been given to potential mitigating factors”².

1 DSD: Welfare Reform Bill (Northern Ireland) 2011, Completed Equality Impact Assessment, April 2012

2 DSD: Welfare Reform Bill (Northern Ireland) 2011, Completed Equality Impact Assessment, April 2012

78. The Department added that its Analytical Services Unit would continue to work with DWP and HMRC to develop a Policy Simulation Model to analyse the impact of policies on the various S.75 groups.
79. The issues concerning the adequacy of the EQIA, which were raised by stakeholders in response to the Department's public consultation, were also brought to the attention of the Ad Hoc Committee.
80. The Equality Commission for Northern Ireland considered that the EQIA did not provide any substantive analysis of the policy proposals nor give real consideration to the potential adverse impact on vulnerable groups; the Commission also believed that it did not take into account sufficiently the context of Northern Ireland policy and proposals which are not subject to parity.
81. The Commission expressed considerable concerns regarding the methodology of the EQIA:
- “We pointed out that the data considered by the Department was extremely limited and that it was essential to gather and consider a wide range of qualitative and quantitative data, in order to determine how the proposed policies will impact on people;
 - while recognising that assessing the impacts of a policy can be challenging at a strategic level, we emphasised that a proper analysis of the impacts of the proposed policy is at the core of any EQIA, the purpose of which is to identify any potential negative impacts and take steps to address these. The Commission was particularly concerned with the minimalist approach taken by the Department to this part of the EQIA. In some places, there was no assessment at all;
 - we noted with concern the high number of assumptions, expectations and vague possibilities which are put forward as mitigating measures, without any evidence to support these.
 - We indicated that it was crucial that the Department was clear about the extent to which the policy options presented in the EQIA could be altered/ amended in light of the outcomes of the EQIA consultation and what the possible alternative policy options are.”³
82. The Equality Commission remained concerned when the Final EQIA was published in May 2012, as very few of the issues highlighted by the consultation had been addressed, and the EQIA was largely unaltered.
83. The Equality Coalition also commented that “Although DSD lists the consultees’ responses to the Welfare Reform Bill in an annex to its final EQIA, it has not sufficiently taken into account the impacts or consultation responses received. This is clear, as DSD has not changed any aspects of the policies included in the Welfare Reform Bill from the draft to the final EQIA. This suggests that DSD did not apply s75 ‘with vigour and an open mind’. Moreover, the final EQIA does not show any additional consideration of alternative policies or mitigation based on the consultees’ evidence of impacts in their consultation responses.”⁴
84. The Equality Commission raised specific concerns with the Department regarding the quality of the data used to inform the EQIA; that the impact assessment did not fully look at the impacts on a number of groups, particularly on women; and that additional data which was supplied by HMRC had not yet been fully processed.
85. The Department responded to the Commission that the Equality Impact Assessment was very much a “living document”⁵, and officials are currently reviewing additional data received from HMRC.

3 Equality Commission: Submission to the Ad Hoc Committee, December 2012

4 Equality Coalition submission to the Ad Hoc Committee, December 2012

5 Correspondence from the Department for Social Development to the Equality Commission, 29 October 2012

86. The Northern Ireland Human Rights Commission noted that the Department had not carried out a full equality impact assessment with respect to the categories of race, religion and sexual orientation and advised the Committee that the European Convention on Human Rights (ECHR) requires equality-proofed legislation: “In the absence of this proofing to ensure non-discrimination and equality the Bill may be subject to legal challenge on human rights grounds”⁶.
87. In the EQIA the Department for Social Development acknowledged the omission of monitoring information or impact assessment on the four S.75 strands of religious belief, political opinion, racial background or sexual orientation, but contends that “Social Security benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these Section 75 categories.”⁷
88. The Equality Coalition disagrees with this premise and contends that “In order for a public authority to have ‘due regard’ within the meaning of s75, it must consider available data. Otherwise, it would merely be guessing as to what impacts a proposed policy might have on the nine equality groups. It is clear from Schedule 9 that a public authority must ‘assess’ (not guess) the impacts, and so sufficient data must be required. Furthermore, the DSD equality scheme recognises that, without sufficient information, it is not possible to conduct meaningful analysis of the impact of its policies on all of the nine categories.”⁸
89. The Equality Coalition also noted that “DSD did not publish any consideration of alternative policies that could better promote equality of opportunity. It noted some mitigation to adverse impacts in its draft EQIA, but this is not sufficient to better promote equality of opportunity. We recognise that DSD is constrained to some extent by the parity principle, but this constraint is not absolute and should not prevent the full consideration of alternative policies, including regard to impacts on equality and other countervailing factors.”⁹
90. Disability Action/ Mencap stated that no policy simulation had been carried out in relation to DLA or Personal Independence Payments (PIP) – without this type of policy modelling it is unclear what the impact is likely to be. Other issues highlighted were: data available in the 2007 Northern Ireland Survey of Activity Limitation and Disability was not used by the Department to inform the EQIA; the EQIA did not look specifically at the impact on disabled children, but rather at the impact on households; the EQIA did not consider the necessity for disabled people to have an additional room (for equipment, etc.) but only took into account overnight stays by a carer.¹⁰
91. The joint submission received from Northern Ireland Association for Mental Health (Niamh), Disability Action and Mencap also referred to the absence of policy modelling and the lack of reliable data in the EQIA. “As the Department for Social Development has not yet confirmed or published the policy simulation modelling in Northern Ireland as stated in the Equality Impact Assessment (EQIA) we are still in a situation that we do not know the number of disabled people that will be impacted by some elements of the Bill. For example, we do not know how many people will be impacted by the removal of Disability Living Allowance and the introduction of Personal Independence Payment”.
92. It also seems that appropriate data was not included in the EQIA to reflect NI ethnic minorities. The Department has indicated that it does not have this data, but NICEM specified a number of areas where statistical information on race is readily available.¹¹

6 NI Human Rights Commission: submission to the Ad Hoc Committee, December 2012

7 DSD: Welfare Reform Bill (Northern Ireland) 2011, Completed Equality Impact Assessment, April 2012

8 Equality Coalition submission to the Ad Hoc Committee, December 2012

9 Equality Coalition submission to the Ad Hoc Committee, December 2012

10 Oral evidence session to the Ad Hoc Committee, 4 December 2012

11 Oral evidence session to the Ad Hoc Committee, 4 December 2012

93. Cara-Friend does not accept that the Department has been unable to assess the impact of its policies on the grounds of sexual orientation on the basis of lack of data. “It is clear from ECNI Guidance,¹² as quoted by the Coalition,¹³ that public bodies, in performing these statutory duties, should collect quantitative data, where possible but also collect **qualitative** data... There is extensive engagement on the part of the LGB sector with public bodies within the remit of the Department, particularly the NIHE...The [LGB] sector also participates in the NIHE Consultative Forum on Equality and has responded to the NIHE draft audit of inequalities and action plan. It appears that no attempt has been made by the DSD to collect, let alone analyse, available qualitative data.”¹⁴
94. The Committee requested information from the Department on its efforts to overcome the data limitations and the lack of impact assessment on the additional S75 categories. The Department responded on 10 December 2012 with details of the Department for Work and Pension’s Policy Simulation Model (PSM) that will be available to DSD in January 2013; data from the 2009-2010 Family Resources Survey will be used to update the Equality Impact Assessment early in 2013.(Correspondence attached at Appendix 5)

The equality implications and human rights implications of the relevant subordinate legislation

95. Social Security legislation commonly sets out broad principles in primary legislation, followed by subordinate legislation detailing the implementation of these principles. The Welfare Reform Bill follows this pattern by bringing forward enabling powers, with further information on exemptions and sanctions to be specified in the Regulations.
96. The degree of uncertainty generated by the lack of detail currently available regarding the Welfare Reform Regulations gives rise to an inherent difficulty in assessing the human rights and equality implications of the legislation. The Department has given assurances to the equality Commission that “as each set of Regulations is prepared, the proposals will be screened in or out on differential impact, to assess the need or otherwise for an EQIA of the Regulations.”¹⁵
97. Some stakeholders felt that screening of the Regulations did not obviate the need for the identification of all adverse potential impacts of the primary legislation. “We understand that the Welfare Reform Bill is, in part, enabling legislation and that DSD intends to apply s75 to the future regulations on specific policies that stem from the bill. However, any likely adverse impacts of the Welfare Reform Bill, and any possibilities to better promote equality of opportunity for the nine named groups, must be considered before the passing of the current bill. Several judgments have made clear that the duty must be fulfilled ‘before and at the time of the decision... DSD must address the adverse impacts before legislating on the Welfare Reform Bill.”¹⁶
98. Other submissions indicated that a full EQIA on the Regulations should be required: “We recommend that the Ad Hoc Committee recommends that the Department of Social Development produces a substantial EQIA on the draft Regulations based on comprehensive and current evidence; and that it does this in a timely manner than enables firstly scrutiny by

12 ECNI practical guidance on EQIAs 2005, at page 11.

13 “It specifies the need to ‘[c]ollect and analyse existing quantitative data by relevant equality category as a minimum base from which to judge outcomes’ and also ‘[u]se qualitative or evaluative research or information gathered by government and bodies such as voluntary, community and trade union organizations.’”

14 Cara-Friend submission to the Ad Hoc Committee, December 2012

15 Correspondence from the Department for Social Development to the Equality Commission, 29 October 2012

16 Equality Coalition submission to the Ad Hoc Committee, December 2012

(i) the Equality Commission for Northern Ireland in fulfilment of its statutory function, and (ii) voluntary and community organisations working with Section 75 groups.”¹⁷

99. The anticipated use of the confirmatory resolution procedure, whereby Regulations would come into operation for up to six months before being referred to the Assembly for scrutiny, was heavily criticised; most respondents believed that the affirmative procedure should be used as a more effective safeguard. The NI Welfare Reform Group also recommended that DSD should publish detailed monitoring plans, particularly in respect of vulnerable groups, for post-legislative implementation.
100. The Department does not support the use of the affirmative resolution as any subsequent delay in implementation may lead to administrative issues and ultimately impact on claimants.

Sanctions

101. It is proposed that the Welfare Reform Bill will introduce and increase the severity of benefit sanctions, and fears have been expressed that these may lead to extreme hardship or even destitution, with resultant human rights implications.
102. The Northern Ireland Human Rights Commission highlighted the proposed sanctions regime that would penalise those who fail to meet certain work related requirements with reductions in their benefit payments, and advised that a sanction should not be applied where there is a risk of an individual or their dependents falling into destitution.
103. Similarly, in its submission to the Committee the Northern Ireland Welfare Reform Group stated that “Increased conditionality and sanctions may contravene Article 3 of the ECHR which prohibits ‘inhuman or degrading treatment’. It places an obligation on the state to ensure that individuals are not exposed to destitution and hardship at a level which amounts to inhuman or degrading treatment. [NIWRG] believe the Committee should consider whether the level of sanctions is appropriate given its impact on the rest of the household including children. Due regard must be given to the impact on dependent children of sanctions applied to parents – especially the most extreme proposal to disallow benefit payments for up to three years. The Department is obliged by Article 3 of the UN Convention on the Rights of the Child to ensure the best interests of children are a primary consideration in all matters affecting children.”¹⁸
104. The particular difficulties faced by people with mental health issues were identified by NIAMH et al: “We consider that there is a real danger of disabled people falling into destitution if mandatory protections are not put in place. This is a serious concern in light of the severe sanctions regime that is being proposed...If a claimant is seriously depressed he or she may not answer their phone or their door, or open their mail. They may not be aware that they are not complying with the requirements of the social security system for example to complete an application or assessment form; to attend for assessment; or to fulfil the requirements of their claimant contract.

Individuals experiencing mental illness may not have insight into how profoundly their ability to engage with education, training and employment is undermined by their current condition; and may enter into unrealistic and unhealthy commitments in their claimant contract.

Claimants with fluctuating conditions such as mental ill-health may enter into arrangements with their Personal Adviser when they are well but if their condition deteriorates, they may not be able to keep up with such agreements. Individuals who have fluctuating conditions may not understand that they need to communicate how severely their condition impacts them at a

17 Submission from NIAMH, Disability Action and Mencap to the Ad Hoc Committee, December 2012

18 NI Welfare Reform Group submission to the Ad Hoc Committee, December 2012

medical assessment; or they may, in their desire to recover their mental health, overestimate the pace and extent of this recovery.”¹⁹

105. The Northern Ireland Commissioner for Children and Young People (NICCY) expressed fears that the conditionality and sanctions regime has the potential to infringe on the rights of children and young people living in families sanctioned by the removal of benefit from the household income. NICCY refers to Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) which stipulates that the best interests of the child must be a primary consideration, and Article 27 which advocates the right to a standard of living adequate for a child’s development.
106. The Department for Social Development has stated in the EQIA that if claimants are able to show good reason, they will avoid a sanction; where they are sanctioned, they will retain the right of appeal. Hardship payments will continue to be available, to provide support for the most vulnerable.

Nominated Claimant

107. The impact of the proposal within the Welfare Reform Bill to pay Universal Credit to a Nominated Claimant within a couple could be considered as not objectively justifiable and may have equality implications for women contrary to the 1979 Directive²⁰.
108. This was particularly highlighted by Women’s Aid in its submission to the Committee: “As they currently stand, the proposed welfare reforms stand to adversely impact upon victims of domestic violence in a number of ways. Universal Credit arrangements will go to the main earner in household, with the possibility for a limited split payments system in exceptional circumstances. Given that the main earner in a household is most likely to be male, and that victims of domestic violence are most likely female, there is a real risk that women in abusive relationships will be deprived of the degree of financial autonomy needed to leave an abusive relationship. Financial abuse is a recognised form of domestic violence, and the proposed welfare reforms run the risk of compounding this sort of abuse by contriving a situation whereby an abuser is in complete control of all financial income in a household.”
109. The submission continues, “Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. If a woman finds herself unable to leave a violent situation on account of government-mandated financial restrictions, her rights under Article 5 may be infringed. In addition, such a situation may contravene the right to life under Article 2 of the European Convention on Human Rights (in the event of a victim being placed in mortal danger) and the right to protection against all forms of violence under the Convention on the Rights of the Child, if there are also children present in the house.”
110. The Equality Commission also expressed reservations regarding a nominated partner. “We are concerned that the Department has not fully considered potential equality impacts in this regard. The payment of the new Universal Credit to the main earner following joint claim and joint assessment may leave carers (usually women) and dependents, without the benefits of income. Whilst the Final EQIA (pages 40-41) states that the Department intends to retain powers to split payments and to override nomination by members of a couple and to guide payments if required, the payment of Universal Credit to the primary carer, usually the mother of the children, is not the default position. We had previously noted that the importance of payment of benefit to women in their ‘caring for dependents role’ was an important social security reform of the 1970s, when it was considered necessary to allow certain benefits to be paid to women, including Child Benefit, recognizing that women more readily spend

19 Submission from NIAMH, Disability Action and Mencap to the Ad Hoc Committee, December 2012

20 The Equal Treatment in Social Security Directive 1979 (79/7/EEC)

on children and the household essentials.²¹ The Department should carefully consider the potential equality impacts of its proposals; identify actions to mitigate potential impacts; and ensure that such actions are reflected in the Bill and/or Regulations.”²²

111. The Department for Social Development contends that couples are already treated as a single unit in most of the existing benefits and tax credits, and that in cases where the Department considers that the benefit payment would be mis-spent if paid to the nominated partner, it can divide payments or make them to the other partner.

Universal Credit

112. Universal Credit will replace the current system of in and out-of-work benefits and tax credits with a single system of support with the aim of simplifying the benefits’ process and showing that work pays. International human rights law recognises the right to work and even places an obligation on the state to facilitate this, but the NI Human Rights Commission expressed concerns that the low level of job opportunities may not fulfil its stated aim of supporting people back into work.
113. Concerns were also raised by NICCY regarding the choice of payment options for Universal Credit. The Commissioner welcomed the flexibilities negotiated by the Minister for Social Development regarding splitting payments between joint claimants and the frequency of payments, but she remained convinced that the claimant should have the choice of payment options without having to satisfy any further criteria set down by the Department. Budgetary difficulties within a family may impact on the standard of living of the children and infringe on their rights under Article 26 UNCRC (rights to social security) and Article 27 (right to an adequate standard of living).
114. A number of stakeholders expressed concerns on the provisions of the Welfare Reform Bill on the rights of ethnic minorities and migrant workers. The Northern Ireland Council for Ethnic Minorities (NICEM) referred to Schedule 1, Paragraph 7, which provides that EU claimants who ordinarily fall under the non-work-related requirements are instead to be treated as falling within the work-related requirement section. Such workers are already not entitled to non-contributory benefits and so may fall into destitution.
115. NICEM continues, “Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) (which has been incorporated into domestic law by the Human Rights Act 1998) recognises a right to property, which includes social security...The right to social security is also enshrined in Article 34 of the EU Charter of Fundamental Rights and the principle of non-discrimination is enshrined in Article 21. While the Charter only has legal effect when implementing EU law, it is highly relevant for EU migrant workers because they are exercising their EU Treaty right to free movement and therefore the Charter comes into effect.”
116. The AIRE Centre supported this view: “Schedule 1 paragraph 7 of the WRB, if enacted, will run contrary to basic principles of EU law because it purports to grant a wide power to discriminate against Union citizens on grounds of nationality. Such discrimination is prohibited by Article 18 of the Treaty on the Functioning of the European Union states that ‘within the scope of the application of the [EU] Treaties and without prejudice to any special provisions contained in them, any discrimination on grounds of nationality shall be prohibited’.”²³
117. In addition, the AIRE Centre noted that the European Commission has issued infringement proceedings against the UK on the basis that the use of the habitual residence test to

21 Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment, Briefing for Assembly Committee for Social Development, ECNI, March 2012

22 Equality Commission: submission to the Ad Hoc Committee December 2012

23 Observations from The AIRE Centre, attached to the submission from NICEM to the Ad Hoc Committee, December 2012

determine eligibility for special non-contributory benefits, amounts to unlawful discrimination under EU law.

118. NICEM also identified potential adverse impacts on ethnic minorities and migrant workers of an online application system – without access to interpreters – and the requirement to have a bank account where Northern Ireland anti-terrorism legislation can make this particularly onerous.
119. The Department for Social Development, in its response dated 4 January 2013 to Committee queries on this issue, clarified its power to verify whether an EEA claimant continues to enjoy a ‘right to reside’ by ensuring that he or she is continuing to be available for and actively seeking work. This correspondence is attached at Appendix 5.

Lone Parent Conditionality

120. The lone parent conditionality provision requires lone parents to be available for work when their youngest child reaches the age of 5 years. Many respondents were concerned about the potential for adverse impacts on women and children that may result from this amendment to current legislation.
121. The main issue identified was the lack of affordable and accessible childcare in Northern Ireland. In England and Wales, the Childcare Act 2006 imposes a duty on local authorities to identify and meet the needs of childcare, but there is no such legislative requirement in Northern Ireland. NIHRC also referred to a study carried out by Employers for Childcare which identified a lack of availability and high costs of childcare here, in comparison with other regions of the UK. “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.²⁴ Furthermore, it identified a substantial gap in demand and supply, with one childcare place for every 7.4 children.”²⁵
122. The NI Welfare Reform Group cautioned that “There is a risk of a disproportionate impact on lone parents if in the administration of conditionality and sanctions that consideration is not given to the lack of jobs with flexible working hours and the lack of good quality, accessible and affordable childcare. We foresee a number of difficulties in introducing legislative powers for this purpose in Northern Ireland when the childcare infrastructure in Northern Ireland required to underpin these proposals is not in place. It is not appropriate to simply transfer these provisions from the Westminster Act to Northern Ireland as the infrastructure to implement the proposals is not available in Northern Ireland. Arguments of parity must take into account the lack of parity of provision of accessible and affordable childcare.”²⁶
123. Save the Children summarised the issue succinctly, “Without an adequate childcare strategy, a statutory duty and comprehensive childcare provision in NI, it is difficult to see how the new system can be effectively implemented here”.²⁷
124. The Department for Social Development has stated that the impact of Lone Parent Conditionality will be mitigated by the degree of flexibility available in personalising the requirements for Jobseekers Allowance. In addition, Departmental officials have reiterated during oral evidence to the Ad Hoc Committee²⁸ that, to date, no one has been sanctioned for lack of affordable childcare and that current Regulations include this as being ‘good reason’ for not accepting a job.

24 Employers for Childcare (2012) Northern Ireland Childcare Costs Survey 2012, page 9

25 NIHRC submission to the Ad Hoc Committee December 2012

26 NI Welfare Reform Group submission to the Ad Hoc Committee, December 2012

27 Save the Children submission to the Ad Hoc Committee, December 2012

28 DSD oral evidence session to the Ad Hoc Committee, 11 December 2012

Persons with Disabilities

125. The Welfare Reform Bill will introduce a transition from Disability Living Allowance (DLA) to Personal Independence Payments (PIPs), with the policy aim of supporting disabled people to overcome barriers to leading independent lives. DLA provides a contribution towards the additional costs associated with a disability and currently assesses the impact of that disability on an individual's ability to manage their care or move around. PIPs will also consider these two components but will move away from automatic entitlement based on certain conditions.
126. The Equality Commission has identified a number of areas where the provisions of the Bill may adversely impact on disabled people. The removal of the direct link between receipt of the 'Standard Disability Premium' addition to Income Support for those in receipt of DLA (Clause 12) is likely to result in loss of income and therefore a potential adverse impact on disabled people. "The Final EQIA identifies a cash loss of £39 per week for 29,000 disabled households but does not identify this as an adverse impact stating that 'transitional protection put in place will mean that there are no cash losses as a direct result of the move to Universal Credit where circumstances remain the same' (page 35). This should be given further consideration by the Department."²⁹
127. The Commission also highlighted potential adverse impacts relating to the Work Capability Assessments for work-related activity under Universal Credit (Clause 38). "Given that the transition from Incapacity Benefit to Employment Support Allowance resulted in 33% of all decisions being overturned at the First-tier Tribunal at the Social Entitlement Chamber (following a lengthy appeals process likely to cause unwanted stress and anxiety to the claimant), we consider that the Department should give clear consideration to potential adverse impacts and mitigating measures to ensure that fair, appropriate and individualised assessment processes and practices are put in place in Northern Ireland."³⁰
128. The NIHRC expressed its reservations that a distributional impact analysis had not been carried out to assess how the budget saving of 20% to be achieved through the replacement of DLA with PIPs may impact on disabled people in Northern Ireland. This level of budget cut may have significant implications for the ability of disabled people to live independently, as protected by Article 19 of the United Nations Convention on the Rights of Disabled Persons (UNCPRD).³¹
129. The Department has indicated that children under the age of 16 years will continue to receive DLA as they have significantly different needs from those of adults, but NICCY has highlighted potential adverse impacts on young people aged 16 to 20 years who currently receive DLA. The Commissioner considers that the mobility element of DLA is essential to address the increased transport costs incurred by many disabled young people and the removal of this may result in a breach of Article 23 (UNCRC) which ensures that children with disabilities have the right to live a full and decent life in conditions to promote dignity and independence.
130. The Northern Ireland Association for Mental Health (NIAMH), Disability Action and Mencap, in their joint submission to the Committee, referred to the higher incidence of disability, particularly mental health disability, in Northern Ireland. They also made reference to the Independent Living Strategy and Disability Strategy in England and Wales which have key indicators and measures, whereas in Northern Ireland the final draft of the Disability Strategy has not yet been launched.
131. They made the point, as did a number of other submissions, that the Welfare Reform Bill allows private contractors to perform a significant role in the provision of medical assessments and highlighted the potential for negative experiences in this respect. Since

29 Equality Commission submission to the Ad Hoc Committee, December 2012

30 Equality Commission submission to the Ad Hoc Committee, December 2012

31 NIHRC submission to the Ad Hoc Committee, December 2012

these contractors will exercise the functions of both the Department for Social Development and the Department of Employment and Learning in relation to work-related requirements, they will be required to carry out functions that properly belong to the state.

132. NIAMH et al suggest that human rights and equality clauses should be made clear on the face of any contract entered into between the Departments and private contractors.³² Alternatively the NIHRC “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”.³³
133. Cara Friend expressed its concerns that lesbian, gay, bi-sexual and trans-gendered claimants may be significantly disadvantaged in satisfying the new criteria to be introduced for the receipt of PIPs, particularly those with mental disabilities and HIV.

Housing Benefit

134. The Welfare Reform Bill will introduce changes to the calculation of Housing Benefit to replicate in social housing the size-related criteria which already apply to the private rented sector. A claimant’s eligible rent will be restricted by a stipulated percentage if their dwelling has more bedrooms than they are deemed to require; the change will apply only to working-age claimants.
135. The most significant issue which has arisen in respect of this provision is the context of the current housing stock in Northern Ireland. The Equality Commission believes that there may “be impacts in regard to a tenant’s ability to move, due to the segregation of social housing in Northern Ireland. The specific potential adverse impacts created through the lack of availability of smaller (1-2 bedroom) social housing in Northern Ireland are not addressed in the EQIA. The Commission considers that the implementation of welfare reform must take full account of the availability, accessibility and appropriateness of the current housing stock in Northern Ireland and include relevant mitigating measures for affected groups, whether through amendments safeguards or changes to timescales.”³⁴
136. The Northern Ireland Housing Executive told the Committee for Social Development³⁵ that it currently has 26,168 under-occupying tenancies and that it would be completely unable to provide current tenants of under-occupied houses with appropriate accommodation. Such tenants may be affected by an under-occupancy penalty and liable to have their Housing Benefit reduced by up to £14.70 per week³⁶, while no alternative smaller dwelling is available to them.
137. The Northern Ireland Welfare Reform Group has commented, “The Department for Social Development has indicated that it will mitigate the effect of this measure through the use of Discretionary Housing Payments (DHPs). We believe that mitigation for these groups should be through specific amendments to the Bill and in subsequent regulations rather than by discretionary support. We are concerned that DHPs are not an adequate alternative to Housing Benefit entitlement. Unlike Housing Benefit: DHPs are discretionary and are not paid as of right. Without substantive and viable alternatives in place, we are concerned that this proposal could impinge on the Article 8 right to Family Life.”³⁷

32 Joint Submission to the Ad Hoc Committee from the NI Mental Health Association, Disability Action and Mencap, December 2012

33 NIHRC submission to the ad Hoc Committee, December 2012

34 Equality Commission submission to the Ad Hoc Committee, December 2012

35 Oral evidence given on 25 October 2012 – Hansard transcript attached at Appendix 6

36 Northern Ireland Housing Executive http://www.nihe.gov.uk/welfare_reform

37 NI Welfare Reform Group submission to the Ad Hoc Committee, December 2012

138. The potential adverse impact on households containing disabled adults or children. The joint submission from NIAMH, Disability Action and Mencap raised the following points on the impact of under- occupancy penalties on the disabled: “We consider that the outworking of the under-occupancy provisions are: disruption of social / care / health support networks, and domestic care arrangements; increased risk to personal safety; increased risk of compromising the individual’s mental health and recovery; disruption of family life; limitation of an individual’s right to live independently; limitation of an individual’s right to participate in public and political life; increased risk of destitution if the individual is unable to find appropriate alternative accommodation, remains in their home, and proceeds to get into debt with their rent and other household expenses as their income reduces.”
139. “The EQIA states that “the impact of the measure on households containing a disabled claimant or partner suggests that a higher proportion of households containing a disabled person would be more likely to be affected by the introduction of the size criteria”. It further states that “households containing a disabled adult and with a non-residential carer will be assessed as having a reasonable requirement for an additional room. This will have the effect of reducing the number of disabled claimants affected by the measure”.
140. The mitigating measure only takes into account the need for an overnight carer and does not take into account the extra space that may be needed for aids and equipment, medical equipment or to provide therapies in the home. It also does not take into account other factors in living in a particular area, for example, being close to family or friends that provide support, accessing community service, transport and being part of the community. The provision of accessible housing options may already significantly reduce the choice a disabled person has over where to live. By implementing the housing criteria as it currently stands disabled people may not have the opportunity to live independently in their own community.”³⁸
141. NICCY adds that any reduction in housing benefit resulting from under-occupancy sanctions, which affect children with disabilities who require an additional room, could detrimentally impact on their rights under Article 23 (children with disabilities) and Article 27 (right to an adequate standard of living).
142. NICCY also believes that “the reduction of housing benefit on the basis of “under occupancy” may mean that single claimants may need to move to single room accommodation. This will impact on claimants who are the non-resident carer of children (accepted to be in most cases a separated father) who will be unable to offer overnight contact to their children. This could infringe upon the child’s rights under Articles 7 and 9 regarding being cared for and staying in contact with both parents.”³⁹
143. The Fostering Network NI raised the issue of foster carers who may face under-occupancy sanctions if they keep an additional bedroom on an ad hoc basis for the use of foster children. “The potential impact of further reducing access to housing benefit for approved foster and kinship carers could have a hugely detrimental effect on our ability to provide family based placements for children who need them...The provisions under the Welfare Reform Bill in-relation to under- occupancy could both prevent people becoming foster or kinship carers and make it more difficult for those who currently are carers to continue.”⁴⁰
144. A potential impact on the basis of sexual orientation was identified by Cara-Friend. “We are concerned that single LGBs up to the age of 35 are expected to live in Multiple Occupation Housing. Already the provisions on MOH occupancy for single LGBs up to the age of 25 place significant pressure on young LGBs who have left home because of abusive family

38 Joint Submission to the Ad Hoc Committee from the NI Mental Health Association, Disability Action and Mencap, December 2012

39 NICCY submission to the Ad Hoc Committee, December 2012

40 Fostering NI submission to the Ad Hoc Committee, December 2012

relationships and/or experiences in abusive communities. There is ample evidence of widespread homophobic harassment in housing and in communities more generally.”⁴¹

Benefit Cap

145. Under the provisions of the Welfare Reform Bill, the Department for Social Development plans to introduce a cap on the total amount a household can receive in social security benefits. The aim is to ensure that no household can receive more in benefits than the average earnings of a working household. It is estimated that this cap will be set around the level of £26,000 net per annum, equivalent to £35,000 before tax, which is slightly higher than the current Northern Ireland gross median wage of £450.60 per week.
146. The Northern Ireland Welfare Reform Group has highlighted possible equality issues in relation to the cap. “We are concerned that this is a retrogressive measure that extinguishes existing social security rights for children and disabled people in particular. The data available in England and Wales shows that the majority of households affected by the cap contain one or more children. In comparison, little information is available as to the impact of this measure in Northern Ireland”.⁴²
147. Dr Rory O’Connell, Queens University of Belfast, School of Law / Human Rights Centre, has advised that “the DSD EQIA indicated a number of measures of mitigation: the benefits cap would be based on the median income in England and Wales, which is higher than the NI level; households where someone receives disability living allowance constant attendance allowance or where there is a war widow will be exempt; also exempt will be households where someone is in receipt of Working Families Tax Credit; the impact on lone parents is said to be mitigated by measures to move them into work and so qualify for Working Families Tax Credit...how will the impact on children be mitigated? The policy will affect particularly larger households, ie households with children. While the proposals indicate a differential cap will be set for households with children, there is no suggestion that this would be based on the number of children”.⁴³
148. He adds that “the Joint Committee on Human Rights (JCHR) identified several possibly discriminatory effects of the equivalent measure in GB. The JCHR indicated that the cap would particularly affect large families with several children; possibly members of certain ethnic minorities; single women including lone parents; and indirectly children”.⁴⁴
149. NICCY agrees that the proposed benefit cap has the potential to impact on the rights of children in larger families to an adequate standard of living under Article 27, UNCRC.

41 Cara-Friend submission to the Ad Hoc Committee, December 2012

42 Northern Ireland Welfare Reform Group submission to the Ad Hoc Committee, December 2013

43 Submission to the Ad Hoc Committee, December 2012

44 Submission to the Ad Hoc Committee, December 201



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

List of Minutes of Proceedings

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Monday, 26 November 2012

Room 29, Parliament Buildings

Present: Mr Trevor Lunn (Chairperson)
Mr Robin Swann (Deputy Chairperson)
Ms Paula Bradley
Mr Mickey Brady
Mr Colum Eastwood
Mr Tom Elliott
Lord Morrow
Ms Bronwyn McGahan
Mr Alastair Ross
Ms Caitriona Ruane
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Mr Christopher McNickle (Clerical Officer)

2.34pm The meeting commenced in closed session – the Clerk in the Chair

1. Apologies

There were no apologies.

2. Election of Chairperson and Deputy Chairperson

The Clerk called for nominations for the position of Committee Chairperson.

Mr Brady proposed that Ms Ruane be elected as Chairperson of the Committee. Ms McGahan seconded this and the nomination was accepted.

Mr Weir proposed that Mr Lunn be elected Chairperson of the Committee. Ms Bradley seconded this and the nomination was accepted.

There being no further nominations, the Clerk put the question that Ms Ruane, being the first candidate proposed, be elected as Chairperson of the Committee;

The Committee divided:

AYES

Mr Mickey Brady

Ms Bronwyn McGahan

Ms Caitriona Ruane

NOES

Ms Paula Bradley

Mr Tom Elliott

Lord Morrow

Mr Alastair Ross

Mr Robin Swann

Mr Peter Weir

ABSTENTIONS

Mr Colum Eastwood

The proposal fell.

The Clerk put the question that Mr Lunn, being the second candidate proposed, be elected as Chairperson of the Committee.

The Committee divided:

AYES	NOES	ABSTENTIONS
Ms Paula Bradley	None	Mr Mickey Brady
Mr Tom Elliott		Mr Colum Eastwood
Lord Morrow.		Ms Bronwyn McGahan
Mr Alastair Ross		Ms Caitriona Ruane
Mr Robin Swann		
Mr Peter Weir		

The proposal was carried.

Mr Lunn accepted the nomination and was duly elected as Chairperson of this Committee.

2.35 p.m The Chairperson assumed the chair.

2.36 p.m The meeting was suspended in order for the Clerk to brief the Chairperson.

2.37 p.m The meeting resumed with Mr Lunn in the Chair.

The Chairperson called for nominations for the position of deputy Chairperson.

The Chairperson called for nominations for the position of deputy Chairperson.

Mr Brady proposed that Ms Ruane be elected as Deputy Chairperson of the Committee. Ms McGahan seconded this and the nomination was accepted.

Mr Elliott proposed that Mr Swann be elected as Deputy Chairperson of the Committee. Mr Ross seconded this and the nomination was accepted.

There being no further nominations, the Clerk put the question that Ms Ruane, being the first candidate proposed, be elected as Deputy Chairperson of the Committee;

The Committee divided:

AYES	NOES	ABSTENTIONS
Mr Mickey Brady	Ms Paula Bradley	Mr Colum Eastwood
Ms Bronwyn McGahan	Mr Tom Elliott	
Ms Caitriona Ruane	Lord Morrow	
	Mr Alastair Ross	
	Mr Robin Swann	
	Mr Peter Weir	

The proposal fell.

The Clerk put the question that Mr Swann, being the second candidate proposed, be elected as Deputy Chairperson of the Committee;

The Committee divided:

AYES	NOES	ABSTENTIONS
Ms Paula Bradley	None	Mr Mickey Brady
Mr Tom Elliott		Mr Colum Eastwood
Lord Morrow		Ms Bronwyn McGahan
Mr Alastair Ross		Ms Caitríona Ruane
Mr Robin Swann		
Mr Peter Weir		

The proposal carried.

Mr Swann accepted the nomination and was duly elected as Deputy Chairperson of this Committee.

The Chairperson congratulated the Deputy Chairperson on his election.

2.41 p.m The Committee moved into Public Session.

3. Declaration of Interests

Members noted the tabled register interests of each Member of the committee. The Chairperson reminded Members of their obligation to declare any relevant financial or other interests before and during each Committee meeting.

Ms McGahan declared a change in her registered tabled interests. Ms McGahan is no longer a Councillor of the Dungannon and South Tyrone Borough Council, and no longer a Member of the Southern Local Commissioning Group.

4. Committee Secretariat Details

Members noted the contact details for the Committee team.

5. Committee Procedures

The Chairperson referred members to a memorandum from the Committee Clerk on the procedures of the Committee contained in their briefing papers and reminded members of the rules relating to privilege and sub-judice.

Agreed: Voting - the Committee agreed that all decisions shall be made by a simple majority vote by showing of hands unless a member requests otherwise.

Agreed: Witnesses – the Committee agreed that the Committee should receive evidence.

Agreed: Deputies - the Committee agreed to permit each of the parties represented on the committee to nominate the same number of deputies as they had Members on the committee. A party deputy may take the place.

6. Committee Approach

Agreed: Committee meetings - the Committee agreed that meetings would be held on Mondays at 1.30 p.m. and Tuesdays at 2.30 p.m.

Agreed: The Committee agreed to receive a briefing from the Department of Social Development on the Welfare Reform Bill and the Equality Impact Assessment of the Bill. Members agreed to schedule this briefing for the meeting of Tuesday 27th November 2012.

Agreed: The Committee agreed to invite the suggested witnesses to give evidence to the Committee and further agreed that it should be provided with a list of those who had responded to the Committee for Social Development's consultation on the Bill together with the Office of the First Minister and the Deputy First Minister's list of Section 75 Consultees.

Agreed: The Committee agreed the indicative forward work plan but noted that it may be necessary to amend it to provide for an additional evidence session

Agreed: The Committee agreed that notification should be placed on its webpage that it was content to receive written submissions by 11 December 2012 on the issue of whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights.

7. Any Other Business

There was no other business.

8. Time, date and place of next meeting

The next meeting of the Committee will be held on Tuesday, 27th November 2012 in Room 29 at 1.30pm (lunch will be available from 1.15pm).

3.12pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements,
Welfare Reform Bill

Tuesday 27th November 2012

Tuesday, 27 November 2012

Room 29, Parliament Buildings

Present: Mr Trevor Lunn (Chairperson)
Mr Robin Swann (Deputy Chairperson)
Ms Paula Bradley
Mr Mickey Brady
Mr Colum Eastwood
Mr Tom Elliott
Lord Morrow
Ms Bronwyn McGahan
Mr Alastair Ross
Ms Caitríona Ruane
Mr Peter Weir

In Attendance: Ms Sheila Mawhinney (Assembly Clerk)
Mr Paul Gill (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Adrienne Magee (Clerical Officer)

1.30pm The meeting commenced in open session

1. Apologies

There were no apologies.

2. Declaration of Interests

The Chairperson reminded Members that they are obliged to declare any relevant financial or other interests before and during each Committee meeting.

No Member declared any interests other than those already noted.

3. Minutes of the meeting of 26th November 2012

Agreed: The draft minutes of the meeting held on 26th November 2012 were agreed by the Committee.

4. Matters Arising

Members noted that Ms Sheila Mawhinney will be taking over as the full time Clerk to the Ad Hoc Committee.

1.32 p.m Caitríona Ruane joined the meeting.

5. Briefing from the Department for Social Development on the Welfare Reform Bill and Equality Impact Assessment

1.33p.m Tom Elliott joined the meeting.

1.33p.m Robin Swann joined the meeting.

1.34p.m Departmental Officials joined the meeting.

Ms Martina Campbell, Social Security Policy and Legislation, and Mr Michael Pollock, Social Security Policy and Legislation, provided the Committee with an overview of the Welfare Reform Bill and Equality Impact Assessment.

The briefing was followed by a question and answer session.

1.56p.m Lord Morrow left the meeting.

2.00p.m Robin Swann left the meeting.

Agreed: The Committee agreed that the Department should provide it with any further correspondence between DSD and the Equality Commission.

2.06p.m Robin Swann re-joined the meeting.

Agreed: The Committee agreed that the Department should provide clarity on the Section 75 groups added to the Family Resources Survey. The Committee also agreed to request further information on the gross weekly median income for Northern Ireland, and how this compares with the gross weekly median income in Britain.

2.28p.m Alastair Ross left the meeting.

2.32p.m Departmental Officials left the meeting.

6. Consideration of witnesses for Ad Hoc Committee evidence sessions

The Committee noted the details of organisations consulted by the Department for Social Development on the Welfare Reform Bill, as well as the Section 75 groups consulted by the Office of the First Minister and deputy First Minister on the Equality Impact Assessment of the Bill

Agreed: The Committee agreed to schedule briefings for Monday 3rd December 2012 from the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission. The Committee further agreed to arrange briefings from the Northern Ireland Council for Ethnic Minorities and the Law Centre for Tuesday 4th December 2012.

7. Committee Deputies

Agreed: The Committee noted the list of deputies put forward by each party represented on the Committee and agreed that those that had not provided deputies would do so at their earliest convenience.

2.47 pm Colum Eastwood left the meeting.

8. Any Other Business

There was no other business.

9. Time, date and place of next meeting

The next meeting of the Committee will be held on Monday, 3rd December 2012 in Room 144 at 2.30pm.

2.50pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements,
Welfare Reform Bill
Monday 3rd December 2012

Monday, 3 December 2012

Room 144, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Tom Elliott MLA
Ms Megan Fearon MLA (deputising for Ms Caitriona Ruane)
Lord Morrow MLA
Mr Conall McDevitt MLA (deputising for Mr Colum Eastwood)
Ms Bronwyn McGahan MLA
Mr Alastair Ross MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: Mr Colum Eastwood MLA
Ms Caitriona Ruane MLA

2.31 pm The meeting commenced in open session

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

The Chairperson advised Members that, together with the Deputy Chairperson, he had met with representatives of the Northern Ireland Human Rights Commission on Thursday 29th November 2012. The meeting had proved very useful in gaining an insight into the procedural aspects of the scrutiny of legislation for conformity to human rights.

Arising from this meeting, the Chairperson suggested that it would be helpful if he met with the Chairperson of the Westminster Joint Committee on Human Rights, Dr Hywel Francis.

Agreed: The Committee agreed that the Chairperson and Deputy Chairperson should travel to London to meet with Dr Francis on Wednesday 5th December 2012.

3. Minutes of the meeting of 27th November 2012

Agreed: The draft minutes of the meeting held on 27th November 2012 were agreed by the Committee.

2.34 pm Megan Fearon joined the meeting

4. Matters Arising

Agreed: Members agreed that the details of any outstanding deputies would be passed to Committee staff. The Committee further agreed that any Member who is unable to attend a meeting should pass their hard-copy meeting pack to the Member who will be deputising for them.

5. Briefing from the Equality Commission for Northern Ireland

2.36 pm Equality Commission representatives joined the meeting.

Mr Michael Wardlow, Chief Commissioner; Ms Evelyn Collins, Chief Executive; and Ms Lisa King, Director of Policy, provided the Committee with their views on the Conformity of the Welfare Reform Bill with Equality Requirements.

The briefing was followed by a question and answer session.

2.44 pm Trevor Lunn left the meeting.

The Clerk took the Chair and called for nominations for the position of Committee Chairperson.

Mr McDevitt proposed that Lord Morrow be elected as temporary Chairperson of the Committee. Mr Weir seconded this and the nomination was accepted.

Agreed: The Committee agreed that Lord Morrow be temporary Chairperson of the Committee.

2.46 pm Robin Swann joined the meeting.

Agreed: The Committee agreed that the Equality Commission should provide copies of recent correspondence with the Department.

2.49 pm Trevor Lunn re-joined the meeting as Chairperson.

2.54 pm Conall McDevitt declared an interest as a parent of a child in receipt of DLA.

3.31 pm Equality Commission representatives left the meeting.

Agreed: The Committee agreed to move into closed session at 3.32 pm.

Agreed: The Committee agreed to ask the Department for Social Development to provide an update on the finalisation of the EQIA on the Welfare Reform Bill, and an expected timeline for the completion of the EQIA.

3.42 pm Peter Weir left the meeting

3.43 pm The meeting moved into open session.

6. Briefing from the Northern Ireland Human Rights Commission

3.43 pm Human Rights Commission representatives joined the meeting.

Professor Michael O'Flaherty, Chief Commissioner; Mr David Russell, Deputy Director; and Mr Colin Caughey, Policy Officer, provided the Committee with their views on the Conformity of the Welfare Reform Bill with observance of Human Rights.

The briefing was followed by a question and answer session.

4.38 pm Human Rights Commission representatives left the meeting.

Agreed: The Committee agreed to write to the Department for Social Development to ascertain if it had conducted a detailed Human Rights assessment and, if so, to request a copy of that assessment.

Agreed: The Committee also agreed to write to the Department of Finance and Personnel to establish if it has carried out an analysis of Welfare Reform legislation and policy in compliance with HM Treasury Green Book guidelines.

7. Forward Work Programme

Agreed: The Committee agreed that it was content to schedule briefings from the Law Centre NI and from the OFMDFM Equality Unit on Monday 10th December 2012. Members further agreed to arrange a joint briefing from Mencap and Disability Action for its next meeting on Tuesday 4th December 2012.

8. Any Other Business

There was no other business.

9. Time, date and place of next meeting

1.30 pm The next meeting of the Committee will be held on Tuesday, 4th December 2012 in Room 144.

4.47 pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Monday 10th December 2012

Tuesday, 4 December 2012

Room 144, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Tom Elliott MLA
Lord Morrow MLA
Mr Fra McCann MLA (deputising for Ms Caitríona Ruane)
Mr Conall McDevitt MLA (deputising for Mr Colum Eastwood)
Ms Bronwyn McGahan MLA
Mr Alastair Ross MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: Mr Colum Eastwood MLA
Ms Caitríona Ruane MLA

1.32 pm The meeting commenced in open session

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

There was no Chairpersons business.

3. Matters Arising

There were no Matters Arising.

4. Briefing from the Northern Ireland Council for Ethnic Minorities (NICEM)

1.34 pm Representatives joined the meeting.

Mr Patrick Yu, Executive Director and Ms Karen McLaughlin, Legal Policy Officer, provided the Committee with their views on the Conformity of the Welfare Reform Bill with Equality Requirements and Human Rights observance.

The briefing was followed by a question and answer session.

1.39 pm Paula Bradley joined the meeting.

1.58 pm Tom Elliott joined the meeting.

2.32 pm The Chairperson, Trevor Lunn, left the meeting. The Deputy Chairperson, Robin Swann, assumed the Chair.

2.42 pm Bronwyn McGahan left the meeting.

2.42 pm Representatives left the meeting.

5. Briefing from Mencap and Disability Action

2.43 pm Representatives joined the meeting.

Ms Jenny Ruddy, Mencap Campaigns Officer, and Ms Karen Hall, Disability Action Information and Policy Manager, provided the Committee with their views on the Conformity of the Welfare Reform Bill with Equality Requirements and Human Rights observance.

The briefing was followed by a question and answer session.

2.49 pm The Chairperson, Trevor Lunn, resumed the Chair.

2.56 pm Peter Weir left the meeting.

Agreed: The Committee noted that Mencap and Disability Action were part of an amalgamation of groups working on a submission to the Committee and Members agreed that this should be forwarded to the Committee as soon as is possible.

3.13 pm Fra McCann left the meeting.

3.14 pm Representatives left the meeting.

3.15 pm Bronwyn McGahan rejoined the meeting.

3.15 pm Peter Weir rejoined the meeting.

6. Correspondence

The Committee noted correspondence from the Department for Social Development.

7. Forward Work Programme

The Committee noted the details of the Forward Work Programme.

8. Any Other Business

The Committee noted that the Department for Social Development had been requested to provide a copy of its Human Rights Assessment of the Welfare Reform Bill, and considered if it would be possible for the Committee to request this under Freedom of Information legislation, or under powers conferred by S.44 of the Northern Ireland Act 1998.

9. Time, date and place of next meeting

2.30 pm The next meeting of the Committee will be held on Monday, 10th December 2012 in Room 30.

3.20 pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Monday 10th December 2012

Monday, 10 December 2012

Room 30, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Lord Morrow MLA
Ms Bronwyn McGahan MLA
Mr David McIlveen MLA (deputising for Alastair Ross)
Ms Caitriona Ruane MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: Mr Alastair Ross MLA

2.31 pm The meeting commenced in closed session

2.33p.m Paula Bradley joined the meeting.

Agreed: The Committee agreed to write to the Office of the First Minister and Deputy First Minister to express its disappointment that the Equality Unit had not responded to its invitation to provide an oral briefing. The Committee further agreed to request a written briefing on the role and remit of the Equality Unit in relation to Primary legislation generally, and, in particular, in relation to the Welfare Reform Bill.

2.36 p.m. The meeting moved into public session.

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

The Chairperson advised Members that, together with the Deputy Chairperson, he had travelled to London to meet with the Chairperson of the Westminster Joint Committee on Human Rights, Dr Hywel Francis on Wednesday 5th December 2012.

2.38pm Peter Weir left the meeting.

Agreed: The Committee agreed to write to the Westminster Joint Committee to ask its Members to consider how best they might widen their scrutiny to include the specific circumstances of the devolved regions.

2.41p.m Peter Weir re-joined the meeting.

3. Matters Arising

There were no matters arising.

4. Draft Minutes of the meeting of 3rd December 2012 and 4th December 2012

Agreed: The draft minutes of the meetings held on 3rd December 2012 and 4th December 2012 were agreed by the Committee.

5. Briefing from the Law Centre Northern Ireland

2.42p.m The Law Centre NI representative joined the meeting.

Mr Les Allamby, Executive Director, provided the Committee with the views of the Law Centre NI on the Conformity of the Welfare Reform Bill with Equality Requirements.

2.44p.m Tom Elliott joined the meeting

2.52p.m David McIlveen joined the meeting

2.59p.m Lord Morrow joined the meeting

3.26p.m David McIlveen left the meeting

3.43p.m Lord Morrow left the meeting

The briefing was followed by a question and answer session.

3.30p.m The Law Centre NI representative left the meeting.

6. Briefing from the Equality Unit, OFMDFM

The scheduled briefing from the Equality Unit did not take place.

7. Forward Work Programme

The Committee agreed to move to agenda item 7.

The Committee noted the draft Forward Work Programme.

Agreed: The Committee agreed to request that the Department for Social Development provide the Committee with a draft plan including a timetable for publishing the Regulations and guidelines due to be made under the Bill.

8. Any Other Business

The Committee noted an invitation to the Chairperson and Deputy Chairperson to attend a dinner hosted by the Northern Ireland Human Rights Commission to mark the launch of its Annual Statement 2012.

9. Time, date and place of next meeting

The next meeting of the Committee will be held on Tuesday, 11th December 2012 in Room 29 at 1.30pm.

4.21pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Monday 7th January 2013

Tuesday, 11 December 2012

Room 29, Parliament Buildings

Present: Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Tom Elliott MLA
Mr Colum Eastwood MLA
Lord Morrow MLA
Ms Bronwyn McGahan MLA
Ms Michelle McIlveen MLA (deputising for Alastair Ross)
Ms Caitríona Ruane MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: Mr Trevor Lunn MLA (Chairperson)
Mr Alastair Ross MLA

1.31 p.m. The meeting commenced in public session

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

There was no Chairpersons business.

3. Matters Arising

The Committee noted that correspondence had been sent to the Office of the First Minister and deputy First Minister through the relevant Committee to highlight Members' disappointment that the Equality Unit did not provide a briefing at the meeting of Monday 10th December 2012.

1.33p.m. Lord Morrow joined the meeting

1.33p.m. Peter Weir joined the meeting

4. Briefing from the Department for Social Development

1.33p.m. Departmental Officials joined the meeting

Ms Martina Campbell, Social Security Policy and Legislation, and Mr Michael Pollock, Social Security Policy and Legislation, provided the Committee with an overview of the Welfare Reform Bill and Equality Impact Assessment.

1.44p.m. Caitríona Ruane joined the meeting

1.55p.m. Tom Elliott joined the meeting

The briefing was followed by a question and answer session.

2.24p.m. Colum Eastwood left the meeting

Agreed: The Committee agreed to formally request the information that the Department indicated that they would forward during the course of the briefing.

2.54p.m. Departmental Officials left the meeting

2.55p.m. Caitríona Ruane left the meeting

5. Forward Work Programme

The Committee considered the draft Forward Work Programme.

Agreed: The Committee agreed the Forward Work Programme as scheduled.

6. Any Other Business

There was no other Business.

2.55p.m. The meeting moved into private session.

Agreed: The Committee agreed that it would continue its deliberations after its consideration of further written submissions received.

7. Time, date and place of next meeting

2.30p.m. The next meeting of the Committee will be held on Monday, 7th January 2013 in Room 29

3.03p.m. The Chairperson adjourned the meeting

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Monday 7th January 2013

Monday, 7 January 2013

Room 29, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Lord Morrow MLA
Ms Bronwyn McGahan MLA
Mr Alastair Ross MLA
Ms Caitríona Ruane MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: None

2.32 pm The meeting commenced in closed session

1. Correspondence

2.36p.m Robin Swann joined the meeting

Agreed: The Committee considered correspondence from the NI Council for Ethnic Minorities and agreed to write to them responding to the issues raised.

Agreed: Members noted correspondence from the Department for Social Development in response to information requested at the Committee meeting of 11th December 2012, and agreed to request that further details of the Welfare Reform Bill Human Rights Memorandum should be forwarded to the Committee as a matter of urgency.

Noted: The Committee noted correspondence from the Department of Finance and Personnel providing clarification on queries raised regarding the relevance of Treasury Green Book guidelines in relation to the Welfare Reform Bill

Noted: The Committee noted copies of correspondence between the Equality Commission and the Department for Social Development in relation to the Welfare Reform Bill Equality Impact Assessment.

3.06 p.m. The meeting moved into public session.

2. Apologies

There were no apologies.

3. Chairpersons Business

There was no Chairpersons Business.

4. Draft Minutes of the meeting of 10th December 2012 and 11th December 2012

Agreed: The draft minutes of the meeting held on 10th December 2012 were agreed by the Committee. The Committee suggested an amendment to the minutes of 11th December 2012.

5. Matters Arising

Ms Caitriona Ruane noted her preference for dealing with correspondence in public session.

6. Consideration of Other Evidence

Members considered the main Human Rights and Equality issues that were highlighted in the written submissions provided to the Committee with a view to reporting on the conformity of the Welfare Reform Bill.

6.1 The Committee discussed issues around the adequacy of the Equality Impact Assessment in relation to the Bill.

6.2 The Committee discussed the level of Assembly control required for subordinate legislation relating to the Welfare Reform Bill.

Ms Ruane proposed that all Regulations should follow the affirmative resolution procedure. Mr Brady seconded this proposal

Mr Weir proposed an amendment to the original proposal, that the regulations should follow the affirmative procedure where there is a policy change. Mr Ross seconded this proposal.

There being no further proposals, the Chairperson put the question that Mr Weir's amendment be agreed.

The Committee divided:

AYES

Ms Paula Bradley
Lord Morrow
Mr Alastair Ross
Mr Robin Swann
Mr Peter Weir

NOES

Mr Mickey Brady
Mr Colum Eastwood
Mr Trevor Lunn
Ms Bronwyn McGahan
Ms Catriona Ruane

The proposal fell.

The Chairperson put the question that the original proposal from Ms Ruane be agreed.

The Committee divided:

AYES

Mr Mickey Brady
Mr Colum Eastwood
Mr Trevor Lunn
Ms Bronwyn McGahan
Ms Catriona Ruane

NOES

Ms Paula Bradley
Lord Morrow
Mr Alastair Ross
Mr Robin Swann
Mr Peter Weir

The proposal fell.

6.3 The Committee discussed concerns that sanctions imposed for failure to meet benefit requirements may result in extreme hardship or destitution.

Agreed: The Committee agreed that it should recommend some wording be included in relation to sanctions, to ensure that there are no infringements on the Human Rights of some vulnerable groups.

- 6.4 The Committee discussed how the identification of a 'Nominated Claimant' could adversely impact on certain Section 75 groups, particularly on women.

4.18p.m Peter Weir left the meeting

4.22p.m Colum Eastwood left the meeting

Agreed: The Committee agreed that the 'parent with care' should be the nominated claimant.

4.23p.m Peter Weir re-joined the meeting

- 6.5 The Committee discussed issues raised by stakeholders on how the introduction of Universal Credit may impact on Human Rights and Equality Requirements under European law.

4.28p.m Colum Eastwood re-joined the meeting

Agreed: The Committee agreed to highlight its concerns on the issue of migrant workers while awaiting the outcome of EU infringement proceedings. It also agreed that payment options should be offered to benefit claimants.

4.43p.m Tom Elliott joined the meeting

- 6.6 The Committee discussed the issues raised in relation to Lone Parent Conditionality and the lack of affordable and accessible childcare.

Agreed: The Committee agreed that it was content with the Department's assurances that lone parents would not be sanctioned for lack of childcare.

- 6.7 The Committee considered the introduction of a Benefit Cap in Northern Ireland, based on current estimates.

The question was put that:

'The Committee is in favour of a benefits cap at the level suggested'

The Committee divided;

AYES

Ms Paula Bradley
Mr Tom Elliott
Mr Trevor Lunn
Lord Morrow
Mr Alastair Ross
Mr Robin Swann
Mr Peter Weir

NOES

Mr Mickey Brady
Mr Colum Eastwood
Ms Bronwyn McGahan
Ms Catriona Ruane

The question was agreed.

5.03pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Monday 14th January 2013

Tuesday, 8 January 2013

Room 29, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Michael Copeland MLA (deputising for Tom Elliott)
Mr Colum Eastwood MLA
Lord Morrow MLA
Ms Bronwyn McGahan MLA
Mr Alastair Ross MLA
Ms Caitriona Ruane MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: Mr Tom Elliott MLA

1.31 pm The meeting commenced in public session

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

The Chairperson clarified for Members that it had been agreed at the first meeting of the Ad Hoc Committee that voting decisions would be based on a simple majority. This was in relation to the question on the Chairperson's 'casting vote' which had arisen at the previous meeting.

3. Matters Arising

Agreed: The amended draft minutes of the meeting held on 11th December 2012 were agreed by the Committee.

4. Consideration of Other Evidence

The Committee continued its discussion of concerns raised by written submission in relation to the Human Rights and Equality implications of the Welfare Reform Bill, particularly in the areas of DLA/PIP and Housing Benefit.

1.44pm Michael Copeland joined the meeting

2.17pm Michael Copeland left the meeting

Agreed: The Committee agreed to obtain further information and clarification from stakeholders on a number of points raised.

Agreed: The Committee agreed that all submissions received should be published on the Assembly website.

2.25pm Paula Bradley left the meeting

Agreed: The Committee agreed to write to the First Minister and deputy First Minister to bring to their attention the lack of response from the Equality Unit to the Committee's request for oral and written briefings.

2.40pm Paula Bradley re-joined the meeting

2.41pm Colum Eastwood left the meeting

5. Forward Work Programme

Noted: The Committee noted the forward work programme.

6. Any Other Business

There was no other business.

7. Time, date and place of next meeting

2.30pm The next meeting of the Committee will be held on Monday, 14th January 2013 in Room 29.

2.42pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Monday 14th January 2013

Monday, 14 January 2013

Room 29, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Lord Morrow MLA
Mr Fra McCann MLA (deputising for Caitriona Ruane)
Ms Bronwyn McGahan MLA
Mr Alastair Ross MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Supervisor)
Mr Kerry Richards (Clerical Officer)

Apologies: Ms Caitriona Ruane MLA

1.34 pm The meeting commenced in public session

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

There was no Chairpersons Business.

1.37pm Mickey Brady and Bronwyn McGahan joined the meeting

3. Draft Minutes of the meeting of 7th January 2013 and 8th January 2013

Agreed: The draft minutes of the meetings held on 7th January 2013 and 8th January 2013 were agreed by the Committee.

4. Matters Arising

There were no matters arising

5. Correspondence

Agreed: The Committee noted correspondence from the Examiner of Statutory Rules and agreed to return to this item during its deliberations.

Agreed: Members noted correspondence from the NI Commissioner for Children and Young People and agreed to respond to the Commissioner, thanking her for her offer to brief the Committee, but explaining that it was unable to accept it due to our very restricted timeframe

6. Consideration of Committee Position

Members reviewed their considerations of the main Human Rights and Equality issues that were highlighted in Committee meetings of 7 and 8 January 2013.

6.1 The adequacy of the EQIA

1.57pm Tom Elliott left the meeting.

Agreed: Members agreed that they were encouraged that the Department is working on data deficits and agreed that the NI Equality Commission should play a monitoring role in the continuing work on the EQIA.

2.13pm Bronwyn McGahan left the meeting

2.14pm Lord Morrow left the meeting

2.18pm Colum Eastwood left the meeting

6.2 Regulations

Agreed: The Committee agreed that the affirmative resolution procedure should be used in some of the regulations that will flow from this legislation.

2.24pm Colum Eastwood re-joined the meeting

6.3 Sanctions

2.30pm Tom **Elliott re-joined the meeting**

2.31pm Paula Bradley left the meeting

Agreed: Members agreed the wording of a recommendation to address issues raised in relation to sanctions in the Welfare Reform Bill.

2.38pm Paula Bradley re-joined the meeting

2.39 p.m. The meeting moved into private session.

7. Briefing from the Northern Ireland Human Rights Commission

2.39p.m Human Rights Commission representatives joined the meeting.

Professor Michael O'Flaherty, Chief Commissioner; Mr David Russell, Deputy Director; and Mr Colin Caughey, Policy Officer, provided the Committee with their views on the application of the Westminster Human Rights Memorandum in relation to the NI Welfare Reform Bill.

The briefing was followed by a question and answer session.

2.52pm Bronwyn McGahan re-joined the meeting

3.05pm Lord Morrow re-joined the meeting

3.23p.m Human Rights Commission representatives left the meeting

3.26 p.m. The meeting moved into public session.

8. Consideration of Committee Position

The Committee returned to agenda item six to conclude its discussions on a Committee position.

6.4 Nominated Claimants

Agreed: The Committee agreed the wording of a recommendation to address issues raised in relation to nominated claimants in the Welfare Reform Bill.

6.5 Universal Credit

Agreed: Members agreed the wording of recommendations to address issues raised in relation to Universal Credit in the Welfare Reform Bill.

6.6 Lone Parent Conditionality

Agreed: The Committee agreed the wording of a recommendation to address issues raised in relation to lone parent conditionality in the Welfare Reform Bill.

3.45pm Colum Eastwood left the meeting

6.7 Benefit Cap

Agreed: The Committee agreed that no recommendation should be made in relation to the benefit cap.

6.8 PIP/DLA

3.48pm Tom Elliott left the meeting

3.52pm Colum Eastwood re-joined the meeting

3.52pm Peter Weir left the meeting

Agreed: The Committee agreed on the wording of recommendations to address issues raised in relation to the impact of PIP / DLA in the Welfare Reform Bill.

3.56pm Peter Weir re-joined the meeting

6.9 Housing Benefit

4.08pm Allistair Ross left the meeting

Agreed: The Committee agreed the wording of recommendations to address issues raised in relation to housing benefit in the Welfare Reform Bill.

4.21pm Colum Eastwood left the meeting

6.10 Other Issues

Noted: The Committee noted clarification in relation to the UN Convention on the rights of a child.

Noted: Members noted the further information on the post legislative monitoring arrangements as provided by the Welfare Reform Group.

Noted: The Committee noted the background information on the distributional impact analysis provided by the Human Rights Commission NI.

4.26pm Tom Elliott re-joined the meeting

Noted: Members noted the clarification from the Department for Social Development in relation to the impact of income from lodgers on benefit entitlement.

6.11 The Committee discussed the question as to whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and the observance of human rights.

Agreed: The Committee agreed to return to this question at its next meeting..

9. Forward Work Programme

Noted: Members noted the Committees Forward Work Programme.

10. Any Other Business

Noted: Members noted that they were still awaiting a response from the OFMDFM Equality Unit.

11. Date, time and place of next meeting

1.30pm The next meeting of the Committee will be held on Tuesday, 15th January 2013 in Room 144.

4.36pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson, Ad Hoc Committee on Conformity of Equalities Requirements, Welfare Reform Bill

Tuesday 15th January 2013

Tuesday, 15 January 2013

Room 144, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Lord Morrow MLA
Ms Bronwyn McGahan MLA
Ms Michelle McIlveen MLA (deputising for Alastair Ross)
Ms Caitriona Ruane MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: Mr Alastair Ross MLA

1.37 pm The meeting commenced in private session

1. Apologies

Apologies are detailed above.

2. Chairpersons Business

There was no Chairpersons Business.

3. Draft Minutes of the meeting of 14th January 2013

Agreed: The draft minutes of the meeting held on 14th January 2013 were agreed by the Committee.

4. Matters Arising

There were no matters arising

5. Consideration of Draft Report

Members considered the first draft of their Report which was tabled due to the need to produce the first draft of the report within a short timeframe. Members went on to discuss the suggestion to agree elements of the report in principle at the meeting but to allow Members time to fully consider the contents and return to any major issues they may have later.

Agreed: The Committee agreed that parts of the report could be agreed in principle, while allowing Members until the close of business on Thursday to put forward any amendments they would like to include in their consideration of the final report on Monday 21 January 2013.

The Committee considered the content of the draft report:

1.50pm Caitriona Ruane joined the meeting.

Agreed: The Committee agreed in principle the content of paragraphs 1-4.

Agreed: The Committee agreed to consider paragraph 5 at the final report stage.

Agreed: The Committee agreed in principle the content of paragraph 6.

Agreed: The Committee agreed in principle the content of paragraph 7.

2.06pm Bronwyn McGahan left the meeting.

Agreed: The Committee agreed in principle the content of paragraphs 8-9.

2.14pm Peter Weir left the meeting.

Agreed: The Committee agreed in principle the content of paragraph 10 as amended.

Agreed: The Committee agreed in principle the content of paragraphs 11-15.

2.27pm Peter Weir re-joined the meeting.

Agreed: The Committee agreed in principle the content of paragraphs 16-20.

2.30pm Bronwyn McGahan re-joined the meeting.

Agreed: The Committee agreed in principle the content of paragraphs 21-23.

Agreed: The Committee agreed in principle the content of paragraphs 24-26.

Agreed: The Committee agreed in principle the content of paragraphs 27-28.

Agreed: The Committee agreed in principle the content of paragraph 29 as amended.

Agreed: The Committee agreed in principle the content of paragraphs 30-31.

Agreed: The Committee agreed in principle the content of paragraphs 32-34.

Agreed: The Committee agreed in principle the content of paragraph 35.

Agreed: The Committee agreed in principle the content of paragraphs 36-37 as amended.

Agreed: The Committee agreed in principle to the removal of paragraph 38.

Agreed: The Committee agreed in principle the content of paragraph 39.

Agreed: The Committee agreed in principle the content of paragraph 40 as amended.

Agreed: The Committee agreed in principle the content of paragraphs 41-43.

2.46pm Paula Bradley left the meeting.

Agreed: The Committee agreed in principle the content of paragraphs 44-46.

Agreed: The Committee agreed in principle the content of paragraph 47 as amended.

Agreed: The Committee agreed in principle the content of paragraph 48.

6. Forward Work Programme

Noted: Members noted the Committees Forward Work Programme.

7. Any Other Business

There was no other business.

8. Date, time and place of next meeting

2.30pm The next meeting of the Committee will be held on Monday, 21st January 2013 in Room 29.

2.55pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson,

Ad Hoc Committee on Conformity of Equalities Requirements,
Welfare Reform Bill

Tuesday 21st January 2013

Monday, 21 January 2013

Room 29, Parliament Buildings

Present: Mr Trevor Lunn MLA (Chairperson)
Mr Robin Swann MLA (Deputy Chairperson)
Mr Sydney Anderson MLA (deputising for Peter Weir for part of the meeting)
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Colum Eastwood MLA
Mr Tom Elliott MLA
Lord Morrow MLA
Ms Bronwyn McGahan MLA
Mr Alastair Ross MLA
Ms Caitríona Ruane MLA
Mr Peter Weir MLA

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Mark O'Hare (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Supervisor)

Apologies: None

2.30 pm The meeting commenced in private session

1. Apologies

There were no apologies.

2. Chairperson's Business

There was no Chairperson's Business.

3. Draft Minutes of the meeting of 15th January 2013

Agreed: The draft minutes of the meeting held on 15th January 2013 were agreed by the Committee.

4. Matters Arising

There were no matters arising.

5. Correspondence

The Committee noted correspondence from the Assembly Editor of Debates to the NI Council for Ethnic Minorities in relation to the Hansard transcript of Tuesday 4th December 2012.

2.33pm Tom Elliott joined the meeting

6. Consideration of Draft Report

The Committee considered the content of the final Report, which included draft amendments agreed in principle at the previous meeting:

Agreed: The Committee agreed paragraphs 6 -8 of the Report.

Agreed: The Committee agreed paragraph 9 of the Report as amended.

Agreed: The Committee agreed paragraphs 10-12 of the Report.

Mr Eastwood proposed that the following recommendation be included in the Report:

“The Committee recommends that an updated EQIA is formally carried out, as part of its living document status, individuals should be able to continue to respond. In addition, Northern Ireland specific data that has not been collated should be sought and used as part of the process in order to avoid any potential adverse impact on Section 75 groupings in order to fully meet equality and human rights obligations.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Sydney Anderson	Trevor Lunn
Colum Eastwood	Paula Bradley	
Bronwyn McGahan	Tom Elliott	
Caitríona Ruane	Lord Morrow	
	Alastair Ross	
	Robin Swann	

The proposal fell.

Agreed: The Committee agreed paragraphs 13 and 14 of the Report.

Agreed: The Committee agreed paragraphs 15-18 of the Report.

Ms Ruane proposed that paragraph 19 in the Report be amended to read:

“The Committee recommends that the Regulations relating to the provisions of the Welfare Reform Bill should be introduced under the affirmative resolution procedure where there is a policy change or where an issue has been identified as having human rights or equality implications, in order to offer the Assembly a more effective scrutiny of the equality and human rights implications.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Sydney Anderson	Trevor Lunn
Colum Eastwood	Paula Bradley	
Bronwyn McGahan	Tom Elliott	
Caitríona Ruane	Lord Morrow	
	Alastair Ross	
	Robin Swann	

The proposal fell

Agreed: The Committee agreed paragraph 19 of the Report without amendment.

Agreed: The Committee agreed paragraphs 20-22 of the Report.

Agreed: The Committee agreed paragraphs 23-25 of the Report.

Agreed: The Committee agreed paragraphs 26 and 27 of the Report.

The Chairperson proposed that paragraph 28, as amended, be included in the Report.

The Committee divided:

Ayes

Mickey Brady
Colum Eastwood
Trevor Lunn
Bronwyn McGahan
Caitriona Ruane

Noes

Sydney Anderson
Paula Bradley
Tom Elliott
Lord Morrow
Alastair Ross
Robin Swann

The proposal fell.

Ms Ruane proposed that paragraph 28 in the Report be amended to include the wording:

“Some Members were concerned that there was a potential lack of compliance with EU law within this provision of the Bill.”

The Committee divided:

Ayes

Mickey Brady
Colum Eastwood
Trevor Lunn
Bronwyn McGahan
Caitriona Ruane

Noes

Sydney Anderson
Paula Bradley
Tom Elliott
Lord Morrow
Alastair Ross
Robin Swann

The proposal fell.

Agreed: The Committee agreed paragraph 28 of the Report without amendment.

Agreed: The Committee agreed paragraphs 29-30 of the Report.

Agreed: The Committee agreed paragraphs 31-33 of the Report.

Agreed: The Committee agreed paragraph 34 of the Report.

Agreed: The Committee agreed paragraph 35 of the Report.

Ms Ruane proposed that paragraph 36 should be amended to read:

“The minority opinion held that a benefit cap set at the level currently suggested would have human rights or equality implications by denying larger families the same rights as smaller families.”

The Committee divided:

Ayes

Mickey Brady
Colum Eastwood
Trevor Lunn
Bronwyn McGahan
Caitriona Ruane

Noes

Sydney Anderson
Paula Bradley
Lord Morrow
Alastair Ross

No Vote

Tom Elliott
Robin Swann

The proposal was carried.

Agreed: The Committee agreed paragraph 36 of the Report as amended.

Agreed: The Committee agreed to include Mr Eastwood’s proposed recommendation at paragraph 37 of the Report.

The Committee considered an amendment from Mr Swann and Mr Elliott that paragraph 38 should read:

“The Committee recommends a benefit cap at the suggested level.”

The Committee divided:

Ayes	Noes
Sydney Anderson	Mickey Brady
Paula Bradley	Colum Eastwood
Tom Elliott	Bronwyn McGahan
Trevor Lunn	Caitríona Ruane
Lord Morrow	
Alastair Ross	
Robin Swann	

The proposal was carried.

Agreed: The Committee agreed paragraph 38 of the Report as amended.

Agreed: The Committee agreed paragraph 39 of the Report.

Agreed: The Committee agreed paragraph 40 of the Report as amended.

Agreed: The Committee agreed paragraphs 41 of the Report.

Mr Eastwood proposed that the following recommendation be included in the Report at paragraph 42.

“The Committee recommends that the Department requests medical evidence in the first instance for Personal Independence Payment (PIP) claims and notifies claimants that supporting evidence will be used to determine their eligibility for PIP, in order to avoid high levels of appeals which can often be a difficult and intimidating process for those with disabilities.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Sydney Anderson	Trevor Lunn
Colum Eastwood	Paula Bradley	
Bronwyn McGahan	Tom Elliott	
Caitríona Ruane	Lord Morrow	
	Alastair Ross	
	Robin Swann	

The proposal fell.

Mr Elliott proposed an amendment to Mr Eastwood’s suggested recommendation at paragraph 42 that would read:

“The Committee recommends that the Department requests medical evidence in the first evidence for Personal Independence Payment (PIP) claims.”

The Committee divided:

Ayes

Mickey Brady
 Colum Eastwood
 Tom Elliott
 Bronwyn McGahan
 Trevor Lunn
 Caitriona Ruane
 Robin Swann

Noes

Sydney Anderson
 Paula Bradley
 Lord Morrow
 Alastair Ross

The proposal was carried.

Agreed: The Committee agreed to include the proposed recommendation, as amended, at paragraph 42 of the Report.

Agreed: The Committee agreed paragraph 43 and 44 of the Report.

4.08pm Sydney Anderson left the meeting.

4.08pm Peter Weir joined the meeting.

Agreed: The Committee agreed paragraphs 45-47 of the Report.

Mr Brady proposed that the following wording should be included at this section of the Report as a narrative:

“To be compliant with Human Rights obligations, social policy has to strike a fair balance between the right of the individual and the public interest. Where a policy change is detrimental to the individual, it must be shown to proportionate, and strike a fair balance between the individual and the public interest.

In the specific circumstances of the north of Ireland, the imposition of an under occupancy penalty will be both detrimental to the individual and detrimental to the public interest because it fails to take account of the legacy of segregation and the profile of our housing stock. The legacy of segregation means that while we may have similar under occupancy rates as parts of Britain, we do not have the same ability to address it.

The profile of our housing stock means there is insufficient suitable accommodation which would enable tenants to comply.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Paula Bradley	Trevor Lunn
Colum Eastwood	Tom Elliott	
Bronwyn McGahan	Lord Morrow	
Caitriona Ruane	Alastair Ross	
	Robin Swann	
	Peter Weir	

The proposal fell.

Agreed: The Committee agreed paragraph 48 of the Report as amended.

Agreed: The Committee agreed paragraph 49 of the Report.

The Committee had some discussion around the formal procedures for publication of a Committee Report.

Mr Elliott proposed that the standard procedure for publication of a Committee Report should be adhered to.

The Committee divided:

Ayes

Paula Bradley
Colum Eastwood
Tom Elliott
Trevor Lunn
Lord Morrow
Alastair Ross
Robin Swann
Peter Weir

Noes

Mickey Brady
Bronwyn McGahan
Caitríona Ruane

The proposal was carried.

Ms Ruane noted her concern that the final report would be signed off without further sight of the document.

Mr Brady, Ms McGahan and Ms Ruane proposed that the following paragraphs be added to the report in relation to the summary of the Human Rights Memorandum provided by the Department:

“Some Members would remind the department that the provision of a detailed human rights memorandum to accompany bills is established best practice, a practice which allows the kind of informed democratic scrutiny of human rights compatibility, rendering enacted legislation more robust to withstand judicial challenge.

Some Members queried whether such a memorandum is subject to legal privilege and therefore for the Minister’s eyes only. At the request of the Committee, the Minister released a summary of the memorandum “provided under legal privilege” and urged the Members to treat it “in confidence” as Executive colleagues will not have sight of this material”.

Firstly an almost word for word version of the memorandum provided by the Minister, appears in the Westminster bill’s explanatory notes and has been available for over a year on the Westminster website. Secondly, the status of that memorandum has already been robustly admonished as inadequate to the task by the British government’s own scrutiny committee.

A full human right memorandum is not a general statement of compliance referenced only to Britain but a detailed clause-by-clause consideration undertaken by the department with data-backed reference to specific circumstances within the north of Ireland. The Committee regrets the department failed to meet this obligation.”

The Committee divided:

Ayes

Mickey Brady
Colum Eastwood
Bronwyn McGahan
Caitríona Ruane

Noes

Paula Bradley
Tom Elliott
Lord Morrow
Alastair Ross
Robin Swann
Peter Weir

No Vote

Trevor Lunn

The proposal fell.

The Chairperson put the question that:

“An agreed wording that would reflect the concerns of the minority opinion, on the issue of the summary of the human rights memorandum, be included in the Report.”

The Committee divided:

Ayes	Noes
Mickey Brady	Sydney Anderson
Colum Eastwood	Paula Bradley
Trevor Lunn	Tom Elliott
Bronwyn McGahan	Lord Morrow
Caitriona Ruane	Alastair Ross
	Robin Swann

The proposal fell.

Ms Ruane noted her concern that the Report would not adequately reflect the views of the minority.

The Committee considered the Executive Summary of the Report.

Agreed: The Committee agreed paragraphs 1 and 2 of the Report.

Mr Elliott and Mr Swann proposed that paragraph 3 of the Report should include the following wording:

“The Committee invited the Equality Unit of OFMdFM to present or give evidence but no official response was received to this request.”

Agreed: The Committee agreed paragraph 3 of the Report as amended.

Agreed: The Committee agreed paragraph 4 of the Report.

Ms Ruane proposed that paragraph 5 be amended to read:

“The Ad Hoc Committee, after due consideration of all the evidence presented to it, concluded that the provisions of the Welfare Reform Bill are not in conformity with the requirements for equality and observance of human rights.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Paula Bradley	Trevor Lunn
Colum Eastwood	Tom Elliott	
Bronwyn McGahan	Lord Morrow	
Caitriona Ruane	Alastair Ross	
	Robin Swann	
	Peter Weir	

The proposal fell.

Mr Elliott and Mr Swann proposed that paragraph 5 of the report be removed and that paragraph 6 should be amended to read:

“The Committee believed that its scrutiny had revealed a number of areas of concern and accordingly it made recommendations which it considers will promote the continued monitoring of equality and human rights considerations in the on-going introduction of Welfare Reform. The Committee, however, concluded that it cannot identify any specific breaches of equality or human rights aspects of the Welfare Reform Bill. This decision was reached by majority vote.”

The Committee divided:

Ayes	Noes
Paula Bradley	Mickey Brady
Tom Elliott	Colum Eastwood
Trevor Lunn	Bronwyn McGahan
Lord Morrow	Caitriona Ruane
Alastair Ross	
Robin Swann	
Peter Weir	

The proposal was carried.

Agreed: The Committee agreed to remove paragraph 5 of the Report.

Agreed: The Committee agreed the amended wording for paragraph 6 to be inserted at paragraph 5 of the Report.

Ms Ruane proposed that the following wording should be added to paragraph 4 of the Executive Summary:

“Concern was expressed by some members that a document released to the ad hoc committee by the Minister was treated as privileged whereas the information contained in the document had already been published on the Westminster website for over a year, and that incorrect information was provided to the committee.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Paula Bradley	Trevor Lunn
Colum Eastwood	Tom Elliott	
Bronwyn McGahan	Lord Morrow	
Caitriona Ruane	Alastair Ross	
	Robin Swann	
	Peter Weir	

The proposal fell.

The question was put that:

“The Committee agree the Executive Summary of the Report.”

The Committee divided;

Ayes	Noes	No Vote
Paula Bradley	Mickey Brady	Trevor Lunn
Tom Elliott	Colum Eastwood	
Lord Morrow	Bronwyn McGahan	
Alastair Ross	Caitriona Ruane	
Robin Swann		
Peter Weir		

The proposal was carried.

The Committee considered the Introduction and Key Issues of the Report.

Ms Ruane proposed that the following wording should be added after paragraph 64 of the Introduction:

“Concern was expressed by some members that a document released to the ad hoc committee by the Minister was treated as privileged whereas the information contained in

the document had already been published on the Westminster website for over a year, and that incorrect information was provided to the committee.”

The Committee divided:

Ayes	Noes	No Vote
Mickey Brady	Paula Bradley	Trevor Lunn
Colum Eastwood	Tom Elliott	
Bronwyn McGahan	Lord Morrow	
Caitriona Ruane	Alastair Ross	
	Robin Swann	
	Peter Weir	

The proposal fell.

Agreed: The Committee agreed that the Introduction and Summary of Key Issues should stand as part of the Report.

5.27pm Caitriona Ruane left the meeting.

Agreed: The Committee agreed that the Appendices should stand as part of the Report.

Agreed: The Committee agreed that a copy of the minutes of proceedings of today's meeting be agreed by the Chairperson and included in the Report.

Agreed: The Committee agreed that the Report be ordered to print.

5.30pm Caitriona Ruane re-joined the meeting.

The question was put that;

“The Committee agree the Report.”

The Committee divided;

Ayes	Noes
Paula Bradley	Mickey Brady
Tom Elliott	Colum Eastwood
Trevor Lunn	Bronwyn McGahan
Lord Morrow	Caitriona Ruane
Alastair Ross	
Robin Swann	
Peter Weir	

The proposal was carried.

Agreed: The Committee agreed that the submission provided by Sinn Fein would be included in the Written Submissions Appendix of the Report.

7. Committee Motion

Mr Ross proposed that the Motion as drafted be agreed by the Committee;

The Committee divided;

Ayes

Paula Bradley
Tom Elliott
Trevor Lunn
Lord Morrow
Alastair Ross
Robin Swann
Peter Weir

Noes

Mickey Brady
Bronwyn McGahan
Caitríona Ruane

No Vote

Colum Eastwood

The proposal was carried.

Agreed: The Committee agreed that the motion as drafted should be laid in the Business Office.

8. Any Other Business

There was no other business.

5.35pm The Chairperson adjourned the meeting.

Mr Trevor Lunn MLA

Chairperson,
Ad Hoc Committee on Conformity of Equalities Requirements,
Welfare Reform Bill

Tuesday 22nd January 2013



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

List of Minutes of Evidence

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27 November 2012

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Colum Eastwood
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Lord Maurice Morrow of Clogher Valley
 Mr Alastair Ross
 Ms Caitríona Ruane
 Mr Peter Weir

Witnesses:

Ms Martina Campbell *Department for*
 Mr Michael Pollock *Social Development*

1. **The Chairperson:** I invite the officials to join us. I am very pleased to welcome Martina Campbell and Michael Pollock from the social security policy and legislation division in the Department for Social Development (DSD). We are not putting a time limit on you. Would you like to carry on with your briefing? Thank you very much.
2. **Mr Michael Pollock (Department for Social Development):** Thank you, Chair.
3. **Ms Martina Campbell (Department for Social Development):** Thanks, Chair. We very much welcome the opportunity to brief the Committee on the Welfare Reform Bill. With the Committee's agreement, we intend to provide an overview of the high-level principles of the Bill. We do not intend to cover areas of detail, and we will welcome a further opportunity to brief the Committee once it has had an opportunity to consider the evidence and the equality impact assessment (EQIA). Then we would welcome the opportunity to come back to follow up any concerns that members have.
4. As you know, we have already provided an extensive briefing to the Committee for Social Development, as some of the members of this Committee will be aware. It should be noted that this is an enabling Bill and that much of the detail will be in regulations or guidance. We advise that the Minister has confirmed to his Executive colleagues and to the Assembly that the Bill complies with equality and human rights considerations and is within the competence of this legislative Assembly. That view has also been confirmed by the Attorney General and the Speaker.
5. We have completed, as the Chair has said, an equality impact assessment, which was published in April. We have committed to updating the document, which we consider to be a living document, and we are awaiting the finalisation of some additional data that our statistical colleagues within the Department obtained from Her Majesty's Revenue and Customs (HMRC). Once the data has been validated, we will update the equality impact assessment.
6. We recognise that in the published equality impact assessment, there are data limitations that have been highlighted, quite rightly, by stakeholders. We are considering options to address those. All the information gleaned will be used to assess the impact of measures on the ground.
7. We appreciate that stakeholders may have particular views about impacts but we, as government, must address any differential impact identified. There are a number of issues that tie into that, including the dreaded word "parity". The arguments around parity have been well-rehearsed both by us at Committee and in the Assembly by the Minister and others.
8. The overarching consensus is that parity works for Northern Ireland. It is to our financial advantage, and it is also about equality in entitlement to benefits for claimants here and claimants in Great Britain, who pay the same rates of tax

- and national insurance as we do and, therefore, should expect to receive the same rates of benefit on the same conditions.
9. With regard to mitigation, there may be areas where some mitigation may be considered necessary, and that is why the Minister has established his Executive subcommittee on welfare reform. It is also why the Executive committed themselves, within the Programme for Government, to the establishment of an independent advisory group on alleviating hardship, which included any implications arising from this Bill.
10. There are other aspects in the Programme for Government. I do not need to tell you what those are. I will just mention, for example, the social protection fund, the commitment to develop a childcare strategy and various programmes that the Department for Employment and Learning (DEL) and the Department of Enterprise, Trade and Investment (DETI) are working on that will contribute to and help to alleviate some of the impacts arising from the Bill. We think it is right and proper that mitigation should be considered within the arena of the wider Executive. We do not consider that it is for consideration within this Bill.
11. With that in mind, we will provide you with a high-level overview of the Bill and then take any questions.
12. **The Chairperson:** Thank you.
13. **Mr Pollock:** In addition to what Martina has said, welfare reform has been on the agenda, I suppose, since before the coalition Government came to power in Westminster. I do not want to add to your reading list, but there are a few publications — like this one — on the Department for Work and Pensions (DWP) website that outline the reform agenda and what it is about. That is, reforming a system that has become outdated, is becoming increasingly expensive with regard to sustainability in the future, and has moved markedly away from how the welfare state was originally conceived. This Bill is trying to address its complexity, among other things, by introducing universal credit, which will be a new benefit for claimants both in and out of work. It is also about fairness, and I think that is where Martina mentioned the Programme for Government. In respect of the taxpayers — the people who actually pay into the welfare state — there is consensus that people should not have a natural right to a life on benefits. There should be some differential between what people can earn going out to do a day's work and what they would be entitled to on benefits. Part of the rationale behind some of the reforms included in this Bill that will be later implemented through tapers and disregards is to incentivise people to get back to work. The overall argument is that it is good for the economy and it is good for the individual in the way forward as far as Great Britain and Northern Ireland is concerned.
14. You will hear arguments that there are no jobs around, but there is still an incentive or an impetus on the Government to try to encourage people to get back to work, to get closer to the labour market. Part of the other programmes that are administered through Departments such as DEL and DETI are to try to create jobs and to try to encourage people to take up opportunities through training and employment courses. That is where joined-up government comes in, and it is where the reform package should merge with other programmes in government.
15. **Ms M Campbell:** The Bill has more than 130 clauses. The first 44 are about the introduction of universal credit, which is my particular area. As Michael has already said, the overall policy intent of universal credit is to address poverty through tackling worklessness and benefit dependency. The underlying principle is that work should always pay and people should be better off in work. Universal credit will replace a complex system of working-age benefits and credits with a single set of rules. It is a new single means-tested support for working-age people who are in and out

- of work, so it is important to remember that the Social Security Agency will be dealing with a new set of customers who are in work.
16. Universal credit will ensure that work pays. Financial support will be reduced at a consistent and predictable rate, and people will generally keep a higher proportion of their earnings. Universal credit will have a claimant commitment, which will be personalised according to people's capability and circumstances, and it will be a single monthly payment to each household. You will all be aware of the Minister's statement on 22 October when he announced that he had secured a number of flexibilities, including split payments, which is the facility to pay the payment to the other partner, the facility to pay universal credit twice monthly, the facility to pay the rent direct to the landlord, and the fourth one, which I have forgotten; sorry.
 17. The upper age limit for universal credit will be the age at which the claimant becomes eligible for state pension. The first new claims for universal credit will start in April 2014. We estimate that all existing claims will be migrated to the new system by 2017. Claims will be made on the basis of households rather than individuals. Both members of a couple will be required to claim universal credit. As I have said, it will be paid on a monthly basis, as a monthly payment cycle fits within the usual cycle of earnings for people in work. For those out of work, universal credit will mimic a salary for paid employment. That should help to smooth the transition into work.
 18. To ensure that households are able to manage the transition to monthly payments, a package of support, to include appropriate budgeting advice, is being developed. Entitlement will be calculated based on information already held or provided by the claimant, including information about any income they have other than earnings, such as occupational pensions, for example.
 19. Those who are not working and who satisfy all the conditions of entitlement will be paid a set amount of universal credit. Claimants who have earnings from employment will have those earnings automatically taken into account. That will involve using the systems that the tax office uses, so it will be real-time information. The amount of universal credit will be adjusted as the earnings are fed into the tax system. A single taper rate and a simple system of disregards will allow people in work to see clearly how much support they can get while making sure that people considering a job will understand the advantages of working. Real-time information means that universal credit payments can be gradually reduced as earnings increase or, indeed, universal credit can go up as earnings go down. The taper rate is expected to be set at 65%. That would mean that 35p in every pound earned would be kept, meaning that claimants would be £35 better off for every £100 they earn.
 20. The standard allowance is a core cash component intended to help with ordinary living expenses. Additional amounts will be added to that basic amount to include childcare costs, children, disability and housing. There will be additional amounts payable for disabled children, and universal credit will replace tax credits as well as a number of other social security benefits. Support with the cost of childcare will be available to lone parents and couples. It will be available regardless of the number of hours they work, so that is an improvement to the current system. There will be a limit of 70% of the amount payable for childcare costs. That is similar to the current system under child tax credits. Support for housing costs will cover similar types of payment liabilities as are covered under the current housing benefit schemes. Tenants in the social rented sector who underoccupy their properties will have their housing benefit payments limited. That is similar to the current position for claimants in the private rented sector.
 21. The other thing is that people will remain registered on the system for two years after their claim has ended, which should ensure that if they come on

- stream again within those two years, a lot of the information will just have to be updated rather than having to go through the full online process again.
22. In respect of the benefit cap, there will be a cap on the total amount of benefit that working-age claimants can receive so that households on out-of-work benefits no longer receive more than those who earn the average weekly wage after tax and national insurance. The total level of entitlement to welfare benefits is to be limited to £500 per week. That equates to £26,000 net or £35,000 gross. There will be a number of exceptions to that, and I can give you details of that if you wish. It is important to note that people in receipt of a number of benefits, including disability living allowance and the new personal independence payment, will be excluded from the cap. Our initial analysis of current households is that around 620 households will be affected by the cap. Where universal credit shows that claimants in receipt of current benefits have a reduced entitlement, they will receive transitional protection for as long as their circumstances remain the same.
23. Universal credit will introduce conditionality. It is a type of contract that means a claimant will have to do something in return for their benefits. There are four conditionality groups. Full conditionality means that claimants will be required to be available to immediately take up or attend an interview for work or better-paid work. Advisers in jobs and benefits offices will allow claimants to place limitations on the work they must search for in certain circumstances — for example, those with a good work history or those with a health condition. There will be exemptions for immediate availability — for example, those who need to make childcare arrangements.
24. The second group involves work preparation. Claimants in that group who are disabled, or who have a health condition that means they have limited capability for work at the time will be expected to take reasonable steps to prepare for work.
25. The next group is keeping in touch with the labour market. Claimants in that group are likely to be lone parents or lead carers. They will be expected to attend periodic interviews to discuss their plans for returning to the labour market, but that is it.
26. The final group has no conditionality. Claimants in that group are likely to be disabled, have a serious health condition that prevents them from working and preparing for work, be a lone parent or a lead carer in a couple with a child under one, have intensive and regular caring responsibilities or have earnings above the national minimum wage.
27. In conditionality, with rights come responsibilities. I mentioned the fact that claimants will have to sign a claimant commitment. In that commitment, we will clearly set out what we expect claimants to do. We will also clearly set out the consequences of failing to meet those requirements. The Bill introduces sanctions, and strengthened conditionality will be supported by a new system of financial sanctions. The aim of the sanctions is to provide greater incentives for people to meet their responsibilities, as I said. Under the existing jobseeker's allowance sanctions regime, the consequences of failing to comply with requirements are not always clear. Prior to the introduction of universal credit, we intend to revise the sanctions regime to broadly align it with universal credit in order to make the transition to universal credit a lot smoother.
28. The sanctions will have four levels: high, medium, low and lowest. No one will be sanctioned if there is no work available. Sanctions will apply only if a job is available and the claimant has been offered it but has not taken it. The level of sanction will depend on the conditionality group that a claimant falls into.
29. I will now hand over to Michael, who will talk a bit about the employment and support allowance.
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30. **The Chairperson:** Before you start, Michael, I want to remind members that, although nobody has indicated that they want to ask a question, that is what we are here for. Should we stop at this point while what you said is fresh in our minds? Does anyone want to ask a question?
31. **Mr Brady:** I suppose, for Martina and Michael, it is déjà vu all over again.
32. **Ms M Campbell:** Just a bit.
33. **Mr Brady:** Just a couple of things about the EQIA. We obviously had evidence from the Equality Commission and the Human Rights Commission. The Equality Commission had concerns about the Department's draft EQIA, and some of those concerns remained when the final EQIA was published in May. Those concerns were raised with the Department.
34. On 4 May, when publishing the final EQIA, the Minister indicated that he intended that the Department would continue to look at the possible equality impacts as the Bill moves forward. You have said that it is a living document, and also that work is ongoing in the Department to analyse the impact of policies across the various section 75 groups. Presumably, we will be able to get some detail on that. As this is an enabling Bill, the regulations will flow from it, as indeed will the guidance. That is why it is so important to get the Bill itself right.
35. In its evidence, the Human Rights Commission said:
"the heavy reliance on secondary legislation complicates the task of providing a human rights analysis of the Bill"
36. — because regulations are not available yet. It went on to say:
"the regulations should be subject to affirmative resolution or confirmatory procedure to ensure scrutiny against human rights standards ... the commission still stands by its advice ... on that matter: the secondary legislation should be subject to affirmative procedure."
37. Presumably, the Assembly would deal with that. Is there any update on that? I know that you have given us some of the details, for instance, about claimant commitment and that, but what people maybe know or do not know is that if one member of a couple does not sign that commitment — for whatever reason; possibly because of mental health or whatever — neither of those people will get benefit. We have talked about a cooling-off period of approximately four weeks. So, somebody could be without benefit for four weeks. Those are all issues that could well impact on equality and human rights.
38. Section 75 has primacy. We have asked the Equality Commission in particular whether it is the Welfare Reform Bill or section 75 that has primacy. Obviously, those are questions that possibly the Committee will be dealing with.
39. The devil is in the detail of the enabling legislation. You gave a very general summary of that, but a lot of the detail needs to be addressed. This Committee, presumably, will be one forum that will have to drill down into that detail, particularly in relation to equality and human rights. That is why we are here. I just wanted to make that point.
40. **Ms M Campbell:** I will try to remember all your points, Mickey.
41. When bringing through primary legislation, it would not be normal practice to have the regulations available. However, we have indicated that we are happy to discuss the version of the DWP regulations that went to the Social Security Advisory Committee. We believe that DWP will be laying its regulations on 10 December, at which stage we will obviously be a lot freer to discuss the content of those. The Northern Ireland drafts are not available yet, but we aim to bring those to the Social Development Committee, hopefully sometime in February, I think. That will be before Royal Assent, which, again, is a very unusual step. However, we are mindful of the Committee's concerns and want to try to facilitate as much scrutiny as we can. I take the point that a lot of this

- relies on an element of trust as to what is going to be in the regulations and that the regulations will be subject to equality screening, as all regulations are.
42. As for data limitations, I think that what the Equality Commission was referring to is the fact that the Department does not routinely collect information on race or sexual orientation.
43. **Mr Pollock:** There are a few of the section 75 groups, but, primarily, that is because affiliation to any of those groups is not a condition of the receipt of benefit. Therefore, there is no requirement or business need to collect data on that. As you know, there is a cost to collecting such data.
44. As Martina said, what we have done is to develop a policy simulation model, based on a model that has been used by DWP, to try to determine the impacts of welfare reform on the ground. This is being developed specifically for Northern Ireland. We have high-level information on the number of benefit recipients, but we have yet to work through all the different models and simulations that would say that this would have a certain impact on the ground.
45. As Martina said, a lot of that relates to trust, for instance, in the sanctions regime. We have explained to the Committee that it is not the idea that the sanctions regime will be punitive. The idea behind the claimant commitment and the sanctions regime going hand in hand is that they work to ensure that individuals in receipt of benefit are aware of their responsibilities and are minded to deliver on those. It is not the case that people will be punished or sanctioned for no good reason. There are a lot of get-out-of-jail cards with regard to good cause or good reason, as it is going to be called, on why a particular sanction would not be applied. All those safeguards and safety nets will be carried forward to this Bill for the introduction of universal credit. There will not be any diminution of the safety nets in that respect. Indeed, there will be the introduction of hardship payments for employment and support allowance. That is an additional safety net. There are a lot of things there, Mickey, to give you some assurance, and I think —
46. **Mr Brady:** I will make a couple of points.
47. **The Chairperson:** Mickey, before you do —
48. **Mr Brady:** Sorry, go ahead and finish speaking.
49. **Mr Pollock:** I want to say that the commission has written to the Department on a couple of occasions since the production of the equality impact assessment. It has recognised the data deficits, as Martina said, but also endorsed the approach that the Department has taken in going forward and reviewing the living document, which is the EQIA, as the regulations roll out.
50. **The Chairperson:** Mickey, I do not wish to stop you, but I am conscious that we do not want to get into too much.
51. **Mr Brady:** I have two points to finish.
52. **The Chairperson:** I am not going to stop you, but I want to remind everybody that we are in overview mode today, and we do not want to get into too much detail.
53. **Mr Weir:** I have a procedural point. Mention has been made of additional correspondence. Was it from the Equality Commission or the Human Rights Commission?
54. **Mr Pollock:** The Equality Commission wrote to the Department within the past couple of months.
55. **Mr Weir:** I am wondering whether supplementary information has been supplied in correspondence between the two. It may be useful if that could be shared with us.
56. **Mr Brady:** I do not think that anybody disagrees with the underlying principle that it is better to work than to be on benefit. It is how you arrive at that and the logistics of getting there. Martina talked about the element of trust, but that is predicated on the Bill and its outworkings. Section 75 is unique to the North, and I would have thought that the gathering or collection of data in relation

- to the affected groups — or groups that come in under section 75 specifically — is very important. Section 75 does not apply in Britain, so it is important that we have the data. Otherwise, you cannot make an informed judgement on the equality impact, or otherwise, of the Welfare Reform Bill. I think that is important. As I said before, there is a lot of devil in the detail, and, obviously, we have had a very general summary. I will leave it at that.
57. **Ms McGahan:** Has the Human Rights Commission requested a meeting with you on the impact analysis?
58. **Ms M Campbell:** No, not to my knowledge.
59. **Ms McGahan:** Recently, we got a figure on the uptake in the North of Ireland of the childcare component of the tax credits. It is 2%, and less. That money is coming from the Treasury, so it is quite poor. Furthermore, I live in a rural area, and we would have to travel 16 or 17 miles to use full-time childcare facilities. That is a very real issue for people who come from a rural area. Cognisance needs to be taken of that.
60. **Ms M Campbell:** Absolutely, and that is why the claimant commitment will take into account the availability of accessible, affordable childcare, and why officials in the Social Security Agency are working closely with the Office of the First Minister and deputy First Minister in trying to get the childcare strategy off the ground.
61. **Mr Elliott:** Thank you very much for the presentation. Apologies if I ask things that should be blatantly obvious, but I am not totally across all this. You said that the benefit cap means that no household can receive more in benefits than the average working household after tax. What is that figure?
62. **Ms M Campbell:** The cap figure is £500 for a couple, which equals £26,000 net or £35,000 gross. It is less for a single person. I think that it is £350.
63. **Mr Pollock:** It is important to note that the benefit cap is pitched on the average or median earnings in GB, which is considerably higher than in Northern Ireland. So, that is more beneficial for social security claimants here in Northern Ireland than it would be if the benefit cap were on a regional basis. Obviously, the median wage would —
64. **Mr Elliott:** Is a break with parity an area we should look at?
65. **Mr Pollock:** That is probably the least of your worries.
66. **Mr Elliott:** My second question is around parity. On page 13, the equality impact assessment states:
“many have argued that Northern Ireland is different from Great Britain in relation to: recovery from recession; emergence from a period of conflict; degree of mental health issues; and overall structure”.
67. You may not be able to give me all the details now, and they may be contained in the document — if they are, that is fine — but I assume that groups and organisations put forward examples of issues and how they could be changed or amended to suit Northern Ireland. Have you got those?
68. **Mr Pollock:** There has not been much by way of specifics. There has been quite a discussion around housing provision, underoccupancy, mental health issues and lack of affordable childcare. A lot of those issues are actively under consideration by way of other Executive programmes or initiatives, such as the childcare strategy, to tackle them. Essentially, however, they are outside the social security arena. Not too many specifics have come forward. Mickey, you would be aware of the ones that the Committee for Social Development is putting forward in its own right.
69. **Mr Elliott:** OK. I am assuming that they would all be areas contained within the Bill.
70. **Mr Pollock:** Yes.
71. **Mr Elliott:** Would any of them not be relevant to the primary legislation but more relevant to the regulations that would come later?

72. **Mr Pollock:** Yes, that is what the Department would say in respect of the information that is available at the minute. Many of the stakeholders will have their own particular issues, but as a Department, we have to rely on statistical data that can be proofed in terms of integrity and stood over in that respect. That is why we hope to get as much information as possible out of the policy simulation model developed for Northern Ireland. That is something that we would actively consider for future equality statements or regulations and for whatever data are available at that point in time.
73. **Mr Elliott:** I want to briefly go back to the benefit cap. You said, Michael, that figures for GB were different from Northern Ireland. You gave me the figures that are being used. What are the figures for Northern Ireland?
74. **Mr Pollock:** That is the UK median wage that the benefit cap is pitched on.
75. **Mr Elliott:** What is the Northern Ireland one?
76. **Ms M Campbell:** I think that £450 is the average. I cannot swear to that, but I think that it is £450.
77. **Mr Weir:** Are we saying that if we were going it alone — for want of a better expression — and applying exactly the same principles, the benefit cap would be lower if it was pitched at the level of the average wage in Northern Ireland?
78. **Ms M Campbell:** Yes.
79. **Mr Weir:** The benefit cap for this is the UK average, which is proposed to apply here.
80. **Ms M Campbell:** Yes, and it is advantaging claimants here.
81. **Mr Elliott:** I appreciate and accept that. I am just wondering whether it would be a financial gain to the Northern Ireland Executive if you were to break parity with that?
82. **Ms M Campbell:** I do not think that it would go to the Northern Ireland Executive. I think that it would return to Treasury's coffers.
83. **Mr Elliott:** Yes. The only point that I am making is that it may offset some of the other issues. It is just a question.
84. **Mr Brady:** I have a quick comment to make on Tom's point about the cap. The average wage may be higher in Britain, but families are larger here. That is the other side. It balances. It is not just as simple as saying that if you broke with parity, people here would necessarily get less. Historically, families here are bigger. According to Iain Duncan Smith, you should have only the number of children that you can afford.
85. **Mr Elliott:** That is all for now, Chair. Thank you.
86. **The Chairperson:** Thanks for that. Mickey has been here before, I think.
87. **Ms M Campbell:** Yes. *[Laughter.]*
88. **Mr Elliott:** I was asking the DSD officials, not Mickey.
89. **Ms Ruane:** With regard to your data collection, could you confirm which section 75 categories you collect data on and which you do not? You mentioned it earlier, but I just want it to be confirmed again.
90. **Ms M Campbell:** We do not collect data on sexual orientation, race, ethnicity — I can never say that word — religion or political belief.
91. **Ms Ruane:** So, you do not collect data on four of the nine categories.
92. **Mr Pollock:** We do not insofar as it is not a requirement for a social security benefit.
93. **Ms Ruane:** Right.
94. **Mr Pollock:** No one is going to ask you what your race or sexual orientation is if you are claiming disability living allowance or whatever.
95. **Ms Ruane:** Section 75 is a very important duty under equality. It is part of the Good Friday Agreement. It is not designed to put anybody under pressure. It is designed to analyse equality. I find it very worrying that there is no analysis of those categories. That is my first point. We probably need to return to

- that. If you are not even collecting the data and analysis, you are obviously working —
96. **Mr Pollock:** There is an underlying logic, though. If it is not a requirement of entitlement, why would it be affected or adversely affected?
97. **Ms Ruane:** Because if you want to do a proper EQIA, you need to work on data. I have been reading through this briefly as you have been speaking. You focus a little on gender and marital status. However, you leave out huge areas. First of all, I urge you to go back and have a look at that. It is worrying to me. I thought that I heard you say — I hope that I did not — that it is costly to do that. I thought that we had moved —
98. **Ms M Campbell:** I do not think that we said that.
99. **Ms Ruane:** With respect to you, Michael actually said it.
100. **Mr Pollock:** I did say that there is a cost attached to that.
101. **Ms Ruane:** Sorry; perhaps I could just finish the point that I was making, Michael. It is worrying for me to hear the excuse of cost. I thought that we had moved beyond that in our debates on equality. It is a statutory duty on Departments to collect proper data and to work from it. Otherwise, Departments are working in the dark. That is the first point that I would make. Obviously, we will have to return to that issue.
102. I know that we are dealing only with broad strokes today, so that is all that I am doing. There will be loads of nitty-gritty that we will want to get into at a later stage. However, the second area is childcare. A report came out yesterday or the previous day. I notice that in one of the pages here you say that if there is no affordable childcare, there will be mitigating circumstances. There is not enough affordable childcare. To be honest, if you look at the percentage of money that is being used from salaries — not even salaries, but benefits — you will see that it is huge. You need to look at that to update your EQIA. I welcome the fact that it is a living document. You need to look at that report because this part of Ireland has less childcare than England, Scotland or Wales. That is obviously a serious worry because it is one of the biggest impediments to getting out of the poverty trap. With respect, it is not good enough to say that some other Department is dealing with that. It is your job as DSD to ensure that the provisions are in place, and if they are not, to actually say that they are not.
103. **Mr Pollock:** We are not trying to hand that off to anyone. The fact that lack of childcare is a recognised issue and that it is accepted as good reason is already built into the legislation. As we have pointed out on a number of occasions at the Committee for Social Development, no one has actually been sanctioned for turning down a job because of lack of adequate or affordable childcare. So, that is proof that we are taking these issues seriously and that we are trying to address them through the legislative vehicle and through the guidance for decision-makers on how this operates in practice.
104. **Ms M Campbell:** On the issue of collection of the data, I said up front that we accepted the criticism and that we recognise the data limitations. I refer you to page 21 of the EQIA, which covers consideration of data and research. We are working with the Department for Work and Pensions and Revenue and Customs to develop the policy simulation model. Also, questions have been added to the family resources survey (FRS), the data from which is the basis on which the policy simulation model is used. That does not sound right, but you know what I mean.
105. **Mr Pollock:** The base population is the database, and that will be merged with other data scans and the like to produce modules or simulations of how the different benefit changes would impact on particular clients.
106. **Ms M Campbell:** Questions on political opinion and sexual identity were included in the family resources survey for 2011-12. We are working on the

- survey results from 2008-09, so we will be able to get that information at a future date when that module from FRS is analysed. We take your point.
107. **Ms Ruane:** I appreciate that you take the point. What we need to do now is see what is done to ensure that data is collected. Although it is useful that it is collected with authorities outside the North, I ask that you also commit to working with the Equality Commission because it has a specific remit in this. As Mickey rightly stated, section 75 does not operate in England. I would welcome a response on that.
108. Also, Michael, you mentioned that no one in the past has been “sanctioned” — an interesting word. The issue is not the discretionary nature of legislation; it is its potential use in the present and the future. Although you may have confidence that nobody will be sanctioned in the future, we need watertight legislation to ensure that people who are in vulnerable categories, such as those who are disabled, are protected. We have seen a huge adverse impact on people with regard to gender and on persons with dependants. As Mickey rightly said, we have bigger families here. So, we do not have the same confidence that there will not be problems in the future, particularly with the current Government that we have in England.
109. **Mr Pollock:** I appreciate that point. My experience of decision-makers in the Social Security Agency, and I was one, is that they take their job very seriously and that they do not go in with a mission to sanction x number of people or to penalise people unnecessarily. It is a responsible job, and the guidance that the Social Security Agency and everybody else puts out is reflective of that.
110. In the context of the Welfare Reform Bill, reporting to the Assembly on an annual basis has been mentioned. That would mean that you will get an idea of how the sanctions regime and everything else is operating in practice, if that gives you any sort of comfort.
111. **Ms Ruane:** I am not getting at any individual workers. I am talking about the importance of it being not just discretionary. There needs to be protections.
112. I would like confirmation that you will work with the Equality Commission. Martina, you did not mention race. I think that race is a very important one, but you left it out. Is there a reason for that?
113. **Ms M Campbell:** As far as I know, those are the only two categories that were added to the family resources survey. I cannot confirm whether those categories were added at DSD’s request or at the request of another Department. I can come back to the Committee and confirm all that. We are happy to work with the Equality Commission or anyone else who wishes to provide sources of data. We asked in the original consultation for additional sources of data, but no other sources were identified that I am aware of.
114. **Ms Ruane:** Sorry, that was not what I was asking. It was not about sources of data; it was about consulting the Equality Commission in the same way in which you are consulting with DWP on the modelling.
115. **Ms M Campbell:** Yes, we are working with DWP and HMRC.
116. **Ms Ruane:** I am asking that you work with the Equality Commission in the same way, not just asking it for sources of data.
117. **Ms M Campbell:** Sorry —
118. **Ms Ruane:** In relation to the gaps and the collection of data.
119. **Ms M Campbell:** If it does not collect the data, how can it help us?
120. **Ms Ruane:** It is not that you are asking it to collect it. You should be working with it on how you should be collecting it.
121. **Ms M Campbell:** OK.
122. **Ms Ruane:** There are gaps.

123. **The Chairperson:** I think that you have had a fair run, Caitríona. You have given the officials food for thought. I am sure that they can mull over what has been said and come back to us.
124. **Mr Weir:** Thank you for your evidence so far. I have a couple of points. You indicated that we should be able to get the correspondence between you and the Equality Commission. Does that specifically deal with the issue of data collection or does it go wider than that? Does it deal with it at all?
125. **Mr Pollock:** I cannot remember the detail of it, but I think that it was in response to a question that was asked when the Committee was scrutinising various aspects of the Bill. We should be able to drum it up fairly —
126. **Mr Weir:** I appreciate that I am not going to get too much of the detail of that today. A lot of work has also been done by —
127. **Mr Pollock:** It was the general approach, and it was in response to a query about whether the Department had been speaking to the Equality Commission. It is something that we do regularly.
128. **Mr Weir:** OK, so there is ongoing discussion. I have more points on that, but I will not labour them. Some of us would take a slightly different view on the data collection bit and the relevance of it, but I will leave that aside for the moment. I appreciate that no offence was intended, but we were talking about a lot of sensitivities around issues, and mention was made of race. I note that there was use of the phrase “nitty-gritty”. I appreciate that it was not you who mentioned it but, historically, that is an offensive term that is related to female slaves on slave ships. There is a lesson for all of us that we need to be careful about all the language that we use.
129. You gave us figures on the benefits cap of £26,000 net for a couple and £35,000 gross. For a single person, I think that it calculates at £18,200 net. Do you have a gross figure for a single person?
130. **Ms M Campbell:** I do not. Sorry.
131. **Mr Weir:** Could you get that for us?
132. **Ms M Campbell:** Yes.
133. **Mr Weir:** OK.
134. I think that everyone would accept that there are large gaps and inadequacies in childcare. As regards the legislation, is the lack of adequate childcare or an opportunity for childcare a factor that would effectively be described as an absolute defence, be it in relation to sanctions or —
135. **Mr Pollock:** It is generally accepted as good reason for not taking up a job offer, an employment offer or a training opportunity.
136. **Mr Weir:** Is that contained in the legislation?
137. **Mr Pollock:** It is already in regulations.
138. **Mr Weir:** OK.
139. **Ms M Campbell:** It is current practice.
140. **Mr Weir:** From that point of view, is that defence or mitigation — whatever way in which it is put — something that is not in any way weakened by this legislation?
141. **Mr Pollock:** All the usual and current protections under the existing legislation would be carried forward. There would be no diminution of anybody’s rights in that respect. As we are aware of the detail of previous regulations arising from different welfare reform Bills, and because of what is already on the statute books, we are reasonably assured that there are no equality or human rights issues attaching to this Bill.
142. **Mr Ross:** Michael, you are a brave man bringing logic into some of these things. That is not always met with great enthusiasm.
143. On the section 75 stuff, you said that data on gender and marital status were collected. I presume that that is because that information impacts directly on how totals are calculated and payments are made. Is that the reason why those two specifically are collected?

144. **Mr Pollock:** Precisely; yes. Those have a material impact on the level of benefit or entitlement.
145. **Mr Swann:** You talked about the DWP regulations being laid on 10 December and Northern Ireland ones being in front of the Committee for Social Development by February. How much work will be done on the DWP regulations to prepare them for Northern Ireland? Do you intend to do much amending or changing to take consideration of what you have heard from the Committee for Social Development and this Committee?
146. **Ms M Campbell:** They will be amended slightly to reflect Northern Ireland legislation, conventions, etc. I think that what you are asking is whether we anticipate there being any additional flexibilities in the regulations that are not in the DWP ones. Is that what you are asking?
147. **Mr Swann:** Go on ahead. If you are going to give me the answer to a question that I did not ask, I am quite prepared to take it.
148. **Ms M Campbell:** All of that is still under consideration. It would obviously be subject to the outcome of the Social Development Committee's considerations of their scrutiny and the outcome of the Bill as it progresses through —
149. **Mr Swann:** So, how do you intend that any flexibility would go through as regards equality or anything that is established through this Committee or the Committee for Social Development, the ministerial final decision and the Bill's passage through the House?
150. **Mr Pollock:** As we understand it, the deliberations or recommendations arising from this Committee will be debated on the Floor of the Assembly and then either carried forward or not carried forward.
151. **Mr Swann:** Sorry; what about the flexibilities that may be introduced in the regulations? Martina referred to those.
152. **Mr Pollock:** I am finding it difficult to envisage what sort of flexibilities we are talking about that are not already there in some shape or form. Extensive protections and good reason are built into the current legislation and are being carried forward from that existing legislation. None of that will be diminished in taking forward this Bill. I do not envisage anything different. I cannot think of an example where something else is needed. If there was something else needed, it would have been included in the equality impact assessment. So, to that extent, I suppose that it is —
153. **Mr Swann:** Sorry; maybe you are confusing — or maybe I am confusing — the Bill with the regulations. Are you saying that there will not be any difference between the regulations laid by DWP and the Northern Ireland regulations?
154. **Mr Pollock:** They will be different insofar as they are Northern Ireland regulations. Northern Ireland has responsibility for its own social security regulations, albeit that it is tied by logistical and parity considerations. However, as regards material differences in respect of equality or human rights, I do not see any arena or issues where we would have markedly different regulations from DWP.
155. **Mr Brady:** Surely the point of this Committee is to ensure that the Bill is compliant with human rights and equality legislation. So, we cannot pre-empt anything; that is all that I am saying.
156. **The Chairperson:** That is exactly the point of this Committee.
157. **Mr Brady:** That is what I thought.
158. **The Chairperson:** I do not really have any questions at this stage. A big change is that this is all going to be done online by computerisation. What about people who are not computer literate?
159. **Ms M Campbell:** There will be support available. There will be a telephony service, and there will be the facility for face-to-face contact and support in the

- office as there is now. There will also be terminals in the office that people can use.
160. **The Chairperson:** Given the history of computerisation in Departments and outside agencies, are you confident that it will be up to speed by the time that it is needed?
161. **Ms M Campbell:** We are assured that it will be.
162. **The Chairperson:** All right. Our model will have to be slightly different from the UK model in the online process as well.
163. **Ms M Campbell:** Yes. The flexibilities are being built into the IT. For example, the flexibilities that the Minister has already secured around split payments and direct payments and all of that will be built into the IT. The introduction of universal credit for new claims is being delayed by six months to allow that functionality to be built in.
164. **The Chairperson:** When D-Day comes, it will be all systems go.
165. **Ms M Campbell:** We hope that it will be a green light.
166. **Ms McGahan:** I live in an area with no broadband, so tell me how that will be dealt with. BT has made it clear that it will only provide broadband to 95% of the areas. It is just unfortunate that my area falls within the category of no broadband.
167. **Ms M Campbell:** We are working with the digital inclusion unit in the Department of Finance and Personnel, whose responsibility it is to increase the availability of broadband across Northern Ireland. For people who do not have access to a computer, are not computer literate or do not have broadband, there will be a telephone service, there will be a facility for the claimant to come into the office at a time that suits them, and there will be limited facility for home visits, which is the position at the moment.
168. **Mr Pollock:** I sympathise. I have no broadband either.
169. **The Chairperson:** Neither do I.
170. **Ms M Campbell:** Neither do I, but I live in the city centre, so there is no excuse for me, but that is beside the point. So, there will be provisions made.
171. **Mr Pollock:** The Social Security Agency is working day and night with its stakeholders to try to ensure that claimants are aware of the changes. It has a whole stakeholder engagement project that will keep people abreast of what is happening and how to deal with issues that might arise for whatever reason.
172. **The Chairperson:** As you know, we will be speaking to the other major stakeholders, and you certainly have not heard the last of us.
173. **Ms M Campbell:** I said at the outset that we wanted to give you a quick run through the high-level principles. When you have had time to hear stakeholders' views, we will be happy to come back and try to provide clarification.
174. **The Chairperson:** Thank you very much for coming, Martina and Michael. It has been very helpful.

3 December 2012

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Lord Morrow (Acting Chairperson)
 Mr Alastair Ross
 Mr Peter Weir

Also in attendance:

Ms Megan Fearon
 Mr Conall McDevitt

Witnesses:

Mrs Evelyn Collins	<i>Equality Commission</i>
Ms Lisa King	<i>for Northern Ireland</i>
Mr Michael Wardlow	

175. **The Chairperson:** I welcome Michael Wardlow, chief commissioner; Evelyn Collins, chief executive; and Lisa King, director of policy. Michael, you can give us a presentation. I will say at the outset that I will have to disappear for a few minutes to ask a question in the House. If you do not ask the question, you get taken away to the tower, apparently. My deputy is not here at the minute, so we could have a difficult situation. We will see how it goes.
176. **Mr Michael Wardlow (Equality Commission for Northern Ireland):** We will behave ourselves.
177. Thank you, Chair, for the opportunity to brief you. I thought that we could follow the procedures of other Committees that we have been at. I will say a few words, and I will then ask my colleague Evelyn to speak to some of the issues around the equality impact assessment (EQIA). We thought that it would be most useful, given that there have been briefings to other colleagues, if you want to ask some questions, and we can maybe have some discussion.

178. We welcome the opportunity to help you in this important work to consider whether the provisions of the Bill are in conformity with the requirements of equality and observance of human rights. Our colleagues from the Human Rights Commission will follow us today. You are aware that the commission has given evidence to the Committee for Social Development on, I think, two occasions. Today, as you said, Evelyn, our chief executive, and Lisa King, who is the director of advice and compliance, are here.

179. The commission is an independent public body that was established under the Northern Ireland Act 1998. We have powers and duties deriving from the legislation on fair employment, sex discrimination, equal pay, race relations, sexual orientation, disability and age. It is quite a wide-ranging brief. Our remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under section 75 of the Northern Ireland Act 1998 and the positive disability duties there, too. We have also been designated to act as an independent mechanism jointly with the Human Rights Commission to promote awareness of and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities with regard to the Government's obligations here in Northern Ireland.

180. As you will see from the information that you have, we provided a response last December to the Department for Social Development's (DSD) public consultation on the equality impact assessment for the Welfare Reform Bill. That response provided comments on some of the broad policy aims of the Welfare Reform Bill, particularly in the context of the implications in an economic downturn and time of austerity and the extent to which the

impact assessment was carried out in a manner consistent with the Equality Commission's recommendations. The commission indicated that it agreed with the overall aim to seek to make social security fairer, more affordable and better equipped to deal with poverty and welfare dependency. So, we are in congress with you there. However, we indicated that there was a real need to properly understand, consider and respond in an appropriate manner to the impacts of the proposed reforms, and we have advised policymakers not only of those requirements to take into account the potential impact on equality of opportunity but of the criticality of doing so, particularly for marginalised groups in Northern Ireland. We raised concerns about the quality of the original impact assessment published by the Department and the final one published earlier in May this year. We have engaged with the Department to seek assurances that it will properly assess and address the potential impacts from this time on. I will ask Evelyn to address some of the issues that we raised in the equality impact assessment and give some reflections on the Bill.

181. **Mrs Evelyn Collins (Equality Commission for Northern Ireland):** As Michael said, we have particular duties regarding the equality and good relations duties that public authorities are under in the Northern Ireland Act. Schedule 9 is very explicit about our role in respect of the duties. It includes keeping under review the effectiveness of the duties, offering advice to public authorities and others in connection with the duties and carrying out a range of functions that are specified in that schedule, including approving — [*Inaudible due to mobile phone interference.*] — equality screening and initiating investigations where a complaint has been made or where we have a belief that a public authority might have failed to comply with its approved equality scheme.

182. You will be aware that public authorities are under an obligation to pay due regard to the need to promote equality of opportunity and to pay regard to

the desirability of that. They need to promote good relations. As part of that, they are obliged to have arrangements in place for assessing and consulting on the likely impact of policies on the promotion of equality of opportunity and for publishing the results of such assessments as well as for monitoring in an ongoing way any adverse impact of policies that are adopted on the promotion of equality of opportunity.

183. In making any decision with respect to a policy, a public authority is obliged to take into account the impact assessment and the consultation carried out in relation to that policy. Under the terms of the Northern Ireland Act and our guidance, public authorities are also obliged to have arrangements in place to publish the results of the equality impact assessment and, in so doing, to state the aims of the policy to which the assessment relates and to give details of any consideration that is given by the authority to measures that might mitigate any adverse impact of that policy on the promotion of equality of opportunity and, indeed, any alternative policies that might better achieve the promotion of equality of opportunity.

184. As Michael said, we, along with many others, responded at the end of last year to the Department for Social Development's equality impact assessment public consultation on the Welfare Reform Bill. We acknowledged in our response that the structure of the document followed the majority of the steps recommended for equality impact assessments that we advise in our practical guidance, but, as the chief commissioner said, we expressed considerable concerns regarding the way that some of the steps had been completed. As I said, the aim of an equality impact assessment is to identify any potential adverse impacts that are likely to arise from a policy and to take steps to address these.

185. Our particular concern about the DSD equality impact assessment as consulted on is that the paper provided neither substantive analysis of the

- proposals or any real consideration of the potential adverse impacts. Although we noted that the consultation document recognised and endorsed the concept of parity in respect of the social security system, it did not consider any of the proposed changes in the context of Northern Ireland policy and proposals that could not be said to be subject to parity. We used in our response the example that although there is an obligation on local authorities in Great Britain to ensure the provision of childcare, there is not the same obligation here in Northern Ireland.
186. We also had concerns about the quality of the data that was considered by the Department. It was extremely limited, and there were areas where there was no analysis at all. We expressed concern about the high number of assumptions, expectations and vague possibilities being put forward as mitigating measures without any evidence to support these.
187. **The Chairperson:** Sorry, but I have to pause proceedings for a moment. I have to disappear to go to the Chamber, and the Committee will have to elect a temporary Chair, because the deputy Chair is not here.
188. **Mrs Collins:** It has nothing to do with anything that I said?
189. **The Chairperson:** No, I was totally fascinated. Mr McGuinness will have my life if I do not turn up.
- (The Acting Chairperson [Lord Morrow] in the Chair)*
190. **The Acting Chairperson:** Some people are getting their own back on me in some way. Anyway, we will carry on with the meeting. Please continue.
191. **Mrs Collins:** Thank you very much. It is great to see consensus breaking out in the Committee already.
192. In our consultation response at the end of last year, in addition to expressing concerns about the equality impact assessment, we took the opportunity to make a number of points about concerns that we had about some of the reform proposals from an equality perspective. For example, in relation to universal credit, we were concerned about the proposal to pay the new benefit to the main earner as opposed to women in their caring role. We had concerns about conditionality and real issues about whether people with children under five are available to work, which is restricted in Northern Ireland by the lack of available childcare. We also raised concerns about the housing benefit cap and a range of concerns about disability benefit reforms, including the eligibility.
193. We advised the Department at that stage to take into account the consultation on the equality impacts and said that it should assist it in ensuring that the most vulnerable in our society would not be affected to an unfair extent by the welfare reform proposals.
194. We remained concerned about the quality of what was called the completed equality impact assessment, which was published in May this year. Those concerns related to gaps in data, the assessment of adverse impacts and the lack of evidence of consideration of mitigating measures and alternative policies, which is at the heart of the EQIA process. Committee members will be aware that, at the time of publishing the completed EQIA, the Minister said that he would continue to look at the possible equality impacts of the Bill as it moved forward and that work was ongoing in his Department to analyse the impact of policies across the various section 75 groups.
195. We wrote to the permanent secretary of the Department at that time to advise that we had concerns outstanding and sought a meeting to discuss them. We met the permanent secretary in August, and we have had assurances that the Department considers the equality impact assessment to be a living document, that additional data has been received from HMRC, which should improve the Department's ability to identify potential adverse impacts, and that the Department intends to

- update the equality impact assessment as soon as the analysis is complete. We have also been assured, in the context of the Bill largely being an enabling one, that the proposals for regulations will be screened in or out on the basis of differential impact to assess the need or otherwise for an equality impact assessment of the various regulations.
196. I read in the Hansard report of last week's meeting that you asked departmental officials for copies of the correspondence between us. I trust that you have now seen our exchanges.
197. **The Acting Chairperson:** I do not think that we got that.
198. **Mrs Collins:** I have no difficulty with making it available to you, and I am sure that DSD will not either. I presumed that you had seen that.
199. We also provided the Social Development Committee with a briefing on equality issues and queries on 30 October. A copy of that briefing on equality issues and queries, as we saw them, arising from specific clauses in the Bill is in members' packs. I trust that that will be helpful to your deliberations, and I am happy to discuss that further.
200. As a commission, we will continue to monitor developments on the progress of equality impact assessing the proposals in the Bill and ensure the effective application of the duties by the Department. We are happy to provide this Committee with any further information we can to assist you in your important work.
201. **Mr Wardlow:** My colleague has just outlined the chronology of events for people who were not so familiar with it. This is something that we have been consistently working on, and we are giving you an assurance that we are — *[Inaudible due to mobile phone interference.]*
202. **Mr Weir:** Thank you for your evidence. I was listening carefully to what you said. To some extent, the concerns that you raise break down into two categories.
- The first category is the equality impact side of the process. From what you have said, is it fair to say that although there have been concerns raised, there is great work in progress? There seem to be discussions ongoing between yourselves and DSD to improve that and cover that point.
203. The second area relates to the contents side of the legislation from an equality point of view. I note that one of the major things you flag up is the payment to the primary carer and the issue of split payments. That is a very serious concern. As I understand it, the Minister made an announcement, and that is a key implementation issue, and as far as we are aware, it is starting to be catered for.
204. In a range of other things, it talks about seeking clarification or determining what measures are needed, etc. Are the other concerns principally issues that will ultimately be decided one way or the other through the subordinate legislation and the implementation side of it, rather than on the direct wording of the Bill?
- (The Chairperson [Mr Lunn] in the Chair)*
205. **Mrs Collins:** To go back to your initial comment: you are right, we have raised both queries about the application of the requirements of the equality duties in respect of the equality impact assessment. They are important ones. They are not just about process; they are important because they should help to inform policy.
206. **Mr Weir:** I was just trying to use a short answer. I did not want to minimise it.
207. **Mrs Collins:** In addition, we raised some policy concerns. We have identified payment to the primary carer as being an issue where there has been an adjustment to meet the concerns raised in the Northern Ireland context. It is one of the areas where, as we understand it, the effect of the parity principle means maintaining a single system of social security, but not necessarily one that is applied in exactly the same way here. In fact, we said that the Minister demonstrated that potential when he introduced the Bill to the House not only

- about the payment to the primary carer provision that is set out in clause 7 of the Bill, but about a number of other points that he made that had been agreed with Lord Freud. Those issues related to payment of universal credit on a twice-monthly basis and the housing cost element of universal credit going directly to landlords rather than to the consumer. We thought that those issues showed responsiveness to issues of concern in Northern Ireland. There is scope to make sure that concerns raised in Northern Ireland can be addressed.
208. **Mr Wardlow:** Your other point was around the process. My colleague Evelyn explained that we have been observing and commenting since the start, and the regulations will have the detail. We are saying that part of the EQIA is yet to be completed. When the HMRC material comes in —
209. **Mr Weir:** The phrase that you used was that it was a living document.
210. **Mr Wardlow:** Absolutely. It is organic. When the HMRC data is assimilated and there is further information, we will be able to see that at the same time.
211. **Mr Weir:** Is there any indication when the additional data from HMRC will be processed or is that not 100% clear?
212. **Mrs Collins:** Work is ongoing on it. We were in communication with the Department very recently, and it is trying to finalise what it is doing. It also has access to a more recent family resources survey that it is looking at. So, I do not have a clear timescale, but it is our understanding that it is working to try to ensure that it has the best use of the best available data, but it is an area where we will want to continue to be in close contact with the Department.
213. **Mr McDevitt:** I will go through your submission. Clause 7 is the basis of awards for universal credit. I declare an interest as the parent of a young lady in receipt of disability living allowance (DLA). You said that you remain concerned that the Bill does not identify the negative impact on women with respect to the payment of universal credit. That remains your position?
214. **Mrs Collins:** That was our position in respect of the original consultation on the equality impact assessment. We welcome in the Bill that there has been a shift from automatic payment to the main earner, which is what our concern had been at the end of last year, to payment to the primary carer. That is more likely to be targeted effectively in our view, but we recognise that that is usually the mother of the children.
215. **Mr McDevitt:** So, you do not have the view now that the Bill has a negative impact on women?
216. **Mrs Collins:** I think that is a very wide question. We were concerned about the quality of the available information and that the impact assessment did not fully look at the impacts on women and, indeed, some of the other categories.
217. **Mr McDevitt:** What is your opinion right now? In your opinion, right now, given the information available to you, does the Bill have a negative impact on women?
218. **Mrs Collins:** There are some areas where we have queries, and those have been set out for you to see. As much of the detail will be contained in regulations, it is hard to say in a very black and white way that there are negative impacts or whether mitigating measures will be brought to bear. It is an area that we and the Committee, I am sure, will want to continue to scrutinise.
219. **Mr McDevitt:** So, is your answer that you cannot say?
220. **Mrs Collins:** The answer is that it is difficult to say in the absence of the details of the regulations.
221. **Ms Lisa King (Equality Commission for Northern Ireland):** I just want to add to that our procedural understanding of how the EQIA should be set out. The Department looked at each of the individual policy proposals, their data and the inequalities. It is that upon which we comment. It is, therefore,

very difficult to make an overarching assessment of the Bill as a whole. You would anticipate the Department looking at each of the main provisions, in and of itself, for potential inequalities. Therefore, the data would be there to support the potential adverse impact. It works through on that basis. There may be areas of the Bill where we have commented on one bit, but that does not necessarily represent the entirety of what the potential impact on women could be.

222. **Mr McDevitt:** That, as I understand it, presents the Committee with a dilemma. This Committee has a duty to look at the Bill as a whole and consider the equality and human rights implications of the Bill. The Equality Commission is the body we look to for advice about whether the Bill is discriminatory or whether aspects of the Bill do not meet the equality standards set out in law in this jurisdiction. We have a problem. I need to know whether you feel that the Bill as a whole, or aspects of the Bill, are discriminatory, or potentially discriminatory, against any of the section 75 groups.

223. **Mrs Collins:** The role of the Equality Commission is to provide advice to public authorities and others about the application of the duties. We have raised concerns about the application of the equality duties in respect of the equality impact assessment and the implications of some of the main provisions of the proposals and, now, the Bill. Giving an overall assessment of whether the legislation is discriminatory is not straightforward because of the nature of the legislation itself — it is an enabling framework — and because we have not seen the detail of some of the regulations. The Department is under an obligation to pay due regard to the need to promote equality of opportunity. That does not necessarily dictate one particular overarching policy outcome. What the Department has to do is ensure that the equality impacts are taken into account in developing the legislation. Where there are adverse

impacts, the Department must take steps to mitigate those.

224. **Mr Wardlow:** It is extremely hard. I know that very often it is hard. Even when I came here nine months ago, I was trying hard to get my head around what the groups in section 75 are. There is a perception that section 75 is a policy. It is not; it is a framework. It places a duty on statutory and public bodies to take it into consideration when they are framing policy. What we have expressed here are some concerns in some areas. We have been engaged with DSD, which will be the policy holder. We have got some assurances that, as this rolls out, each of the regulations will be taken across section 75. We will have the opportunity to comment, at that point, if an EQIA comes out. However, it is impossible to say whether this is discriminatory. It is not that we do not want to say, but it is just not possible, I am afraid, Conall, given the fact that this is enabling legislation and the detail will be in the regulations as they roll out. What we have said is that we have some concerns in some areas, and will continue to address those until there is a sense coming out the other end in the regulations of what this will actually mean to a person receiving the benefit, for example.

225. **The Chairperson:** We have other questioners. Before we move to them, let me say that Conall is, I think, on the right track here. You seem to have difficulty in giving us a yes or no answer. Bear in mind that the regulations and subordinate legislation will come later. Presumably they will be subject to the same screening and scrutiny as the Bill. We are charged with looking at the Bill in terms of human rights and equality issues. Is there any aspect of the Bill, as it stands, that you would have major concerns about and that might be in breach of the appropriate legislation?

226. **Mrs Collins:** We set those concerns out in our paper for the Committee for Social Development. I understand that you have copies. We set out some areas in which we had queries and questions. Going back to what

the chief commissioner said, the application of the equality duty requires public authorities to take equality considerations into account. We need evidence from the Department that that is ongoing, and so do you. *[Inaudible due to mobile phone interference.]* However, that does not dictate a particular policy conclusion. It is a matter for the legislature to decide on the policy conclusions. On the face of it, we have set out queries around potential impacts on people with disabilities and in respect of housing, lone parent conditionality, and so on. However, as to the application of the duties, we need evidence from the Department that it is considering the equality implications properly and, where it says that there are adverse impacts, considering measures to mitigate those. To go back to what Michael said, it is not possible to say whether the whole Bill is discriminatory. That is not the purpose of the section 75 legislation. Section 75 legislation is a mainstreaming tool, if that helps.

227. **Mr Wardlow:** As I said to Conall, it would be very easy if we could say yes or no. If this had a measurable forensic outcome, we could say that. In other words, if this was a policy that should provide x, y and z, we could say that. The problem is that it is not. It says that we should present a policy in a context of the section 75 requirements on a public body. Our responsibility is to look at whether DSD, when framing the legislation and putting it forward to the Assembly, took into consideration the duties that it has under section 75. That is partly done by looking at what DSD did, and through the EQIA and engagement. We are saying that there are some areas of concern. The regulations allow you in the Assembly, and others, to make sure that some of those issues, and the concerns raised by other colleagues, are taken into consideration before the regulations of the enabling legislation roll out. That is where we will be able to see whether a plus b equals c. At the minute, this is high-level, enabling legislation. We have expressed concerns about some elements of the legislation. In a sense, that should help to form the views on what the regulations should take into consideration. We are giving you some high-level indicators of — *[Inaudible due to mobile phone interference.]*
228. **The Chairperson:** I am a simple person. *[Inaudible due to mobile phone interference.]* — as that stands at the moment, because you have raised concerns. Is there nothing you could identify to show where there is potentially a breach?
229. **Mr Wardlow:** It is not so much about a breach. We have identified the concerns that we believe we have with the Bill. Is that right?
230. **Mrs Collins:** Yes.
231. **Mr Wardlow:** I am just not sure that you understand what our role is and what we can and cannot do.
232. **The Chairperson:** I am taking your role to be that of expert witness.
233. **Mr Wardlow:** Absolutely.
234. **The Chairperson:** I do not mean to be offensive.
235. **Mr Wardlow:** No, no; not at all.
236. **The Chairperson:** We know each other too well for that. I think that we are entitled to a bit more definition from you on what we have so far. There has been a lot of talk about procedure and worries down the line about regulations, or the fact that the Department may or may not have adopted the correct procedure in bringing the Bill to this point. We are here to look at the legislation as it stands at this point and eventually make a recommendation to the Assembly as to whether we think the legislation is fit for purpose in terms of human rights and equality. You are not helping us.
237. **Mrs Collins:** I am sorry that we are not helping. We set out the requirements on the Department in relation to its equality duties to try to provide a framework in which DSD has to work under section 75 obligations. We set out, quite publicly, the concerns we raised about that. In

- our paper to the Social Development Committee, we set out concerns and queries about some equality issues on the face of the Bill. For example, on disability, we have indicated that we have some queries about whether the removal of the direct link between receipt of disability premium in addition to income support, and so on, should be considered and why the standard disability premium addition to income support is not considered in this clause. There are lots of questions about passported benefits for people with disabilities, such as the operation of the blue badge system. So, we have a lot of detailed queries and concerns about the Bill and the potential impact on equality groups. I was hoping that that would also help you in looking at the Bill.
238. As regards breach of the legislation, as you termed it, we can investigate a Department or any public authority where there is a belief that it may have breached the commitments of its equality scheme. That option is open to the commission, but it is different from saying that something is discriminatory, if that makes sense.
239. **The Chairperson:** We will move to members.
240. **Mr Brady:** Thanks very much for your presentation. Essentially, the Department came up with two EQIAs and appears to have fallen short on both of them. We are told that it is an organic, living document. Without wanting to put you on the spot, are you confident that the Department will come up with one that actually addresses the issues?
241. The other problem, which applies to all of us, is that this is enabling legislation. As far as we know, the regulations in Britain will not be available until sometime this month. The regulations here will probably not be available until February. Presumably, a lot of the stuff in the regulations here will be predicated on the regulations that come out in Britain. If it is enabling legislation, it is incumbent on us all to get it right because the regulations flow from that.
242. You have addressed the whole issue around disability fairly clearly. One of the issues is the reduction in housing benefit. People who have disabilities may have to move out of accommodation that has been adapted for a particular purpose — *[Inaudible due to mobile phone interference.]* It seems to me that, if the Department is doing an EQIA, that information is in front of them. That is easily addressed, but the Department has not addressed it. At one stage — *[Inaudible due to mobile phone interference.]* If the enabling legislation is flawed, it is reasonable to assume that everything that flows from it will be flawed. I suppose that you have not been able to — *[Inaudible due to mobile phone interference.]* The difficulty is in respect of the regulation and guidance. How the sanctions are implemented will depend a lot on the guidance that is given to social security staff, for instance. That will also flow from the regulations, and there is an inherent difficulty there. There are issues that you have addressed to some degree that the Department should have addressed. That has not changed. Nothing has changed in the fabric of the Bill. Those are issues that need to be addressed. I am not sure that you are putting forward ideas of how they might be addressed as much as flagging up those issues. We need to look at how those issues are addressed to make sure that the Bill is compliant with equality and human rights legislation.
243. All the groups that came before the Social Development Committee, including yourselves and the Human Rights Commission, expressed grave concerns about the Bill. Nobody is arguing with the underlying principle that it is better to work than to be on benefit and that universal credit is a good idea in theory; although whether it will ever work is another issue. However, there is an inherent difficulty in that because of the lack of regulations and guidance. That is why it is important that we get the enabling legislation right.

244. **Mrs Collins:** That is right. Indeed, that is why we looked through the Bill when it was published to identify areas where we thought there may be issues. You mentioned the one about housing benefit and underoccupancy. We raised queries about whether any assessments for housing benefit will include or take into account the needs of tenants who are disabled or separated from their partners and may require additional rooms to accommodate carers, for example, and/or children, and we queried whether assessments for housing benefit will fully take into account the tenant's ability to move to new accommodation, given the particular patterns of social housing in Northern Ireland. So, we have raised concrete issues about the Bill, and they are important.
245. Going back to the equality impact assessment, the Department needs to understand that not everything is on a level playing field. Even if it is desirable that people should be working, the fact is that that is more difficult for some people than others, either because of their disability or, with lone parents, because of the lack of childcare.
246. **Mr Brady:** Can I raise a point on the issue of lone parents and the lack of childcare? The age is five, but children here start school at four. I presume that they will be at school at the age of four, but that is going down to three and then a one-year-old. So, that will magnify the problem rather than solve it, because of the lack of affordable childcare or, in some cases, any childcare. That will present huge issues as the legislation kicks in because it will go right down to a one-year-old child, and the parent will then be subsumed into the employment market — or the lack of employment market might be a better way of putting it.
247. **Mr Wardlow:** If it were possible for us to give a yes or no answer to the question of whether this is compliant, it would be a wonderful world. However, the way that our responsibilities and the legislation are framed does not allow you to do that. It is not that we do not want to but that we cannot. We said that we had concerns about the process of the EQIA, and there is still work to be done on that. We had some concerns about the Bill, and we got into some fairly detailed issues. It was not just high-level things. We expressed some concern about the detail of the legislation and made some suggestions. It is not as if this was a light touch. We have said that there is a way to go, and there was a way to go on the equality impact assessment. We made some recommendations and suggestions and said that we cannot take our eye off the regulations because that is where the detail will be. Before that happens, we have some detail in here that we think will be helpful when DSD and this Committee are looking towards developing the regulations. That is probably as far as we can go on this.
248. **Mr Brady:** If you have flagged up concerns — obviously you have — it would not be unreasonable for the Department to address those concerns and come back to you on how they might be addressed in compliance with equality legislation.
249. **Mr Wardlow:** With some of this, we do not know what the impact will be, so we do not know what the Department might say about mitigation. Some of this is at that level already, and, with other things, we are waiting for that to happen.
250. **Mr Brady:** It would be reasonable to assume that the regulations here will not be drastically different from the ones in Britain.
251. **Mr Wardlow:** Probably not.
252. **Mr Brady:** That is taken as a given. So, presumably by this month, the Department will have some idea of how the variations in the context of the regulations may impact further down the road.
253. **Mr Wardlow:** That is very reasonable.
254. **Mr Swann:** Apologies for missing the start of your presentation, folks. Has DSD actioned any of your recommendations in the EQIA?

255. **Mrs Collins:** It has certainly given us a commitment that it is looking at the data that it has and trying to go back over the equality impact assessment and do it again. It had taken on board some comments in between the original EQIA and the one that it published in April, but, in our view, that was insufficient. As I said in the presentation, we have been in correspondence and discussion with the Department about it, and one of its initial reasons for not having done a better equality impact assessment was the lack of data. The Department now has additional data that it thinks will be helpful in assessing the impact.
256. **Mr Swann:** Do you have a timeline for when you expect that to be completed?
257. **Mrs Collins:** The Department is working on it at the moment. I do not have a precise timescale.
258. **Mr Swann:** Could you estimate it?
259. **Mrs Collins:** It is ongoing. We said that it is important to do it so that the impacts of the regulations can be taken into account. I hope that it will be in early course.
260. **Mr Swann:** I want to go back to the point you made earlier about housing and access for people with disabilities and other section 75 groups. With regard to housing and the sanctions employed, is there anything in the Bill that would increase the likelihood of destitution for certain groups?
261. **Mrs Collins:** I think that there has to be a concern about the penalties for non-compliance with various elements, so that people, certainly disabled people and older people, are not unduly penalised for failing to meet requirements, and there certainly has to be concern about the most vulnerable in society.
262. **Ms King:** I have just one specific point in relation to the information presented, and it is about the issue of occupancy, which, I understand, has been of particular interest to Assembly Members.
263. The information contained in the impact assessment still does not take into account the nature of the housing stock and the availability of smaller-sized units with one or two bedrooms. Information is presented in ministerial statements about the housing strategy, but the final EQIA did not take into account, or did not present, any information about the likely impact, given the particular circumstances of our housing stock and social housing stock. So, there are concerns about the talk of promoting greater movement within the housing market. It is presented in those terms, rather than identifying the potential risks among certain groups of people. The occupancy requirements, and, therefore, the reduction in housing benefit, may have the impact that you are talking about.
264. **Mr Elliott:** Thank you for the presentation. I suppose that it is a wee bit difficult to get to the bottom of where we want to go as a Committee. I have just been looking at why the Committee was set up, namely to consider:
- "whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights."
265. If we cannot get an answer from the expert witnesses — as you call them, Chair — it will be very difficult for those of us who are not experts to make that decision or call. So I put that down as a marker. It is going to be very difficult for us to make a firm decision on this as a Committee.
266. On top of that, I will put into my own words how I think you have explained your role. You are not here to give an opinion or make a decision as to whether the legislation is competent in equality issues. Rather, you are here to say whether the outworkings of that legislation will impact on any of the section 75 groups. Is that reasonable?
267. **Mr Wardlaw:** There is a wee bit more, because we have a duty with regard to the EQIA as well. I think that Lord Morrow identified that. In fact, there are two issues here. One is the Bill itself;

- the other is the process of the EQIA. We have a role in both. We have expressed concerns about the process of the EQIA, and we have taken up quite a bit of time on that. We have also expressed some concerns about the detail of the Bill. So, we are here to say, from our perspective, here are our concerns about the process and here is what we remain concerned about in the Bill itself.
268. **Mr Elliott:** You have raised concerns. Setting aside the EQIA for a moment and just dealing with the Bill, if any of the concerns that you have raised are not addressed in the Bill, do you believe that they would give rise to equality issues in the outworkings of that legislation around the section 75 issues?
269. **Mrs Collins:** As I said earlier, section 75 is a policy mainstreaming tool. It does not accord individuals with rights. That is a distinction that may be helpful to the Committee. If there was a provision of the Bill that remained either unclear or had the potential to be discriminatory, we would have to look at the anti-discrimination legislation framework to see whether there would be a cause of action under it. There is different application across the anti-discrimination framework as to whether social security as a public function is covered at all. That is a whole other set of issues. The framework —
270. **Mr Elliott:** You are actually suggesting that this may not be covered by equality legislation?
271. **Mrs Collins:** Social security as a public function is covered by race and disability legislation but not by the gender equality legislation. For example, all of it is covered by the disability discrimination legislation. The Department, in developing its proposals, is covered by the duties under section 75 of the Northern Ireland Act, and that is where the mainstream equality duty kicks in.
272. **Mr Elliott:** It gets even more confusing as time goes on. If parts of it are not covered and some parts are covered, are you saying that only the parts that are covered in general terms can be looked at by the Equality Commission, or can you look at the entire process?
273. **Mrs Collins:** There are two separate processes. One is our role in advising public authorities and others on the effective application of the duties, and we also have powers and duties under separate anti-discrimination statutes. Social security is a public function for the purposes of most of the anti-discrimination statutes but not, for example, gender.
274. **Mr Elliott:** What are issues that fall outside it, such as gender, covered by? Are they covered in any respect?
275. **Mrs Collins:** In the social security legislation?
276. **Mr Elliott:** Yes.
277. **Mrs Collins:** Not under anti-discrimination legislation on the grounds of gender. There are two separate sets of provisions. There are the separate anti-discrimination pieces of legislation — disability, race, gender, fair employment, and so on — and there are the equality duties that are contained in the Northern Ireland Act.
278. **Mr Elliott:** Some members have asked about the equality impact assessment. You said that it is work in progress, and I accept that. Either in that or in the wider legislative issues, do you get the distinct impression that a lot of the issues that you have raised will be positively addressed at the end of the legislative process, either through primary legislation or through regulations?
279. **Mrs Collins:** It would be wrong to say that we have had a substantive discussion at senior level on the substantive issues that we have raised about the Bill, which came out a few weeks ago. I do not think that we can say that we are confident or not. We have a heavy reliance on Committees such as yours to raise these issues through the legislative process.
280. **Mr Elliott:** I do not even know whether it is possible, but, if a number of the regulations could be read at the

- same time as the primary legislation, would that be helpful in giving a better determination?
281. **Mr Wardlow:** That is the point at the minute. This all seems like a labyrinth, and you are right, because equality legislation is not sitting in one place under one enabling Act, for example. Therefore, as my colleague said, there are the duties that DSD has in framing the legislation with all of the equality impacts. If and when the legislation becomes law, other anti-discrimination legislation will apply, from race legislation to disability legislation. As Evelyn said, gender does not fall within that. That is just out there. Obviously, the more detail that we have about what this looks like and the impact that it will have, the more there is the possibility of talking about mitigation. The more we know what falls out with parity, for example, which we have in Northern Ireland and which you as a legislative Assembly have some authority over, the more that we can say where changes can be made. For example, there have already been two cases where the Minister has made some changes. It means that things can happen, but you need to know what the outworking will be before you can make those specific recommendations. That is the problem. The problem is that there is a greyness out there, if I can put it that way.
282. **Mr Elliott:** There certainly is. There is a lot of greyness.
283. **The Chairperson:** Michael, the timescale that we have is very tight. You will not be able to give us any more firm advice on the day that the Bill receives Royal Assent than you are giving us now, because you will not know what the regulations are and what is coming down the line behind the Bill. We will be no further on. We are no further on now. Again, I do not mean any offence by that.
284. **Mr Wardlow:** I appreciate that, and none is taken.
285. **The Chairperson:** What you have told us today we could have gleaned from your original presentation to the Committee
- for Social Development. Nothing has been advanced, and nothing has been made clearer. Forgive me if I missed this a few minutes ago, but the equality impact assessment was to be updated, and I believe that you had some sort of assurance from DSD in August that it would be updated. Have you been consulted in any way about that?
286. **Mrs Collins:** We have not been consulted. We have had a number of conversations with departmental officials about the progress that they are making on it. It is one of the differences, potentially, if further work were done to assess the impacts and mitigating measures were considered at that stage. That is the possibility of the Department, as we understand it, trying to update its equality impact assessment.
287. **Mr Wardlow:** In answer to your question about whether you have learned anything today that you could not have learned from reading our submission, part of this is about helping those of you who are not on the Committee for Social Development and who are perhaps new to this. This is quite a complex framework, and it is impossible to say yes or no to some of the questions. What we have tried to say is, "This is what we believe you and the Committee, in your scrutiny role, need to take into consideration. These are things that we and others have highlighted, and the detail will be in the regulations". As Evelyn said, looking at the detail that was not available at the second EQIA is important in order to see what data that brings and what impact, if any, that has on the EQIA, with the potential for mitigation. When we receive that, we will have another opportunity to look at this and perhaps provide more detail; absolutely.
288. **Mr McDevitt:** I hear what you are saying about waiting for more data. Will that be local data or an analysis of the situation in GB?
289. **Mrs Collins:** I understand that HMRC released more local data to enable the Department to look at the issues.

290. **Mr McDevitt:** So, you will be able to consider the potential impact on, for example, women and children against data from Northern Ireland.
291. **Mrs Collins:** That is what we understand.
292. **Mr McDevitt:** When exactly will you see that data?
293. **Mrs Collins:** The Department has the data at the moment. We actually have not asked for the data. The duty is on the Department to undertake the assessment, but we will continue to pressurise it into concluding that.
294. **Mr McDevitt:** You said that the EQIA is an organic document, but it cannot be so organic that it is elastic. It needs to be complete before we are asked to vote at Final Stage, otherwise you cannot give us clear advice. The parliamentary timescale is pretty clear, so surely you must have a very definite view on when you need this back so that you can consider it and advise the House and others in the policy community on whether, in light of that new data, there is a greater likelihood or less likelihood that this meets the EQIA standard. So, when will you have advice to give us?
295. **Mrs Collins:** I said earlier that we had not got a clear indication from the Department as to when it will give us an assurance that it has looked further at the data. We can go back to the Department and ask it and then communicate that back to the Committee. We are happy to come back with more detail, if the Committee would find that helpful.
296. **The Chairperson:** This Committee has 30 working days, until around 15 January.
297. **Mr Weir:** Even if the data is not ready in that time frame, the Committee for Social Development will take over, so there will be a Committee to receive it.
298. **Ms McGahan:** My comment relates to clause 38, which deals with capability for work or work-related activity. I fill out DLA forms and forms for people who have to attend tribunals, and what I have witnessed is that medical evidence is not enough; it is not given primacy. All the questions are about how a person's condition affects them, despite the fact that there is excellent medical evidence. If an individual says, "I can make a cup of tea in the morning. I can make a bite of dinner, which could be as simple as a microwaveable dinner, and I can go to bed", he has lost his case, despite the fact that he is not fit to work. Medical evidence needs to be given primacy. I witness that every single week in my constituency, and it is scary. Medical evidence is not given primacy. I do not know whether you have any views on that. I know you mentioned that a couple of different things should be taken into consideration. I have seen, at a practical level, that this does not work.
299. **Mrs Collins:** We have certainly raised concerns about the assessments and the changes in assessment for eligibility to benefits for people with disabilities. There are issues. We have seen, even in relation to the changes, that approximately a third of work capability assessments are overturned on appeal. That says that something needs to be looked at in that context. So, certainly, we agree that the overall sense of how things are assessed needs to be looked at carefully so that the process operates fairly.
300. **Mr Wardlow:** In respect of disability legislation, we have raised, in another place, the social model versus the medical model of disability, in that people should not be classified as disabled because of a medical condition. The social context in which they are disabled by other things should be the model. So, in another place, we are supporting exactly what you are saying. There is a blunt-tool approach, if you like.
301. **Ms McGahan:** I find that, with some of these interrogations that you can get — and there is no other word for it — I have to sit down and convince those people to go back to appeal their case. It is horrendous. I do not know whether

- you realise just how bad it is on the ground. I see this practically.
302. **Mr Wardlow:** We take that point on board, Chair.
303. **The Chairperson:** OK. Nobody else wishes to speak. Michael, Evelyn and Lisa, thank you very much. We may talk again.
304. **Mr Wardlow:** I want to close by saying that I apologise if, for whatever reason, there has not been a meeting of the expectations that you had of what we were able to say or do. However, given the fact that colleagues are now clearer about our role, we would be more than happy to come back within that level of expectation, particularly if data is available, and so on, to continue to give you and the Committee for Social Development our support. I wish you all the best in your deliberations.
305. **The Chairperson:** Thank you very much.

3 December 2012

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Lord Morrow
 Mr Alastair Ross

Also in attendance:

Ms Megan Fearon
 Mr Conall McDevitt

Witnesses:

Mr Colin Caughey	<i>Northern Ireland</i>
Professor Michael O'Flaherty	<i>Human Rights</i>
Dr David Russell	<i>Commission</i>

306. **The Chairperson:** I welcome Professor Michael O'Flaherty, chief commissioner of the Northern Ireland Human Rights Commission; David Russell, deputy director; and Colin Caughey, policy officer. I invite you to make your presentation. I am sorry that we kept you waiting. I know that you are tight for time.
307. **Professor Michael O'Flaherty (Northern Ireland Human Rights Commission):** Thank you very much, Mr Chairperson. I thank the Committee for inviting us. We are giving our advice today, pursuant to the provisions of the Northern Ireland Act 1998, where, under section 9, we are instructed to advise the Assembly on whether a Bill is compatible with human rights. In so doing, and by human rights, we refer only to those human rights treaties that have been ratified by the United Kingdom, many of which are engaged around the work of this Committee.
308. Before getting to that, the Human Rights Commission warmly welcomes the establishment of the Committee. We consider that employing the ad hoc device in the 1998 Act is a very welcome step by the Assembly in ensuring compliance with international human rights standards. Before I begin, if I may, I should say that the standards that we have in mind today are the European Social Charter; the European Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the UN Convention on the Rights of the Child; the UN Convention on the Elimination of All Forms of Discrimination Against Women; and the UN Convention on the Elimination of All Forms of Racial Discrimination. All those treaties, which have all been ratified by the UK, will inform what we present to you today. We will capture our comments in written form during the week and ensure that that is delivered to you.
309. Let me begin with four general observations, some of which have been triggered by the benefit of listening to the Equality Commission's dialogue with you. The first of those observations is that, in assessing the Bill's compliance with human rights obligations, I invite you not to take an overly narrow interpretation of compliance — in other words, compliance of the bare language of the text with international human rights obligations — but also the application or possible application of the Bill in terms of the international treaties. I say that because it is the approach that is taken by the Joint Committee at Westminster. It looks as much at possible compliance or application issues as it does at the bare letter of the Bill that is before it. It is on the basis of both that it draws its conclusions.
310. Secondly, the Joint Committee is also very willing to look at issues of legal certainty. There have been a number of instances when it has been concerned that the principle of legal certainty has been insufficiently protected or honoured by a Bill. That has caused it to express concern. Although nobody

- challenges the function of an enabling law, it seems to us that it would be well within your remit to consider that even though it is enabling, it is missing a level of detail which is required to ensure that it is applied in a human rights compliant manner.
311. Third of the four general observations is that, as it is an enabling piece of legislation, and, to a very large extent, dependent on the nature of regulations, including in terms of assessing whether it is human rights compliant, we think that it is important that you look at putting stronger elements in the Bill whereby the regulations come before you by way of the affirmative resolution procedure. You have been asking our predecessors whether the Bill is compliant or not compliant with human rights. I will give you my first compliance and non-compliance view. If we do not get sturdier use of the affirmative resolution procedure in the Bill for the purposes of the Assembly's control of regulations, a serious issue of compliance would certainly arise.
312. Finally, in terms of general introduction, we are concerned that your job is being made all the harder by the absence of basic resource material which you would have if you were in Westminster. According to Treasury guidelines, it is required for the relevant Departments to undertake distributional impact assessments of a Bill, which look at the impact of a Bill across any number of different categories, one of which is human rights. Within the category of human rights, the Treasury regulations at Westminster stipulate that the human rights assessment should take account of rights under the socio-economic treaties: the European Social Charter and the Covenant on Economic, Social and Cultural Rights. If we were in Westminster, you would have a number of those impact assessment documents, developed by the relevant Departments. It is our understanding that that has not been done by the Executive. That raises an issue. You will be the judge of whether that raises an issue of compliance with regulations.
- However, if such impact assessments exist, they are not in the public domain. Certainly, we have not been able to access them.
313. If you will allow me, I will turn to some specific points in terms of human rights compliance of elements of the Bill. They are in no particular order and are quite disparate. The first has to do with the rationale for the disability living allowance adjustments and the introduction of personal independence payments (PIP). The Department for Work and Pensions (DWP) stated at Westminster that the purpose of the change to PIP is to ensure a 20% reduction in the budget. We understand that the same rationale is being presented with regard to Northern Ireland. However, we have no evidence that that 20% has been calculated taking account of the specific situation of disabled people in Northern Ireland. Until it is disaggregated and individuated to the situation of Northern Ireland, that 20% would appear to be arbitrary, and that would constitute an inconsistency with human rights obligations.
314. Again, however, we lack the knowledge. If it can be demonstrated to this Committee that that 20% is a scientifically calculated assessment based on solid, disaggregated data for Northern Ireland, then it is fine. However, that information does not appear to be in the public domain.
315. Next, issues of equality. I will raise just one, because obviously the Equality Commission spoke to this in detail. Equality is not just a matter of section 75. Equality is a matter of ensuring that this Bill will not be likely to discriminate across all the grounds of non-discrimination. The equality assessments that have been done with regard to the Bill in Northern Ireland have not engaged the discrimination grounds of race or religion. Therefore, you do not have data before you to determine whether the welfare reform provisions would raise issues of discrimination on the grounds of race or religion.

316. For example, you do not have the information before you with regard to the impact on Travellers, who have been identified by the UK Government and the United Nations as an ethnic group and, therefore, within the category of race, or of migrant workers, for example those migrant workers who do not have any competence in the English language. We are not saying there is any deliberate targeting; we are saying that you have not been delivered the material you need to make your assessment.
317. It has been stated by the Government that the whole welfare reform project is intended, among other things, to assist people back into work. However, the Human Rights Commission suggests to you that you have been given no evidence as to how these precise provisions will assist people back into work. We are concerned here, not in just general terms but also because I think everybody would agree that the statistics for the success of return-to-work programmes in existence now are dreadful. Right now, the statistics indicate that 3.5% of participants in return-to-work programmes find work within six months. If that is the rate of success of the current projects and programmes, what is it about welfare reform that is going to have such an extraordinarily better impact? We suggest that that is information that needs to be put to you by the relevant Departments.
318. The issue of carers of small children has already come up this afternoon. It is an issue that has received considerable attention in the Assembly, so I do not need to speak to it at any great length. However, the Bill as it is currently fashioned in the light of Northern Ireland and its situation is not human rights compliant. It is as simple as that. At the moment, the average cost of full-time childcare is £156 a week. What is more, supply does not match demand. Therefore, depriving a mother or parent of benefits because of unwillingness to go to work, when the childcare that they would require to contract is of the sum of £600 a month — £7,000 a year — is very troubling. That has not been addressed as of yet and is specific to Northern Ireland, because there is better access to affordable childcare elsewhere in GB.
319. Private sector actors are, potentially, given a large place in the delivery of the welfare services under welfare reform, including in undertaking the assessments that may result in the sanctioning of individuals. There is nothing inherently wrong with that. That problem is that the Bill fails to make clear that when those private sector actors are carrying out that vital public function, they are subject to the Human Rights Act 1998. If the Department carried out the function, there would be no issue; the Human Rights Act 1998 would apply to how the Department would treat those people. At the moment, the Bill does not make clear that the privately contracted agents would be so covered. Again, that is needed to achieve human rights compliance.
320. In the case of a sanction being applied on an individual, there is a risk, under the current provisions, of a person falling into destitution. That is a profound human rights issue. The problem is that the legislation does not make adequately clear the bridge between the imposition of the sanction and the engagement of the hardship payments. Under the terms of the Bill as we currently have it before us, there could be a considerable gap before termination of benefits for the purposes of sanction and the kicking in of those hardship payments that are designed to prevent destitution. The regulation of that potential gap period is where the problem is.
321. Social housing is a matter that Assembly Members have looked at length at already. Again, it does not require any vast detail from me. Let me instead put some figures to you. I refer to the manner by which having an excessively large domicile will cause you to be penalised for purposes of social welfare. Taking an average rent, the tenant on full housing benefit who is underoccupying by one bedroom will

- see their benefits reduced by £8.25 per week. For a tenant underoccupying two or more bedrooms, the figures would be £14.70 per week. It is estimated that the group of people that we are talking about is not tiny; the group of people affected by the penalisation scheme for unnecessary housing space is likely to be 32,668 tenants. That, of itself, does not raise a human rights concern. The concern arises because of the particular structure of housing in Northern Ireland. Traditionally, housing units have been built bigger than in GB. Where in GB it is a two-bed flat, here it has been a three-bed terraced house or something of that nature. The evidence suggests to us that there are just not enough alternative suitably sized housing units. Secondly, there is the issue with which you are much more familiar than me: the de facto sectarian segregation of housing, which further limits the pool of alternative housing and leaves people potentially in the situation of having to stay in their original home and losing benefits as a result.
322. One last point, if I may. Again, it has to do with housing. The commission is cognisant of the many contexts in which a person who would normally be perfectly appropriately housed in a small unit has exceptional needs whereby a bigger housing unit is required. One example is a disabled person who has a live-in carer. We do not see in the present structure of the Bill an acknowledgement of exceptional circumstances such as those. Another example would be a separated parent whose child occasionally visits. Perhaps the other parent has the custody, but the child comes on the weekend or whatever. The need to have another bedroom for that child does not appear to be currently identified as an exception for the purpose of the imposition of the penalties.
323. Those are the concerns. I realise that all of them have been put to you by us before. However, we spoke on human rights the last time round. You are the ad hoc human rights Committee, so we have no choice but to bring them back to you again. We also consider that the Bill is fixable. With your scrutiny, its elements can be tightened up. The regulatory system can be brought under the tighter scrutiny of the Assembly. As a result of all of that, we might then be confident that the Bill would be compliant with the United Kingdom's international human rights standards.
324. **The Chairperson:** Do either of your colleagues want in?
325. **Professor O'Flaherty:** My colleagues will come in to answer questions if I do not have the required level of detail.
326. **The Chairperson:** Thanks, Michael. You have been very forthright.
327. In the various points that you made, you often said that there are unique circumstances in Northern Ireland. If our circumstances were not unique, we could just follow the UK legislation. Are there any of those points on which you do not think that the issue is the difference between us and the UK? To put it another way, are there any areas in which the UK legislation is questionable as well?
328. **Professor O'Flaherty:** If you look at the analysis of the equivalent Committee — the Joint Committee on Human Rights — you will see that it raised a number of the concerns that I have brought to you today. For example, it raised concerns about the high degree of subsequent regulation, the need for very close scrutiny of the subsequent regulation, and so forth. Those concerns are generic across the United Kingdom.
329. **The Chairperson:** To pick one of them, there is a question over the whole concept of assisting people back into work. You mentioned that only 3.5% of people get back to work within six months under the present scheme. Surely that rate is a consequence of our economic situation. The Bill is for good times and for bad. What is the point that you are making?
330. **Professor O'Flaherty:** The point I am making is that if the Bill is intended to get people back into work and if it

- were likely to succeed, that would be a human-rights positive, because people have a right to access to work. It is difficult to make that human-rights-positive argument in the light of the failure to make clear what is so different about this strategy from previous strategies that makes it any more likely to be successful.
331. **Mr Colin Caughey (Northern Ireland Human Rights Commission):** Under international human rights law, there are obligations on the state to ensure that there is access to adequate training for the people who wish to exercise their right to work — effectively, to be employed. The key point that we are highlighting is the need to ensure that the mechanisms in place are robust in assisting people into work.
332. **The Chairperson:** That is for another Department.
333. **Professor O’Flaherty:** That is right.
334. **Mr McDevitt:** Paragraph 10 of the commission’s original submission struck me. It states:
- “The Bill has significant implications for the enjoyment of socio-economic rights as recognised in the ICESCR and European Social Charter. International standards, ratified by the UK Government and binding on the NI Executive, require the removal of barriers so as to ensure the progressive realisation of socio-economic rights.”*
335. If I heard you correctly, Michael, you were saying that the Bill as drafted — because of its permissive nature and the fact that it is not clear that all enabling legislation would require affirmative action and therefore a guaranteed future level of parliamentary scrutiny, and because of its impact on childcare provisions and the other stuff — fails to meet that basic test.
336. **Professor O’Flaherty:** We have no quarrel with the legislative scheme. The Commission has no position on whether welfare reform is a good or bad thing. That is well outside our competence. The Bill, on the face of it, raises concerns, which I have outlined.
337. **Mr McDevitt:** Delving into some of the specifics, one scenario that has been testing colleagues of mine is that where someone who is in a hospital or a care home has their disability living allowance (DLA), or PIP as it will become, docked while they are in care. Would taking away such a payment from someone while they are in care or in hospital affect their right to be fully involved in public life? Would it undermine a right to participate fully in society, simply because they are in hospital or in care?
338. **Dr David Russell (Northern Ireland Human Rights Commission):** Under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), there is a protection of the right to independent living, so there is a potential for the rights of disabled people to be engaged under article 19.
339. **Professor O’Flaherty:** This is the Committee at which we should be very legal and very correct. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) is the right to participate in the public life of society. If it were determined that the removal of benefits from a person in care precluded or seriously impeded them from enjoying public life, such as standing for election, choosing representatives, and so on, that would raise the possibility of a violation of the ICCPR.
340. **Mr McDevitt:** Am I hearing you correctly when you say that the two policy dimensions of the Bill that are most concerning to you, because of the uniqueness or the differences in circumstances here in the North versus GB, are childcare, because of the very poor provision of childcare here, and the housing changes, again because of the unique circumstances with our housing stock, the fact that we tend to have larger public housing and the unfortunately segregated nature of it?
341. Am I right in saying that those are the two specific areas of the Bill where you think that, because of our local circumstances, there is most risk that the legislation could be injurious or in potential breach of certain human rights

- obligations or international human rights standards?
342. **Professor O'Flaherty:** They are two of the more obvious ones in the Bill itself, and in the absence of the Bill to take account of them. There are any number of other concerns that our colleagues in the Equality Commission have brought to you that are in elements of our submissions about which I have not spoken today that could, in a context of bad regulation, be equally problematic, but those two are already self-evident before we see any regulations.
343. **Mr McDevitt:** Finally, to be sure that we do not misunderstand Michael, you are saying that unless the Bill makes the secondary legislation such that it requires affirmative resolution procedure in the Assembly, there would be a basic question over its compatibility?
344. **Professor O'Flaherty:** That is correct, and I am confident that if the scenario that you have just described were to come about, the matter would be eventually condemned by the UN Committee on Economic, Social and Cultural Rights (CESCR) when it next reviews the United Kingdom's record.
345. **Mr McDevitt:** In other words, if the Bill did not require affirmative resolution?
346. **Professor O'Flaherty:** OK.
347. **Mr McDevitt:** Thank you.
348. **Mr Elliott:** Thank you for your presentation. I seek one point of clarification. Quite near the beginning of the presentation, Michael, you said something to the effect that a serious issue of compliance would arise. I cannot recall what that actually was.
349. **Professor O'Flaherty:** I said it so many times.
350. **Mr Elliott:** I know that. Anyway, I will check it in Hansard afterwards.
351. Just for clarification, the Bill is undergoing the same human rights scrutiny as it does in the United Kingdom Parliament. Is that right?
352. **Professor O'Flaherty:** Now that we have established this Committee, it is, yes.
353. **Mr Elliott:** It is within the same human rights competence, and it is directed under the same human rights requirements, regulations and legislation?
354. **Professor O'Flaherty:** They are the same treaties, yes.
355. **Mr Elliott:** I assume that it has been through all the human rights processes in the United Kingdom Government, and you highlighted some of the issues for which the Executive have been to individual Departments. Is there a requirement for the Executive to do this here, if it has already been done in the UK Parliament?
356. **Professor O'Flaherty:** On the technical matter of the rule, David will speak. However, I say to you that, even if there were not a formal requirement — I did not say that there was a formal requirement, because I am not sure — and even in the absence of a formal requirement, there are differing circumstances and conditions in Northern Ireland that would mean that —
357. **Mr Elliott:** I am sorry to stop you there. Are there any differing circumstances that the regulations determine? For the European Convention on Human Rights (ECHR) and the International Labour Organization (ILO), and all those areas that you have specified in paragraph 2 of your submission, are different regulations or different levels of scrutiny required in Northern Ireland from what is required elsewhere in the UK?
358. **Professor O'Flaherty:** No. However, the problem is that Northern Ireland is a devolved Administration, and therefore you are not going to get the same degree of scrutiny of the situation in Northern Ireland from a Westminster Department as you would if there were a parallel or mirrored scrutiny, at the level of the devolved Departments, which we understand did not take place, at least in the form of impact assessments of the type that I referred to earlier.
359. David may wish to add something to that.

360. **Dr Russell:** In our original submission, we highlighted that there is a requirement, because it is within the competence of the Assembly, so, under sections 6 and 24 of the Northern Ireland Act 1998, it is required that all Northern Ireland Assembly and Executive legislation should be compatible with the convention. In addition, sections 14 and 26 require compliance with international human rights obligations.
361. **Mr Elliott:** Sorry, what are those two sections?
362. **Dr Russell:** Sections 6 and 24 with regard to the European Convention, and sections 14 and 26 with regard to international human rights standards.
363. **Mr Elliott:** What specifically are they about?
364. **Dr Russell:** They are about the obligation of any legislation to be deemed compatible. In answer to your first question, it is the devolved competency of the Executive and the Assembly, and it is the responsibility within that competency to ensure compliance with the ECHR and all the ratified UN standards.
365. **Mr Elliott:** The only point that you are making is that the Northern Ireland Executive have not carried out that scrutiny and assessment role.
366. **Professor O'Flaherty:** As best we can tell.
367. **Dr Russell:** Some of the actions undertaken by DWP about following the green book of Treasury guidance were to undertake an economic appraisal that would assist in ensuring compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) may not have been replicated by the Department of Finance and Personnel (DFP).
368. **Mr Elliott:** OK. Therefore, the only argument that you are making so far is that the Northern Ireland Executive have not gone through the process of carrying out that scrutiny and those assessments. Is that reasonable? Apart from that, you have not found anything that specifically breaches any of these human rights issues.
369. **Dr Russell:** The Bill has passed through Westminster, but that does not mean that it will not be subject to a judicial review on some points. It just means that the legislation has passed. The Northern Ireland Assembly now has the opportunity to ensure that the Welfare Reform Bill here is compliant as far as possible and deals with any issues that may have been similar in the Westminster context; for example, issues that the Joint Committee on Human Rights would have raised. Therefore, part of the answer to your question is that we do not know, because so much is left to secondary legislation, and what may arise as a consequence of legislation having passed in Westminster, if it were non-compliant, could easily be replicated here. We see this as an opportunity to ensure the best human rights-compliant legislation possible by the Assembly.
370. **Mr Elliott:** To be fair, Michael said on several occasions that the Bill as it stands is not human rights-compliant for Northern Ireland.
371. **Professor O'Flaherty:** Not several: one or two.
372. **Mr Elliott:** Let me finish. Is that specifically just around procedure that is being carried out?
373. **Professor O'Flaherty:** No, no.
374. **Mr Elliott:** Let me finish. Is that simply because of the process that has been carried out by the Executive, or are there any other specific issues that you have found in the Bill that are not human rights-compliant?
375. **Professor O'Flaherty:** Yes. You built the procedural matter that you mentioned up into something much bigger than we intended. We were simply —
376. **Mr Elliott:** It was you who built it up, Michael, not me.
377. **Professor O'Flaherty:** No. I simply drew to your attention that you lacked a resource, which were the local

- departmental analyses. When I spoke to non-compliance of the Bill, I was referring to specific substantive matters, such as the failure of the Bill to deal with the peculiar situation of housing in Northern Ireland or the issue of parents of young children returning to work.
378. **Mr Elliott:** Were any of those issues flagged in the UK Bill?
379. **Professor O'Flaherty:** These issues are particular to Northern Ireland, for reasons that I gave earlier. One is the peculiar issue of the housing stock. I will not repeat it, because I said it just a moment ago. There is also the fact that there is not the same level of access to affordable childcare in Northern Ireland as there is in GB, so, even if the issues were flagged, that would not have raised the same human rights considerations elsewhere in the United Kingdom as it does here because of the particular circumstances here.
380. **Mr Elliott:** What you are saying is that the Bill could breach human rights regulations under the whole raft of things that you mentioned in paragraph 2 of your submission? It could breach the legislation in Northern Ireland but the UK legislation.
381. **Professor O'Flaherty:** We are looking at the Bill only as it is applicable to Northern Ireland. That is all that we are speaking to. We are not speaking to the —
382. **Mr Elliott:** This is very important. You are saying that there are specific circumstances in Northern Ireland. Are you saying that it could breach some of the issues in Northern Ireland but not the UK legislation?
383. **Professor O'Flaherty:** With respect, it is a false question. It is a Bill applicable to Northern Ireland about Northern Ireland. I can speak only to that context.
384. **Mr Elliott:** Yes, but the UK as a whole is subject to all these treaties. Therefore, we in Northern Ireland are subject to them. The point that I am trying to make is that, in respect of the treaties, the Northern Ireland Executive and Assembly are on the very same basis as the UK Parliament and Government. Are you saying that one of those treaties could be breached in the Northern Ireland Executive and Assembly legislation but not in the UK legislation? I find it strange that, if they are all the same treaties, the legislation can be breached here but not in mainland UK? I am only asking the question.
385. **Professor O'Flaherty:** Let me answer that by way of an analogy. There have been a number of cases where international monitoring bodies such as the UN Human Rights Committee, which I serve on, have found that particular state legislation in the United States was in violation of the United States' international obligations because of the situation in that state and because the same regulatory framework and the same violation would not exist under similar regulation in another state of the United States.
386. The treaties do not impose a homogenised obligation across the country. The treaties are there to ensure respect for the human rights of the individuals in that country in the light of the circumstances in which they find themselves. There is no problem, as a matter of international human rights law, with the notion that a devolved statute for a particular jurisdiction would raise international human rights concerns that would not be raised in a different part of that jurisdiction where the circumstances are different.
387. **The Chairperson:** I have received a request from Hansard for someone to turn off a mobile phone, please. Hansard is having difficulty picking up some of the conversation, so I give that gentle reminder.
388. **Mr Elliott:** From what Michael is saying, am I right to suggest that your answer is yes and that some of these treaties could be breached in Northern Ireland but not in the UK by using the same legislation.
389. **Professor O'Flaherty:** Not in GB — not in another part of the United Kingdom.

390. **Mr Elliott:** Yes, by using exactly the same legislation.
391. **Professor O’Flaherty:** Yes, that is correct.
392. **The Chairperson:** You mentioned the variations between individual states in the United States, but each state passes its own legislation. It is not a case of a general law across the USA breaching human rights compliance issues in one state but not another. The fact that they pass different legislation means that it may not be compatible.
393. **Professor O’Flaherty:** That is the problem with plucking examples out of the air. You may well be right, Mr Chair, so let us park my example. It will not help us.
394. **The Chairperson:** I think that I am right.
395. **Professor O’Flaherty:** My colleague David has been brave enough to say that he has an example.
396. **Dr Russell:** I will try. I will use the example of childcare responsibilities to try to explain it. In our previous submission, we said that, although there is the same onus under the Welfare Reform Bill introduced here as under the Westminster legislation, the circumstances are different in Northern Ireland for, first, the availability of childcare and, secondly, the circumstances by which the state supports childcare. In England and Wales, the Childcare Act 2006 imposes a duty on local authorities to identify and meet the needs of childcare. However, Northern Ireland has no corresponding childcare legislation, no lead Department for childcare and no implementation of a childcare strategy agreed by the Executive.
397. At the same time, we know about the disproportionate cost of childcare in Northern Ireland and the requirement for it. Therefore, a breach would be less likely to occur in England or Wales because the circumstances are different. In Northern Ireland, the difficulties and barriers to parents, particularly those of small children, will be greater. The circumstances in which there is the potential for a human rights breach are more likely to present themselves here.
398. **Mr Brady:** Thanks for the presentation. I was actually going to make that point. In Britain, there is legislation that is incumbent on the local authorities. If someone can identify a gap, the local authority there has to supply childcare.
399. You raised many specific issues. There are obvious difficulties with housing, for instance. You mentioned the size of the units. There is the whole issue of segregated housing, with people reluctant or unable to move for many reasons.
400. An interesting point that was raised in a presentation to the Social Development Committee — perhaps you will comment on it — is that, when the legislation was being considered at Westminster, the House of Commons Joint Committee on Human Rights criticised the absence of a detailed human rights memorandum. Given that that criticism is on the record, the view was taken that it was not unreasonable to expect the Department here to produce a memorandum when the Bill came in front of the Assembly. Obviously, those warnings had been flagged. I think that the point also was made that if that kind of scrutiny is done, there are less likely to be legal challenges at a later stage. That seems a very sensible way of proceeding. There was, and is, the opportunity for that memorandum to be put in place, and that would obviously deal with a lot of the issues you have raised. Had it been put in place, it would have made this a much easier progression.
401. It is a devolved matter, and there are many different circumstances here, which have been flagged by almost all the groups — in fact, by all the groups, I am sure — that came in front of the Social Development Committee. They flagged the particular circumstances that pertain here. We have higher rates of disability. We have more people on DLA. The 20% issue was flagged up. If someone has a long-term, chronic condition, that is not going to go away

- because of economic circumstances. That is an issue. Therefore, if you cut benefits by 20% to save money, by definition, you will possibly impact on 20% of disabled people. That may be a fairly broad analogy. The memorandum might have gone some way to enlighten us.
402. **Professor O'Flaherty:** I can only but agree. We would like to have seen a memorandum that took account not only of European Convention on Human Rights aspects but other UK treaty obligations, such as the International Covenant on Economic, Social and Cultural Rights. Such treaties are legally applicable to and binding on the UK, albeit they do not have the same force in the courtroom. They are not going to trigger a judicial review in the same way in which a violation of the ECHR might, but that does not make them any less binding on the state.
403. **Mr Brady:** I have two more points. One is on the single-room rent. We were told, as is already happening, that that could make 6,000 people a year homeless. The other point that you raised was about the bridging gap and hardship payments. The whole point about hardship payments in this legislation is that they will be recoverable. If we start with the premise that benefit is subsistence level, which is the government definition, people paying back will be below subsistence level.
404. The same applies to people living in an underoccupied property. If they do not move, they will have to find that money out of their benefit. The other thing on underoccupancy is that the Housing Executive, in its presentation to us, said that if underoccupancy were introduced in the morning, it simply could not cope with it. That goes back to your point that the housing units are not available. In areas where there are smaller housing units and people could transfer, they simply cannot, because of the nature of housing in the Six Counties.
405. **Professor O'Flaherty:** I will just say a word on the hardship fund. That is a really important provision in the Bill. It is an important element of making the Bill human rights-compliant. If it works properly, it will provide a safety net so that people do not fall into destitution, which would violate human rights obligations. I suggest that this Committee has the important job of seeing whether the framework for the hardship fund is one that works. That is a policy matter. We welcome the fact that it exists. We see some problems with the terms of the Bill. I am sure that those can all be corrected and adjusted, but, again, that is something better left in your hands than seeking a technical response from us.
406. **Mr Swann:** Thanks for your presentation, gentlemen. You referred to the Joint Committee at Westminster. Are you aware of any of the recommendations made by it having been actioned?
407. **Mr Caughey:** I believe that some further analysis has been carried out, as the Equality Commission referred to, on the impact of the reforms. Some of that may be available, and we can certainly look into that for you and report back.
408. **Mr Swann:** You are not aware of anything that has flown out from the recommendations?
409. **Professor O'Flaherty:** We have not done a systematic examination of its very comprehensive survey or the extent to which elements of it have been dealt with systematically at Westminster.
410. **Dr Russell:** We can certainly check for you. However, the truth is that our focus is on the impact of the current welfare provision on people in Northern Ireland.
411. **Mr Swann:** Michael, you referred a number of times to the clauses of the Bill that are peculiar to the people in Northern Ireland. How have you made that assessment?
412. **Professor O'Flaherty:** It was just the two issues, which we have discussed at length.
413. **Mr Swann:** Was it a comparison with England and Wales?
414. **Professor O'Flaherty:** Yes, in comparison with other parts of the United Kingdom.

415. **Mr Swann:** You spoke to my colleague Tom Elliott earlier on and said that you are not looking at how the Bill pertains across the water; rather, you are looking solely at how it affects Northern Ireland. Did you carry put some sort of assessment of the two situations?
416. **Professor O'Flaherty:** Our mandate and remit is only for Northern Ireland. We engaged with Westminster originally on welfare reform only to the extent that we saw issues that could raise problems down the line in Northern Ireland. That has been the exclusive focus of our attention.
417. **Mr Swann:** Therefore, those issues may not be peculiar to Northern Ireland? I am just thinking that, if some of the recommendations are introduced in Wales, they may also be specific to there.
418. **Professor O'Flaherty:** There is no such thing as a Welsh human rights commission, but you would need to ask Wales that. We have not done a study on other parts of the United Kingdom. That is not within our competence.
419. **Mr Caughey:** It is worth saying, to amplify Michael's point, that a number of studies have identified childcare as an issue. We have drawn on an Employers for Childcare study that carried out that analysis. It identified the lack of available childcare in Northern Ireland in comparison with other regions of the UK.
420. **Mr Swann:** I want to make one final small point. You said that the private actors that were being brought in were not subject to the Human Rights Act. How difficult is that to correct?
421. **Professor O'Flaherty:** My understanding is that it is as simple as a specific provision in the Bill. This is what has been done in the other professional sectors, if my understanding is correct.
422. **Dr Russell:** It would be wrong to say that they are not subject to the Human Rights Act. A private contractor is subject to the terms of the Act in carrying out a public function. The Bill proposes that some of the services that would usually be undertaken by the Department — for example, the personal independence payment assessment — will be contracted out. All that we are asking for here is legal certainty.
423. A precedent has already been set for that. A judicial review was taken as to whether nursing care homes were covered by the terms of the Human Rights Act. Subsequently, the UK Government moved, under the Health and Social Care Bill, to ensure that they were. All that the commission recommends is that the precedent that has been set for the Human Rights Act is carried through for private sector contractors under this Bill in order to provide a degree of legal certainty. They would probably be covered anyway.
424. Another alternative would be for the Department to ensure that Human Rights Act compliance is assured under social clauses in the contracts.
425. **The Chairperson:** I understand your point about legal certainty, but is it difficult to identify the particular groups that need to be identified? If the Human Rights Act already applies to private organisations that carry out a public duty, how would you want that strengthened and what particular formula works?
426. **Professor O'Flaherty:** The difficulty is that, at the moment, because it is not rendered explicit in the Bill, there is a danger of it being tested in the courts. One can only speculate, but that is what has happened with the nursing homes. One might say that it was obvious that publicly funded nursing homes were acting as agents of the state, and therefore the Human Rights Act applies. However, it was not so obvious that it did not go to a courtroom and end up in an expensive judicial review, which ultimately went where it should have gone.
427. You are the legislative drafters. We are suggesting that, borrowing on similarly crafted elements in equivalent legislation, it would be useful and helpful to make that explicit here as well.

428. **The Chairperson:** You said that it was obvious in the case of nursing homes. Did the court not find it obvious as well?
429. **Professor O'Flaherty:** It still had to go through an expensive court process. We are simply proposing it to you as a way of providing certainty where there is a potential for ambiguity.
430. **Ms McGahan:** I live in a rural area, and, to the best of my knowledge, the population there of around 7,000 or 8,000 people does not have one full-time daycare child facility. In fact, my sister drives 16 or 17 miles to access such a facility. As well as that, if she did not have a car, she would have serious problems with access to public transport. In the wintertime, our roads are not gritted because of a lack of volume of traffic, but we get on with it.
431. You talked about one recommendation about resolution procedure. How would that enhance the Bill's human rights compliance? Can you give me a practical example of that?
432. **Professor O'Flaherty:** In making that recommendation to you, we were simply suggesting that you can do a better job of ensuring human rights compliance if the Assembly gets to consider all those regulations when they are put before it. It should by no means be an automatic or rubber-stamp exercise or anything of that nature. That is what we were getting at. I will ask David to speak about it in more detail.
433. **Dr Russell:** It is our understanding that an affirmatory procedure allows for a higher level of scrutiny by the legislature, and it was for the Committee to consider, given that so much is unknown and is left to the secondary legislation. That is where the potential for a lot of those breaches lies. The Assembly could be minded to ensure a heightened level of scrutiny by favouring affirmative action rather than negative.
434. **The Chairperson:** I am fascinated by the issue of a reduction in housing benefit because someone has too many bedrooms. If that situation [*Inaudible.*] At what point is a person's benefit cut?
- If people are living in a house that is too big, the only way out for them is to put their name on a housing list, at which point it is up to the state to find them a new house. In Northern Ireland at present, and I guess in some parts of England as well, that could take months or even years. Living in a house that is too big is not a major criterion at the moment when you start to clock up the points. It is usually the other way around. Would it not be a pretty clear breach of people's human rights if their benefits were cut and they were not able, through no fault of their own, to find suitable accommodation?
435. **Mr Caughey:** You have identified the issue to which we were alluding. People may encounter difficulties. If people are judged to require a two-bedroom house, for instance, they may have difficulties in identifying a two-bedroom house in the area in which they live or further afield, simply because of the nature of the housing stock here. The exact details of how the cut will be applied will be identified in the regulations, but I think that you have identified a perfect example of why it should be an affirmatory procedure to allow for that level of detailed scrutiny of those issues and their practical outworkings.
436. **The Chairperson:** Fair enough. ???I can feel another nursery school provision coming on here. If somebody lives in Kilkeel and they cannot find a house but say that they have one in Knockloughrim.
437. **Lord Morrow:** On that point, it must also be understood that, for one reason or another, thousands of houses are lying vacant in this country at the moment, not least the Housing Executive having a big housing stock.
438. **The Chairperson:** Not social housing.
439. **Lord Morrow:** Yes, social housing. I can take you to my own town, where houses are lying vacant. I suspect that that is no different from any other region here. The Housing Executive has a big stock of houses lying vacant, not to mention the private sector.

440. **Mr McDevitt:** One point did not come up, which Michael and his colleagues raised in their introductory remarks. Michael, you were talking about the way in which our sister Committee at Westminster would apply the legal certainty process in its scrutiny of legislation. If I heard you correctly, you described it as the process that allows consideration of whether enabling legislation is sufficiently clear. What advice do you have for us, specifically in the context of this Bill, beyond the question of affirmative resolution, which we take on board, about applying that legal certainty process to this Bill? What other aspects of the Bill do you think that there is lack of clarity on, or is there a lack of process clarity beyond that point of affirmative resolution for the secondary legislation?
441. **Professor O'Flaherty:** We consider that there are only a few issues, and ours are only indicative. I think that other witnesses will raise further issues. There could be a formula in the Bill to avoid a human rights abuse of application of the Bill. We keep coming back to the same old examples, but take the issue of childcare, for instance. An acknowledgement of the particular problem could be crafted and inserted so that the subsequent regulations are constrained by a recognition. There are a couple of examples of that kind.
442. Although I had not planned to raise this issue with you today, we would welcome a stipulation in the Bill that the regulations under it will at all times be compliant with the UK's international socio-economic treaty obligations. Frankly, that would be unusual in UK legislation, but it would be very helpful.
443. **Mr McDevitt:** This is a devolved matter, and part of the technical argument that you are making to us is that, because welfare is devolved, we have to consider this ourselves as the primary legislature, even though the model may be a hand-me-down. You said that that would be a strange thing for the UK to do, but why would it be a strange thing for Northern Ireland to do?
444. **Professor O'Flaherty:** By "strange" I only meant unusual.
445. **Mr McDevitt:** Unusual because of the political dynamic?
446. **Professor O'Flaherty:** Just the legal culture. It happens in some other jurisdictions. References to international treaties can be found in constitutions or in basic legislation, but it would not be part of the received tradition in this part of the world.
447. **Mr McDevitt:** However, there is absolutely nothing to stop us, as a devolved Assembly, from putting them in. If we made reference to them, it would bind us only to those that are legally binding, but it would hold us — I am paraphrasing — morally and politically committed to those which are not. Is that correct?
448. **Professor O'Flaherty:** Indeed. To the extent that you want to explore this idea, the only instruments to which I would refer are the ones that the UK has already ratified, not those that are lying out there that are not engaged in this jurisdiction. The UK ratified the International Covenant on Economic, Social and Cultural Rights in 1976. That is a long-standing obligation.
449. **Mr McDevitt:** That is very interesting. Thank you.
450. **Mr Brady:** The point was made about housing. There is one example, which we were given in the Committee for Social Development, to do with underoccupancy. There are areas in north Belfast, for instance, where the houses are smaller but because of the nature of housing here, people simply cannot move, for whatever reason. That is one of the big issues that faces us with the Bill.
451. Most of the underoccupancy rules are predicated on what happens in the south-east of England, and in London in particular. There was story in the news about six months ago of a landlord of a three-bedroom terraced house who was being paid £2,000 by the local authority. That was the example that was given

as to why underoccupancy rules were being introduced and why people had to downsize. That simply does not happen here because we are in totally different circumstances. So, yes, there are plenty of empty houses, but it is simply not possible for people to downsize in them.

452. I will go back to a point that you made earlier. Although the housing associations and the Housing Executive have not built for a long time, historically they built three- and four-bedroom family-sized houses. The only reason why they built the old person's dwellings (OPDs) is because they got a subsidy for them. Now they are single person's dwellings, but they are so few and far between that they do not come into the equation in any shape or form.

453. The Housing Executive told us very clearly that if underoccupancy rules were to be introduced, it would not have the housing stock to deal with it. In my constituency, where a housing stock of about 12,500 was held by the Housing Executive because of the policy of selling off, there are fewer than 3,000 houses left. That is diminishing all the time, and it is a huge issue here. It may not be the case in England or Wales or wherever else.

454. **The Chairperson:** Thank you very much. You have been very helpful.

455. **Professor O'Flaherty:** Thank you very much.

4 December 2012

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Lord Morrow
 Mr Alastair Ross
 Mr Peter Weir

Also in attendance:

Mr F McCann
 Mr McDevitt

Witnesses:

<p>Ms Karen McLaughlin Mr Patrick Yu</p>	<p><i>Northern Ireland Council for Ethnic Minorities</i></p>
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456. **The Chairperson:** I welcome Patrick Yu, the executive director of the Northern Ireland Council for Ethnic Minorities (NICEM), and Karen McLaughlin, the legal policy officer. You are very welcome. Members, you have a pack from NICEM for reference.
457. Patrick, it is over to you. I think that you know what we are about here. We are discussing human rights and equality issues only.
458. **Mr Patrick Yu (Northern Ireland Council for Ethnic Minorities):** Thank you, Chairman and members, for inviting us to give evidence on the equality requirement of the Welfare Reform Bill. We made a submission to the Committee yesterday. This morning, we circulated another document from our partners in London, who are the key experts in human rights law, particularly social security. That document was sent to us only this morning, which is why we could not include it in the information for the Committee. We will incorporate it afterwards.
459. In September last year, the Department sent out the equality and impact

assessment (EQIA) for the Bill's consultation document. Unfortunately, NICEM did not respond at that time because our policy team was engaged intensively with the Department of Education (DE) on our published research report, 'Promoting Racial Equality in Northern Ireland's Post-Primary Schools'. We have limited human resources to deal with the vast volume of section 75 consultations. Each month, there are roughly 10 to 20. It depends on the nature of the requirements on different consultation papers.

460. In our evidence today, we will focus specifically on the concept of equality in domestic, international and EU law and set out the particular requirements with which the Welfare Reform Bill must comply. My colleague Karen will start off with the legislative scrutiny of the Bill.
461. **Ms Karen McLaughlin (Northern Ireland Council for Ethnic Minorities):** I will briefly comment on the legislative scrutiny. When we gave evidence to the Committee for Social Development, as some of you are aware, NICEM stated that it would fully support the use of Standing Order 35. We are glad to welcome the setting up this Committee, not because we are interested in delaying the introduction of welfare reform but because we are aware of the importance of ensuring that legislation is compliant with equality requirements and human rights standards, particularly under the Human Rights Act 1998. If such requirements were not met, legislation would be open to legal challenge. When a legal challenge is initiated, particularly in relation to welfare entitlements, it is often too late for individuals, as their rights have already been violated. They may already have been forced to live in destitution or take out loans and have to deal with debt as a consequence.

462. In addition, we welcome this Committee because the mainstreaming of equality and human rights lies at the core of the Belfast/Good Friday Agreement and the Northern Ireland Act 1998. The crucial scrutiny powers of the Assembly are essential in ensuring that equality and human rights requirements are observed in the development of all law and policy. The very active civil society engagement in the Welfare Reform Bill indicates that this legislation will have wide-ranging implications for every faction of society and many of the section 75 groups. Thus, it is of pivotal importance to ensure that equality of opportunity is taken as a starting point when scrutinising such legislation.
463. During NICEM's evidence to the Committee for Social Development, we commented on the system in Westminster, the Joint Committee on Human Rights (JCHR). NICEM continues to call for the establishment of such a Committee in the Assembly to consider equality and human rights in order to ensure that Bills have undergone rigorous scrutiny. NICEM believes that there is potential to use the petition of concern in the Assembly as a warning sign to signal the need for pre-legislative scrutiny, similar to the level of scrutiny carried out by the Joint Committee in Westminster. That would provide ample time for statutory bodies, such as the Human Rights Commission and the Equality Commission, to provide expert evidence, which could then be taken as a point of departure when the relevant Statutory Committee examines the Bill.
464. **Mr Yu:** I will focus on the Department's EQIA. The first question that I would like to ask is this: does the EQIA fulfil the equality requirement under section 75 and other equality law? We need to look at the nature of section 75 and its robust requirement. The main aim of section 75 is to ensure that equality of opportunity is mainstreamed by public authorities in their policymaking, policy implementation and policy review. In short, it puts equality into the mindset of the decision-maker when he or she is making a policy decision. The new guidance from the Commission also encourages public authorities to address inequalities and demonstrate measurable positive impacts on the lives of people experiencing inequality.
465. The legislation also highlights the "due regard" duty. Having "due regard" and "regard" means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of a particular duty, to any function of a public authority. In our view, the partially completed EQIA of the Welfare Reform Bill fails to meet the requirement of due regard. The Brown case in Great Britain, which is, I think, the only case law in GB, developed the principles of due regard to the relevant equality needs. The Brown case developed four principles. I will just highlight the first two principles, which are relevant to this Committee. The first principle is that, when a public authority makes decisions that do affect, or might affect, an equality group, it must be made aware of its duty to have due regard to the equality goals in the equality duties. An incomplete or erroneous appreciation of these duties will mean that due regard has not been paid. The second principle is that the due regard must be exercised with rigour and with an open mind. It is not a question of ticking boxes. The duty has to be integrated within the discharge of the public functions of the authority — the equivalent of our section 75 here. It involves a conscious and deliberate approach to policymaking and needs to be thorough enough to show that due regard has been paid before any decision is made.
466. Having read through the completed EQIA, NICEM is not satisfied that it is comprehensive. In our view, the EQIA has been only partially completed, as it does not recognise the potential adverse impact on certain groups, such as ethnic minorities, because the Department claims that it does not hold any information on its administrative system. It is not uncommon, not only for this Department but for many Departments, to use the screening

- process, arguing that there is no information in the system, and then they screen out the policy. The same issue always arises.
467. Moreover, the EQIA highlights only whether there is any differential impact on certain groups. The limited data set used by the Department for Work and Pensions (DWP) model could not take into account the specific circumstances in Northern Ireland. In effect, there is no data set from Northern Ireland to demonstrate that there is no differential impact, nor does it address the equality goals as highlighted in the first principle under the Brown case.
468. We are deeply concerned that, 12 years after the implementation of the section 75 duty, the Department has no monitoring data on race, religion, political opinion and sexual orientation in relation to this particular policy or other policies, which, as the Committee is well aware, will have wide-reaching impact on every section of the community.
469. I will now turn to the use of available data sources. The data collection under the EQIA process should also take into account all other available data and research, both within and outside the Department, but the Department fails to do so. As a matter of fact, under the Racial Equality Strategy for Northern Ireland 2005-2010, the Department published its action plan to implement the six aims of the strategy. The aims relevant to the Welfare Reform Bill include the elimination of racial inequality and the promotion of equality of opportunity in all aspects of life, as well as equal access to public services. Although the race strategy expired in 2010, if you look at Assembly debates and Question Time, you can see that the race strategy is still ongoing. A new revised strategy is under way and will, we hope, come out early next year.
470. In the 2006 action plan on the race strategy, the Department for Social Development (DSD) is also aware of the language barriers that affect ethnic minority people accessing public services. The action plan states that DSD:
- “Will ensure customers who do not speak English as a first language will have access to the full range of services provided by the Social Security Agency”.*
471. The second point of the action plan states:
- “The Child Support Agency and the Social Security Agency will continue to identify the need to produce specific information and advice leaflets in a variety of languages other than English “.*
472. As a matter of fact, they know that language is a key barrier for ethnic minorities. I have not seen any mention in the EQIA of that.
473. The 2006 action plan also highlighted many actions to be taken forward by the Northern Ireland Housing Executive (NIHE). In October 2007, the Housing Executive published the ‘Black and Minority Ethnic and Migrant Worker Mapping Update’. The update collected all relevant data on race — both settled and new migrant communities — from different sources, as well as the Housing Executive’s own data on the breakdown by ethnic origin of position 1 applicants in social housing in local government districts, as well as the waiting lists in the same districts. The latest update is from February 2012. You can see that there is a lot of information available to be used.
474. In July 2011, the Office of the First Minister and deputy First Minister (OFMDFM) launched guidance for monitoring racial equality for all public authorities, which was the outcome of the inter-departmental working group, including DSD, led by OFMDFM. In short, DSD did not even try to use other sources of data and/or research, or talk to its own race champion to fill the gap in its data for this Bill. This failure amounts to the due regard duty not being discharged.
475. I now turn to the potential and imminent differential impacts on race. First, the language barriers that restrict ethnic minority access to public services are commonly recognised by all public authorities, including DSD. The

- justification that the policy applies to all groups — regardless — will, potentially, become indirect discrimination against an ethnic group who could not comply with the requirements. In this regard, the new online computerisation that will implement the Bill falls far short of the EQIA, as the only group recognised is that of older people, despite the fact that there are no statistics on age. How on earth can they realise that elderly people have a problem but not ethnic minorities?
476. The language barrier also impacts on the uptake rate of entitlements in the current benefit system. Our benefit system is so complex for a non-national to understand that it can cause a lot of difficulty for someone applying without help or advice. We also envisage that, when the new universal credit (UC) system is put in place in 2014, as proposed, there will be a big challenge to communicate the changes to ethnic minority claimants who cannot speak any English.
477. Secondly, the proposal for the administration of universal credit takes as its point of departure the assumption that all claimants have a bank account. That is not necessarily the case for ethnic minorities, particularly for European Economic Area (EEA) nationals on jobseeker's allowance (JSA). Under the current anti-terrorism law, persons wishing to open a bank account must have resided in the UK for at least six months and must have proof of a residential address, such as a tenancy agreement or utility bill with the name of the applicant. Therefore, the requirement for a bank account would delay access to entitlements for minority communities.
478. Thirdly, we are concerned that the EQIA did not identify the negative impact on ethnic minority women. The payment of the new universal credit to the main earner following the joint claim and joint assessment will leave ethnic minority women without any income. It is not uncommon in the ethnic minority community for women to be perceived as having a subordinate role in the family unit.
479. Fourthly, members of ethnic minority communities may also have other protected characteristics, known as multiple identity. We must acknowledge that the Department has statistics based on a claimant's gender, marital status, dependants and disability under the current welfare benefit entitlements. We must not have a situation in which an ethnic minority disabled woman with no English skills and with dependent children might have more disadvantage than a local woman in a similar situation. Moreover, the current data set is one size fits all. There are different disadvantaged groups within each data set, according to their status and their multiple identity status. Regrettably, the completed EQIA does not take into account or consider the issue of multiple identities, which may lead to a claimant being in a further disadvantaged position.
480. The continuing economic downturn means that the impacts on the new migrant community are enormous, particularly former A8 and current A2 nationals. Therefore, it is critical that due regard is paid to the section 75 equality of opportunity duty.
481. I will now pass over to my colleague Karen, who will address the equality framework and the compatibility of specific provisions with EU law.
482. **Ms K McLaughlin:** Thanks, Patrick. At the outset, I would like to state that NICEM accepts that it is legitimate for Governments to lay down requirements for access to the welfare system and, indeed, to reform that system. However, as mentioned in our briefing paper, and of particular relevance to this Committee, is the fact that the right to social security is a recognised human right that is enshrined in a number of human rights instruments. The principles of equality and non-discrimination underpin such instruments, as well as underpinning the EU legal order. I will briefly sketch out the relevant equality requirements under those systems.

483. According to article 5 of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, state parties are required to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law in the enjoyment of economic and social rights, such as the right to social security. Moreover, article 1 of protocol 1, coupled with article 14 of the European Convention on Human Rights (ECHR), provide that individuals should not be discriminated against in asserting their right to social security. In EU law, article 34 of the EU Charter of Fundamental Rights enshrines the right to social security, and non-discrimination is enshrined in article 21. Equality is also enshrined in articles 2 and 3 of the Treaty on the European Union. Article 18 of the Treaty on the Functioning of the European Union prohibits the discrimination of citizens of the EU on the basis of nationality.
484. In EU secondary law, the racial equality directive 2000/43 prohibits discrimination on the grounds of racial or ethnic origin in the provision of social protection, including social security. That concept of discrimination includes direct and indirect discrimination as well as harassment. I will come back to some examples of where the Welfare Reform Bill may give rise to direct and indirect discrimination.
485. Finally, it is important to bear in mind that social security is an area of co-ordination in EU law that is governed by regulations 1408/71 and 884/2004. The principle of equality of treatment is enshrined in article 4 of regulation 884/2004. That is outlined in the note that you received from the AIRE Centre in London.
486. As mentioned in the briefing paper, the Welfare Reform Bill is enabling legislation, and the key tenets of the proposals will be set out only in the regulations. However, there is one particular provision that, we believe, constitutes direct discrimination and is unlawful under EU law. That is paragraph 7 of schedule 1, which provides the power to treat EU nationals differently from British or Irish citizens. That is also mentioned in the Advice on Individual Rights in Europe (AIRE) Centre's briefing paper.
487. It is also possible to envisage instances in which the welfare reform proposals may give rise to indirect discrimination. Indirect discrimination will have the effect of making it more difficult for minority communities to access the benefits to which they are entitled. In our submission to the Committee for Social Development, the manager of the Belfast Migrant Centre outlined the current issues with the administration of the benefits system, which make it increasingly difficult, and sometimes impossible, for migrants to access their entitlements. One such example, which Patrick touched on, is the administration of the universal credit system online. As minorities may not be able to get a bank account, that would place them in a situation of indirect discrimination.
488. Social security is an area of co-ordination in EU law, and there are issues with the right to reside test that is used currently. Again, that is mentioned in the AIRE Centre's briefing paper. The European Commission has instituted infringement proceedings against the UK. As a result, if we compare the proposals in the Welfare Reform Bill in Northern Ireland with what has taken place in Great Britain and look at the regulations produced there, AIRE Centre has outlined two instances in which there could be a multiple discrimination issue on the grounds of nationality and disability, as well as issues relating to the habitual residence and right-to-reside test. On that note, I pass back to Patrick to finish.
489. **Mr Yu:** We have outlined our situation. We are only one of the nine section 75 groups. I will stop now to answer any questions from members.
490. **The Chairperson:** Thank you both very much.

491. **Mr McDevitt:** If I may summarise, you are saying that the Bill, as currently drafted, is potentially discriminatory against people from an ethnic minority background.
492. **Ms K McLaughlin:** Yes, schedule 1, paragraph 7 in particular, because it gives the power to make regulations that would treat EEA nationals differently from British or Irish citizens.
493. **Mr McDevitt:** Let us look at some of the specific provisions in the Bill. Would the proposed childcare changes, for example, have a disproportionate, or potentially disproportionate, impact on someone from an ethnic minority or migrant background?
494. **Ms K McLaughlin:** That goes back to Patrick's point that the EQIA did not cover ethnic minorities because it was claimed that there was no data, even though people have to state where they come from when they apply for a payment. So it is difficult to assess the impact. We argue that, because of the barriers to migrants accessing the benefits system, there would be an adverse impact. However, the Department has failed to carry out the equality impact assessment.
495. **Mr McDevitt:** So is it fair to say that you cannot say that the changes in childcare are not discriminatory; you cannot say that the change from disability living allowance (DLA) to the personal independence payment (PIP) is not discriminatory; and you cannot say that the changes in housing benefit are not discriminatory?
496. **Mr Yu:** As I said, it is the Department's duty to demonstrate that. Our role is to provide supplementary information. As we have argued many times, the Department claims that it does not have any information and uses that fact to rubbish everything else.
497. In our submission, we look at two aspects. One is whether the equality duty under section 75 is fulfilled. A lot of our concerns relate to the EQIA. The EQIA is only one document, which is submitted by the Department to supplement its argument. In our view, the EQIA is not comprehensive; it excludes other groups. Also, if you look at the EQIA in more detail, you will see that it uses UK statistics instead of statistics from Northern Ireland. It states that there will be no impact, but it does not give any detail. For example, it compares those with disabilities with those who do not have disabilities. However, within disability, people have different situations: physical disability, mental or physical impairment or disability and other types of disability. So, within each subset, there are a lot of differences among a disadvantaged group. I do not see how the EQIA demonstrates that it has used the equality goal to fulfil that requirement. That is why, in our view, the Department has failed the due regard test.
498. **Mr McDevitt:** So you are saying that the Department has failed in its duty to provide a proper EQIA and has particularly failed in its duty to provide a proper EQIA for people from a minority ethnic background.
499. **Mr Yu:** Yes.
500. The second aspect is equality law. In our submission, we are absolutely clear that the Bill deliberately infringes on EEA citizens. A specific part of the Bill is very clear about the change. Karen described in detail how that contravenes different parts of EU law. I raise the same concern that we raised with the Social Development Committee. Any infringement of EU law will make the Bill void. So we need to see the consequences.
501. **Lord Morrow:** Thank you for your presentation. Your paper states that the whole benefit system is complex. I say this respectfully: it is complex for us all. Ask any MLA sitting round the table, and they will tell you that it is mighty complex for even those of us who are supposed to be very fluent in English and understand these things. Your paper uses "may" but does not use "shall". That tells me that you have a doubt. It states:

“Simply just to publish leaflets in foreign languages and the use of interpreters might not necessarily discharge all the duties under section 75.”

502. So you are not saying that it is defective.
503. **Mr Yu:** I am not. I agree with your proposition. First, I am not a judge. The judge clearly has the power, but I do not have that authority. As I said at the beginning, our role is to supplement information given to the Committee, and the main one that polices section 75 is the Equality Committee. It has the authority to decide whether that is infringed. In our view, this is one of the factors that will have a huge impact on ethnic minorities. That is why we use the words “might” or “may” instead of “shall”. We do not have that authority.
504. **Ms K McLaughlin:** Just to pick up on the point about the system being complex, that refers more to the issue of EU law coming into play when you talk about minorities having access to the welfare system here. With regard to EU law, you have the problems that are well documented about the right to reside test. The UK is undergoing infringement proceedings by the European Commission because of its misapplication of the right to reside test and the habitual-residence condition. So that is what makes it more complicated for EEA nationals to access the benefits that they are entitled to.
505. **Lord Morrow:** You use the argument that it is not enough just to issue a leaflet in your language. You say in your submission that that is not sufficient. I agree that that is not sufficient, but is there not advice out there? We are always seeking advice on these issues from the professionals and from people who know the intricate details. Is that not available to you also?
506. **Mr Yu:** No; you need to look at the operation in context. In the past seven years in particular, the ethnic composition has totally transformed since the addition of the EEA countries. Now, one Polish community is equivalent to all the ethnic minorities added together. You can also see that the number of welfare claimants from the EU is increasing dramatically. We understand that because we see those people in our migrant centre and deal with a lot of those cases daily. A lot of those people do not understand the benefit system. Not only do they not understand the benefit system, they find the application form difficult if it is not in their language. There are also a lot of complex EU rights and entitlements. They do not know whether they are caught under this one or that one. That makes it more complex, and they come to ask for our help. They cannot get any help when they go to the local Citizens Advice Bureau (CAB), because they do not have an interpreter, and they do not have an interpreter because they do not have the costing. Whether you are Polish, Lithuanian or whatever, that is the difficulty if you do not have the language.
507. When we addressed the Committee for Social Development, we highlighted the fact that, at the moment, most of the EU benefit cases are being delayed by at least eight to 12 months when people renew their application: for example, when someone renews their housing benefit or family credit. There is a system now that will have an impact. I can give an example. We have a case involving a wife who has moved from another country to avoid domestic violence against her and her children. She came here to look for a job. The system excluded her at the beginning because it is so complex. She did not understand the different requirements under different parts of EU law. That is only one example.
508. We also have a case involving a family with children whose benefit payments have been delayed and who, as a result, have become homeless. Having said that, the benefits system will pay them back retrospectively, but, at this time, the family is experiencing destitution and homelessness with their children. This issue is not a rarity on the ground.
509. **Lord Morrow:** Will the move to universal credit, which will replace the range of benefits, simplify things?

510. **Ms K McLaughlin:** EU law creates a complication here; I mentioned regulation 883/2004. Some benefits, which will be subsumed under universal credit under that regulation, are so-called special non-contributory benefits. In that scenario, jobseeker's allowance, for example, is set up to give the EU citizen some kind of support in the intervening time after he or she has lost a job or is looking for jobs in another EU member state. I envisage some problems if that is not teased out before the Bill goes ahead. That is also referred to in the AIRE Centre's note.
511. **Lord Morrow:** I will leave it there, Chairperson. Thank you.
512. **Mr Brady:** Thank you very much for your presentation. I have just a few questions. In your briefing you say:
"We are deeply concerned that twelve years after the entry into force of the section 75 duty, the Department has no monitoring data on race, religion, political opinion and sexual orientation in relation to this particular policy".
513. It would be really difficult to see how you could do a comprehensive EQIA if that data is not available.
514. **Mr Yu:** It is a partial EQIA, not a comprehensive one.
515. **Mr Brady:** You would expect that with legislation such as this, which is going to have such an impact, you would cover all your bases. If you are going to do a proper EQIA [*Inaudible due to mobile phone interference.*]
516. **Mr Yu:** Yes. They should follow the duty [*Inaudible due to mobile phone interference.*] the right one rather than the wrong one. [*Inaudible due to mobile phone interference.*] We in the ethnic communities see the seriousness of this. As I said, we support the use of [*Inaudible due to mobile phone interference.*]
517. **Mr Brady:** I have a couple more questions. The first is about habitual residents. [*Inaudible due to mobile phone interference.*] It is not just about people who are coming from abroad. It is also about people who were born here, lived here and went to work in America or Australia and came back, who have to show that they are habitually resident. There is an issue there, obviously. That problem is going to increase because of the nature of welfare reform as it stands at the moment. Even in case law there is no specific definition of how long you have to be here to be habitually resident. Some offices could say that you need to be here a week, while others could say three weeks.
518. The Social Security Commissioners have said that the longer you are here, the more habitually resident you become. It is very arbitrary, and it seems to me that if that is not addressed, it will become even more arbitrary.
519. Karen, you also mentioned people who are entitled to work in Britain or here and can get contributory benefits. There was a case in England involving a woman who became pregnant and who was able to work only up to 12 weeks before the baby was born and had no access to any benefit. There was a tragic end to that case, and that has been documented. That kind of thing is increasingly likely to happen under the proposed legislation.
520. Finally, do you envisage a lot of legal challenges under European Union legislation if this Bill goes through as it stands?
521. **Ms K McLaughlin:** As I mentioned, there are infringement proceedings based on the current application of the right to reside. Those infringement proceedings were issued on foot of a case in the UK Supreme Court called Patmalniece, which is also referred to in the AIRE Centre document. If the right-to-reside test were to become more stringent, or, as we mentioned in our briefing to the Social Development Committee, there were some murmurs of putting in place a two-year time period for the habitual residence condition, it has already been decided in Luxemburg that those things infringe EU law, so, undoubtedly, there would be more legal challenges.

522. The problem about legal challenges, as I mentioned already, is that it is too late for the individual claimants at that stage. Legal challenges cost a lot of money, and non-governmental organisations (NGOs) have limited resources to support people, so we could also envisage a situation where more people are falling into a state of destitution, and that would have implications under article 3 of the European Convention on Human Rights in respect of inhuman and degrading treatment.
523. I want to follow up on what you said in relation to the Human Rights Commission (HRC) and the application of that and link that with what Lord Morrow mentioned earlier about the complexity of the system. That is what we were getting at when we mentioned the complexity of the system. It is that added dimension of EU law. There is very little legal expertise in that particular area. We are concerned that if this wide power to make regulations, as set out in paragraph 7 of schedule 1, goes ahead in its current form, it could lead to a massive raft of people falling into this power, and, undoubtedly, it would have detrimental impacts on migrants seeking access to the benefits that they are entitled to under EU law.
524. **Mr F McCann:** I have a couple of questions. One of the points that Lord Morrow raised is about universal credit. There is a myth that it will make everything easy, but, by the time you get universal credit, 30 benefits will have been amalgamated and cut to pieces, and the damage will have been done before you even get the launch of universal credit.
525. Your paper states:
“When the principles developed in the Brown case are applied to the DSD’s completed EQIA, it is clear that the requirements under section 75 have not been discharged.”
526. Can you elaborate on that?
527. **Mr Yu:** In relation to the duty, as I said, it is very clear. Going back to the principle that I highlighted in the Brown case, it might be better to read it again.
“When a public authority makes decisions that do or might affect an equality group, it must be made aware of its duty to have due regard to the equality goals in the equality duties. An incomplete or erroneous appreciation of these duties will mean that ‘due regard’ has not been paid.”
528. In the Brown case, it is about the EQIA being incomplete or not being as comprehensive as it should be. They fail different groups. We have nine groups, and, in respect of each group, it needs to demonstrate that it does not have any differential impact or, if they have differential impact, any mitigating factor that they need to consider. In our view, they did not go through it as thoroughly as they should.
529. **Ms K McLaughlin:** I will pick up on the universal credit point. We need to go back to first principles and look at what each benefit has been set up for. Under universal credit, they are all being subsumed under a work-related payment, but a number of different payments have been set up for different reasons to deal with different situations, such as disability payments, for example. We mentioned the access issues with the universal credit system. If everything is going to be online, we mentioned the issues with the bank accounts and the fact that that will put minorities in an indirect discrimination scenario. Again, I will reiterate the point on EU law in that there is a piece of EU legislation here that cannot be circumvented. It will probably result in some kind of negotiations or hammering out of how the legislation will impact on regulation 883/2004. However, under that regulation, article 4 applies an equal treatment principle. That legislation has not seemed to feature anywhere in any of the discussions. Perhaps that is due to the fact that the social welfare system has been developed in a legal vacuum of sorts, without paying attention to equality, human rights and EU requirements.
530. **Mr F McCann:** On the question of the Brown case, what you are saying is that,

- with regard to welfare reform, there is a clear breach of equality legislation. The other issue is that, when the EQIA was being done, was information sought from any ethnic minority groups? Were they invited to sit down to look at possible difficulties that may arise with the Bill?
531. **Mr Yu:** I highlighted in some detail that there are different sources of information, including their own Department. It is not uncommon with civil servants, in different Departments, for the left hand not to know what the right is doing or vice versa. This is a classic case of that. There is a race champion who is at assistant secretary level. He also co-ordinates other policies. Also, he is aware that, under the action plan, the language barrier is a key issue. I have no idea why this issue did not flare up in any process, either during the internal policy review or the policy development process. That, as you know, is one of the issues.
532. You should also look at the other sources of information. I mentioned the Housing Executive, which is a Next Steps agency. As I mentioned, the Housing Executive delivers a lot of action plans for the Department under the race equality strategy. The Department could have the monitoring data. Therefore, why does it not have it?
533. I can give you some examples. Even though NICEM is a small organisation, when we do our casework, our monitoring data can generate different types of information on benefits, for example, around nationality or ethnicity, so it is quite simple. Also, OFMDFM already benchmarks the standard; we know that it is very difficult. Over the 12-year period, all the Departments, including OFMDFM, deliberated on race and then we held them to the benchmark. The most complex area, using ethnic monitoring, is health and social care, in particular in a hospital. We set up a project on ethnic monitoring, and we worked with the five trusts, the Department and OFMDFM. We are piloting the testing under the hospital system, the patient administration system and the childcare handbook. We
- looked at how people went through the whole system. I think that the testing of the system is working. In the future, and in a year's time, all the information on section 75 groups could be available through same system.
534. It is a joint project involving different Departments. In most cases, each Department has a lot of information, but the issue is about whether the policymaker, in developing the policy, gets all the data rather than just picking and choosing information. They need the totality of the data.
535. **Mr F McCann:** I was just asking Mickey something about benefits. Obviously, the whole system is sanction-led. With regard to the migration of people, especially people with ethnic minority backgrounds, from benefits into work-related groups under the Department for Employment and Learning, have any discussions taken place with ethnic minority groups to ask for their assistance with people suffering from mental illnesses and other illnesses that would be a part of these work-related groups under welfare reform?
536. **Mr Yu:** At the moment, there is a disjointed approach by Departments. We raised that issue using not only this platform but the racial equality panel and other forums. I try to bring it back to the fundamental issue of the importance of monitoring data. If we do not have any monitoring data, how will each Department benchmark to promote equal opportunities? If you do not have such data, how do you set a baseline? If you are here in year 1, and you would like to change a policy, you cannot do so because you do not have any data. Why exactly does OFMDFM put everything back to square one when monitoring data is so important? That highlights exactly my point: 12 years on, the majority of Departments — DSD is only one of many Departments — do not capture all that monitoring data.
537. **Ms McGahan:** This may have been touched on earlier when you said that language is a key barrier. I know that to be the case because I have represented

- people from the foreign national community at tribunals. For form-filing, what I find is that they are asked which language they speak and are then provided with interpreters. Do you find that to be satisfactory? From what I can see, I think that it is OK, and I have represented people's views at tribunals. Do you feel that that is inadequate? Can something more be done?
538. **Mr Yu:** An interpreter is crucial during an interview with an applicant or in another process, because they speak the same language as the applicant and understand them. The last time we were at the Committee for Social Development, we raised our concern about people with disabilities and the fact those applicants do not want to burden an interpreter. Sometimes, an interpreter may not be doing a good job, but the applicant does not want to challenge them, so they just listen to the interpretation and then perform what the doctor asks them to do. Language is only part of the bigger jigsaw that really affects the outcome. Using interpreters to translate does not mean that you can discharge all the duty; you need to find ways to mitigate the effect and improve the system.
539. **Ms McGahan:** As I said, I have represented people with disabilities and have sat down with interpreters, and what we have found is that it is all about how your condition affects you. Medical evidence is nearly secondary; that is my reading of it. I have spoken to interpreters and relayed that to them, and they have then relayed that to the person with a disability. You cannot put words in people's mouths either.
540. **Ms K McLaughlin:** In that case, the issue was that there was no interpreter there. The person was asked, "Do you have difficulties communicating?", and they said no because they could speak English, but they had a disability. We mentioned that case at the Committee for Social Development. Mickey, you may remember that the Belfast Migrant Centre manager mentioned it.
541. **Ms McGahan:** I was talking about language being a barrier as something separate from a disability.
542. **Ms K McLaughlin:** It is about understanding the language, if you know what I mean. When a person with a disability who is from an ethnic minority background is asked in English whether they have difficulties communicating, they make think they are being asked whether they have difficulty communicating in English.
543. **Ms McGahan:** But you are asking that directly in the forms [*Inaudible due to mobile phone interference.*]
544. **Ms K McLaughlin:** That was just one example of a case we had. We can provide you with the details if you want. As I said, we mentioned it at the Committee for Social Development.
545. **The Chairperson:** We have a paper from the AIRE Centre? What is the status of the AIRE Centre? Is it an internationally recognised organisation?
546. **Mr Yu:** The AIRE Centre is one of the very few experts in EU law in the United Kingdom. It is not unfamiliar with Northern Ireland. It came to Belfast in 1997 or 1998, and I was one of the many people who listened to it talk about how to view the law in light of human rights protection in EU legislation. It has been here a number of times to run different training courses. However, it is like any other voluntary sector body. It is registered as a company and with the Office of the Immigration Services Commissioner (OISC) so it can provide wide legal advice on immigration.
547. **Ms K McLaughlin:** It was a third-party intervener in the Patmalniece case in the UK Supreme Court that I mentioned earlier. It represents clients at the European Court of Human Rights in Strasbourg and the Court of Justice of the EU in Luxembourg.
548. **The Chairperson:** OK. I am nearly sorry I asked. [*Laughter.*]

549. **Mr Yu:** It has real expertise in the field. It is one of our key partners and that is why we invited it to give us expert evidence.
550. **The Chairperson:** I am really convinced about it now.
551. The advice in its paper is very definite about everything. Most of the presentations that we have had so far have are pretty much in terms of “maybe” rather than “shall”, “will” or “must”. The AIRE Centre’s opinions are very clearly stated. *[Inaudible due to mobile phone interference.]* I want to ask you about habitual residence. Is there a definition of habitual residence, first of all?
552. **Ms K McLaughlin:** No. As Mickey said earlier, there is no definition. The concept of habitual residence comes from a Court of Justice of the European Union judgement — the Swaddling judgement — which set out five factors. However, it is a very subjective test, which is to do mainly with your links to the country. As Mickey said, it is not just about other EEA nationals who are not from Britain or Ireland; it is also about people who have left the country. You might be talking about young migrants who go to Australia but come back after a number of years and are unable to fulfil the habitual residence condition.
553. **Mr Brady:** Just on that point —
554. **The Chairperson:** I have to go in a minute, Mickey.
555. **Mr Brady:** It is about habitual residence. It needs to be borne in mind that that was introduced by the Tories in 1995. Peter Lilley was, I think, the then Secretary of State for Work and Pensions. It was a xenophobic reaction, if you like, to keep foreign nationals out and prevent them getting benefits. However, based on my experience as an advice worker, I can say it has affected more local people who have gone away and come back. The definition is totally arbitrary; there is nothing specific about it.
556. **Mr Weir:** I appreciate what Mickey said. Legally, does the fact that it also affects local people who have gone away for a while mean that it is actually EU compliant because it means that it applies irrespective of your country of origin?
557. **Mr Brady:** No. That is the issue. That has not been tested. I am not saying that it does not affect huge numbers of other people, but in my experience, it affects local people who come back.
558. **Mr Weir:** Yes, Mickey, that is the exact point. If it affected only people from outside Britain and Ireland, I would have thought that it could be fairly easily struck down under EU law. However, it is hitting people who have gone away and have come back.
559. **Ms K McLaughlin:** In the Patmalniece case in 2011 the Supreme Court held that it is indirectly discriminatory. That is why there has been a referral to the Court of Justice of the EU.
560. **The Chairperson:** I have to go in a minute or two, so I just want to make one wee point. If this thing is so clearly discriminatory and has, apparently, been tested, why is it still in the UK Welfare Reform Bill?
561. **Ms K McLaughlin:** That is a question we would love to hear the answer to. The fact is that infringement proceedings are being taken against the UK. There are infringement proceedings in other areas of law as well. It is not uncommon that they continue to make them. We urge this Committee to ensure that the Northern Irish system does not infringe EU law.
562. **The Chairperson:** It is up to the Assembly, I suppose. I find it hard to think that we would depart from the wording of UK legislation, which was passed in the full knowledge of all that is contained in the paper. It would be a big thing for us. I appreciate that it is not just a matter of breaking parity or changing the wording. I cannot imagine why the UK Parliament would have passed legislation that is clearly against EU conventions and which is discriminatory. Why on earth would they do that? Somebody is wrong here.

563. **Ms Karen McLaughlin:** Are you questioning whether the provision is or is not discriminatory or whether it infringes or does not infringe EU law?
564. **The Chairperson:** I guess that that is the question. Is the AIRE Centre right or wrong?
565. **Ms K McLaughlin:** That is the evidence that we put forward to the Committee for Social Development; it is also the evidence from the UK Supreme Court in the Patmalnice judgement, which held that it was indirectly discriminatory. It is only in the past few years, with increased migration patterns, that this area of law has been tested to any degree. The question of why the UK Parliament would have included that provision is a fair one, but there are many challenges to domestic legislation that infringes EU law.
566. **The Chairperson:** Is our Bill significantly different from the regulations that applied under existing legislation?
567. **Ms K McLaughlin:** Schedule 1(7) gives the power to make regulations. That power explicitly states that EEA nationals would be treated differently. That is the provision that we have the most concern with because, as I have said, this is a piece of enabling legislation. The detail will be in the subsequent regulations, which have not yet been drafted in Northern Ireland; we can only go by what has happened in GB, since the enabling legislation is a mirror image. That is our concern: the power that would directly treat people differently.
568. **The Chairperson:** I have to excuse myself for a few minutes for a question.
(The Deputy Chairperson [Mr Swann] in the Chair)
569. **Mr Weir:** Just in relation to those two points, I mean, first of all we are talking about enabling legislation, I mean, it surely, ultimately, then would be the regulations potentially that would be an infringement on that. That would be where the problem would ultimately lie, with the regulations, if I am right.
570. **Ms K McLaughlin:** Yes. However, this gives the power —
571. **Mr Weir:** Giving the power to do something — it is actually the regulations that would be potentially — which is not what is before this Committee. The other thing —
572. **Ms K McLaughlin:** It is giving the power; therefore it should be got rid of.
573. **Mr Weir:** With respect on it, giving the power to do something and the actual infringement occurring by way of the regulations, the regulations are not in front of this Committee.
574. **Ms K McLaughlin:** Yes, but it would directly discriminate against —
575. **Mr Weir:** Well, maybe a degree of that, but what I was going to say on it was surely the point in terms of if we are looking around the issue of infringement proceedings, and obviously that is an issue that will have to be determined by Europe in terms of the incompatibility. Infringement proceedings would be against the UK as a whole, I presume, on that basis, in which case, ultimately, if, arising out of that, there was a direction effectively that the law needed to be changed, it would then have to be changed for the whole of the UK. So in one sense, you know, we should either be either fully in or fully out in that regard, you know. If it is not incompatible, then we are in the same position with an unchanged position with the rest of the UK; if it is incompatible, then fresh changes would have to be made across the UK. Is that not the case?
576. **Ms K McLaughlin:** Infringement proceedings are ongoing; I was not saying that there would be —
577. **Mr Weir:** I am not doubting that. What I am saying is that if the infringement proceedings basically then determined that the UK is in breach and has to make a change, that change would have to apply across all of the UK. Is that right?
578. **Ms K McLaughlin:** On the basis of the application of the habitual resident's condition and the right to reside test.

- However, those are separate from schedule 1(7), which we recommend be deleted.
579. **Mr Weir:** Well, with respect on it, that, presumably, is mirroring what is there in the rest of the UK, the paragraph 7.
580. **Ms K McLaughlin:** It is the exact same. However, it goes back to the power of the regulations: Northern Ireland will draw up its own regulations.
581. **Mr Weir:** Karen, without —
582. **The Deputy Chairperson:** Could you address your remarks through the Chair?
583. **Mr Weir:** Sorry, through the Chair, I was going to say without rehearsing the argument again about regulations and the power of it, if this is a direct lift from the legislation that is being applied across the rest of the UK, what I am saying is clearly if there is an argument over breach of EU law, and consequently infringement, the position surely then should be that either it is illegal across all of the UK or it is not illegal anywhere, in which case actually the action that should be taken is if it is deemed to be incompatible, an infringement, and the UK is then ordered to change that, it should then be changed across the whole of the UK rather than unilateral action being taken in Northern Ireland.
584. **Mr Yu:** We need to draw a distinction between the infringement proceeding on the habitual resident tests and schedule 1(7), as the former will impact upon the latter. The Welfare Reform Bill also relies upon certain tests. If they find that there is an infringement proceeding, which means that, because of this, the whole Bill —
585. **Mr Weir:** I am saying, Patrick, that surely the logic should apply throughout. If we have said that paragraph 7 is identical across the whole of the UK, either for all of the UK it is wrong or it is not wrong at all.
586. **Ms Karen McLaughlin:** Yes, but the Northern Ireland Administration does not compare to *[Inaudible.]* legislation, so this is —
587. **The Deputy Chairperson:** That is the point. It is our look at the Northern Ireland Bill.
588. **Mr Weir:** I appreciate that. However, what I am saying is that if a change needs to be made on the basis of what is a European Bill, that change will have to be ordered across the UK, rather than across simply a part of it. I think it would be foolish, on any social security matter, to simply go it alone on the basis of a concern that something might be, as opposed to it being proved wrong in the courts.
589. **The Deputy Chairperson:** Let us move on slightly. May I ask whether the concern that was raised by the AIRE Centre was raised with the Westminster Committee with regard to welfare reform?
590. **Ms Karen McLaughlin:** We have not seen that concern, as such.
591. **Mr Yu:** We do not know whether they have put forward this view to Westminster. We only asked them to give us certain advice on a particular area, so there is *[Inaudible.]* part of the expert evidence to help in the process.
592. **Ms Karen McLaughlin:** We made that point to the Committee for Social Development a month ago.
593. **Mr F McCann:** I wanted to raise this point when Trevor was here because he more or less argued that every law is a good law; however, history has taught us that that is not the case. Mickey mentioned Peter Lilley's xenophobic approach to new laws; we are still living with the consequences of that. That is what much of this debate is about.
594. I cannot understand Peter's point: regardless of whether it is done in Westminster or here does not really matter —
595. **Mr Weir:** Through the Chair, the point that I was making on it is that the reasoning is that this should be struck down because it is incompatible with the EU position. This is an identical position throughout the UK. So, logically, from a court point of view, either it should not

- apply anywhere in the UK or alternatively it is compatible —
596. **Mr F McCann:** If it is a bad law —
597. **The Deputy Chairperson:** I am sorry, Fra, but let us not have an argument across the table.
598. **Mr Brady:** Sorry, through the Chair, I am not sure about Peter's rationale. What he seems to be saying is: why do we have a devolved Bill? Why is it a devolved matter? Surely, the issue that we are dealing with is the Bill as it applies here. I have been listening to a great deal of evidence for some time and it seems to me to be the whole issue. We are here to decide whether the Bill complies with human rights and equality; and that is because there are conditions that pertain here in the North that are totally different from those that pertain in the south-east, north-west or the north-east of England. That is our function here, whatever happens across the water. Look at what the AIRE Centre said: it is dealing with observations on the Welfare Reform Bill (Northern Ireland) and regulations pursuant to the Bill, not the Bill that has gone through the British Parliament.
599. **Mr Weir:** Through the Chair, I am making a separate point. *[Interruption.]*
600. **The Deputy Chairperson:** Members, please.
601. **Mr Brady:** Sorry.
602. **Mr Weir:** Through the Chair, if the argument is that a particular thing is in breach of EU law, if the law is identical, it is either in breach everywhere, or not in breach at all.
603. **Mr Brady:** Many points have been made about when the regulations come along. We are dealing with enabling legislation. What flows from that enabling legislation are the regulations, so if the enabling legislation is not right, the regulations will not be right. I am not sure whether you would agree with that. It is predicated upon the enabling legislation; otherwise there is no point in having that enabling legislation. We can only deal with the
- here and now; we cannot talk about what might be required by the EU in the future.
604. **The Deputy Chairperson:** Members, we will move on. Will we send this to the Assembly's Legal Services for their opinion?
605. **Mr Weir:** I assume that some of this will have been considered. It is my understanding that, next Tuesday, the Social Development Department is due to respond to the evidence that has been given. I think that the Department should be given the first opportunity to, at least, comment on the compatibility and legal compatibility of any of those things, and it may well be that it covers that.
606. **Mr Brady:** Departmental officials are advocates of the Bill; they are not giving us an objective view of the legislation. They are selling the Bill. The chief executive of the Social Security Agency is selling the Bill. They are administrators; with respect, they are not policy-makers.
607. **The Deputy Chairperson:** I accept that point.
608. **Mr Weir:** All I am suggesting is we get, in terms of the issues that are raised, because there may also be, today or later or Monday —
609. **The Deputy Chairperson:** All the issues that have been raised are being forwarded.
610. **Mr Weir:** My understanding is that they are due to come back to us next Tuesday. I am not precluding anything from being checked. If we need something to be checked legally, it can be checked at that stage. I am saying that it is appropriate that we at least allow the Department to respond first so that we get a complete picture of things, and, if we are not satisfied with things, there will be an option to take further legal advice.
611. **Mr Elliott:** The Department will respond to all the issues. We may or may not agree with what the Department says, but it is up to us to form a view. As

Peter said, we can get legal guidance at a later stage if we find it necessary to do so. I assume that there may be a number of issues on which we will need legal guidance.

612. **The Deputy Chairperson:** Members have no more questions for the witnesses. Patrick and Karen, I thank you for your contributions. You started a bit of a debate. Thank you for your time.

4 December 2012

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Tom Elliott
 Lord Morrow
 Mr Alastair Ross
 Mr Peter Weir

Also in attendance:

Mr F McCann
 Mr McDevitt

Witnesses:

Ms Karen Hall *Disability Action*
 Ms Jenny Ruddy *Mencap*

613. **The Deputy Chairperson:** I welcome Jenny Ruddy, campaign officer for Mencap; and Karen Hall, information and policy officer for Disability Action. Would you like to make an opening statement?
614. **Ms Karen Hall (Disability Action):** We were due to meet a couple of organisations at about 4.15 this afternoon to produce a joint briefing for the Committee. We will get that to you. I know that some of you have the briefing from the Social Development Committee, but I will start with some of the equality issues and touch on a little bit of human rights. Jenny will follow on from that.
615. **The Deputy Chairperson:** Members, there are tabled briefing items in your packs.
616. **Ms Hall:** I am not working off our Social Development briefing paper. Disability Action provided a response to the consultation on the equality impact assessment (EQIA) in November 2011; it is available if the Committee wishes to see it. We raised a number of concerns in our response. In fact, some of those concerns still exist with regard to the final EQIA. One of our main concerns related to the consideration of data and research, and we raised that with the Social Development Committee. The EQIA states that the departmental analytic service unit is continuing to work with the Department for Work and Pensions (DWP) and HMRC to develop its policy simulation model that will better equip us to analyse the impact of the policies across various section-75 groups. As far as we are aware, the policy simulation has been done in relation to universal credit. It is not available to us. It still has not been done in relation to disability living allowance (DLA) and the personal independence payment (PIP). That was the case a couple of weeks ago when we last checked. Therefore it is unclear what the impact will be in certain areas. We need the policy modelling.
617. In our initial response, we recognised that it is sometimes difficult to monitor and capture data, but it is not good enough to say that no data exists. Where none exists, there should be consideration of comparable national or international data or reference qualitative data.
618. One of the main issues with the EQIA was whether it considered persons with and without dependents. We will perhaps talk about that a little more as we go through, but that is particularly important for those with caring responsibilities. The EQIA did not consider the data that is available in the Northern Ireland Survey of Activity Limitation and Disability. There is significant data in that; it is one of the biggest surveys in relation to disability, inactivity and limitation. It was done in 2007 and the data exists in NISRA.
619. The equality impact assessment showed that some disabled people will be worse off under universal credit. We were concerned that the EQIA did not look at the impact on disabled children and

- only reflected households. Under the proposals for universal credit, disabled children will be affected. Children who are in receipt of the higher rate of DLA care will get the higher addition, which will be paid at a similar level. However, children who receive the lower level of support through the disability element, because they receive the low- or middle-rate DLA component, will now receive the new disability addition, which will only be worth £27 instead of £54. The equality impact assessment did not look at or consider the impact on disabled children.
620. There were also worries about housing benefit entitlement in the social rented sector. The EQIA recognised that the measure on households containing a disabled claimant or partner suggests that a higher proportion of households containing a disabled person would be likely to be affected by the new size criteria. One of the mitigations in that is the extra bedroom to allow for an overnight carer. In our response to the draft EQIA, we said that it was not enough to have that for an overnight carer, because disabled people need additional room for many reasons. It could be that they are receiving therapy and need room for dialysis, for example, or need room for additional equipment.
621. The reason why the additional room criteria came into effect was because of a case taken under human rights law that related to the same thing in private households. That case was taken by a Mr Burnip, who had a severe disability. He was living in private rented accommodation, and his housing benefit was reduced because it was considered that he needed only a one-bedroom property; however, he needed room for an overnight carer. The case was taken under discrimination legislation under article 14 of the European Convention on Human Rights (ECHR), and that is why the additional bedroom mitigation was entered for the social rented sector. However, we still think that consideration may need to be given not just for overnight carers but for additional space for therapy and equipment.
622. There were many interesting outcomes from that case, and I will certainly reference it in our briefing paper. It threw up some interesting stuff in relation to the UN Convention on the Rights of Persons with Disability (UNCRPD), and the judge referred to that in his judgement. It was not part of his overall decision, but he implied that had he not been able to make the judgement under the ECHR, he would have gone back to the UNCRPD.
623. If we consider the UNCRPD in relation to that element of the Welfare Reform Bill, article 19, which deals with the right to live independently and to be included in the community, states that:
- "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement"*.
- (The Chairperson [Mr Lunn] in the Chair)*
624. We wonder why the Department included a narrative in the EQIA to different conditions when considering the time limiting of contributory employment and support allowance (ESA) for those in the work-related activity group. The work capability assessment is not condition-based, but is meant to be an assessment of the ability to carry out work-related activity. An earlier narrative in relation to different section-75 groups expected that 53% of people losing their contributory ESA would be wholly or partially compensated by income-related ESA.
625. In relation to mitigation and disability, it states:
- "Individuals with low or no other income may apply for income-related Employment and Support Allowance. This will act as a safety net to support those who have no means of supporting themselves. In addition individuals who do not qualify for income-related Employment and Support Allowance will still be able to access the support offered by the Work Programme to help them continue to move towards work."*
626. What the mitigation does not take into account is the impact on disabled

- people. For example, if the mitigation is that the work programme is there, the work programme as it is in GB has clearly demonstrated its limited capability of getting disabled people into work. The mitigation does not take into account any of the discrimination that disabled people face in trying to access the workplace as well as the significant attitudinal barriers that they face.
627. Jenny will talk more about the removal of ESA youth, but the EQIA stated that:
- "Removing the 'youth' provisions will affect young disabled people. The Executive is committed to promoting employment prospects for younger people, with and without health conditions, by investing in employment support, apprenticeships and further education."*
628. However, we have yet to see the detail of how that will be mitigated or how those who lose youth ESA will be supported.
629. In relation to DLA and PIP, I spoke earlier about policy modelling. Without policy modelling, we do not know how many people it will affect. Taking a crude measure, which was the 20% that the Chancellor mentioned in his Budget statement in 2010, that would mean 23,400 people who are currently entitled to DLA will not be eligible for PIP. It does not say how that will be mitigated or what will happen to those people. The mitigation in relation to that talks about universal credit and contributory ESA, but that is not relevant under DLA and PIP.
630. The other key consideration is around long stays in hospital, which will reduce to 28 days for people in receipt of PIP. We are really concerned about how that will affect people's right to independent living. With regard to social fund reform, the Department said that no data was available. However, that should not be a reason not to try to find some way to model. We know that a significant number of those who receive community care grants will be young people, their families and carers.
631. I will pass over to Jenny, who will talk about *[Inaudible due to mobile phone interference.]*
632. **Ms Jenny Ruddy (Mencap):** I thank the Committee for giving Karen and me the opportunity to present. *[Inaudible due to mobile phone interference.]* As Karen talked in detail about the EQIA, I thought that I could look at the Joint Committee on Human Rights at Westminster and what it said about the Bill. I will highlight some of the inequalities that face the 33,000 people with a learning disability who live in Northern Ireland.
633. It is estimated that less than 10% of people with a learning disability are in paid employment due to the barriers that they face in trying to find work. Many people with a learning disability do not drive and rely on others for transport or need specific travel training. They use public transport. People with a learning disability still leave school without any form of qualifications despite improvement in the curriculum.
634. There is a need for more accessible information across the sector. There is a lack of understanding of learning disability among medical professionals. Therefore some of our key asks for ESA were the removal of time limits and to put safeguards in place for people with a learning disability who do not understand what is being asked of them or who have communication difficulties and who do not get the support that they need in claimant responsibility. We believe that it is unfair to put those time limits on benefits for people with a learning disability who have paid into the system and who have the right to expect that they will be supported as they move towards paid employment.
635. The Joint Committee on Human Rights outlined that although the European Convention on Human Rights does not preclude states from setting conditionality requirements in respect of work, there is a risk that the conditionality and sanction provisions in the Bill may, in some circumstances, lead to destitution. The Committee urged the Government to take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to the issue and carefully monitor the impact of the sanctions regime on

- people with particular circumstances, which would be very relevant to people with a learning disability. Conditions placed on claimants should be reasonable, and claimants with a learning disability may need extra support to help them to understand and make decisions about the process that they are involved in and what they will have to do to meet those requirements. It is important that they have access to independent advice providers and advocacy services as well.
636. The Joint Committee also highlighted that the decision to introduce a time limit to ESA has not been taken on the grounds of evidence that someone could find a job within a 12-month period, requested the justification for the time limit and advised the Government to scrutinise closely to ensure that article 14 of the convention was not breached.
637. We also suggest an amendment to exclude DLA and PIP claimants from the new size criteria, and we also suggested that the Social Development Committee should ensure that, in the case of somebody with a disability or families with a child with a disability, where adaption is in place and additional spaces are needed for treatment and equipment or where services are only available in a specific area, they will not be required to move and will not have their benefits reduced.
638. There are many issues for people with a learning disability who may access their package of support or who have built up support networks in their area. It is also very important for people to live near their families. The proposals in the Bill do not take account of any of the factors relating to learning disability or the importance of living in a particular area; for example, being close to family and friends, who often provide support, accessing community services and the public transport system and being part of their community.
639. The limited provision of accessible housing options may already significantly reduce the choice that a person with a learning disability has over where to live due to the segregated housing
- that we have in Northern Ireland. By implementing the housing criteria as they currently stand, people with a learning disability may not have the option of living independently in their own community. The Joint Committee highlighted that by stating that although the Government were prepared to look at exemptions for individuals with a disability where their homes have been subject to extensive adaptations — therefore focusing mostly on people with a physical disability — that would not address the disruptive patterns to care and support networks that can be vital for people with a learning disability.
640. We also asked the Social Development Committee to put in place protections for those who may not meet the criteria for PIP and for their carers in relation to poverty and social exclusion. We also asked the Committee to consider an amendment to ensure a review after the first year of PIPs being introduced to Northern Ireland, and every two years after that. We also asked the Committee to retain youth entitlement to ESA. We have asked the Department for figures on the number of people who get youth entitlement, but, unfortunately, they are not available. We often get told by our community-based advisers who advise people on benefits that that is a particularly important benefit for people with a severe learning disability, and it gives young adults some independence and financial support as they stay on at school or go on to further education.
641. In our paper to the Social Development Committee, which I think you have, we highlighted a survey that Mencap carried out in 2010 entitled 'DLA: why it matters'. The survey's findings highlighted the central role that DLA plays in the lives of people with a learning disability, helping them to afford the support that they need to live an independent and fulfilling life. Mencap believes that access to all rates of DLA must be protected; otherwise people with a learning disability will be left socially and financially vulnerable and isolated. The Joint Committee on Human Rights discussed the potential

- impact of the replacement of DLA with PIP in relation to article 19 of UNCRPD. During its inquiry into the right to independent living for disabled people, it received evidence about specific concerns regarding potential unjustified retrogression in relation to the UK's obligations under the UNCRPD.
642. The Joint Committee suggested a trial period for the new assessment process and a report on its implementation to ensure that its impact was fully assessed and analysed in light of its operation in practice. We also raised concerns in our written submission about the assessment process of PIP. It is important that private contractors be explicitly required to adhere to the requirements of section 75 of the Northern Ireland Act and to other relevant conventions.
643. Finally, it is important to highlight that we are different in Northern Ireland because there are certain policies that we do not have in place that the rest of the UK has. I want to draw attention to the lack of a childcare strategy for children with a learning disability in Northern Ireland. The Joint Committee looked at a particular risk of disproportionate impact on lone parents if those opposing sanctions fail to take account of the poor availability of jobs with flexible working hours and affordable childcare. For a lone parent with a child with a learning disability it would be even more challenging to find suitable employment. In 2011, Employers for Childcare produced a report entitled 'Childcare for All?', which consulted families of children with disabilities and special needs about childcare and employment. Some of the findings were as follows.
644. The main source of childcare for families with children with a disability or special needs is informal, at 66%, with grandparents being the most common choice, at 35%. Thirty-nine per cent of respondents reported that they did not use any formal form of childcare provision, with the majority indicating a preference for looking after their children themselves. That desire was interlinked with their concern and perception that there are no childcare settings to meet their child's specific needs. Sixteen per cent of respondents said that childcare providers would not accept their child because of their disability.
645. Thanks again for this opportunity. I will hand back to Karen to sum up.
646. **Ms Hall:** As organisations, we have been talking about some key issues such as the right to advice and representation to make sure that people get that appropriate support, whether it is advice or advocacy support. There is also a need to ensure that private contractors are implicitly required to adhere to the requirements of section 75, the Human Rights Act and the Disability Discrimination Act, and that the regulations get full scrutiny. As Jenny said, there is a lack of certain other strategies, such as a childcare strategy, and we are yet to see final version of the disability strategy, even though it has been consulted on.
647. **The Chairperson:** Thank you very much. That was quite a run-through. It reminded me of the complete works of William Shakespeare in 45 minutes. I am sorry that I missed the start of your contribution, but you said that you will leave us a paper.
648. **Ms Hall:** We are working on it this afternoon, and we will get a formal paper to you in the next day or two.
649. **The Chairperson:** You spent quite a bit of time talking about the joint Committee at Westminster. As it happens, Robin and I are going to see the Chairman tomorrow. Is there any chance of —
650. **Ms Hall:** We can give you what we have written.
651. **The Chairperson:** That would be very useful for us.
652. **Mr Brady:** Thanks very much for the presentation; it is déjà vu all over again. I have a couple of points. The point was made earlier that universal credit will subsume five or six of the main benefits,

- and there are about 30 benefits altogether. It is predicated on work and moving people towards work, and I raised the issue about the youth ESA. That replaced youth incapacity benefit, which had replaced severe disablement allowance. Young people were eligible for that from the age of 16, and it was accepted that they were never going to be able to work, in the normal sense, because of particular conditions, such as learning disability or whatever. They will now be shoved into that work pool, irrespective of what is wrong with them and will then be assessed using a tick-box exercise. They are being assessed in that way at the moment; people are being migrated as we speak. There are inherent difficulties with that.
653. You raised the issue of the change in the disability premiums, particularly where children and families with children with disabilities will be affected. It seems that the EQIA was done in isolation. I am not sure if you were consulted about how the changes may impact.
654. Carers will be impacted big time because of the knock-on effect. A carer gets about £57 a week for looking after somebody for a minimum of 35 hours, and that is about one quarter of the minimum wage. OK, they say that carers can work, but they can earn a very minimal amount, and if they go 1p over the allotted amount, they lose all their benefit. There are issues with that.
655. The other issue is that the mobility component for people with a learning disability or who have particular types of conditions could be removed under PIP.
656. You mentioned the private contractor. We have been told about Capita, which is very similar to Atos in its make-up, with data-processing and stuff for the statutory bodies and all that. Like Atos, it has no background in doing medical assessments. I am not sure if you want to answer this, because you mentioned that it should be imbued with section 75 and how that will impact, but are you confident that it will do a better job than Atos?
657. **Ms Hall:** I could not comment on whether it would or would not. We know about the accessibility problems at Royston House, where the work capability assessments are being done in Belfast. That is an equality issue: people are being treated differently because, essentially, they cannot get down a flight of stairs during an evacuation procedure. That is what we are saying: it needs to be clear that those organisations have to comply with that type of legislation.
658. **Ms Ruddy:** I can add a little to that in terms of the make-up of the national organisations. We are in three countries — England, Wales and Northern Ireland. I have heard from my colleague who works in welfare reform in London that Capita has a slightly better reputation than Atos. It has a slightly better knowledge of mental health in particular, it has been actively working with the voluntary and community sector, and it has set up a forum that involves Mencap. We hope that Capita will set up a similar working group in Northern Ireland.
659. Obviously, there are lots of organisations, and we are fortunate that we are a national organisation. However, organisations such as Disability Action would not have access to that group. Obviously, we have different circumstances in Northern Ireland: we have a higher rate of mental health disability and a higher rate of disability in general. So, it would be nice to see that reflected in Northern Ireland, but, from what we have heard anecdotally, it does have a better reputation than Atos.
660. **Mr Brady:** That is about the only good news that we have heard all day.
661. On the whole issue around mental health, there are people who suffer particular types of conditions. Fra and I sat on the Social Development Committee during the previous mandate. I am going back to 2007 when the initial stages of welfare reform were introduced, and one of the big issues was around the training of staff, because people were being migrated across and they were being assessed for work. Staff were being trained to

- look for mental health conditions such as bipolar disorder. Some people have mental health conditions that have not even been diagnosed. I know that there will be champions for autism and all of that — at least that is what we are being told. It will be interesting to find out how it all pans out.
662. Has there been any discussion around the type of training or the qualifications, if you like? We argued at the time that, if somebody had quite severe mental health problems, they should be interviewed by a clinical psychologist, a psychiatrist or a community psychiatric nurse — somebody who would have some in-depth knowledge.
663. **Ms Hall:** Obviously, we all work together in different elements of welfare reform, and I know that some of the other organisations are looking at how to influence the training.
664. **Mr Brady:** You feel that is obviously very important?
665. **Ms Hall:** Definitely.
666. **Mr McDevitt:** You raised the question of the EQIA again. Do you think that the EQIA is fit for purpose?
667. **Ms Hall:** I think that it is, particularly in relation to children with disabilities and carers. I think that there is a lot of missing information in relation to the policy simulation modelling. We still have not seen that and have not had a chance to respond to it. As it stands, we do not know the impact of different parts, particularly around PIP and DLA, so the legislation is going through without that evidence.
668. Is it complete? I would say no. In our response in 2011, we referred to quite a few things that needed to be looked at. Certain elements of it could be improved significantly, particularly around children with disabilities. It did not really look at the impact, even though, as we became more aware of the changes, we realised that that impact would be quite significant. It also did not do too much to look at the impact that it would have on carers. If somebody is to lose DLA/PIP, and they have somebody in their household who is providing care, which might be a passport to carer's allowance, they will, essentially, lose that. So, there is an impact on that person as well.
669. **Mr McDevitt:** So you believe that the Bill could be very discriminatory against children, particularly children with disabilities, and carers.
670. **Ms Hall:** Yes; a lot of the detail of universal credit is in the regulations. What we have here is what we know at the minute. There is so much detail in the regulations to work out. We do not know the rates so sometimes we cannot work out whether somebody will be better or worse off. The content of the regulations is key, and that is why we said that we must ensure that the regulations are scrutinised. As we get more detail about how it will impact, we will look at how that can be mitigated.
671. **Mr McDevitt:** I was taken by your citation of the UN Convention on the Rights of Persons with Disabilities, which is on page 3 of your submission, particularly the article 19 duty, which is the duty on the state to uphold a disabled person's right to independent living and their full inclusion and participation in the community. When it scrutinised the legislation as it applies in GB, the Westminster Committee had grave concerns about its compliance with article 19.
672. **Ms Hall:** It looked not just at the Welfare Reform Bill but at the reform of social care, which is probably slightly ahead. So, it looked at the overall impact of all of those things, including how the eligibility criteria for social care support would fit in with disability living allowance. In an earlier briefing to the Committee, we referred to that in relation to what is happening in adult social care and its review here. It was about taking a holistic approach about how the impact on disabled people will be cumulative.
673. **Mr McDevitt:** Given that we are a separate jurisdiction, that this is a

- fully devolved matter and separate legislation, and that we are equally bound by the convention as Westminster when it enacts laws for England, do you believe that the Bill as it stands is compliant with article 19 of the UN Convention on the Rights of Persons with Disabilities?
674. **Ms Hall:** No; and that is why I brought in the Burnip case, which was obviously taken after the 2009 Bill in GB. However, the detail of that judgement shows that the judge, in effect, said that the UNCRPD should be used more often in such cases. He also referred specifically to article 19. Even though the case happened after, it showed that there was clear discrimination against that disabled person; three different families actually, but one case is not resolved.
675. **Mr McDevitt:** Just to be clear: you do not believe that the Bill as it stands is compliant with article 19.
676. **Ms Hall:** Not in terms of being able to enjoy the key rights to independent living. If a significant number of people is moved off DLA and do not receive PIP, obviously the rights of those people to independent living will be significantly impacted and be reduced. Back in 1991, DLA was brought in to look at the extra cost of living with disability. Removing it will impact on a disabled person's right to live independently, and there is the housing element as well.
677. **Ms Ruddy:** Look at learning disability. Our London office took 19 people with mild to moderate learning disabilities through the actual draft assessment form to see how many of them would qualify for PIP, and I think that only two of them would. Consider the fact that they are people who are more likely to live in the community rather than in supported living or at home, yet they will not be entitled to PIP, and you will see how there will be an accumulative effect. They will probably also lose out on other benefits under universal credit.
678. **Ms Hall:** We have to think of the big picture as well. Other things are happening around the independent living fund
- in 2015. The consultation on that is closed. It affects only a small number of people here, but the impact on them will be significant. It is a question of looking at the cumulative effect of all of those things as well on the right to live independently in your own community.
679. **The Chairperson:** Nobody has indicated that they have any more questions, so thank you very much for coming. You have given us a lot to think about.
680. **Ms Hall:** We will leave you our copies.
681. **Ms Ruddy:** Forgive my typos. *[Laughter.]*
682. **The Chairperson:** That will be useful for us; thanks.

10 December 2012

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Colum Eastwood
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Mr David McIlveen
 Lord Morrow
 Ms Caitríona Ruane
 Mr Peter Weir

Witnesses:

Mr Les Allamby *Law Centre (NI)*

683. **The Chairperson:** I welcome Mr Les Allamby from the Law Centre (NI). If you have a mobile phone, please make sure it is turned off.
684. **Mr Les Allamby (Law Centre (NI)):** It has been turned off already in anticipation. I saw Peter heading outside to make a phone call, which reminded me to do that very thing.
685. **The Chairperson:** I invite you to give your presentation.
686. **Mr Allamby:** Thank you, Chairperson. I intend to give a reasonably short presentation that will cover what I think are the Human Rights Act 1998 issues and some equality issues that may arise in the Welfare Reform Bill. I will be happy to take questions on what I present or on anything else that is in the submission that we produced for the Committee for Social Development.
687. It is probably worth starting by saying, and without going into any great depth or detail, that the Human Rights Act 1998 was an incorporation of the European Convention on Human Rights into domestic legislation in 2000. Effectively, that allows domestic courts to read into domestic legislation key principles and provisions of the convention.
688. At the same time, it is probably worth saying that the traditional role of the European Court of Human Rights has not been to substitute the decisions of domestic courts but usually to look at whether legislation or legal decisions in the signatory states effectively apply the convention principles appropriately. It does not mean that Strasbourg takes a different view than Westminster, for example, and substitutes its decisions. It looks at whether the signatory state has followed the principles underpinning the convention.
689. It is also worth saying, fairly briefly, that when the European Court of Human Rights examines these issues, it usually looks at the legality of a provision or a restriction by examining three things. The first is whether that provision or restriction has a legitimate aim. It takes a fairly broad view of what is a legitimate aim, but the provision must have one in the first place. The second is whether that legitimate aim corresponds to meeting a pressing social need. Thirdly, it asks whether the approach is necessary and proportionate. Proportionality is a key test.
690. The European Court of Human Rights has, traditionally, taken a very strict approach with some parts of the convention. For example, it looks in a fairly rigorous way on things such as freedom of expression or private life. However, on other issues — for example, property issues — it tends to take a less rigorous approach. The court tends to look at things such as whether a provision has a reasonable relationship between the interference of a right and the legitimate aim being pursued, and whether a fair balance has been struck between competing general interests on the one hand and the individual impact on the other. So, it is that kind of recognition. For example, would the European Convention, in general terms, say that it is legitimate

- for a devolved Assembly or the UK-wide Government to decide how to spend their money on social security? The European courts would say yes, it is not their job to determine that policy. They would then look at the question of whether the issues have been applied proportionately, including the decision to cut expenditure. Again, the European courts would tend not to intervene and say that you cannot cut expenditure, but that the issue is the way that you have gone about doing it.
691. I want to address some issues in the Welfare Reform Bill that I think are problematic. I know that this may be the longest preamble in history, but one final thing to say at the outset is that this Bill is enabling legislation. Therefore, much of the detail of what the Assembly will be dealing with over the next three or four months or so will be in the regulations. I will use the quick example of what is euphemistically called the “spare-room tax” or, to give it its proper title, the social sector size-related criteria. In other words, if you “overoccupy” Housing Executive or housing association housing, you will lose housing benefit if you have more than one bedroom that is not in use. All that the Bill does is give the powers, in very broad terms, to produce that kind of provision. The regulations, and we have seen draft regulations in Britain so we have some idea of what they will look like, will tell us how that provision will apply, the level of the penalty and what exemptions there are. So, the detail is in the regulations, and a great deal of our Welfare Reform Bill is being left to detail in the regulations.
692. When dealing with the Bill, you must bear in mind that you have to see the regulations and where the two elements fit together. Some Human Rights Act issues are as likely to arise from the regulations as from the Bill. Therefore, although I will confine my remarks to the Bill, that does not escape the fact that, as everyone likes to say, “The devil is in the detail”. It certainly is in welfare reform.
693. I will take four areas to give you some flavour of potential legal issues that may give rise to Human Rights Act concerns. The first, which is mentioned in the submission, is that schedule 1(7) provides for European migrant workers to be treated differently in that they will be placed in what is called the all work-related requirements regardless of their circumstances.
694. In practice, there are five categories that you can fall into, and they range upwards from no work-related requirements at all. So, if you have a very serious disability — for example, a learning disability — and you get certain disability benefits, you are unlikely to be expected to look for work. However, slightly more onerous conditions will be applied depending on your circumstances. For example, someone who has just had a child can be in a category that has a fairly light-touch approach. The categories go right through to the all work-related requirement that — we know now from having seen draft regulations and the Department for Work and Pensions (DWP) announcements in Britain — you must spend 35 hours a week looking for work. Therefore, schedule 1(7) is saying that, regardless of their circumstances, EU migrant workers must spend 35 hours of every week looking for work.
695. In effect, what will happen is that you will have two workers living next door to each other who have recently become unemployed. One is a European Union worker from Poland, who has perhaps worked for almost 10 years since coming here in 2004, and the next-door neighbour is a British or Irish national who is in exactly the same situation. If the British or Irish national is looking after somebody full time — for example, a child or adult family member with a disability — and they get carer’s allowance, the conditions for looking for work will be relatively light touch. However, if the Polish worker next door has full-time care commitments or has recently given birth, they will still be expected to look for work for 35 hours a week.

696. That will become doubly onerous in that it will have a knock-on effect in other areas, as we know from draft regulations in Britain and other areas. It is called the minimum income floor — and I am sorry to have to throw so many technical terms at members. If you are a self-employed person, under the new universal credit arrangements, there will be an assumption that you are making a certain amount of profit, whether you are making it or not. So, for a short period early in a business, there will be an assumption that you may not be making a net profit. After that, the assumption in universal credit is that there is a minimum income floor. Whether you make money or not, the assumption will be that you are generating an income. That is designed to stop people with a self-employed business being able to claim full universal credit.
697. That minimum income floor will not apply to people outside the all-work requirement. The British or Irish national who has given birth relatively recently or who has caring commitments will be allowed to go and seek self-employment, because that may well suit them much better in respect of their care commitments. However, if you are from another part of the EU and you decide, because of your caring commitments, or whatever, that you want to try self-employment, the assumption will be that the minimum income floor will apply to you.
698. In effect, what we are doing is treating EU workers differently. In any examination of the legality of that, it seems to me, first of all, that social security and universal credit will be treated as a property for the European Convention. The question then is this: is it discriminatory? The freedom from discrimination in the European Convention on Human Rights is not a freestanding right and has to be attached to another right, such as the right to property. As the courts and the UK Government have now accepted, both non-contributory and contributory benefits and social security are a property. So, the answer to the question of whether it is discriminatory is clearly yes. However, the further question then is this: is there an objective justification for treating EU migrant workers differently from others? In my view, it is very difficult to see what that objective justification is.
699. Universal credit will also have a right-to-reside test built into it. One of the traditional attempts to justify this is to say that we do not want people to arrive and simply claim social security — the so-called benefit tourists. In my experience, benefit tourists are a phenomenon that you hear more about than see in practice. That will be dealt with by the provisions for right to reside. There will be a group of people who, like local workers, have been here, lost their job or had a change in circumstances, and still want to find work but will be treated very differently from non-EU workers. I cannot for the life of me see any great policy definition for that.
700. Personally, I think that it is being driven by a broader political agenda in respect of Europe that applies at Westminster. It has nothing to do with policy, and, in my view, we do not need it in our Bill. If we put it in our Bill, it is likely to end up in the courts in any event. If it is not contrary to the convention, we are likely to find that it is contrary to European law and the European Court of Justice, because, on the minimum income floor provision, for example, in treating people differently, European directives say that migrant workers, provided that they are workers, are entitled to the same social and tax advantages as local workers. Again, this is not applying that provision under what is called article 7(2) of (EEC) No 1612/68. I am sorry to throw in rather a lot of law. I know that there is a lawyer or two sitting around the table.
701. That is the first provision that I think is problematic and likely to lead to a legal challenge. The second one is the issue of the size-related criteria — the spare-room tax, if you like. Having a spare-room tax is not necessarily unlawful of itself, in my view. I do not like it. I do not think it is necessary or appropriate, but I could not say that a Government

- could not decide to do something like that if they wish to do it. The issue for Northern Ireland is that the Housing Executive is on record before the Social Development Committee as saying that, at the moment, it is not ready for it. So, in effect, in evidence given to the Social Development Committee, the Housing Executive has said that if everybody offers to move into alternative accommodation in order not to have their housing benefit cut, because they are on a low income and cannot afford to pay it, the Housing Executive will not be able to provide or find alternative accommodation. It is quite open about that. We know that we have got discretionary housing payments, but those are considerably less than the amount of money that is going to be saved by the provision on the spare-room tax.
702. A person may be told that they will lose up to 14% of their housing benefit because they have a room more than they need. They may well have a son or daughter at university who is coming home, or they may want to offer care to somebody on an occasional basis, or whatever, but that will not be good enough. If they then say that they will move somewhere else, the Housing Executive will say that it cannot find them smaller accommodation but will still take money from their benefit. In those circumstances, I think there is an argument about whether article 8 of the European Convention on Human Rights — the right to family life and the right to private life — will have been breached.
703. The second area that gives rise to concerns — and in Britain we have seen exemptions to it — is that there are very few exemptions. Although it is very welcome that, for example, people living in supported living accommodation are exempt from the spare-room tax, beyond that, the exemptions are relatively small in number in Britain. Therefore, if we decide to make parallel provision in Northern Ireland, we will have, for example, cases in which foster carers who are “in between” caring will not be exempt from the tax. So, if you have
- a spare room that is being used for a foster care placement and you provide temporary provision, and if that child moves on to someone else and there is a gap before your next foster care placement, currently, you will be faced with the spare-room tax. We know that there is a real shortage of foster care placements. Barnardo’s issued a very good report about the dangers and vulnerabilities of young people in care. This seems to be going completely in the opposite direction from what everybody else would like to do, such as encouraging foster carers, for example.
704. If you have two children under the age of 10 and you put them in separate bedrooms because one has a disability and keeps the other awake at night because of the need for care, the disturbance at night, etc, that will not be exempt from the provisions, and so, again, you will potentially find yourself losing housing benefit. You can go for discretionary housing payments, but they are discretionary. They are not meant to be paid in perpetuity, etc. Interestingly, there was a case in Britain against the local authorities, Birmingham City Council and Walsall Metropolitan Council, concerning the equivalent provision in the private-rented sector. One of the three cases — I will not go into the other two because they have decided to make them exemptions — involved two children under eight, both of whom had disabilities and needed to be in separate rooms. The Court of Appeal said that the fact that you lost housing benefit as a result of having two disabled children in two separate rooms was unlawful under article 1, protocol 1 and article 14 of the European Convention.
705. For reasons best known to itself, the Department for Work and Pensions has not decided to make that an exemption even though the Court of Appeal has said that it is unlawful. The Supreme Court may decide to overturn that; we do not know. It will be at least a year, in my view, before it gets to the Supreme Court.

706. The interesting issue for me is that DWP in that case, and, I have heard, the Department for Social Development (DSD), have argued that they have discretionary housing payments for those types of hard cases — for foster carers in between placements, for people with disabilities, etc. However, in the Burnip, Gorry and Trengove case, the Court of Appeal said that discretionary housing payments are not the answer and they do not allow you to say that we can have this provision.
707. They were really saying that those provisions are not in perpetuity and that that provision is not available as a right. Therefore, it is not sufficient to be able to say, well, you can ask the local Housing Executive office to make up the difference because you have children with disabilities. That is the second area where there is a real problem with the Bill when we get to the regulations.
708. The third one is what is called the claimant commitment. The claimant commitment is a replacement for the current provision whereby you have to sign a jobseeker's agreement, you have to be actively seeking work, etc. There will be a new kind of agreement, called the claimant commitment. Our difficulty with that is that under current arrangements that are going to apply in universal credit — it is coming in before universal credit — the Department in Britain has said that if one member of a couple signs the claimant commitment but the other refuses, they will not get any benefit at all. I understand that we are likely to follow suit here. Common sense might dictate that if one partner refuses to sign and the other signs, you might pay a lesser amount of benefit. For example, it might be more proportionate to say that the single rate will be paid until the partner signs. However, nothing will be paid to the couple or the children.
709. In our view, that leaves families in a position where partners or children can be left with nothing. We have experience of this — sometimes people with mental health problems, sometimes family disputes where one partner simply refuses to sign almost in order to spite the other partner. That almost certainly means that you either have to persuade your partner to sign, which, presumably, might be very difficult in some cases, or alternatively, you split up or you survive without any benefit at all. Again, that raises issues to do with the right to private and family life, and it would be very easy to find a way of dealing with that. However, the current Bill and regulations in Britain do not.
710. The final one that I will mention as important in the Bill is the time-limiting of employment and support allowance (ESA) for people on contributory benefit for those in the work-related activity group. We know that some people who are on contributory benefit — in other words, who have paid their contributions and have got their national insurance — will be able to go on income-related benefit after 12 months. However, there are two groups of people who will come off the benefit altogether. The first are people who have a partner who is working, and the second are those who have savings over £16,000.
711. We know from the equality impact assessment (EQIA) in Britain and in Northern Ireland that the vast majority of people who will be affected by that are people who are aged 45 or over. Seventy per cent of the people who are on contributory ESA are aged over 45. The figure is nearly 40% for people aged over 55. That group of people will probably be those who have saved up £16,000 or more. They have done what the Government said that they should do, which is to prepare for retirement and save for that. That is the group that will be impacted by this proposal.
712. The questions on that one is, I suppose, whether the interference is proportionate. Does it strike the right balance between, on the one hand, a Government that want to save money and, on the other hand, the impact on individuals? There was a case in Iceland, the Asmundson case, where an occupational pension scheme was taken away. The European Court decided that the removal of the pension

- altogether was disproportionate. A way to ameliorate that could have been found, and it was held unlawful. There are a number of other cases in which the court has said that the interference, if you like, with existing social security payments is lawful in terms of the convention.
713. The interesting issue for me, and one thing that the Assembly is going to face — the two of you here from the Social Development Committee will face it first — is that, almost certainly, the Bill and regulations will come to you at the same time. The Department's intention is not just to get the Bill through as quickly as it can with a timetable but, for some parts of the Bill, it wants the regulations to follow almost immediately. The social rented sector provisions will follow almost immediately; the ESA provision will follow almost immediately. In Britain, they wrote to people in advance to say, "This is going to happen to you in terms of your ESA contributions conditions, and you may find yourself losing benefit, but we will give you some notice of that." The 12-month rule is going to be retrospective. In other words, if, on the day it is introduced in regulations in Britain, you have already been on benefit for 12 months, you will come off on the day that the provision is introduced. There is no start from now and spend 12 months on benefit; it starts from day one. However, we have not done any of that preparatory work. So, if we decide that we are going to provide the Bill and the regulations at almost the same time, you are going to give people no forewarning as individuals at all. I think that there is a set of legal issues that revolve around that.
714. Those are four examples of Human Rights Act 1998 implications of the Bill. I will turn fairly quickly to equality. I want to confine my submission to some specific issues because I think that you will probably have had a more detailed overview of section 75 from other people who have come before the Committee. I will give you some very quick examples of concerns I have.
715. One practical example is about the incentives to work. It is fair to say that work incentives under universal credit will, by and large, for those who can find work, be considerably better for lone parents, single people and couples with a single earner. By and large, those people will be better off if they find work under universal credit. However, I strike a small note of caution. The Department in Britain has announced — and I have no reason to believe that we will not do it here — that it is going to introduce what is called a zero earnings rule for mortgage interest. What that means is that, if you are a lone parent, for example, universal credit — and it is a principle that I have no difficulty signing up to to encourage people to get into work wherever that is possible. The new arrangements will allow you to work for less than 16 hours and get into the mini-jobs world, work one day a week. That suits your childcare when your children are very young, and that can lead to you moving to perhaps two days a week and, eventually, full-time employment. The trouble is that if you get any work at all, you will lose all your mortgage interest help straight away. That is the intention. So, if you have a mortgage and are getting help with payments, and you do even half a day a week to try to start getting back into the world of work, you will lose your mortgage interest help. So, there will be groups of people who will lose as a result of that. I have not seen much work done through the equality impact assessment to factor that in. More importantly, perhaps, the Department's EQIA acknowledges, on page 40, that in couples who have two earners, if both of them get into work, they will not necessarily be better off under universal credit. Therefore, the incentive to work for two earners is much less clear-cut. It says:
- "Universal Credit is designed to encourage work at a household level, and is expected to reduce the number of households in which there is no-one working. As the focus of Universal Credit is to help workless households there is a risk of decreased work incentives for second earners in couples (primarily women)."*

716. Women second earners could well be worse off as a result of universal credit, yet you march on 40 pages in the same EQIA, and the Department says:

“Where both members of a couple are out of work we consider it is right that both individuals should be required to find work or prepare for work if they are capable of doing so. Accordingly, under Universal Credit all couples will be required to make a joint claim. All claimants will have to meet conditionality requirements in line with their personal circumstances and capability.”

717. In other words, if both members of the couple do not actively look for work — 35 hours a week in some cases — we will sanction you, even if we are admitting that universal credit has been devised in a way that will leave you worse off by finding work. No information on how they are going to mitigate this; it simply says that, on the one hand, this happens, and, on the other hand, we are going to do this. I understood that part of section 75 was that if there is an equality impact, you look at how to mitigate. I can find no attempt to mitigate that, and it seems a fairly fundamental principle to encourage you into work that you should not only be better off, but at least you should not be any worse off if you find work. In this case, it looks as if we are being quite open about the fact that people will be worse off. So, there are issues with the EQIA.

718. A second group is people with disabilities. As the EQIA states, 30% of people will be better off under universal credit, 30% will be worse off — some of those up to £39 a week worse off — and 40% will have no change. There are reasons for that to do with the current system, and DWP has said that it wants to channel some of the money that it is saving and that is leaving people with disabilities worse off into other ways of encouraging people into work. Our EQIA says that the transitional protection will deal with that and that no one will be worse off at the point of change. To an extent, that is true. However, there are two things that the EQIA does not go on to say, one of which is that the

transitional protection is eroded. In other words, as your benefit goes up, the protection you have goes down. So, slowly but surely, you will end up moving to, in some cases, being £39 worse off. If you are a new claimant, you will not have any transitional protection. Two groups of people will be affected by that, one of which is the group of people who have had a disability since birth or childhood and who come into the scheme because they reach age 16, 17 or 18. They will not have any transitional protection and will be worse off. So, young people with disabilities will be affected. The second group is those who become disabled for the first time. You have a car accident or an accident at work, or something else. Until then, you were in reasonable financial circumstances but suddenly you are out of work and claiming universal credit, or your working ability has been reduced. You might still be in work but have to rely on universal credit. You will not get transitional protection, and there is nothing in this EQIA about how we will deal with those groups of people.

719. We have next to no information about who will be affected by the benefit cap. We know that the numbers are not that large in Northern Ireland compared to many other parts of the United Kingdom. That is, by and large, to do with the fact that our housing costs, on average, are lower. Sixty per cent of the people who will be affected by the benefit cap live in London and the south-east of England, but we will have some people affected. We know much more about who those people are in Scotland and in Wales and in regions in Britain than we do about those in Northern Ireland, but we need to do some work to drill down about who is going to be impacted and how we are going to deal with that group of people.

720. Much of what is in the EQIA is reliant on the 2008 and 2009 family resources survey. The equivalent in GB uses much more up-to-date figures. We know that between one fifth and one quarter of social rented sector tenants will be affected and that a large number of those will be older people. We really

- need to drill down further as to who those people are. We know, for example, about the removal of national insurance benefits for people who are subject to immigration control. The EQIA conflates all those people and says that they are people who are working illegally. That is simply not the case. Some of the people who will be affected by this will be people who were here perfectly legitimately, were on visas to work and whose circumstances may have changed. They may well be appealing whatever their immigration status is. My organisation is involved in that to a very significant extent. Again, we need to know who those people are and what those circumstances are.
721. Finally there is the question of sanctions. The EQIA does not tell us how many people are currently sanctioned, who they are and whether they are people with children or without children. It gives us no figures on the projected number of people who will be affected by sanctions. It makes a statement to say that the proposed changes to the hardship provisions will only affect non-vulnerable groups, that any recovery will be gradual and that there are not expected to be any equality impact issues. Well, under the new arrangements for hardship payments and sanctions, it will be much tougher to get hardship payments. In addition, they will be loans, where currently you get a reduction in their benefit, but that benefit is not recoverable. You will get a reduction in your benefit and, when you get back onto benefit after a sanction, not only will you then have to have coped with having lost 40% of your standard allowance but you will have to pay the money that you have been given back. I can tell you, without having to see all the stats, that we need to know how many families are likely to be impacted by that. If you take 40% of a standard allowance of universal credit out of someone's household income, it will have a child poverty impact. People will not somehow stop spending only on themselves; it will affect what they can purchase for their children. Paying the money back will have an impact.
722. So, there are statements in the EQIA that, in my view, are not stand-over-able and are not accurate. Therefore, we need to drill down on those. I hope that that gives you a sense of some of the issues that apply, both in human rights terms and equality terms.
723. **The Chairperson:** Thank you very much. You have been very specific, which is good. You have raised things that other organisations have touched on as well. You are a member of the board of the social security advisory committee.
724. **Mr Allamby:** I am, yes.
725. **The Chairperson:** You are reporting on the regulations in Westminster. Are those being laid today?
726. **Mr Allamby:** They are. I am in the slightly bizarre position that I am not allowed to say anything about this until 4.30 pm this afternoon. I can tell you that they will be laid this afternoon. What I have told you about today was based on draft regulations. The universal credit regulations will be published, if not today, in the next couple of days, so we will know what the most current, up-to-date version for Britain is. The Department has said that there may well still be some show-stoppers and that it may look at them again, but we know where it is currently and what it intends to do. By the end of the day, we will know the response to the social security advisory committee's recommendations, and, without in any way treading on Parliament, I can say that there are a number of changes that will be made. I am not really in a position to go into detail on that.
727. If the regulations in Northern Ireland replicate the regulations in Britain — and I have no reason to doubt that that is the Department's intention — the kinds of things I have mentioned will give rise to real concerns. Some of the things that I have mentioned can, frankly, be dealt with and do not have an enormous price tag. I recognise that doing certain things differently comes with a price, and that price is quite significant. That raises a whole set of

issues that, clearly, the Assembly would need to interrogate. However, there are other changes that, frankly, do not come with a significant price — for example, exempting foster carers in between placements from the housing provisions. If DWP says that that group of people should be able to be picked up in discretionary housing payments, why do we not simply pick them up with an exemption in a regulation? It frankly will not cost any more money, it is administratively more simple and it says to foster carers that we are not going to put up another barrier to them undertaking foster care if they happen to live in housing association or Housing Executive accommodation. So there are things that we can do differently that do not necessarily have financial ramifications for Northern Ireland.

728. **The Chairperson:** You spent quite a bit of time on the situation around EU workers here and the differences in treatment — the 35 hours a week looking for work, and so on. This is what I can never understand: why would the UK Parliament pass an Act that was so obviously going to be discriminatory or challengeable?
729. **Mr Allamby:** I think the answer to that is that they, presumably, believe that they can objectively justify why they are doing that. They must have a tenable legal argument. Lawyers can argue almost anything about anything, but you can find a counterargument to the legality, or otherwise, of most things. I suppose that I am saying that it is very difficult to see an immediate and obvious objective justification for what is being done here. I am sure that departmental lawyers will construct one in GB, but sometimes you will go into court knowing that you might rather be arguing the other side's case more than your own case, and other times the reverse is true. On this one, I would much rather be arguing the case that this is unlawful than trying to justify the lawfulness of it. I am not saying that there will not be a very elegant peroration as to why it can be justified, but I think it will be quite a tough task for whoever ends up having to do that on behalf of the UK Government. I think it would be much better not to have to spend time over that in court here. Let us deal with it by not putting it in our Bill.
730. **The Chairperson:** Is there likely to be something in the regulations that you cannot talk about that would clarify that in any way?
731. **Mr Allamby:** No. There are draft regulations. I have seen the draft regulations and the explanatory memorandum. They are in the public domain; they are on the social security advisory committee's website. The Government are saying that they want to be better able to keep track of European Union workers and others, and they want this provision on that basis. The problem is the way it is crafted. There are all sorts of other provisions that are designed to be advantageous for people who are not expected to look for full-time work, because of their circumstances. You still want to encourage somebody who has caring responsibilities, such as somebody who has a child under 12 months, for instance, but still wants to enter into the labour market early. Those groups of people are encouraged to take up self-employment, and the rules are relaxed to allow them to do that. The rules are not relaxed for an EU migrant. Bizarrely, if an EU migrant has just had a child, is being told they have to look for work 35 hours a week, but decides to try self-employment instead, to try to get themselves off universal credit, or off full universal credit, we will immediately penalise that person for doing that. We would not penalise a British or Irish national for doing the same thing.
732. I find it very difficult to see what is an objective justification, and why you do not merely say, "You have got to look for work 35 hours a week". When you do other things, certain categories of EU migrant workers will have those closed off to them, even if the aim is to get you off universal credit. It makes no policy sense. It seems to me that it is designed in some way to have a negative impact on certain types of migrant workers.

733. There will be people who are work seekers who probably will not get into universal credit in the first place, because if you have never worked here, it is going to be very hard to get into universal credit. So, this is not about work seeking. This is about people who have come here, worked for a period and are not working currently. Given that we have had people from the accession countries since May 2004, you could have people who have been working here for six, seven or eight years. By the time universal credit comes in, it will be almost 10 years since accession. So you may well have people who will have been working for eight, nine or 10 years but who have lost their jobs and are going to find themselves being penalised within the benefit system, even though it is very clear that they are people who have, traditionally, worked very hard to get back into work, and we are not going to offer them flexibilities.

734. Trevor, I genuinely do not know what the rationale for that is, other than what I will call wider political issues. I have not heard the Department here give us a specific Northern Irish rationale about why we want that.

735. **The Chairperson:** I will come to members in just a moment. The Westminster Government have been through all of this, and presumably they have had advice from people like you, or maybe even you in person. They have had their Standing Committee on human rights and equality look at it in some detail, and they have gone ahead and passed the Act. Some of the matters you mention are maybe Northern Ireland-specific and some of them are not. I am not doubting what you say at all, but if it is so clear that it is almost inevitable that challenges will come up due to discrimination, why did they go ahead and do that?

736. **Mr Allamby:** I should probably be clear. I think that, on the issue of EU migrant workers, there is a really strong legal argument and legal challenge. Some of the other areas I have suggested are open to challenge. I am fairly strongly certain that there will be a challenge,

but I cannot forecast what the outcome will be. It may or may not be successful. I have no doubt that there are credible alternative arguments about why, for example, with a claimant commitment that only one partner signs up to, you do not get any benefit unless both partners sign up. Social security is littered with legal challenges over the years, some of which have been successful and some of which have not. It is fair to say that, on the other three examples that I have given you today, there is no doubt that the Department and government lawyers will put the alternative arguments, and, hand on heart, I do not know whether any of the three of those will be successful. What I am really saying is that I think that they are credible challenges.

737. **The Chairperson:** OK, thanks very much.

738. **Ms Ruane:** Go raibh maith agat, a Cathaoirleach. Les, very much for your presentation. It is very useful. It is international human rights day today, as you know, so I think it is very fitting that we are looking at all of this. I also want to pay tribute to the work that your organisation has done, and I mean that very sincerely. You have done tremendous work, and you deserve huge credit. I have no doubt that elected reps right across the political spectrum understand that. I take arguments that the Law Centre makes and any advice that you give us very seriously.

739. I have just a couple of questions. You mentioned section 75 categories. One of the ones I am very concerned about is people with dependents. You mentioned a couple of different areas, but will you elaborate a little bit on the impact on people with dependents, especially given the lack of childcare that we have here? Last week or the week before we saw the amount of money that it costs to keep your child in childcare provision.

740. The second and last question I have is about something that concerns me greatly. At one of our meetings, we were informed that DSD does not collect data on the section 75 categories,

- which I found astounding at this stage, given that section 75 has been part and parcel of our governance for many years now. If you do not collect data, you cannot predict. Maybe that is why the EQIA is so sparse. Will you comment on the lack of data and the impact that that can have on having a proper EQIA?
741. **Mr Allamby:** There are two issues there. I will give you a quick example of people with dependants and the issue of sanctions or conditionality attached to benefit. In Britain — and, if we follow suit, in Northern Ireland — we are introducing very severe increases in sanctions. They range from low to medium and high. The high level of sanctions will effectively say that the first time you breach sanctions, it will be a 26-week loss of benefit and, on the second occasion, if it is within a certain period, it can be 52 weeks. If you fail to meet a requirement three times within a year it will mean three years off benefits. It feels a bit like three strikes and you are out.
742. Those groups of people can have access to hardship payments, but there is a 40% reduction in the standard allowance and the payment is recoverable. Somebody who has dependants may be sanctioned, but, frankly, the children have not done anything wrong. A household in which somebody, for whatever reason, falls foul of the system three times, is taken off benefit for up to three years. The question then is this: what happens to the children, and what happens to the other partner who may well have been actively looking for work?
743. The worry that we have with sanctions is that research to date suggests that certain groups of people are disproportionately affected by them, such as people with mental health problems, people with learning disabilities, people for whom English is not a first language and people with literacy and other difficulties. They are not the only people, but they are the kind of people who are prone to sanctions. Those groups of people are already considerably vulnerable.
- Hardship payments by way of loans may be offered.
744. Under the new arrangements, the sanction is designed to change your behaviour if you have done something wrong. Your benefit will be stopped for a period. In the normal world, you would expect that if you then re-engage, the sanction would cease. However, in some cases, that is not what would happen. I find it hard to see a sensible justification for that. The sanction will not cease when you re-engage; you will have to serve a further period, almost as if to punish you to make sure that you do not do it again. Again, you have hardship payments, but they are loans. That is one example where people with dependants will be impacted in a particular way. In reading the EQIA, you get no sense of either the child poverty impact or the section 75 issue of people with dependants and people without.
745. We do not have section 75 in Britain, but we have an Equality Act and a set of provisions that are different. If you look at the EQIA of the Bill in Britain, you will find a considerable amount of data that has been kept that will tell you the impact of various provisions of the Bill based on issues of race and ethnicity. You can find virtually nothing like that in our EQIA. We had a considerable change over the past 10 years in particular. We have long-standing migrant communities and communities from abroad, but, in the past 10 years, we have had a very significant change in our ethnic make-up. It really is inexcusable that, in 2012, we have not started collecting data on, for example, the issue of race and ethnicity. It is not that difficult to do that if you decide that you want to do it. It may well take time before you have the kind of data that you can use, but we should have been thinking about this when the EU expanded and people started to come here from other countries. We really need to be able to say meaningfully what the impact will be based on race.
746. There are ways in which we can collect data that are not disproportionately expensive but that will help us to inform

- policy. It is important to remember that section 75 is about trying to have due regard to equality, but it is also a tool to help you to understand the policy impacts in advance, rather than having to sweep up after the event because something has happened that you were not expecting or having to pay more as a result of having to put through amendments and other policy, as often happens. This was designed to avoid that kind of thing. Doing more effective data collection would be money well spent.
747. **Ms Ruane:** The Department of Education has data on every ethnic minority child in a school. I agree with you that it is an easy thing to do if you put your mind to it.
748. **Mr Weir:** Thank you, Les, for your presentation. In light of what you said about time constraints, perhaps you should leave us a sealed envelope that is not to be opened before 4.30 pm.
749. I found it quite useful. I have a number of points, which I will go over fairly quickly. First of all, you have dealt with the legislation itself. Would it be fair to say that your bigger concerns are potentially about the implications of the regulations?
750. **Mr Allamby:** Absolutely.
751. **Mr Weir:** Secondly, I want to ask you about the human rights implications, because that was not quite clear. You mentioned the human rights implications on the zero-earnings rule and, as you put it, the intention with regard to mortgage relief. You said that it looks like something that is coming down the track, but, presumably, it is not in the Bill. It is just something that is quite likely to be coming in our direction.
752. **Mr Allamby:** It is not in the Bill. However, it was flagged up in the explanatory memorandum, which is in the public domain. When the universal credit regulations were being consulted on over the summer in Britain, it was flagged up that that is the intention. In other words, any form of work will immediately mean the loss of all your mortgage interest payments. It is not going to be tapered for people working more than a certain number of hours or earning over a certain amount. Bizarrely, if you do two hours of work a week at the national minimum wage and that brought you in £12 —
753. **Mr Weir:** I appreciate the point. That seems to be fairly ill-conceived, to be perfectly honest. However, strictly speaking, our role is to look specifically at the Bill.
754. The other point is that, in a number of the areas that you touched on, we would agree that there are major concerns. You mentioned the impact on foster carers, the claimant commitment in terms of nothing being paid to a couple and the retrospective time limit. I appreciate that this is one of the areas where we, as a Committee, in looking at these specific aspects, must take into account that there has been a process with the Social Development Committee. Those are all areas where people would say that there are concerns. Correct me if I am wrong, but I thought that the Social Development Committee was looking at amendments around all those areas.
755. **Mr Allamby:** I think it probably is. Some of them are probably to do with regulations. For example, there is nothing in the Bill about the impact on foster carers. All the Bill says is that we are giving ourselves powers as an Assembly, and giving the Department powers, to implement, if you like, a spare-room tax for public sector housing. I cannot immediately see a legal argument that says that, somehow, the Assembly could not give the Department those powers. It is then about how you use those powers and apply them, so we are back into the regulations.
756. My issue is that it is very hard to decouple the Bill from the regulations because the Bill is so broad-ranging —
757. **Mr Weir:** I understand that, but the remit of this Committee is to look specifically at the equality and human rights implications of the Bill rather than of the potential regulations.

758. It will be interesting when we get some response from the Department; you are not the first to raise it. Paragraph 7 of schedule 1 is the work-related bit for EU migrant workers. I cannot think of a particular reason why that is framed the way it is. You have highlighted that. Presumably, this is something that is being put on a UK-wide basis. I think that, of all the areas, this is most likely to end up being challenged in the courts if it goes ahead the way it is.
759. With the impact of a legal challenge, through whatever arguments are used by DWP, the courts are likely to say either that they can accept it for whatever reason, or alternatively, it will effectively be declared unlawful across the whole of the UK. To some extent, this bit will stand or fall together. There is no way that we will be in a position to go it alone on that.
760. **Mr Allamby:** If we decided not to enact it because we think it potentially unlawful or because we do not see the policy rationale, the issue would then immediately become about whether it is one of the areas on which you can put a price. Is there a cost attached to doing something differently? If so, does it mean that there will be money coming out of the Northern Ireland block grant? It is impossible to know what the ramifications will be of saying to somebody who is a migrant worker and has a child under 12 months to go and spend 35 hours a week looking for work, even though their child might be only three months old. I will use the example of the hypothetical Polish worker again. The hypothetical Polish worker might decide to spend 35 hours a week looking for work in those circumstances and might endure hardship. If they do not, and they get sanctioned, there is a cost to that if we did not go down that road, but it will be very difficult to see what the physical financial cost will be if we decided to do something differently.
761. **Mr Weir:** If there is a challenge in respect of the main legislation across the water, and a court case shows that it is against EU law, any change would have to be replicated across the whole of the UK.
762. **Mr Allamby:** Technically, not necessarily, but, in practice, almost certainly, if that is not an almost lawyerist answer. What I mean by that is that if it was taken to the Court of Appeal or to the Social Security Commissioners, it would probably have to go. Interestingly, there is a technical issue, which is that our Bill is probably not primary legislation for the purposes of the Human Rights Act. Therefore, a challenge is more likely to happen here. I need to do a bit more work on this, but we could challenge this with the Social Security Commissioners because they would have powers to deal with this as secondary legislation, but, in Britain, it may well have to go direct to the court. If the Court of Appeal makes a decision in Britain, it is not absolutely binding here, but, traditionally, they are very likely to follow.
763. **Mr Weir:** If something is declared to be against EU law in Birmingham, it would be very difficult to say that it is within EU law in Belfast.
764. **Mr Allamby:** In fairness, I think that the Department would almost certainly follow the judgement, although it may well find its way through the Court of Appeal, the Supreme Court, etc.
765. **The Chairperson:** How would you prove or disprove that somebody had spent 35 hours a week looking for work?
766. **Mr Allamby:** That is one of the interesting things. You are going to have primary legislation, the regulations and a lot of guidance, and I am pretty sure that the 35-hour rule will be written into the regulations rather than the guidance. The reality is that I do not know, short of electronically tagging everybody and finding out what they are doing. As I said to the Committee, if I became unemployed tomorrow, I could probably spend 35 hours a week in the first two or three weeks looking for work. What I mean by that is that I could do up my CV, look at all the websites, prepare myself for work, etc, but, after four or five weeks, short of knocking on doors and

- saying, "gis a job", it would be very hard to know how you would spend 35 hours a week. There are only so many libraries and jobcentres, and there are only so many times you can send off your CV, so the reality is that it is built in in a way that is unenforceable. I do not think that it should be in regulations. It is designed to give the message, rather than actually being real.
767. **The Chairperson:** Peter asked you about the loss of mortgage interest payment if you work a couple of hours a week. You said that it is not in the Bill, but you are gleaning that from the explanatory memorandum. Is there anything in the draft regulations that clarifies that situation?
768. **Mr Allamby:** The draft regulations state that your mortgage interest simply stops if you go into employment, so any form of employment will mean that you will lose your mortgage interest. In fairness, that is the position at the moment if you work more than 16 hours a week because then you can move into the tax credit system. The argument is that the tax credit system will be generous enough to compensate you for the loss of your mortgage interest. What is new on universal credit is that, if you work two or three hours a week, you will not end up being sufficiently compensated for that, which goes against the idea of mini jobs.
769. **Mr Brady:** Thank you very much for the presentation, Les. I have to say this is the first time that I have known you to be embargoed, and you have only three quarters of an hour to go.
770. We are obviously dealing with the primary legislation, and I think it is important that we get the enabling legislation right, because the regulations will flow from that.
771. Talking of legal challenges, a precedent has been set in the European court. In 1984, the Drake case changed the whole emphasis of invalid care allowance. So, there are examples.
772. As has been mentioned, the Housing Executive said very clearly to the Committee for Social Development that if the underoccupancy rules were implemented in the morning, it simply would not be able to cope and that it would take a considerable period of time before it felt able to do so. I know that there has been a lot of talk about the box room in social housing, which most people use as a store room rather than as a bedroom, because you would be lucky to get a bed into one, unless you were to sleep diagonally. My point is that that could be an area for exemption.
773. One of the things the Department said is that if one person from a couple does not sign the claimant commitment, there would be a four-week cooling off period. That would mean that, during those four weeks, no benefit would be paid to either claimant. That is an obvious difficulty.
774. In Britain, people have been given at least a year's notice of contributory ESA, but that certainly would not be the case here. So, there is no parity in that regard.
775. Surely, zero earnings is a disincentive for people to go and look for work. Who is going to work for two hours a week and lose their mortgage interest? It is nonsense and is totally irrational.
776. You mentioned hardship payments, which will be recoverable. By the Government's own admission, benefits are at subsistence level, so the people affected will be living a long way below subsistence level, and it will become very difficult for them.
777. You touched on the obvious issues of fostering, and all that. We are looking at the human rights and equality aspects of the Bill, but we cannot project who or how many may be affected because of the vast lack of data on those issues.
778. If we make changes to the primary legislation, that will be rolled out in the regulations. So, that is a possibility.
779. **Mr Allamby:** This goes back to Peter's point. I think the issue for the Ad Hoc Committee is that although you are considering only the human rights and

- equality implications of the Bill, the Department's timetable suggests that it wants to introduce some of the key regulations almost immediately after the Bill has been passed. In some cases, we are talking about a tiny number of weeks — less than a month. If that is the case, we are in a different position from Britain. In Britain, the Bill was given Royal Assent on, I think, 8 March 2012, and the 12-month ESA rule, for example, came in on 30 April. That was only six weeks later, but people had been written to beforehand. The housing provision, for example, will come in April 2013, which is 13 months after the Bill was passed. We know that that is on its way in Northern Ireland, and if the intention is to get it in as quickly or as close to the GB timetable as possible, it almost certainly means that you will get the regulations, if not the day after, very shortly after the Bill has been passed. So, any scrutiny of the real detail will be very difficult.
780. Trevor, you pointed out earlier that all this has been scrutinised in Britain. There was an enormous amount of scrutiny of the Bill. However, apart from the social security advisory committee, there has not been and is no legal requirement to scrutinise the regulations in anything like the same detail. So, we have a democratic deficit in what are quite important parts of this welfare reform package. You cannot look at the Bill in isolation from the regulations; you have to at least recognise that the two come together. How much of that can be dealt with in the terms of reference is a matter for you rather than me. Given the ramifications, you need to look at the two together.
781. **The Chairperson:** That surely means that all we can do is reserve judgement.
782. **Mr Allamby:** Well, you can reserve judgement in that sense, but it is a reserving of judgement knowing what the regulations are likely to look like. In the same way as our Bill looks almost the same as the GB Bill, I would not be rushing down to the bookies to put money on any notion that our regulations will look significantly different from GB regulations unless, frankly, the Assembly decides that it wants some of those regulations to be different.
783. **The Chairperson:** We have to report the result of our deliberations on the Bill within 30 working days of when we started — 22 January 2013 is our last date. We will not be in a position to comment on the regulations at that point.
784. **Mr Allamby:** I would not suggest or recommend that you comment in detail on the regulations. What I think you probably need at least to be able to comment on is the Department's timetable and how the timetable for the Bill and certain of the regulations will impact given that some of the human rights and equality aspects seep into the regulations.
785. **Mr Weir:** Surely the reason the regulations are so hot on the heels of the Bill is that we had the Bill later. People can discuss why that is the case, but if we are not to fall behind and break parity and cost ourselves a considerable amount, there is some catch-up to be done.
786. **Mr Allamby:** Yes. There are two things I would say about parity. We are already out of sync. The 12-month stopping of contributory ESAs has been in place in Britain since last April, so we have already fallen behind the timetable. Even if we had had accelerated passage last year and rushed the Bill through, I do not think we would have had some of the provisions that came in in Britain on time.
787. The other issue, of course, is that we are doing some things differently. We do not have parity in the sense that we do not have a council tax benefit that is being subsumed to local authorities. We are going to have rate rebates and take a longer look at what rate rebates do. We are almost certainly going to retain a social fund in a way that Britain has not. There are already quite significant differences in parts of the Bill that recognise almost historical issues and social security here. So, we are already

- in an area where there is not a dispute between DWP and DSD. There will be a break from parity because, historically, we have already broken with parity on certain things. Every welfare reform Bill that I have seen has had some differences to reflect Northern Irish nuances.
788. **Ms McGahan:** Thank you for your presentation. I represent Dungannon town. We have a large foreign national population due to the meat industry — Moy Park, and so on. There is not a week goes by that I do not deal with people from that community, so I am concerned about EU workers being treated differently from others. I fill out passport applications every week for their children. Would the fact that their children have Irish or British passports make any difference?
789. You talked about housing. We have almost 1,000 people on the housing waiting list in Dungannon. The flip side to that is that I obtained figures earlier this year showing that we have 600 vacant properties. What condition they are in I do not know, but we need a joined-up approach among all the organisations that deal with housing. My guess is that that would kill the housing waiting list in Dungannon. It would also mean people contributing to the economy in Dungannon and potentially creating employment.
790. Also, we had a look at figures this morning showing that the number of children in care in the Southern Health and Social Care Trust area has increased by 7%. The recession and poverty are probably playing a key role in that. Although I represent Dungannon town, I live in a rural area with a population of 8,000, and we do not have one full-time day-care facility. In fact, last week, I was dealing with mothers who could not get their children out to school; roads were not gritted because of the gritting policy, and some pupils were missing GCSE modules. That is a massive issue in the rural area that I come from.
791. That is really just a commentary on those issues. To go back to the first point about passports, does the fact that people's kids are born here have any implication at all?
792. **Mr Allamby:** It has implications in other areas of law, but, under this provision, even if you are an EU migrant worker whose children were born here, I do not think you will be exempt from the all-work requirement, regardless of your circumstances. So, no, I do not think that the fact that one's children may have British or Irish passports will allow a person to be exempt from the provision.
793. I will turn to the other things that you mentioned, the first of which is the size-related issue. We are going to have to come up with a range of proposals to deal with that. As I understand it, the difficulty with the box-room provision, for example, is that if you say that it is not a bedroom, that has ramifications for the amount of money and income that comes into the Housing Executive. If a house has three bedrooms but is now classed as having two bedrooms, there is an issue about the level of rent. There is a knock-on impact elsewhere. It does not make sense, given the large numbers of people who are homeless across Northern Ireland, in Dungannon and beyond, to have vacant properties that could be occupied while you incur a very considerable expense by putting people into hostels and bed-and-breakfast accommodation that is not generally ideal for families or other households in any event.
794. Childcare is really important. One of my bugbears is that this Government talk about universal credit as if the only people who will claim it are those who are out of work and need to get into work. Actually, the majority of people who will be on universal credit will be those who are in work but are not earning sufficient wages to live on. They have to have the national minimum wage, but universal credit works in the same way as our current benefit system, which pays large numbers of people tax credits because they are in work

- but their wage alone is not enough to live on. It is exactly the same, so we focus on that issue. For lone parents, however, unless the economy changes dramatically, the kind of work that is out there does not generally offer family-friendly hours, and suitable childcare is not available. Unless you have informal childcare, you will not be able to take work, no matter how motivated you are to do so. The other thing about our childcare provision is that it is very expensive.
795. One of the other things about the childcare debate is that childcare is not just about having somewhere safe to put your children. It is about child development. If we want to move away from informal childcare into a much more structured and formal child development approach, we have to do something about the level of childcare. We have only just, finally, produced a consultation document after what seems to have been an age to do even that. We are way behind what has been happening in Britain and we need to catch up, otherwise this welfare reform provision will not work for lone parents.
796. **The Chairperson:** Mickey, do you want to follow up on that?
797. **Mr Brady:** I have another point to raise with you, Les. In its presentation to the Committee for Social Development, officials from the Housing Executive talked about a pilot scheme in Craigavon that is targeting people who they think may be affected by the underoccupancy provisions and encouraging them to take in lodgers. I am not sure about the logic or illogic of that, because I assume that if you take someone in to use a bedroom that will be underoccupied according to what we are hearing, that person presumably will be contributing to the household. If you are on benefit, presumably that would be taken in as income and you could lose more than you would lose on your housing benefit. That seems to be a totally illogical process, to be honest with you. I cannot imagine for a moment that the income from the lodger is going to be exempted.
798. **Mr Allamby:** I understand from Lord Freud that if you take in a lodger who brings in income, that should not have an impact. I cannot remember whether he said that you would be able to keep the whole of your income from your lodger or, at least, that the income that is the shortfall of housing credit or universal credit will be disregarded. My understanding is that, with regard to taking in lodgers, you will not, if you like, be giving with one hand and taking with the other.
799. The difficulty that I have with the lodger scheme is that although it makes some sense, the problem is that some people keep a spare room because they want their grandchildren to be able to stay over with them or they want somewhere for their kids to stay when they come home at Christmas, because they have grown up and live away from home. There is a whole variety of reasons why the rest of us, if we are relatively middle-class and homeowners, have a spare room for family circumstances. So, although taking in a lodger for some people might be a possibility, for others it really is not the answer. Others will want to be able to free up that room at Christmas, during the summer holidays, outside of university terms, or whenever it might happen to be. A lodger is not really the answer to that kind of provision.
800. **Mr Eastwood:** Thank you very much for your presentation. It is very useful. Unlike others, I think that the regulations are actually very important to the Committee and the Assembly because they flow from the Bill. What you are telling us is that they are going to come in maybe the next day or even that very day. If you look at the zero earnings rule, you see that it is completely ridiculous. The whole argument about welfare reform is that people should be better off in work than out of work. This contradicts that completely. Do you have any information from the Department about whether it is looking to change some of the regulations that are clearly ridiculous and about which there are some significant issues with regard to

- human rights legislation? From what you have said, I do not think that you have any information to suggest that. I suppose that my question is why DSD is not flagging up those issues and trying to create regulations that actually make sense.
801. **Mr Allamby:** It may well be flagging them up privately, or it may not be. I genuinely do not know. I have no information to suggest that, at present, the Department here is planning regulations that will look significantly different to those of GB, other than where the issues are to do with our legislative references being different, etc. In what I will call substantive terms, I am not aware of that currently. So far, the things that we will do differently are the things that were announced by the Minister about six or eight weeks ago. I am not privy to anything else that we are about to do differently. I hope that there are some things in the pipeline, but, if there are, I am not aware of them.
802. **Mr Eastwood:** I understand that the Committee has a very short time period to consider this. However, I think that we should be flagging up to the Department that we have heard evidence that suggests that there are serious human rights issues with some of the regulations.
803. **The Chairperson:** If somebody gets mortgage interest support payments and they take on some work, your interpretation is that they will lose their interest payments. What happens if they take in a lodger?
804. **Mr Allamby:** What will happen to their mortgage interest payments? I should know the answer. Under current provision, you can keep a small proportion of the money that you bring in from a lodger. Off the top of my head, I think that it is something like £20. I am not sure what the provision will be for universal credit. I do not think that it is one of the areas that they intend to change. The bedroom tax, if you like, or the spare-room tax, is aimed not at homeowners but at public sector tenants. So, if you are a couple whose kids have grown up and you own your three-bedroom house, even if you claim help with mortgage interest, there is no spare-room tax for homeowners. It is only for those who rent in the public sector.
805. **The Chairperson:** I was not thinking about the size-related criteria, as you call it. I was thinking about somebody who is getting mortgage support. If they get a couple of hours' work in the week, they will lose that support, but if they take in a lodger, they will not lose it.
806. **Mr Allamby:** That is right. If you take in a lodger, you can keep some of that income.
807. **The Chairperson:** In other words, you provide income to yourself. However, there is a contrast between the two positions.
808. **Mr Allamby:** I guess that the difference is that lone parents are now expected to be much more actively engaged in looking for work, whether they bring in a lodger or not. The paradox is that if you turn down a job opportunity, you may be sanctioned. It would be interesting to see what would happen to a person who turned down a job because taking it would mean that they would lose their mortgage interest payment and would be left so much worse off. Is that a reasonable ground for turning down a job? I suspect that that will be the kind of issue that will end up at an appeal tribunal. You would hope that personal advisers would recognise that if the maths is so clear-cut, that decision is reasonable in those circumstances.
809. The issue for lone parents is that if they get a job for 35 hours a week, the chances are that they will be better off, and, therefore, losing their mortgage interest would not be such a worry. The problem is that if a job of four or five hours a week is taken as a stepping stone, the loss of the mortgage interest becomes a far bigger issue. So, it is almost saying to lone parents that they should find full-time work or significant part-time hours, whereas everything else that this Government have said

- about universal credit is about how it is designed to get you into a mini-job as a stepping stone to eventually finding full-time work. Quite often, people with young children are not looking for 35 hours a week; they are looking for seven or 10 hours, and then eventually 14 hours, 21 hours or 35 hours.
810. **Mr Brady:** I have a quick point to make on sanctions. Obviously, there will be primary legislation and regulations, but the guidance will be very important because the guidance that is given to decision-makers and to front line staff will determine what sanctions are applied and in what circumstances. That goes back to your point about working out the maths. However, the guidance may well say, “Do not worry about the maths. If we accept that that is not reasonable, you will be sanctioned”. The difficulty is that we do not have sight of the guidance or the regulations. The guidance varies so much in many local offices; some are zealous in applying sanctions and others take a more pragmatic approach, and that is the difficulty.
811. **Mr Allamby:** Yes. In fairness to the Department, I think that the proportion of people on benefit who are sanctioned here is lower than that in Britain, and that reflects, in part, a more liberal attitude. It also reflects, in part, the recognition of issues such as childcare and the understanding that childcare is a real barrier to finding work.
812. **Mr Elliott:** I have one question around the regulations. Thanks for the very interesting presentation. Are you saying that it is very difficult to make any judgment, particularly on the human rights aspect, without first seeing the regulations?
813. **Mr Allamby:** I am saying that in some of these areas the challenge may not be based on the Bill but on the regulations under it.
814. **Mr Elliott:** I thought that you were indicating that, in most cases, it is very difficult to make a judgement on the Bill without seeing the regulations. Did I pick that up wrongly?
815. **Mr Allamby:** I think that on the issue of migrant workers, for example, you can reach a judgment based on the Bill. The other examples that I have given are based on the Bill and what the Government have announced is coming down the track in the regulations. So, in some cases, it is both.
816. **Mr Elliott:** OK. Thanks.
817. **The Chairperson:** Well, thank you very much. That was very informative.
818. **Mr Allamby:** Thanks, and good luck with your deliberations.

11 December 2012

Members present for all or part of the proceedings:

Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Colum Eastwood
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Miss Michelle McIlveen
 Lord Morrow
 Ms Caitríona Ruane
 Mr Peter Weir

Witnesses:

Ms Martina Campbell *Department for Social
 Development*
 Ms Jane Corderoy
 Mr Michael Pollock

819. **The Deputy Chairperson:** I welcome to the Committee Martina Campbell, Michael Pollock and Jane Corderoy, all from the social security policy and legislation division in the Department for Social Development (DSD). I take it that you have a presentation for us?
820. **Mr Michael Pollock (Department for Social Development):** Yes, Chair. We have a letter from the Committee that Martina has partially responded to. You referred to it as being in the members' pack yesterday, and it covers some of the issues. The letter is dated 7 December 2012 and contains a list of issues that I propose to go through to see whether we can provide responses and clarification for Committee members.
821. We have listened to the evidence sessions. One thing that I would say, if it is any comfort to members, is that we have not heard anything radically new by way of evidence in those presentations of which we were not already aware. By your leave, I turn to the letter of 7 December.
822. **The Deputy Chairperson:** Members, the letter is in your pack, and we will work our way through it.
823. **Mr Pollock:** The first issue raised is "The lack of a detailed Human Rights assessment". The letter states:
"The absence of a detailed Human Rights memorandum supplied by the Department gives rise to difficulties".
824. Martina covered that issue in her response yesterday, when she said that the human rights memorandum is protected by legal privilege. Therefore, it is not something that we would ordinarily share with the Committee. We have checked that position with our lawyers and that remains the case.
825. We can expand on what is in the explanatory and financial memorandum, in respect of the articles touched on by the Welfare Reform Bill, what articles are engaged and how we expand on them. Paragraph 637 of the memorandum provides a summary that the Minister would have submitted to his Executive colleagues before the Bill was introduced.
826. **Mr Brady:** Sorry, why is it a secret?
827. **Mr Pollock:** I do not think it is a secret, Mickey.
828. **Mr Brady:** It cannot be shown to the Committee for some reason. What is the rationale behind that?
829. **Mr Pollock:** The rationale is that it is something provided under legal privilege and, as such, it is protected. It is not ordinarily shared with Committees.
830. **Mr Brady:** So it is not transparent in that sense?
831. **Mr Pollock:** It is the same issue as that which Iain Duncan Smith responded to the Joint Committee on Human Rights at Westminster, and the same stance was taken here because we are linked with the UK.
832. **Mr Brady:** Should we not take a different stance, since here it is the devolved matter?

833. **Mr Pollock:** You can take that stance, but I am speaking from the Department's point of view.
834. Our legal advice is that the human rights memorandum, which is detailed, is not ordinarily shared with the Assembly. It is the Minister's statement that says that the Bill is in conformity and compliance with the European Convention on Human Rights (ECHR).
835. **Mr Brady:** Again, I ask why the human rights memorandum would not ordinarily be shared. Has it ever been asked for before in other circumstances? The Bill that we are looking at is unique in some ways.
836. **Mr Pollock:** The issue of human rights memoranda has been raised before on numerous occasions, but the memoranda have never been shared.
837. **Mr Brady:** Interesting.
838. **Mr Pollock:** However, as I said, we can expand in the explanatory and financial memorandum on the articles that we think are engaged and on how compliance with human rights is satisfied. Therefore, there may be something that we can do.
839. **Mr Brady:** Is this not a breach of human rights?
840. **Mr Pollock:** Whose human rights?
841. **Mr Brady:** Possibly our rights, as Committee members. I am being facetious. It just seems peculiar that there is something that is totally relevant to all of this, but we, the Committee members who are here for a specific equality and human rights purpose, cannot see it. I just want to make that point.
842. **The Deputy Chairperson:** Yes. That is fine. Thanks, Mickey.
843. I just want to make members aware that you referred to paragraph 637 of the explanatory and financial memorandum, to do with human rights issues. It is just this one sentence, Michael:
- "The provisions of the Bill are compatible with the provisions of the Human Rights Act 1998."*
844. **Mr Pollock:** Yes. As I said, I think that we can expand on the articles in the convention that are engaged with and on how human rights are satisfied.
845. I move to the second issue in the letter of 7 December, which is "The completion of the EQIA". The Department must:
- "pay due regard to the need to promote equality of opportunity".*
846. There are also some issues about the completion of the equality impact assessment (EQIA), and the Equality Commission has registered its concerns.
847. Again, that is not anything new to us. We recognised the data deficits, and I think that that will appear in the completed equality impact assessments. We recognised the importance of further screening and have already advised the Social Development Committee and this Committee that it is our intention to screen the regulations that arise from the primary legislation.
848. We also recognise the legitimate concerns of the stakeholders who have provided evidence about equality impacts. As I said, for the EQIA, we have repeatedly stated that it is a living document and that we are updating it. There is some mention of the data deficits, and, in that regard, I can advise that we are looking to update the policy simulation model. We have added in HM Revenue and Customs (HMRC) data; that is, tax and income data. We are looking to include the family resources survey (FRS) from 2010-11, and that should be available just after Christmas. Therefore, we will be able to produce a further module from the policy simulation model early in the new year.
849. The difficulty with the data, as we have explained repeatedly, is the lack of a pattern. If you are dealing with statistical modelling and are going to extrapolate, you have to have some sort of pattern from which you can draw conclusions. There is a cost attached to all of this. We mentioned the deficits

- for political opinion, race, religion and sexual orientation. Those are section 75 categories that have absolutely no bearing whatsoever on benefit entitlement. Anything that is gathered is effectively an intrusion into someone's human rights, from the other side of the coin.
850. A lot of issues around the data used to inform the equality impact assessment — the third issue — have been raised by the groups that have presented to this Committee and the Social Development Committee. From an official or government standpoint, we have to be sure as to the integrity of the data, so we must rely on publicly available figures such as the FRS, which is a statistical base that can be used to draw conclusions from which you can formulate policy. As I said, the policy simulation model, which is new and has been designed for Northern Ireland, is, at most, six to nine months old. We have to be cautious of producing iterations of it time and time again.
851. As I said, there is an undertaking with equality impact assessments that there will be further screening and further equality impact assessments carried out if necessary on the regulations as they appear.
852. That covers the third issue in the letter. The fourth issue is "The 'layering' effect". There is recognition in the Department for Work and Pensions (DWP) that, because of the breadth of the Welfare Reform Bill, it is almost impossible to get a picture of the cumulative effect of all the measures and impacts. The best that it can do, and the best that we are trying to model and mirror, is an aggregate approach whereby the policy simulation model is built up over time. Where we have valid data, we will feed it in.
853. Under the fifth issue, the Human Rights Commission (HRC) suggested the inclusion of the affirmative resolution procedure in the Welfare Reform Bill as an effective safeguard. That is not something that we would particularly welcome, in so far as it would take up Assembly and Committee time. Ordinarily, the process by way of confirmatory resolution — or affirmative resolution, as it is called there — would be that the regulations would be made, laid and then debated within a six-month time frame.
854. If, at the end of that time, there is a vote in the Assembly and those regulations fall, there has to be a total reversal of everything that has gone before. Therefore, you are talking about clerical workarounds, IT changes, potential delays to claimants, errors, and all of that. Ordinarily, the process would be — it is the same with this Bill as with any other Bill — when there is a major policy shift, the first raft of regulations that comes from that primary legislation are subject to affirmative resolution. There is a recognition that, where there is a major policy change, that should be, and ordinarily is, debated in the Assembly.
855. It is the same for all the universal credit regulations where there is major policy change. The negative resolution procedure applies to benefits that are already in play and have been in play for 10, 12 or sometimes 20 years — the likes of jobseeker's allowance (JSA) and housing benefit. There is an uncertainty about that process if it is varied through having affirmative resolution for every regulation that comes out of it. There is a very real cost by way of delay, as well as to Committee and Assembly time.
856. A number of specific housing issues are raised under the sixth issue. I can provide a wee bit of clarification on what we said before. On housing issues, the EQIA does not take account of the nature of the housing stock. That is true, to a certain extent. There is quite extensive work going on in the Department, through the Housing Executive and the like, on research on how to solve a problem such as the housing issue and the reforms that are being introduced through the Welfare Reform Bill.
857. As I said, extensive research is being conducted. The Minister commissioned that through the Housing Executive.

- He has produced a housing strategy. Again, the more sophisticated that the policy simulation model becomes through development, the better that the information available on amelioration or the need for amelioration will be.
858. On childcare issues, all that I can reiterate is that to date no one has been sanctioned for lack of affordable childcare. It is in regulations already that good reason, as it is now being called, for not taking up a job is a lack of affordable or accessible childcare. There are some comparator figures on childcare tax credit take-up. In Northern Ireland, I think that it is on average £78 a week, whereas take-up in the rest of the UK is around £55. Therefore, there are issues around childcare and measures in place to address those issues. I would not for a minute suggest that a resolution is anywhere near, but there is certainly work going on across Departments. The Department of Health, Social Services and Public Safety (DHSSPS) would have an interest in that, as would the Department of Education (DE) and DSD. It is about getting a collective childcare strategy and moving forward. To date, as I said, a key point would be the welfare reform safeguards and anybody's human rights and equality rights under the protections already on the statute books.
859. The third point under the sixth issue is "Getting people back into work". There is again quite an extensive raft of programmes through the Executive and the Programme for Government to encourage people back to work. A key principle of the Welfare Reform Bill is to provide better incentives to ensure that it always pays when people get back into work. However, there are not in education, employment or training (NEET) and other programmes through the Department for Employment and Learning (DEL) and quite a few initiatives outlined in your own Programme for Government that are designed, if you like, to complement the welfare reform objective of getting people back to work or moving people closer towards the workplace.
860. On the seventh issue, "Other areas with possible Human Rights/Equality implications", you mention destitution, private contractors, impacts on the disabled, and ethnic minorities. On destitution, as far as the Human Rights Act 1998 is concerned, yes, there is a human right enshrined, but it is a right to entitlement to benefit. No actual amount would be specified. Hardship regimes have existed for quite some time for benefits, and a new hardship provision is being introduced for employment and support allowance (ESA).
861. As far as private contractors carrying out assessments for personal independence payments (PIPs) is concerned, we think that that is a red herring. The contract and the responsibility are still with the Department, so Capita or anyone else carrying out PIP assessments would be acting as an agent of the Department.
862. A number of issues were highlighted concerning impacts on the disabled, including extra support for people with disabilities. It is true that people with disabilities do need extra support. We contend that the Bill is proportionate in that respect in so far as there are higher disregards — work allowances, as they are now being called. There are additional components for people with disabilities; for example, the benefit cap does not apply to a family with a disabled person. There is also the prospect of getting carer's or attendance allowance.
863. The Equality Commission itself recognised that, in the equality impact assessment, we are using the social model more than the economic model for people with disabilities. We intend for any measures in the Bill to be proportionate in that regard.
864. I know that Les mentioned ethnic minorities yesterday. It is something that has come up time and again, particularly to do with paragraph 7 of schedule 1. There has been some movement in DWP's regulations, ensuring that spouses are not caught by the claimant commitment and having to meet all the work conditions. That will be modified

- and reflected in any regulations that we take forward.
865. As far as the right to reside condition is concerned, I think that it has been upheld by the Court of Appeal that the state is entitled to protect its public finances and resources by requiring a degree of social and economic integration in order for an individual to qualify for entitlement to contributory benefit. That is what this is about. Income-related benefit is a financial assistance-type benefit, and universal credit would be viewed in that regard. An individual's right to live anywhere, or claim anywhere, is there. If a person has paid contributions elsewhere in the European Economic Area (EEA), he or she would be entitled to their contributory benefits as such. This is to do with income-related benefit where it is deemed as being a type of financial assistance.
866. The only other issue mentioned is the difficulty with access owing to language barriers. We see that as being a bit of a red herring, because access to interpreters is available throughout the Social Security Agency (SSA) network.
867. Other than that, Chair, I do not have anything else to say. We have a timetable. Unfortunately, it is one that we have to rework because the Ad Hoc Committee is sitting and because we have to bring forward regulations. There are factors such as the Christmas recess and Easter recess to consider. All have a bearing on the lead times associated with bringing forward regulations.
868. **Ms Martina Campbell (Department for Social Development):** I can take the Committee through the timetable in general terms. It has not been signed off yet by the Minister, as Michael said.
869. **The Deputy Chairperson:** Michael, to be fair, the timeline of this Committee has been established for two weeks. The timetable should perhaps have been adjusted by now.
870. **Ms M Campbell:** I said that I can take you through the timetable in general terms. The issues is perhaps not so much when this Committee will report but whether the Social Development Committee will complete its scrutiny within the six remaining days.
871. We envisage that we will be presenting the regulations to the Social Development Committee in three packages. We have already shared a previous draft of the timetable with it. As I said, we propose to divide the regulations into three packages, depending on their time-critical operational date. We are also proposing a departure from normal procedure, in that we will submit the draft regulations to the Social Development Committee as soon as possible after the Bill's Final Stage and in advance of Royal Assent. We are doing that in recognition of the Committee's concern and the size of the package, and to give the Committee as much time as possible to allow it to scrutinise the regulations.
872. On the current estimate, we envisage that the Committee will receive the first batch of regulations during the week commencing 8 April 2013. We hope to be making those regulations by the first week in May. That will be for regulations coming into operation in GB in April 2013. Obviously, we will be a month behind.
873. The second package of regulations will be going to the Committee around the end of April 2013. We hope to be making those regulations in the last week in May. That will be for regulations mostly with an operational date in GB of April 2013. We will have an operational date of June 2013, which will leave us almost two months behind.
874. The final package will be the universal credit package, which we had envisaged going in around the first week after the summer recess, in September 2013, with a view to making those regulations by November 2013. As members will know, the introduction of universal credit has been pushed back to April 2014. So, some regs in that package cross-refer and are consequential, which is why we want to try to do the packages in sequence. However, we are reviewing the content of each of those packages, and,

- as I said, we are reviewing the timetable in consultation with the Minister.
875. That is a rough approximation of our plans, and, as I said, the process obviously depends on when the Social Development Committee completes its scrutiny and on when the Final Stage is.
876. **Mr Pollock:** That is us for the time being.
877. **The Deputy Chairperson:** The Committee's main concern about the regulations involves sub-paragraph 7 of paragraph 1 of schedule 1. Have you seen anything in the GB regulations that were laid yesterday that might allay the Committee's fears?
878. **Mr Pollock:** We have seen draft regulations that take account of the issue that I mentioned with foreign nationals' spouses being required to submit to claimant commitment work conditions. That is being changed.
879. **Ms M Campbell:** The issue with that sub-paragraph is that EU nationals are being asked to be subject to full conditionality. That includes areas such as testing their work search commitments. The coalition Government has not changed that position. EU nationals of course have a right to reside, work or whatever in another EU country, but they do not necessarily have a right to be sustained by the Government of that country. So, the only way that the Government can test EU nationals who are here for work search or work and who retain worker status is to check their conditionality, which is about knowing what work preparation and work search they are undertaking. That is why full conditionality is applied to them, unlike what happens with British or Irish nationals who live here and are not subject to it. We will go back to what we said about universal credit's being financial assistance, and there is obviously a human right to live and work wherever you want. However, the action that the coalition Government took, which we are proposing to adopt here, is proportionate, and protecting the country's economic position is a legitimate aim.
880. **The Deputy Chairperson:** I have another point about the ECHR memo, and I appreciate what you said, Michael, about being able to share legal opinion. What is the Attorney General's role?
881. **Ms M Campbell:** As members will know, the Attorney General completes a certificate of competence before any Bill goes to the Assembly.
882. **The Deputy Chairperson:** Has the Attorney General completed that certificate of competence?
883. **Ms M Campbell:** Yes.
884. **Mr Eastwood:** I am slightly concerned about the idea of the regulations arriving from London and our adopting them without any real change. We have been told that the devil is in the detail of the regulations. Do you have any sense of DSD having an opportunity to change any of the regulations, or will we just adopt them en masse?
885. **Ms M Campbell:** We will not be adopting them en masse, because the Minister said on 22 October —
886. **Mr Eastwood:** Other than the ones that have already been announced.
887. **Ms M Campbell:** All the regulations will be scrutinised where appropriate, but parity is, of course, the primary basis for the regulations. Where Northern Ireland circumstances dictate, we would have to consider mitigation outside the social security arena. That is why the Minister has established the Executive subcommittee on welfare reform, why the Office of the First Minister and deputy First Minister (OFMDFM) has an independent advisory group on alleviating poverty, including the impacts of the Bill, and why the Bill is an Executive priority. Do you want to add anything more, Michael?
888. **Mr Pollock:** No. If you look at the summary of the objectives of the Programme for Government, you will see that welfare reform is dotted throughout it; it is not something that has just bounced over the horizon. Any number of initiatives are in place;

- Martina mentioned the advisory group to Ministers. There is also the Executive subcommittee on welfare reform, the social protection fund, promoting social inclusions, child poverty issues, Delivering Social Change, neighbourhood renewal, NEETs, fuel poverty strategies and childcare strategies. Those issues are all linked in some way to ameliorating or alleviating hardship. So, there is already recognition at Executive level of the issues that are arising out of welfare reform. Those issues are funded ordinarily out of the block grant; they are not issues that are within the social security ambit. If you start from the premise that you are going to maintain parity of social security — in other words, the individual here gets the same benefits and is subject to the same conditions as someone elsewhere in the UK — you look to your Executive programmes and to initiatives to alleviate hardship.
889. **Mr Eastwood:** I understand your point. We could go through each initiative individually, but that is not really in your remit. We are failing completely in child poverty, for example, but that is outside your remit. So, you are basically telling me that there is going to be no change in the regulations. Is that correct?
890. **Ms M Campbell:** Obviously, the decision for the regulations lies with the Assembly, as, ultimately, the decision on what is in the Bill lies with the Assembly. It is an Executive Bill. However, at this stage, we do not know, because we have not completed our assessment of the regulations. Some of them were laid only yesterday in England. We do not believe that, in the main, there will be much change. However, operational changes may come through in the guidance that are not necessarily in the regulation.
891. **Mr Eastwood:** I have a couple of specific points to ask about. One concerns the mortgage interest payment. We have been told that that will go if a claimant receives even one hour of work a week. That strikes me as going against what you, Michael, said about work paying. It seems to be one of the very obvious examples of —
892. **Mr Pollock:** It looks perverse, but, in actuality, if you consider that someone who is starting work can apply for universal credit, you will see that it is not. As such, they are entitled to the tapers and disregards that are attached to universal credit. So, in that respect, they will be able to retain more of their benefits and earned income as they start work. They should not be worse off in support for mortgage interest (SMI).
893. **Mr Eastwood:** They lose the full mortgage interest —
894. **Mr Pollock:** Yes; a zero-earnings rule applies to the SMI.
895. **Mr Eastwood:** This is my last point. One of the points that has been made to us about the underoccupancy payment, or the spare-room tax, as it has been called, is to do with foster carers. A lot of foster carers can, at times, be between one and another set of kids. We have been told that they are going to be penalised because they will not be exempt. Is that the case? Are there any plans to change that?
896. **Mr Pollock:** It is the case that there is not a blanket exemption for foster carers. I could be a foster carer this week and then stop. If that were the case and there were some sort of exemption in the legislation for that, should I get an extra room ad infinitum? Cases are dealt with individually. The idea is that it is not sensible to have prescriptive blanket exemptions for underoccupancy.
897. **Ms M Campbell:** The amount that foster carers receive from the health trust is totally disregarded in full. So, it would be considered double provision.
898. **Mr Eastwood:** I understand that, but how do you deal with those foster parents who go without kids for one, two or three months? What do you do in those cases?
899. **Ms M Campbell:** They have to choose whether they wish to make up the difference.
900. **Mr Eastwood:** I just think —

901. **Mr Pollock:** To use an age-old phrase, there is access to discretionary housing payments.
902. **Mr Eastwood:** I just think that we should be doing everything that we can to encourage people to foster kids. We are very short on people who are willing to do that, so penalising people who are is not a good idea.
903. **Ms M Campbell:** The different regulations here will have a local version of the discretionary elements of the social fund, which will be taken out of the social security scheme. That will be responsive to local circumstances. Also, the rates element of housing benefit will be separate and different from that of the coalition Government.
904. **Mr Pollock:** They will not be social security payments, as such.
905. **Ms Ruane:** Go raibh maith agat, a Leas-Chathaoirleach. The previous time that we were here, I raised the issue of the lack of data collection. From some of the submissions that we got from other agencies, I know that they are as concerned about that as our party is. In the light of the fact that we made you aware that you are not collecting data as you should and given your section 75 duties, have you done anything to address that?
906. **Ms M Campbell:** I got the response from our colleagues in the Social Security Agency just last night, so I will be writing formally to the Committee. I told you the previous time that, as I understand, we did not collect data on, as Michael said, sexual orientation, race, religion and political opinion on the basis that benefit is an entitlement and that each of those characteristics do not impact on your entitlement. However, I can tell you that the family resources survey covers religious belief; racial group; gender; marital status; age; persons with a disability; persons with dependents; and, obviously, persons without dependents. The questions that were added to the 2011-12 family resources survey cover political opinion and sexual orientation. Those data will become available to us, but the statisticians have told us that, because the policy simulation model uses data from the family resources survey, the sample size is not viable. The family resources survey covers approximately 2,000 households, and the catchment element of race in that sample size is not within government standards.
907. **Ms Ruane:** It sounds as though it is not within government standards. Data collection is not about surveys; it is about knowing exactly who the population is and about looking at age, gender, disability, race, sexual orientation. So, I remain worried that you are not collecting data, and I would be interested to know how you are going to deal with that.
908. Sorry, did you want to say something about that, Michael? I wanted to move on.
909. **Mr Pollock:** I recognise your point about data collection. However, I mentioned that we have to be assured of the integrity of data where sample size is concerned so that we can extrapolate it to design policy. There is no point in me going out and counting red cars in the car park and then saying that, by extension, I think that there might be x number of red cars in Northern Ireland. There has to be a statistically valid basis for such work, and our statisticians are coming from that point in developing the policy simulation model to assist in the policy development. It is a statistical model. There are proxies, in that they will not be going out and asking someone whether they are Protestant or Catholic, gay, straight or whatever. There are proxies that they have to be able to prove the integrity of to ensure that the policy that results will be reasonable.
910. **Ms Ruane:** I remain concerned that there is no proper, adequate data collection. Other agencies and Departments have that. Given the importance of your Department, I think that that is very worrying. Anyway, we will have that point on the record.
911. Secondly, I know that you had some discussion about the timetable, but we

- need the verbal report that you gave us. I would like a copy of it in writing but with updates. It would be useful for us to have that as soon as possible, because we are meeting.
912. Thirdly, migrant workers are obviously a key issue, and we have to make sure that we do not contribute to racism in any way. I am concerned about how migrant workers will potentially be disproportionately adversely impacted in this matter. You can talk about parity, and you speak as though we always stick with parity. However, we do not. The social fund is a departure from parity. We depart from parity on lots of different issues right across the North. So, it is important that you understand that we have section 75 here, which they do not have in England, and that it is adhered to. My concern is that, to date, it has not been.
913. **Mr Pollock:** I understand the point. I will just mention that the social fund that the member is talking about is actually outside the social security ambit, so, in that sense, parity does not apply.
914. **Ms Ruane:** No, but there is not a social fund elsewhere. This Executive bring forward proposals on a regular basis. The point that I am making is that we should not talk about parity as though it is some sacred cow that we can never break. We break parity regularly on loads of different issues. I sit on the Policing Board, where we break it every single week.
915. **Ms M Campbell:** The difference is breaking parity when a funding stream is attached. Social security has a funding stream attached to it, and it is in the Northern Ireland Act 1998 that we seek to maintain single systems of social security entitlement so that people in Northern Ireland do not receive different levels of benefit to people elsewhere in the United Kingdom. That is funded by the coalition Government.
916. **Mr Pollock:** That is outside the Northern Ireland —
917. **Ms Ruane:** No, I understand all that, but the whole reason that we are even having these discussions is because our Assembly brings forward the Bills, and our starting point cannot be that everything has to be the same just because England does it.
918. **Mr Pollock:** Absolutely —
919. **Ms Ruane:** If I could finish. Other jurisdictions are very clear that they look after their populations first, and they negotiate within that arrangement. Presumably, all of us around this table want to ensure that our constituents are catered for in a proper way rather than just being led by the nose by civil servants in England.
920. **Mr Pollock:** Absolutely. This is not our Bill; it is your Bill. It is an Executive Bill. It is your policy.
921. **Mr Brady:** Once again, thanks for the presentation. I have just a couple of points on housing to make. The Housing Executive made it very clear that it could not cope with the underoccupancy. As you mentioned, Michael, there is a housing strategy, but that is for the long term, in that any solution to underoccupancy will be a long-term solution. I just want to make one point. In answer to Colum's question, you mentioned the discretionary housing benefit. That is for the short term. To use your own phrase, it will not apply "ad infinitum"; it is for the short term. Again, it will be cash limited, in a sense, because, at the moment, it is up to local managers and Housing Executive offices to decide whether it is within the budget. I know that more money is being put into the benefit, but it is still a short-term solution for a long-term problem.
922. Obviously, we hope to get a childcare strategy in place. When I was in the voluntary sector, approximately 10 years ago, a survey was done in my constituency on the provision of childcare. That survey found that Newry and Mourne had the worst childcare provision of registered childminders in western Europe. Presumably, the guidance to people working in the offices will relate to whether people are

- sanctioned, and that will be taken into account. I think that you mentioned that.
923. You also mentioned hardship provision. There will be a hardship fund, but individuals will have to repay it. Currently, people do not. If you are getting hardship payment because you are in danger of destitution and benefit comes back into play at some stage, you will be repaying that out of funds that are already at what is termed as subsistence level.
924. I have one more question. Martina mentioned ethnic minorities and migrant workers, and she talked about British and Irish nationals not being affected, but they are habitual residents. Could anything change that? If an Irish passport or British passport holder who has been working abroad comes back here and wants to claim benefit, they have to show that they are habitually resident. That is a very arbitrary type of decision. Some offices might require you to be here for only two weeks, some for three, some for four, some for five and some for six months.
925. **Ms M Campbell:** I do not think that the guidance on habitual residence is changing. I think that we have had the discussion about people coming home from Australia or wherever to look after parents. They are home only for a short term for the specific purpose of looking after their parents, or whatever.
926. **Mr Brady:** I am not —
927. **Ms M Campbell:** It is not up to the Government to fund that; it is up to those people and where they paid their taxes.
928. **Mr Brady:** They are not the people that I am talking about; I am talking about the people who have come home to stay.
929. **Ms M Campbell:** If they have come home permanently, they should satisfy the test.
930. **Mr Brady:** The point that I am making is that there is no definitive period. That is why the guidance is so important. It used to be the case that you had to show your aeroplane ticket your children had to be registered at schools and you had to apply for a house.
931. **Ms M Campbell:** We will look at that for you.
932. **Mr Pollock:** I do not think that there is a specific period for what constitutes —
933. **Mr Brady:** The Social Security Commissioner case law on it says that the longer that you are here, the more habitually resident you become. However, it has not specified a period. That is important for some people, because some have been left waiting for three months and others have been paid within a fortnight. So, there needs to be uniformity.
934. **Ms M Campbell:** We will have a look at that.
935. **Mr Brady:** In finishing, I will say that there is the issue with the affirmative procedures for the regulations. I have made this point before, but the regulations are predicated on how the Bill is formulated. This primary legislation is enabling legislation, so the regulations will flow from the Bill, and guidance will presumably follow that. Therefore, it is very important that we get the Bill right. Presumably, that is one of the reasons why we are here.
936. **Ms M Campbell:** I will take the point about childcare. We understand from the Department of Health that childminders are giving up; a lack of children means that they are not renewing their registration. As I understand it, the Department of Health has undertaken to complete some work on establishing what childcare provision is. I will confirm that that is the position for you, Chair. Obviously, officials in the Social Security Agency are working closely with officials in OFMDFM, who are responsible for developing the childcare strategy. As Michael said, the lack of accessible and affordable childcare is already in guidance as good reason.
937. **Mr Brady:** I know that we talked about this before, but I want to pick up on the point about registered childminders. If

- they wanted to access, for instance, the childcare element of working tax credit, they would have to be a registered childminder. If they are registered, they have to look after at least one other child that they are not related to, and that comes under the social services provision. I am not sure that people are giving up because of a lack of children. We have one of the youngest populations in western Europe, and I am sure that the census figures today will probably verify that. I am sure that it happens as a result of the formalities, because if your mother, auntie or sister are involved, you have to go through a fairly rigorous child protection process, and rightly so. However, people are doing it anyhow, so there has to be a simpler way of doing it while keeping child protection being paramount, which I do not have to stress. That element is the same, and it will stay the same. I think that you confirmed to me before that that aspect of it will not change. If you are going to get any relief for childcare costs, you will have to be a registered childminder. Maybe there needs to be a wider discussion on that.
938. **Ms M Campbell:** Yes, I think that that is something for the childcare strategy. Where the formalities of registration are concerned, as I understand it, the additional £12 million that OFMDFM got for the childcare strategy included initiatives on registration and helping to clear the backlog of registration, as well as training for continuing professional development (CPD). Although I accept the point that childcare is an issue for some people, I do not think that it is insurmountable. I think that the issue is for all Departments to work together on.
939. **Mr Brady:** I am sure that we will rehearse these arguments again.
940. **Ms M Campbell:** Yes, I am quite sure of that.
941. **Mr Weir:** I am sure, Chair, that there will be a circular about it. I have to take slight exception to Mickey referring to the mothers, aunties and sisters. That sounds very sexist, Mickey. I am sure that males will also be operating.
942. **Mr Brady:** No, it is traditional and historical here.
943. **Mr Weir:** There is a concern across the board in Northern Ireland that the level of childcare provision is below that of elsewhere. That is a good defence — effectively, a complete defence — where sanctions are concerned.
944. **Ms M Campbell:** Yes, it is.
945. **Mr Weir:** Mention was made about a timetable for the regulations. I suppose that you can rejig that timetable a little and get back to us — fairly quickly, I hope. Does the timetable deal purely with the regulations, or does it refer to the guidance at all?
946. **Ms M Campbell:** It does not make any reference to the guidance.
947. **Mr Weir:** Has there been any thought about a timetable for guidance?
948. **Ms M Campbell:** I will have to ask colleagues in the agency about that, because that is not our —
949. **Mr Weir:** If there is a timetable for guidance, it would be useful if you shared that as well.
950. **Ms M Campbell:** Colleagues in the agency have committed to sharing the guidance with the Social Development Committee.
951. **Mr Weir:** It would be useful if there is at least a commitment on a timescale for the guidance.
952. Mention was made of the overriding significance of parity. That is a crucial issue from more than just a legislative point of view, because striving towards it is in the Northern Ireland Act. Parity may be thrown out the window through, for example, the application of social security rates, given that wages in Northern Ireland tend to be lower than those in other parts of the United Kingdom. It is then significant, because there is an argument centrally that the Government can simply say, “Well, if parity is out the window, you do not actually need the same high level of social security as elsewhere. We can

- provide lower rates.” So, there is a high level of significance in that.
953. I think that Caitríona talked about other jurisdictions. How did Scotland and Wales deal with this matter?
954. **Ms M Campbell:** Social security in Scotland and Wales is not devolved.
955. **Mr Weir:** So, theirs is a carbon copy, if you like.
956. **Ms M Campbell:** Theirs is done by Westminster.
957. **Mr Weir:** So, whatever complaints are made about our following suit, at least we have been able to have some flexibility, as announced by the Minister.
958. **Ms M Campbell:** Yes, we have. Scotland, Wales and ourselves have the flexibility, as we have repeatedly said, to consider mitigation within the context of the Executive but outside the social security —
959. **Mr Weir:** Yes, in the difference between the departmental expenditure limit (DEL) and the annually managed expenditure (AME).
960. **Ms M Campbell:** I do not have the figures with me today. However, I am sure that Mickey and Paula will remember from our for Social Development Committee discussion on childcare that if the Assembly decides that it wishes, for example, to reinstate the 10% cut, from 80% to 70%, in the cost of childcare under tax credits —
961. **Mr Pollock:** It would cost another £17 million.
962. **Ms M Campbell:** The cost to the Executive of reinstating that 10% cut would be £17 million. From memory, it would give each person an additional £12. As Michael said, although Northern Ireland has the lowest rate of claimants for child tax credits, we claim back the highest average amount of childcare by almost £20. The only other place in the United Kingdom that comes close to us is inner London.
963. **Mr Weir:** Finally, because of the way in which things have worked out, we are considering the Bill in the middle of the Committee for Social Development’s consideration of it. That is a work in progress, presumably, in which there is consideration of Committee Stage amendments. I appreciate that you have gone through the evidence. In some areas of evidence, concerns have been raised and either the Minister has made announcements, or there has been consideration, of amendments. Is that a fair comment?
964. **Mr Pollock:** As I said, if it is any comfort to the Committee, I do not think that there have been any new issues in all the evidence sessions that we have heard. If we forget the child bride on the end, I think that there is something like 75 years’ experience here. *[Laughter.]* So none of this is new to us.
965. **Mr Elliott:** Thanks for your presentation. I am sorry that I missed the start of it. My issue is a broader one. Some of the organisations that gave evidence over the past two weeks — in particular, the Human Rights Commission — were of the clear view that parts of the legislation may not be compliant. The commission indicated that those parts of the legislation could be compliant in other parts of the UK but may not be human rights-compliant in Northern Ireland. They mentioned the affirmative resolution procedure. How do you answer all those issues?
966. **Mr Pollock:** From my perspective, the affirmative resolution procedure has absolutely no bearing on human rights issues. I heard snippets of that evidence session through the link in the office. I was struggling to find areas in which we could possibly not be compliant, yet the rest of the UK is.
967. **Mr Elliott:** It might be interesting if you read that transcript. Perhaps we need to make more enquiries into that because those witnesses were quite specific, Michael.
968. **Mr Pollock:** They were adamant. However, from memory, they did not give any specific examples.

969. **Ms M Campbell:** As Michael said, all the new regulations — namely, universal credit and PIP regulations — will, as is normal procedure, be confirmatory for the first set of regulations. That is normal procedure when new policy is being introduced. So there will be an opportunity to vote on them.
970. **Mr Elliott:** So they will be subject to the affirmative resolution procedure.
971. **Ms M Campbell:** Clause 44 states which regulations will be under the confirmatory resolution procedure with regard to universal credit. They include:
- “acceptance of claimant commitment ... capital limits ... income to be deducted ... standard allowance ... children and young persons ... housing costs element ... other needs and circumstances”*
972. — which will cover childcare costs —
- “work availability ... claimants subject to no work-related requirements ... sanctions ... hardship payments ... calculation of capital and income”*
973. and the migration strategy for migrating existing claimants over to the new benefit. They will be made in the first instance by the confirmatory resolution procedure. Jane, do you want to add anything about PIPs?
974. **Ms Jane Corderoy (Department for Social Development):** All the main sets that make any policy changes will be by confirmatory resolution procedure, as will all the regulations from the clause that relates to fraud.
975. **Mr Elliott:** There were other examples, and I am trying to pick up on some of your issues now. Mr McDevitt raised some issues, particularly around the provision of childcare and housing stock. He said:
- “Am I right in saying that those are the two specific areas of the Bill where you think that, because of our local circumstances, there is most risk that the legislation could be injurious or in potential breach of certain human rights obligations or international human rights standards?”*
976. Professor O’Flaherty said that that was right. There was some discussion, and Mr McDevitt concluded by saying:
- “In other words, if the Bill did not require affirmative resolution?”*
977. Professor O’Flaherty said, “OK.”
978. **Mr Pollock:** We have probably gone through the childcare issue to the death. No one has been sanctioned. It is already in regulations in Northern Ireland that lack of access to affordable, adequate childcare is deemed good reason for not taking up a work opportunity, work placement or whatever. There is a subtle difference in the local government set-up, in that local authorities in GB have a much wider remit than our district councils and, as such, there is a statutory duty on local authorities to provide childcare facilities in their local authority area. That is a subtle difference by virtue of where we are in Northern Ireland and our district council set-up. As far as human rights and childcare are concerned, the underlying issue is that no one’s benefit would be affected if he or she cited lack of childcare as a valid reason.
979. **Mr Elliott:** OK. I suggest to you that you are disagreeing with the Human Rights Commission’s assessment that, if there is not an affirmative resolution procedure for some of those issues, they will not be compliant. Is it reasonable to say that?
980. **Mr Pollock:** That is perfectly reasonable. We contend, as Martina mentioned, that the protocol is that, when there is a new policy or a major shift in policy, ordinarily those regulations would be subject to affirmative resolution procedure. That is the case with this Bill.
981. **Ms M Campbell:** Perhaps the Human Rights Commission is getting confused between the affirmative and confirmatory resolution procedures. In Westminster, the affirmative resolution procedure is used; here we use the confirmatory resolution procedure. The processes are broadly similar, but the reason why we use the confirmatory resolution procedure whereby a debate

- does not have to take place before regulations come into operation is simply to maintain parity of time. That means that, when there is uprating or whatever, claimants are not disadvantaged by having to wait for a debate to be scheduled in the Assembly before the uprating can be effected.
982. **Mr Elliott:** You are saying that the Human Rights Commission was confused about that position?
983. **Ms M Campbell:** I suggest that it has misunderstood the process and the subtle difference between the affirmative and confirmatory resolution procedures.
984. **Mr Pollock:** She is very kind.
985. **Mr Elliott:** On a final point: the commission indicated that the legislation could be in breach of human rights in Northern Ireland but may not be in breach of human rights in GB. Do you hold any —
986. **Ms M Campbell:** In what sense?
987. **Mr Pollock:** I cannot see how an individual's human rights could be adversely affected in Northern Ireland by application of the conditionality attached to the Bill.
988. **Mr Elliott:** It took me a long time to get an answer out of the Human Rights Commission, but I eventually did. At the end of a discussion, I said to Professor Michael O'Flaherty:
- "From what Michael is saying, am I right to suggest that your answer is yes and that some of these treaties could be breached in Northern Ireland but not in the UK by using the same legislation."*
989. Professor O'Flaherty replied:
- "Not in GB — not in another part of the United Kingdom."*
990. **Ms M Campbell:** Was that about housing stock?
991. **Mr Elliott:** No, it could be about any point.
992. **Mr Pollock:** I remember that discourse.
993. **Mr Elliott:** The Human Rights Commission clearly made the point that the legislation could be in breach of human rights in Northern Ireland but perhaps not in the rest of the UK.
994. **Ms M Campbell:** A memorandum has been completed on compliance with the European Convention, and it has been assessed that the Bill is compliant with human rights requirements. There may be an issue about whether the actions or measures taken are proportionate and justified to achieve a legitimate aim, such as protecting the social economy of the country.
995. **Mr Brady:** Is that the memorandum that we cannot see?
996. **Ms M Campbell:** Yes, that is right. *[Laughter.]*
997. **The Deputy Chairperson:** Mickey, you have been told that it is all right and not to worry about it.
998. **Lord Morrow:** It is better not to know some things.
999. **Mr Brady:** Probably.
1000. **Ms M Campbell:** We have said that we will expand the explanatory and financial memorandum that accompanies the Bill to include a further summary of what is in the memorandum.
1001. **Ms McGahan:** You mentioned impacts on the disabled and said that you felt that the Bill was proportionate. Will you expand a wee bit more on that? You said that the number of registered childminders is being reduced, which does not surprise me, given the poor uptake of childcare vouchers and the childcare component of tax credits. Apparently, according to Employers for Childcare, the figure is less than 2%. Questions have to be asked about that. Perhaps it is to do with the fact that there is no affordable childcare. You said that that problem is not insurmountable, but it could be bigger than you think.
1002. **Ms M Campbell:** I will take your last point first. I agree with you about childcare; it is extremely strange that the uptake is low. I have figures in the office

- on the actual number of claimants, but I am sure that the Employers for Childcare report is correct in stating 2%. Why is that? Is it because of issues to do with lack of awareness of child tax credits? Is it, as you suggest, to do with affordability? Is to do with other issues, such as people using informal childcare arrangements? We would both agree that that is possibly a reason. However, we do not know. When universal credit comes in — indeed, before it comes in — the Social Security Agency will be conducting an awareness campaign with employers to try to raise awareness about access to claims to try to resolve that position. We are also working with OFMDFM, which is in the lead in developing the childcare strategy. That probably covers childcare.
1003. **Mr Pollock:** You asked about the human rights and equality issue. As I said, there is already legislative provision that states that lack of affordable childcare or access to adequate childcare constitutes a good reason for not taking up a job. As I said, no one has been sanctioned on that basis, and that has been carried forward. There is certainly an issue around childcare and the lack of a cohesive strategy to determine who does what and where, but we do not see it as an issue in this context.
1004. **Ms McGahan:** At the same time, however, there are parents who want to work, so the issue of childcare still needs to be addressed. Although there are informal childcare settings, there is still a lack of stimulation and child development. Parents want that to be addressed. I sit on the OFMDFM Committee, and I know about the issues surrounding flexible childcare as opposed to contracts.
1005. **Mr Pollock:** That is in the Programme for Government.
1006. **Ms McGahan:** My sister pays £750 a month for two kids, which is brutal.
1007. **Ms Corderoy:** Yes.
1008. **Ms M Campbell:** Yes; Jane pays quite a lot for her childcare. Those are valid points, but again, they are for colleagues outside the social security arena. They are not covered in the Bill.
1009. Jane may want to add something more about PIP in relation to disability. Either Mencap or Disability Action told the Committee for Social Development that no assessment had been done on PIP in the EQIA. That is incorrect; there are nearly 10 pages covering the reform of disability living allowance (DLA) and PIP.
1010. There was a question about winners and losers in relation to universal credit. Forty-one per cent of disabled people are likely to see no change in their entitlement under universal credit as opposed to 27% of non-disabled people. The marginal deduction rate (MDR) and participation tax rate (PTR) — please do not ask me to explain what they are —
1011. **Lord Morrow:** You have just jogged my memory.
1012. **Mr Weir:** You know what the next question is going to be. *[Laughter.]*
1013. **Ms M Campbell:** I will give you the formal definition. The participation tax rate measures the proportion of total earnings lost from the withdrawal of benefit. It is a measure of the financial reward for entering work. The higher the percentage, the less incentive there is to go to work.
1014. Let us take the percentage for people whose PTR is below 60%. These figures can be found at page 32 of the EQIA. Under universal credit, the PTR for 90% of disabled people will be 60% or below at 10 hours a week. That compares with non-disabled people, whose PTR will be 99%. Under the current system, the PTR for disabled people is 14%, so it is going up. To go from 14% to 90% is quite a high improvement.
1015. The marginal deduction rate is the proportion of extra earnings that is lost as a result of paying more tax. It is the incentive to work more hours, so it represents how much extra someone gets for working extra hours.
1016. Again, the higher the percentage, the less the incentive, so let us take the

- percentage under 60%. Under the current system, the MDR for 18% of disabled people is 60% or below. Under universal credit, that will increase to 42%. It is currently 29% for non-disabled people; under universal credit it will go up slightly to 33%.
1017. I accept that there will be winners and losers. I do not think that we have ever denied that. However, the whole emphasis in disability and in the whole welfare reform programme is that the money that is spent on disabled allowances is being refocused and targeted at those who need it most.
1018. **Ms Corderoy:** Personal independence payments will replace DLA for working-age people. The entitlement will depend on the effects of the disability on a person's life rather than on a particular diagnosis. Therefore, it is the social model rather than the medical diagnosis model. Several of those who gave evidence last week and this week were quite positive about that. PIP is intended to be fairer, more transparent, consistent and objective, and it would take better account of those with mental health, intellectual, cognitive and development impairments compared with DLA.
1019. **Ms McGahan:** So your point is that it is all about how your condition —
1020. **Ms Corderoy:** Impacts on your life, yes.
1021. **Ms McGahan:** I am not sure whether that is a good thing. I have attended DLA tribunals at which people had excellent medical evidence and, because they could demonstrate that they could make a cup of tea in the morning, dress themselves and, perhaps, make dinner — whatever that means — and put themselves to bed, they lost their DLA. On the other hand, other people's medical evidence may not be as strong, but because they are able to demonstrate how their condition impacts on them, they win their DLA. There is an issue about medical evidence having primacy. I have heard doctors sitting on tribunals saying that their patients have medical evidence, but because they did not meet the criteria, they were not successful. That is my own experience.
1022. **Ms Corderoy:** The criteria developed for personal independence payments have gone through quite a lot of consultation and have changed as a result. More things have been taken on board to respond to the make-up of people's incapacities or disabilities. The Bill allows medical evidence to be taken into consideration, but it is taken in the round in a more holistic way, with many pieces of evidence going to the assessor. Medical evidence will still be considered.
1023. **Mr Brady:** Essentially, it has all been wrong since 1992. I want Martina to explain the affirmative and confirmatory resolution procedures. An affirmative resolution procedure is debated before the regulations go into operation and confirmatory is —
1024. **Mr Pollock:** In Westminster.
1025. **Mr Brady:** We have the confirmatory resolution procedure here, and the regulations are in place before we debate them. So what is the point?
1026. **Ms M Campbell:** The regulations can fall.
1027. **Mr Brady:** They can fall, but essentially it is a done deal by that stage. Is that the difference? You said that they were generally similar, but one is debated before the regulations are laid and go into operation; with us, the regulations will be in operation, and then we debate them.
1028. **Ms M Campbell:** We have the affirmative resolution procedure here, but we use the confirmatory for time —
1029. **Mr Brady:** The Human Rights Commission said that it should be the affirmative resolution procedure here as opposed to the confirmatory so that we would get an opportunity, even if there were a raft of amendments, to debate regulations before they go into operation.
1030. **Mr Pollock:** With the bulk of the regulations, the substantial changes to universal credit and PIP are already

subject to the affirmative resolution procedure.

1031. **Mr Brady:** However, that is not happening here, and we need that opportunity.
1032. **Ms Corderoy:** We are committed to the regulations going to the Social Development Committee before then, and it will have had a chance to scrutinise them.
1033. **The Deputy Chairperson:** Thank you very much, Jane, Martina and Michael, for participating today. We might see you back again before we finish.
1034. **Ms M Campbell:** I thought that that was us. Thank you.
1035. **Mr Pollock:** Thank you.
1036. **The Deputy Chairperson:** I want to confirm the actions that were agreed — you will have a note of most of them: expansion of the articles considered as part of the explanatory and financial memorandum; more details of regulations as they would apply to ethnic minorities; a timetable in writing, including the guidance on regulations; and further information on the guidance for habitual residents.
1037. **Mr Pollock:** Guidance is already in place, obviously, in the Social Security Agency. However, we will ask colleagues in the SSA about updated guidance, new guidance or guidance on any of the new benefits.
1038. **The Deputy Chairperson:** Thank you.

7 January 2013

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Colum Eastwood
 Mr Tom Elliott
 Ms Bronwyn McGahan
 Lord Maurice Morrow of Clogher Valley
 Mr Alastair Ross
 Ms Caitríona Ruane
 Mr Peter Weir

1039. **The Chairperson:** We agreed at the meeting on 11 December that we were content that we had taken sufficient oral evidence and that the meetings scheduled for today and tomorrow would be used to scrutinise written submissions and the record of oral evidence received. Members have copies of the 14 written submissions received, and there is a very good summary of the various issues raised. That is in table format and has a brief indication of the position of the Department for Social Development (DSD) on each issue. So I propose that we now move to the summary table and consider each of these issues in detail to determine whether they significantly impact on the conformity of the Welfare Reform Bill with the requirements for equality and the observance of human rights. Do members agree?

Members indicated assent.

1040. **The Chairperson:** The first item in the table is the adequacy of the equality impact assessment (EQIA), so we are back to that again. A number of responses, most notably that from the Equality Commission, raised serious concerns about the process and adequacy of the EQIA. These concerns include the lack of consideration of up-to-date and relevant data, the adverse impact and alternative policies. So the question for us is whether the equality

issues and adverse effects have been properly identified and to what extent they impact on the Welfare Reform Bill.

1041. **Ms Ruane:** My position remains that I have serious concerns about the inadequacy of the EQIA. Its inadequacy came up in various submissions. There are certainly four categories for which DSD admits that it has insufficient data. It has not even equality proofed against race, sexual orientation, religious belief or political opinion, and there are some questions about disability, as raised earlier. That is very worrying. The Human Rights Commission has made a very clear statement that is well recorded in this document. The EQIA is inadequate and major questions remain.

1042. **Lord Morrow:** Chair, I would just like clarification on something that you said. You referred to the Equality Commission's having "serious concerns", but I do not see those words in the document. I may have missed it. The document states that the commission has "concerns". Which is it?

1043. **The Chairperson:** That is a fair point. I am reading the notes provided for us in the table. I do not see the word "serious". I think that was my impression from the evidence given by the Equality Commission. Frankly, I would have to review the Hansard report to see whether the commission used that word, but it was pretty explicit in expressing its concerns. I think that "serious" is not too heavy a use of language in the circumstances.

1044. **Lord Morrow:** It was just that the member said that she had "serious concerns". She is entitled to say that, but we are not entitled to interpret what is not there. The document specifically states that the Equality Commission has:

"Concerns about the way in which the EQIA was conducted".

1045. The member can say that she has serious concerns about the EQIA. That is fair enough, but we cannot say that the Equality Commission has serious concerns unless it has said that.
1046. **Ms Ruane:** I would just like to respond to that. I have concerns, and, of course, I am entitled to say that.
1047. **Lord Morrow:** Yes, and I have said that.
1048. **Ms Ruane:** Yes, but I have concerns about the fact that a number of organisations that made written submissions had concerns, many of them serious concerns, about the EQIA. With respect, I think that the fact that four of the nine categories were not even part of the EQIA shows how serious the concern is.
1049. **Lord Morrow:** Does the commission use the word “serious”?
1050. **Ms Ruane:** I think that it is serious that the adverse impacts on four of the nine categories were not even looked at.
1051. **The Chairperson:** Members have a copy of the Equality Commission’s written submission. In reference to the EQIA, it states:
“the Commission expressed considerable concerns”.
1052. **Lord Morrow:** That is different from serious.
1053. **Mr Eastwood:** We will go with “considerable” then.
1054. **Mr Weir:** Chair, without getting too worried about whether the concerns are “serious”, “considerable” or whatever way you want to put it, I am happy enough to reflect the fact that concerns have been raised about the EQIA. However, expressing my opinion, just in case it is interpreted in any other way, the DSD response covers the situation fairly well. First, on the disability issue, which is clearly germane to the Welfare Reform Bill, DSD disputes some of the claims made about that, including those about the personal independence payment (PIP). At times, we get so hung up on ticking particular boxes that we lose sight of common sense. Issues such as belief or sexual orientation have absolutely no relevance to the Welfare Reform Bill because it is based on entitlement in that regard. So, from that point of view, I suspect that there will not be a great meeting of minds on this. We could probably all acknowledge that concerns have been raised. Perhaps the report needs to reflect in some way the concerns that have been raised. However, I certainly do not believe that those concerns ultimately hold water.
1055. **Mr Brady:** Before we go on to discuss how many angels we can balance on the point of a needle, we need to move on from that. One serious issue is that Mencap and Disability Action — Paula and I are both on the Social Development Committee and it is mentioned in this document — said that the change to PIP had not been dealt with by the EQIA. That is a major policy change, and it will affect a huge number of people. That seems to me to be a serious omission — a considerable omission, or whatever you want to call it.
1056. **Mr Weir:** I am not disputing the use of the word “serious”. I am saying that that assertion is disputed by DSD. Specifically, at the bottom of page 2, it states:
“Either Mencap or Disability Action told the Committee for Social Development that no assessment had been done on PIP in the EQIA. That is incorrect; there are nearly 10 pages covering the reform of disability living allowance (DLA) and PIP.”
1057. Taking the most objective view, there is at least a dispute about the evidence. So, I think it is wrong to simply say, in a black and white way, that there has not been an EQIA on that. There has been.
1058. **Mr Brady:** Mencap and Disability Action are very clear that if there was an EQIA — the Social Development Committee got the evidence from them — it was totally inadequate. We have been told that this EQIA is a “living document”, whatever that means. I would have thought that if you are going to do something, you should do it properly initially and then, as it evolves,

continue to do it properly. As far as I am concerned, that is what an EQIA is all about. It is about dealing with the issues as they arise. This reference to a living document seems to be a very euphemistic way of saying, “We did not do it right the first time, but maybe we will do it right the next time or, possibly, the time after.” Again, excuse me for being cynical, but having listened to the evidence, it seems to me that a proper assessment was not done of disability in regard to the move from DLA to PIP, and that is a huge issue. There are 184,000 to 187,000 people in the Six Counties in receipt of disability living allowance, and a huge number of them could be affected. That needs to be dealt with.

1059. **The Chairperson:** Is there scope for a continued monitoring role for the Equality Commission? Is that where you are going with this?
1060. **Mr Brady:** The difficulty is that if you do not get it right, and if it is going to be monitored, say, yearly, a large number of people will be affected. One interesting thing is that the statistics for the standard conditions for which people received DLA in the past, such as back problems and all of that, have not really altered. What is happening now, specifically in the North, is that a number of people are coming forward with mental health problems, particularly younger people. We have a huge problem. If the condition is not dealt with properly initially, it will be exacerbated and will traumatise the person and do all sorts. You need to get the monitoring right and have it set in such a way that it can be dealt with adequately. Of course you need to monitor to make sure that it is being done properly, but they are saying very specifically that, in their opinion, the issue has not been dealt with adequately through an EQIA. I think that needs to be addressed.
1061. **Ms Ruane:** There was a discussion around entitlement and whether we accept what DSD is saying. My difficulty with accepting what DSD is saying is that there is inadequate information.
- There are four categories for which it has carried out no equality impact assessment, and to say that people in the gay community or lone parents are not going to be adversely impacted is wrong. You carry out an equality impact assessment to identify particular areas of concern around the nine categories. Cara-Friend has outlined where it sees there will be difficulties for people who are gay or lesbian. It is not for one minute suggesting that people will have to fill out a form to say whether they are gay or not, but it is saying that there should be qualitative data showing housing and some of the areas where they will be adversely impacted. It is the same with gender. Women’s Aid has identified where victims of domestic violence will be adversely impacted on. I suppose that the question for the Committee is whether we believe that DSD has answered the questions. I do not see how anyone on the Committee can say that it has, because DSD has accepted in a letter that it has not looked at four of the nine grounds — race, sexual orientation, religious belief and political opinion — and that it has looked at only parts of disability. That is a glaring gap.
1062. **Lord Morrow:** That takes us right back to the point that Peter Weir made earlier that the ultimate test for this will come one day in a court of law. Let that be in one month, one year, two years or whenever, because the member has spoken about groups, or categories. If categories feel that they have been in some way disadvantaged under the legislation, they must test it. No clear evidence is coming out that that is the case, because the issues that she talked about are not the eligibility issues.
1063. I do not agree with Mickey Brady when he talks about a living document. My interpretation of a living document is one that is flexible and changeable, that lives while the process goes on and that can change and be changed to meet changing circumstances.
1064. **The Chairperson:** I think that he said a “living document”.

1065. **Lord Morrow:** That is what I said.
1066. **The Chairperson:** Sorry.
1067. **Lord Morrow:** What do you think that I said?
1068. **The Chairperson:** I thought that you said a “little document”.
1069. **Lord Morrow:** No, I said a “living document”.
1070. **The Chairperson:** I have ordered my hearing aid.
1071. **Mr Swann:** DSD’s response recognises the data deficits. One of the things that DSD talked about was updating the living document that Lord Morrow mentioned. It added HM Revenue and Customs data and tax income and said that the family resources survey 2010-11 data would be available over Christmas. DSD also said that it would be able to produce a further module from the policy simulation model early in the new year. Do we know what stage that is at and how that might answer some of the concerns?
1072. **The Chairperson:** We do not know.
1073. **Ms McGahan:** On the back of the member’s point, the Equality Commission flags the data deficit, and DSD has not taken on board all the information from the Department for Work and Pensions policy simulation model. The issues paper does not seem to state that DSD is going to look at that, so it will be interesting to know why it will not be doing so.
1074. **Ms Ruane:** First, Lord Morrow must not know my name. It is not “she”; it is “Caitríona”.
1075. Secondly, on the point that Lord Morrow makes about the legislation being tested in a court of law, obviously lots will be tested in courts of law, but a Department has a statutory duty to carry out a full equality impact assessment, and the reality is that DSD has not done that. It has admitted that itself, and that is the worrying thing.
1076. We can talk about courts of law until the cows come home, but we are looking at a reality here.
1077. **Mr Brady:** I accept the point that the legislation may well be tested in a court of law, but I thought that one of our functions in all of this is to protect vulnerable people. We are talking about individuals who will be impacted on by the legislation if it is flawed, and one of the reasons why we are here is that there is a degree of that inherent in the legislation. Although cases may be brought by organisations that are of a mind to do so and have the wherewithal, we are talking about individuals who may be impacted on who may not have the wherewithal to bring a case. By the time that the legal cases are sorted out, it may be too late for people, particularly those who suffer from mental health issues and/or a disability.
1078. If you go back over social security legislation, you will see that there have not been that many cases taken. There was the Drake case in 1984, which tested the fact that married women could not claim invalid care allowance. That went to Strasbourg, where the woman won her case. Almost as she was flying back, the legislation was changed to ensure that it would not have that much of an impact. That was done not for carers but so that it would not cost the Government that much. So, again, you have to be cynical about some of these things. However, if we are here to protect individuals, it is individuals that we need to be aware of. Organisations may well take legal cases further down the road, but if this legislation goes through in its current format, a lot of vulnerable individuals may be impacted on adversely. I just wanted to put that point on record as well.
1079. **Mr Eastwood:** At the minute, we are talking only about the adequacy of the EQIA. No matter what any of us — or even the Department — think about the potential impacts on any particular group, the Department has recognised that the EQIA was not sufficient because it recognised the data deficits. Before we move on to the individual elements, I

think that, right now, we have, obviously, to come to the conclusion that the EQIA was not sufficient because of the lack of data. The Department could, therefore, not carry out the job that it was supposed to carry out. Whatever that might have told either it or us is a different debate.

1080. **Mr Weir:** Sorry to interrupt Colum's point, Chair, but, with respect, although it may well be recognised that there is a data deficit, that does not mean what Colum suggested. Again, you are putting words in the Department's mouth. The Department has not said that it does not regard the EQIA as being sufficient or adequate. It clearly thinks that it is, and I share its view that it was sufficient and adequate.
1081. **Mr Eastwood:** That is fair, but given that the Department has said that there are data deficits and that it has left out large sections of society in the equality impact assessment because it did not have the data, my analysis is that we can only conclude that the assessment was not adequate or sufficient.
1082. **Mr Weir:** You may, but the rest of us may not necessarily.
1083. **Mr Eastwood:** I think that some of us will. I think that we can talk about all the other issues later, but the fact is that the Department just did not go to all the sections that it was supposed to or address what it was supposed to. So, it is kind of obvious.
1084. **The Chairperson:** The Department has said that it intends to screen the regulations that arise from the primary legislation. The Equality Commission appears to have a formal role to play.
1085. **The Committee Clerk:** The Equality Commission stated:
- "The Commission also has the power to initiate investigation, where it believes that there has been failure to comply with an approved equality scheme or in pursuance of a complaint by a directly affected individual. ... Determinations of whether public authorities are in compliance with their Equality Scheme follow such investigations and a report is completed by the Commission.*

In this instance, investigation by the Commission is an option, and if a failure to comply with its Equality Scheme was found, then a possible recommendation may be to the Department to conclude its equality impact assessment properly. The Commission is monitoring closely what the Department is doing to address its concerns about the Equality Impact Assessment and to ensure the effective application of its duties."

1086. So, the Equality Commission has outlined its role going forward.
1087. **The Chairperson:** We do not appear to have a meeting of minds. It seems to me that the Department has acknowledged the deficiencies in the equality impact assessment and that it has agreed that it will screen the regulations as they arise. Under its terms of reference, the Equality Commission has a role to initiate investigations.
1088. The Department seems to have addressed the question of the data as best it can. It is looking to update the policy simulation model, and it mentioned the further module that may be available early in the new year. However, it will not be available in time for us, that is for sure.
1089. There is a clear difference of opinion on the section 75 elements. The Department is categorical in saying that the categories will have absolutely no bearing whatsoever on benefit entitlement. So, without going round all the houses again, where are we heading with this? Are we heading to a vote? Will somebody make a proposal?
1090. **Mr Brady:** Could I just make a point, Chair? We have been told that the screening of the regulations will happen in a very short time frame. So, we are talking about regulations that are emanating from the —
1091. **The Chairperson:** We are not talking about regulations.
1092. **Mr Brady:** No, but the point that has been made is that the Equality Commission has said that it will screen the regulations that will arise. Now, I am not sure whether it will have adequate

- time to do that because, in Britain, you have the Bill and then the regulations, so there is a period of time between them. Here, we are having the Bill, if it goes through, and the regulations will be put into operation immediately. So, it is a very tight time frame. I am not sure that it is adequate to enable it to properly screen the regulations for equality, etc. I just wanted to make that point.
1093. **The Chairperson:** There is a proposed timetable for the regulations, which we have referred to. It is confidential, so I do not think we should be talking about it in open session, but it is before us and it gives dates.
1094. **Ms Ruane:** Why is it confidential? Remind me of the reason why they want it to be confidential. I am trying to remember.
1095. **The Chairperson:** Because it has not yet been offered to the Social Development Committee, nor has it been approved by the Minister. It is purely indicative.
1096. **Ms Ruane:** OK; that, in itself, raises some questions. I presume that the letter from Will Haire to Evelyn Collins is a public letter. As I said earlier, it states:
- “There is not, as yet, any suitable data sources to enable us to assess the impact accurately on the basis of religion or belief; sexual orientation or race.”*
1097. That is in Will Haire’s letter to Evelyn Collins. I think that, in itself, shows that they have not even carried out a proper EQIA. So, to screen it subsequently, when you have not even started with a proper document, raises major questions.
1098. **The Chairperson:** We have been through this. The letter also —
1099. **Ms Ruane:** I know, but I —
1100. **The Chairperson:** — states there should be no differential impacts on any of the groups.
1101. **Ms Ruane:** Yes, but they have not even carried out an EQIA, so how do they know? The whole idea of an EQIA is to carry it out to see whether there is any adverse impact.
1102. **The Chairperson:** It is because it is entitlement-based; it does not depend on those categories.
1103. **Ms Ruane:** But it does. An EQIA is a statutory duty for a Department. On that basis alone, I do not see how this Committee can accept that a proper EQIA has been carried out. I go back to Colum’s point: I thought that we were discussing whether the EQIA is acceptable. An EQIA looks at nine grounds. It is clearly stated. There is a clear process. Four of the nine have not even been looked at, and there are questions around the fifth.
1104. **Mr Eastwood:** The very fact that they say that there is other data to look at from HM Revenue and Customs and the new module or whatever means that they probably think that it was inadequate. Is that not the logical conclusion of that?
1105. **The Chairperson:** You could turn that the other way and say that, in their opinion, it is adequate in terms of the data and information available to them at the time —
1106. **Mr Eastwood:** Yes, but that is not the issue.
1107. **The Chairperson:** — but that they are prepared to treat it as a living document, which will have to be amended, screened and scrutinised as time goes on.
1108. **Mr Eastwood:** It does not really matter whether the information was available to them at the time. The fact is that they should have had that information. That is maybe the argument. If they did not have that information, why not? Why did they not get it before now for the equality impact assessment?
1109. **Ms Ruane:** I would just like to make one further point, if I may. On page 2 of the summary of key issues, it is a bit rich for a Department to say:
- “Anything that is gathered is effectively an intrusion into someone’s human rights, from the other side of the coin.”*
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1110. That is absolutely not the case. In this case, it may be referring to someone identifying as gay, lesbian, bisexual or transgendered. Nobody is saying that you have to identify if you do not want to, but there should be qualitative data on the impact on the gay, lesbian, bisexual and transgendered community. In the past, it was said that it was an intrusion into someone's human rights to ask what their religious belief or political opinion was. I think that it is now accepted that you need to request that information to get good, fair employment. Obviously, it is up to an individual to decide how they respond. It is a bit worrying that a Department would even answer in that way.
1111. **Mr Weir:** Where I draw a distinction on that is that, when you are dealing with employment, it is a question of a number of people competing for a particular post, but when you are talking about benefits and entitlement, it is an absolute entitlement on the basis of that. That is where, I think, there is distinction between the two.
1112. The only point that I will make in relation to this, and I have no pressing appointments, so I could be here until midnight, is that it strikes me that there is probably a range of things that we may be able to agree on and others that there will be a degree of division on. I suspect that, broadly speaking, some folk will not necessarily accept my opinion on some of the stuff. In the same way, when you say that the Committee cannot do x, y and z in reaching a particular conclusion, I do not necessarily agree with you on that point. However, I am happy to acknowledge that concerns have been raised and that work on the data is ongoing to try to improve that situation and that there is an ongoing role for the Equality Commission.
1113. There are certain things there that could probably be agreed on that basis. I would not agree with saying that the EQIA is inadequate or something of that nature, and I suspect that there will not be consensus on that. It may be that, with some of those propositions,
- it will ultimately be a simple question of testing out the opinion of the Committee to see what particular things will go in the final report. That may not be a matter for today; I am not entirely sure what way we want to take things forward. Maybe today is not about reaching definitive conclusions but about trying to give a flavour of opinions to the Committee Clerk. I do not know whether that is the case, but I think that there will be a number of things that, with the best will in the world, there will not be consensus on and on which votes will be taken.
1114. **Ms Ruane:** The ideal would be to reach some agreement. I am not sure, Peter, that we would agree to word it in the way that you stated. Maybe we should also be noting, as a factual point, that there was no EQIA done on four categories out of nine.
1115. **Mr Weir:** With respect, you cannot acknowledge that without also acknowledging the fact that this is an entitlement, and, consequently, I dispute the need for them on that basis. There is also ongoing work within that, so —
1116. **Ms Ruane:** Well, you can note —
1117. **Mr Weir:** Well —
1118. **Ms Ruane:** No. You can note that assessments on four of the nine categories were not carried out and that there was a difference of opinion in the Committee on entitlement and impact. We need to include the fact about work on four of the categories not being carried out; that is fundamental.
1119. **Mr Eastwood:** It is not just about entitlement. We have had evidence from different people throughout the process about some of the impacts that this would have on gay and lesbian people or whomever. So, it is not just strictly about entitlement. The assessment is supposed to be about impact, and whatever we think — whether you agree with it or not — we have a quite significant amount of evidence from people who told us that there will be an impact.
1120. **Mr Weir:** We have an opinion.

1121. **Mr Eastwood:** Yes, but it is evidence. It is their opinion but it is still evidence and we have to take it seriously. So, it is not just as simple as saying that it is about entitlement. However, I take Peter's point as well: we are not going to agree on this. It may be worth —
1122. **Mr Weir:** I suspect, Chair, that there may be certain things that, broadly speaking, people can fully agree on and there may be some that a form of words can be reached on that people can agree. There are also going to be issues on which there will be division. Without claiming to have any great foresight, I suspect that that may not be restricted purely to the EQIA issue. There may be other issues for us to cope with about which there will not necessarily be 100% agreement.
1123. **Mr Eastwood:** Maybe, Chair, given the discussion that we have had on this, the Committee Clerk can come back with some form of words next week, tomorrow or whenever. This is probably the least significant of the issues; there are fairly significant ones further into this document.
1124. **The Chairperson:** It is probably an indication of things to come. I think —
1125. **Mr Brady:** Sorry, Chair, but maybe the Committee Clerk should pray for the wisdom of Solomon because that may be required to write the report.
1126. **Mr Weir:** What way is she dividing the baby?
1127. **Mr Brady:** That is another question.
1128. Entitlement has been mentioned as if there is some kind of blanket entitlement. Entitlement is done in a very strict, procedural way. It is done by individuals who are decision-makers and who take into account all sorts of factors. Various factors, including disability, affect entitlement. I am just saying that the opinion seems to be that if you are entitled, you get it, but it is not as simple as that. Entitlement is the end product of a rigorous criteria-based procedure.
1129. **Lord Morrow:** Entitlement is the start.
1130. **The Chairperson:** It does not include assessment of your race, religion or sexual orientation.
1131. **Ms Ruane:** It can.
1132. **Mr Brady:** It may do if you are a migrant worker.
1133. **Ms Ruane:** Read Cara's submission on housing.
1134. **Mr Brady:** The point was made about habitual residence. Habitual residence does not just affect people who are not native to Ireland. It can affect people who have moved abroad to work and have come back. There are all sorts of other issues surrounding that.
1135. **Mr Weir:** Does that not actually mean that it is race-irrelevant?
1136. **Mr Brady:** Not if you are a migrant worker from outside the European Union. For instance, if you come from America and you are an American, that can have an impact on your entitlement to benefit, even if you are married to someone who is a citizen here. There are all sorts of permutations that you could throw in. We could spend all day on that. I am sure that Peter's urgent appointment is looming large, and I do not want to keep him back.
1137. I just wanted to make that point. It is not just simply that there is an entitlement; you have to go through all sorts of issues to arrive at that particular point. It depends on all sorts of things.
1138. **Lord Morrow:** I just want to re-emphasise that these are section 75 categories, and, as it says here, they have absolutely no bearing whatsoever on benefit entitlement. I know that we are not going to get agreement on that, but there it is in black and white. That is now down to interpretation. I respectfully suggest that we should consider moving on.
1139. **Mr Eastwood:** I agree with that last bit.
1140. **The Chairperson:** The Committee staff have enough information to enable them

- to gather it together in some sort of format that we can agree on.
1141. **Mr Weir:** The Committee Clerk might be having a nervous breakdown by the end of the meeting.
1142. **Lord Morrow:** Let us be fair to the Committee Clerk. We are not going to ask the Committee Clerk to make our decisions for us. I suspect that she is not a wizard with words. She will do her best. At the end of the day, when all is said and done, this Committee will decide. We are either big enough to do that or we are not.
1143. **The Chairperson:** OK. We will move on to the next item, which is subordinate regulations. As we know, the Bill is essentially enabling legislation. Can the equality and human rights implications be adequately considered separately from the regulations? The further question is to do with the level of Assembly resolution that we should recommend or demand: should it be strengthened by changing it from confirmatory to affirmative?
1144. **Mr Brady:** I think the Human Rights Commission stated that it should be affirmative. I think I am right in saying that. I might have been misreading it.
1145. **Ms Ruane:** And the Children's Commission.
1146. **The Chairperson:** The Children's Commission did, yes.
1147. **Ms Ruane:** So did the Human Rights Commission.
1148. **Mr Weir:** There may be just an issue of language here. In its response, DSD reads confirmatory and affirmative as meaning the same thing. There is perhaps a slight difference in the way in which those words are used, depending on context. However, it seems to me that the debate is essentially about whether the resolution is affirmative or to what extent it is affirmative.
1149. **Ms Ruane:** In its submission, the Human Rights Commission:
- "advises that the Committee ensure that Regulations provided for by the Bill are enacted by way of the affirmative resolution procedure."*
1150. **Mr Weir:** The difference is that it seems that DSD has gone some of the way towards meeting that, but not, maybe, as far as some of those people who have raised concerns would like it to go. Essentially, it has said that, where there is policy change, the resolution would be by the affirmative procedure, but that regulations beyond that would not necessarily be subject to affirmative resolution — presumably by negative resolution.
1151. **Mr Eastwood:** Yes, but what does that mean? I am sorry, Chair.
1152. **The Chairperson:** I am glad you asked.
1153. **Mr Eastwood:** Does that mean that it will apply if the Minister decides to make a policy change from GB? Is that what you mean?
1154. **Mr Weir:** No. I think DSD is saying that the first raft of the regulations that come from the primary legislation will need to be subject to affirmative resolution because they will represent a degree of policy shift, not from GB, but from what is, if you like, current policy. However, if they do not involve any policy shift subsequent to that, they would not be subject to affirmative resolution. It is only where the regulations change policy that that would apply, which, I think, is the normal way of doing things. If there is a policy shift, affirmative resolution will apply. Sometimes there have been policy shifts, and maybe a Department has ignored that practice, but in a broader sense, DSD has indicated that, where there is any degree of policy shift, affirmative resolution will apply. However, if it is simply a more technical change, it would not be subject to affirmative resolution. I think that would be the norm.
1155. **Mr Brady:** It is my understanding, from what we were told, that affirmative means that the regulations are debated in the Chamber before they are laid, while confirmatory means that they are

- laid, and, basically, it is too late, and, within six months, you debate them. If they are wrong, you are debating something that you necessarily disagree with. The Department is saying that the difficulty is that it will take up Committee and Assembly time. We are dealing with a huge issue here.
1156. **Mr Weir:** If you read the last bit, you will see that what the Department is actually saying is that, where there is any policy change, it will be subject to affirmative, rather than confirmatory, resolution.
1157. **Mr Brady:** What it is saying, in my opinion — again, it is down to interpretation — is that if it is confirmatory, they are laid, the regulations are put in place and they are then debated in the Chamber within six months. Affirmative means that, before it is laid, it —
1158. **Mr Weir:** Yes, but what the Department has said is that, where there is any policy shift, it will be subject to affirmative, rather than confirmatory, resolution.
1159. **Mr Brady:** With respect, I thought that the whole point of welfare reform, from the British Government's point of view, is that it is a huge policy change. We are talking about the dismantling of the welfare state here, with respect. It is the biggest change since 1948, and is that not important? I would have thought that it was. That is only an opinion.
1160. **Mr Weir:** The point that I am making is that the Department has said that, where there is any policy shift, it would be subject to affirmative resolution.
1161. **Mr Brady:** It is a huge policy shift. If you go through the Welfare Reform Bill, you will see all sorts of policy shifts.
1162. **Mr Weir:** Without us realising it, there might be a danger of us violently agreeing on something.
1163. **Ms Ruane:** This is something that we can deal with when we have the Human Rights Commission here. We can scrutinise this further.
1164. **Mr Eastwood:** Peter, the Department is clearly saying that it does not want to take up any more Assembly or Committee time.
1165. **Mr Weir:** If you read the full thing, you will see that, ordinarily, the process — it is the same for any Bill — is that, when there is a major policy shift, the first raft of regulations that come from the primary legislation are subject to affirmative resolution. Where there is recognition that there is a major policy change, it should be, and ordinarily is, debated in the Assembly. So, what this says is that if there is a major policy change, it will be subject to affirmative resolution. If it is something that falls below that — maybe something of a technical nature — it will be subject to confirmatory resolution. Apologies, I think that I got something wrong earlier in relation to the wording in that regard. However, that is basically the gist of it. The Department has acknowledged that if there is any major policy shift on anything, it will be subject to affirmative resolution.
1166. **Mr Brady:** Chair, can I just make the point —
1167. **The Chairperson:** Hold on a minute, Mickey. I do not think that we are miles apart on this. I do not like this affirmative, confirmatory and negative resolution nonsense, frankly. As an Assembly, we are here to debate stuff. I see no reason why something as important as this — just to give my own opinion for once — should not be subject to affirmative resolution and just leave it at that.
1168. **Mr Brady:** The point that I was going to make is that we talked about any Bill, but this is not just any Bill. The Department has also said that, normally, the process mirrors what happens at Westminster. The whole point of having social security and welfare reform as devolved matters is to give the Assembly the chance to do it right and, possibly, to be innovative. You will note that I have not mentioned parity. You can be innovative without going into the

- dialectic argument about parity. I just wanted to make that point.
1169. I agree with your point, Chair. It is an opportunity for the Assembly to debate the issues before they are put in place as opposed to after, when debate would not make that much difference.
1170. **The Chairperson:** This confirmatory, six months, suck-it-and-see approach frankly does not impress me.
1171. **Mr Swann:** I know that it is hard to talk about the confidential paper that we received, but it lays out, in appendix 2, regulations and which sections are to be debated and when. So there is an indication there about what we will have a go at, but, again —
1172. **Mr Brady:** I think, with respect, that is assuming that it is confirmatory. Let us be honest, had the Department had its way, there would have been accelerated passage, and we would not be sitting here in the first place. That is a personal observation.
1173. **Ms McGahan:** I find this language a wee bit confusing. Peter flagged up the last paragraph, which is clear, but, towards the top, the paper talks about:
- “the process by way of confirmatory resolution — or affirmative resolution, as it is called there — would be that the regulations would be made, laid and then debated within a six-month time frame.”*
1174. Is the process the same for affirmative and confirmatory resolution?
1175. **The Chairperson:** No, it is not the same. That is what worries me a little. I have experience of these things. Something could be put in place to be debated within six months, and then we could find out that it is not suitable or is incorrect or not compliant in some way. It does not seem like a way to do business. I do not see the necessity for it, but I am only one here.
1176. **Mr Eastwood:** They do not want to waste our time.
1177. **Ms Ruane:** That language worries me; the wasting of our time. Whoever in DSD decided that it might take up our time —
1178. **The Chairperson:** The wasting of our time would be a matter for the Assembly and how much time it wanted to waste on it.
1179. **Ms Ruane:** Exactly, and a Business Committee, and —
1180. **The Chairperson:** If it is something straightforward that we just have to vote on by affirmative resolution, we do not need to spend half a day discussing it. However, if we discover six months down the line that it is wrong —
1181. **Mr Brady:** This is probably the most major piece of legislation that has come through the Assembly. The mental health Bill, which will come through eventually, will be another one, but this is one of the biggest pieces, if not the biggest piece, of legislation, certainly in the previous mandate and this one. It is not unreasonable to suggest that it should be given the proper time and scope for debate. Ultimately, if it is not done properly, six months down the road, it is not going to make huge changes if we do not get it right the first time round. This is our opportunity to get it right.
1182. **The Chairperson:** The question is pretty simple: should our recommendation be that the level of Assembly resolution be strengthened from confirmatory to affirmative? Do we need to vote?
1183. **Mr Weir:** The point is that it should certainly be affirmative where there is any policy change. There will be regulations that, for example, will simply adjust a level of payment or whatever. Those are not normally things that would be subject in any way to affirmative resolution.
1184. **The Chairperson:** The Assembly would then nod them through. Why not have them put before us?
1185. **Mr Weir:** As far as I am aware, there are certain legal restrictions in respect of a timescale on affirmative resolution; you cannot simply pass something with

- affirmative resolution within a day or whatever. I think that that is the nature of that. That could mean that you may find a situation in which a claimant misses out because it cannot be put in place in time. There are certain legal restrictions around the timescale of affirmative resolution. I would certainly be happy to accept that there should be affirmative resolution where there is any degree of policy change.
1186. **Ms Ruane:** I think that we should be saying that it should be done through the affirmative resolution procedure. Departments have ways of dealing with the anomalies that Peter is talking about. We can have a major discussion on it. I propose that we deal with the affirmative resolution procedure.
1187. **The Chairperson:** That is the proposal. Is it being seconded by Mickey?
1188. **Mr Brady:** Yes.
1189. **Mr Weir:** Could I propose an amendment to that?
1190. **Lord Morrow:** You could just vote against it.
1191. **The Chairperson:** By all means. What is your amendment?
1192. **Mr Weir:** The amendment would be that it is dealt with by affirmative resolution where there is a major policy shift.
1193. **Mr Eastwood:** This is the difficulty: how do you term what a major policy shift is?
1194. **Mr Weir:** OK. Major policy changes are where it actually changes what is being put in place. There will be certain things that, broadly speaking, are clerical changes or of a technical nature. It would not be sensible for all of those to be dealt with by way of affirmative resolution because there would be a timescale delay, with the best will in the world. There is a distinction between where it is a policy change and where it is something of a technical nature. I do not know, Chair, whether you want to take that as an alternative proposal or an amendment or whatever. We are maybe back to dancing on the head of a pin.
1195. **The Chairperson:** Tell me, in layman's language, what your proposal is.
1196. **Mr Weir:** Caitríona has proposed that regulations should follow the affirmative procedure; I do not want to put words in her mouth. Add to that "where there is a major policy change". Clearly, there is not going to be a consensus on this.
1197. **Ms Ruane:** Maybe the report should state that there was a difference of opinion and that members felt that it should be the affirmative resolution procedure.
1198. **The Chairperson:** What about if you left out the word "major" and just said "where there is a policy change"?
1199. **Mr Weir:** I could live with that. That is probably going a little bit further than what the Department —
1200. **The Chairperson:** What about "where there is any policy change"?
1201. **Mr Brady:** Who decides on the policy? The whole purpose of welfare reform is to change social security policy per se. A huge raft of policy changes is contained within that legislation. I would like somebody to tell me what is not a policy change in the Welfare Reform Bill.
1202. **Mr Weir:** Do not forget that we are talking about subordinate legislation. For instance, you may take it that, in each year, arising out of it you will have a potential upgrading in the amount that would be paid. So, for instance, in a particular piece of it, you may get that the amount has changed. That would be by way of subordinate regulations from a particular bit that may add, say, an extra £2 to that in a particular year. That is not a policy change, but it would be a regulation arising out of welfare reform. That is just one example.
1203. **Mr Brady:** That is clerical, but if you consider that the Tories have frozen social security for three years at 1%, that is not really a big issue because it is already in place.
1204. **Mr Weir:** With respect, the point is that there would be a range of regulations coming out of this. Some will be policy

- changes and some will be technical in nature. That is the point I am making.
1205. **Mr Brady:** I understand what you are saying, but my point is that, holistically, the Welfare Reform Bill is a major policy change. That is why it has been introduced.
1206. **Mr Weir:** With respect, we are actually talking about the regulations that will emerge from that and whether there is a policy change in each of the individual regulations. I am not sure though. Put it this way, there may not be an enormous gap between the two sides, but I suspect that it may be one that is not going to be bridged.
1207. **Mr Brady:** With respect, let me make the point that although the regulations have been talked about a lot, we do not know what they are. So, we are making a decision based on a premise that we know nothing about. You could decide to go with the affirmative procedure. I do not think that you can be that selective with the regulations because, at this point, even the Department does not appear to know — I am sure that it does know, but it does not appear to — what the regulations are going to be because they will flow from the enabling legislation. For us to make a decision based on that, which is something that we do not have a crystal ball to look into and find out about, is, I think —
1208. **Mr Weir:** With respect, and I can live with this on it, the other logic of that would be to say that we should be doing nothing at all on the regulations.
1209. **Mr Brady:** Sorry?
1210. **Mr Weir:** That is the logic of that position: if we do not have a clue what is going to come in the regulations, as a Committee, we should be saying nothing on it. We could say that it is actually outside our remit. Live with that as a position.
1211. **Mr Brady:** It is not. The point that I have been making, and will consistently make, is that this is enabling legislation. The Welfare Reform Bill is enabling and primary legislation. The regulations flow from that. When I have asked a lot of the people who have given submissions, to the Social Development Committee and this Committee about that, they have been very clear that the regulations will flow from the enabling legislation. So, if you get that right, presumably what you put in place then enables the regulations to relate to the enabling legislation. Presumably, that is why you have enabling legislation. We are talking about a raft of regulations arising from this. Those regulations are going to be intrinsically linked to the enabling legislation, but can be different, in that sense. That is the point I am making.
1212. **Mr Weir:** I understand that.
1213. **Lord Morrow:** Can we move on, Chair?
1214. **The Chairperson:** We can move on without having made a decision.
1215. **Ms Ruane:** There are two ways we could move on. One is that we take a vote and the other is that we note that —
1216. **The Chairperson:** I think we could reflect in the report the slight difference of opinion between those in favour of affirmative and confirmatory without —
1217. **Mr Brady:** With respect, there was a hint of agreement there.
1218. **Ms Ruane:** No, it needs to be more than that. I am of the strong view that it should be the affirmative resolution procedure. I share that view with the Human Rights Commission, NICCY, and so on. Others do not seem to. I think it does need to be reflected that members of the Committee are of the view that the affirmative resolution procedure should be applied and the rationale as to why, which Mickey outlined very coherently, and that others feel it is enough to have affirmative resolution on major policy —
1219. **Mr Weir:** With respect, and with the best will in the world, Cairtriona, that makes the assumption that a majority of the Committee — I do not know whether that will be the case — is in favour of affirmative resolution in all cases.
1220. **Ms Ruane:** No, no.

1221. **Mr Weir:** Well, you said that the Committee supports affirmative resolution and that others think it should only be by way —

1222. **Ms Ruane:** Peter, you did not listen to what I was saying. The Hansard report will show —

1223. **Mr Weir:** With respect, Caitríona, I was listening very carefully.

1224. **Ms Ruane:** What I said, clearly, was some of the Committee believe that it should be the affirmative resolution procedure and others feel that it should be affirmative resolution on major policy changes. We could also say that there was discussion about when a policy is a policy. I think that we need to reflect everyone's opinion.

1225. **The Chairperson:** OK. I think that we are going to have to take a vote. Mr Weir, can you give me your amended proposal again?

1226. **Mr Weir:** That —

1227. **Ms Ruane:** With respect, I put my one first.

1228. **Lord Morrow:** The amendment —

1229. **Mr Weir:** We have to put the amendment first.

1230. **Ms Ruane:** Sorry. I thought that yours was a proposal.

1231. **The Chairperson:** Do not forget that I am here. *[Laughter.]* The amendment comes first.

1232. **Mr Weir:** I appreciate that, Chair. Our amendment would add the words:

“where there is a policy change”.

1233. **It will read:**

“regulation should follow affirmative procedure where there is a policy change”.

1234. **The Chairperson:** OK. Is that seconded?

1235. **Mr Ross:** Yes.

1236. **The Chairperson:** OK. Can we vote on that, please?

Ayes 5; Noes 5.

AYES

*Lord Morrow, Mr Ross, Mr Swann,
Mr Weir, Ms P Bradley.*

NOES

*Mr Brady, Mr Eastwood, Mr Lunn,
Ms McGahan, Ms Ruane.*

1237. **The Chairperson:** Is this a casting vote situation? Is it?

1238. **Lord Morrow:** Yes. That is what the Chair is for.

1239. **Ms P Bradley:** There is no casting vote in Committee.

1240. **The Chairperson:** That is what I thought. Is there a casting vote in Committee?

1241. **Mr Ross:** No. There is no casting vote in the Assembly.

1242. **The Chairperson:** That is negatived.

1243. **Mr Eastwood:** It falls anyway.

1244. **Mr Weir:** I suppose, to be fair, we should check what the procedures are as to whether you have a vote and a casting vote or just a casting vote.

1245. **Mr Eastwood:** We might need that for the next one.

1246. **Ms P Bradley:** There has not been a casting vote in any other Committee that I have been on when there is an even vote for and against.

1247. **Mr Ross:** There was a tied vote in the Standards and Privileges Committee recently and there was no casting vote.

1248. **Mr Brady:** I agree with what Paula said about Standing or normal Committees, but this is an Ad Hoc Committee. There is no precedent, so we do not know.

1249. **Ms P Bradley:** It may be different.

1250. **Mr Brady:** As far as I am aware, it has never happened before.

1251. **Ms Ruane:** We probably need to take advice.

1252. **Mr Brady:** Yes, we need to take advice.

1253. **The Chairperson:** Are we bound by the normal —

1254. **Mr Brady:** Not necessarily.

1255. **The Chairperson:** I will short-circuit this by saying that I am not going to use the casting vote even if there is one. That means that the amendment falls. We will now vote on the motion on the use of affirmative resolution.

Ayes 5; Noes 5.

AYES

Mr Brady, Mr Eastwood, Mr Lunn, Ms McGahan, Ms Ruane.

NOES

Lord Morrow, Mr Ross, Mr Swann, Mr Weir, Ms P Bradley.

1256. **The Chairperson:** That falls as well. We are back to the start.

1257. **Lord Morrow:** Let us move on, Chair. We are wasting our time.

1258. **A Member:** Why don't we just write that up?

1259. **The Chairperson:** I think that we should reflect that in the report. It may not be the biggest thing that we have to discuss.

1260. The next one is sanctions. Concerns have been expressed, particularly by the Human Rights Commission, that sanctions imposed for the failure to meet benefit requirements may result in extreme hardship or even destitution for certain vulnerable groups. That has obvious human rights implications. Should the Committee accept the Department's assurances that the most vulnerable will be supported by hardship payments? The Department has stated:

"Hardship payments will continue to be available...But they must not diminish the incentivising effects of the sanction regime."

1261. **Mr Brady:** We have been told that even if you do get a hardship payment, it will be repayable. That is unlike the hardship payments at the moment. If someone is on benefits and gets a

hardship payment — this may apply to other members of a family where the person who is claiming is sanctioned — it will, at some stage, put them below the subsistence level, which, by the Government's own admission, is what benefit is. There is an issue there. Hardship payments will not necessarily solve the problem of destitution, and, in the long term, they may put people into further destitution.

1262. It has to be pointed out that the Welfare Reform Bill is sanction-led. There is an underlying principle of getting people back to work, which everyone agrees with. However, if you do not satisfy certain criteria, you will be sanctioned. For some people, that could be for up to three years. If someone is done for social security fraud and gets two years' jail, they will still be sanctioned for a further year when they come out. If they had committed another crime and did their jail time or whatever, they would be immediately entitled to claim benefits. So, again, that is disproportionate, because we now have a sanction regime that can be for three months, six months, nine months and then up to three years. So, it is punitive. It is not there to be an incentive to people to get into work and comply. It is punitive, pure and simple. It is sanction-led, and the sanctions are disproportionate to the whole benefit regime, if you like. That point has been made on a number of occasions, and most of the people who have made submissions to us have indicated that the sanctions are not proportionate to whatever might happen.

1263. The statistics that we have been given by DSD show that fraud, particularly social security fraud, is going down and has been going down constantly since at least 2007-08. Customer error and departmental error are now more than social security fraud, so perhaps there should be an equality of sanction. Perhaps the Department should be sanctioned if it is not doing its job right. That is only a personal observation. Punitive sanctions are being put into place to deal with social security fraud,

- which is actually a diminishing issue. That needs to be pointed out.
1264. **Ms McGahan:** On the issue of people who fail to meet their requirements by attending work-focused interviews, recently I dealt with a woman who is housebound. She cannot leave the house, so I asked her to contact her doctor to get a letter to say that she cannot attend and for them to come out. He refused to do that. Doctors are now starting to feel a burden from all of this as well. They have to provide medical evidence, and if their patients get turned down at a tribunal or a work-focused interview, the doctors have to provide additional evidence. It just goes on and on and on. I have serious concerns about that because doctors are starting to feel this very badly.
1265. **Mr Brady:** I have a further point on conditionality. Both partners have to make a claim. If one partner, for whatever reason, decides not to sign the agreement, you do not get money for at least four weeks. There is what is called a cooling-off period when you are given four weeks to decide whether your partner will sign. If they do not sign, you will be sanctioned, but there will be at least a four-week sanction. That partner, for whatever reason, may decide not to sign. It might be because they do not like the face of the person who interviewed them or it could be for all sorts of nebulous reasons, but the point is that a sanction will be in place. Again, that is disproportionate.
1266. **The Chairperson:** Do you think that there should not be sanctions?
1267. **Mr Brady:** Of course there should be sanctions because sanctions have to incentivise people. However, they should not be disproportionate. That is the point that I am making. Someone who gets three years' sanctions and is punished through the judicial system will still have a double whammy put on them, which is what it is about. If you have sanctions that are introduced, that gives the Department the power to sanction someone for three months, six months, nine months or whatever. It is disproportionate. We are told that lone parents will not be sanctioned if they do not have childcare and all the rest of it. My experience from 2008 is that we were told by the then Minister for Social Development that that would not happen. It did not happen initially, but, eventually, it did start to happen. I have experience of such cases.
1268. **The Chairperson:** There is a right of appeal.
1269. **Mr Brady:** Of course there is a right of appeal, but the point is that if you are sanctioned, you can lose benefits or have your benefits suspended or reduced. We are talking about appeals taking, on average, three to six months. Again, that is disproportionate.
1270. **Mr Weir:** I understand that there has been a certain amount of discussion of this issue at the Committee for Social Development, so some of us are at a bit of a disadvantage to Mickey and Paula. I understand that there is likely to be a certain amount of change in that area. Is there some form of words to say that, while accepting that there may be some need for sanctions, the sanctions should not be disproportionate or overly punitive and should not result in any form of destitution? We should accept that there has to be some form of sanction. I use the word "overly", because, once you have a sanction, it is, by definition, punitive. We may have to qualify that there are concerns about the current proposals and that we must ensure that the sanctions are not disproportionate or overly punitive and do not result in any form of destitution.
1271. **Mr Brady:** I just want to make the point that I am not saying that nobody should ever be sanctioned by social security. There are people in my experience who might be termed serial offenders, in the sense that they simply will not comply, for whatever reason. However, if, for instance, somebody has mental health problems, that has to be addressed. There are people who simply cannot be bothered, and I am not saying that people should not be sanctioned. What I am saying is that the regime

- of sanctions that is being introduced is totally disproportionate in terms of punishment, because not only is it going to affect the person who has failed to comply but it will have an adverse impact on their dependants and their partner, etc. I think there is a difficulty.
1272. **The Chairperson:** You might not say “totally disproportionate”. You might say “potentially disproportionate”.
1273. **Mr Brady:** It depends on the individual case, of course.
1274. **Ms P Bradley:** I just want to pick up on what Mickey was saying. This was debated thoroughly in the Social Development Committee, and there was no one around the table who did not agree that we needed to put forward recommendations to change the wording. We all agreed with that, and I think the Minister was open to those changes, especially the bits relating to the issue that, if one parent did not sign, a child would be left less well off, which is something that none of us wants to see, and also the bit about childcare. I know, Mickey, you said that they said before that that was a good enough reason for you not to be sanctioned if there was not affordable or accessible childcare. We have to believe that that is written into this and, therefore, that has to stand, because it is written into the rules around this. Another thing that Mickey said was about the mental health issues, but, again, those were issues that we had written down in the Social Development Committee and we wanted to make recommendations for change. The Minister was open to those recommendations. They have been debated fully.
1275. **Mr Weir:** Can I just check; were recommendations agreed by the Committee on that?
1276. **Ms P Bradley:** We had just about got to that stage when this Committee started.
1277. **Mr Brady:** Some sort of Ad Hoc Committee kind of —
1278. **Ms P Bradley:** Took over. It was the feeling of the complete Committee, and the Minister, so this is not going against that. They are recommendations that we would probably be able to change anyway when we get through to that.
1279. **Ms Ruane:** I agree with what Paula said. We should not settle for generic wording. We should be very specific. Childcare, mental health: we should name some of the issues that need to be dealt with, as well as the point that Mickey is making about the sanctions being disproportionate. The other thing I think we should definitely be doing is protecting children in all of this. We should be insisting or recommending that children be protected, because if parents are not doing the job they are supposed to be doing, or one parent is not, children should not be disadvantaged.
1280. **The Chairperson:** I do not hear much disagreement. Can we condense that into our report?
1281. **Ms P Bradley:** I just want to put forward that all that has been said here by everybody has all been recognised by the Social Development Committee. Had this Committee not taken place, that would have been followed through on, because it was strongly felt in Committee that we needed to address those issues.
1282. **Mr Brady:** Following on from what Paula was saying about childcare, one of the things that highlighted the major differences between here in the North and Britain was that, in Britain, legislation was introduced in April 2006 that makes it incumbent on a local authority to provide available and affordable childcare. If someone can identify a gap in that then, again, it is incumbent on the local authority to provide that. We do not have that because our local authorities are not geared up for it. That is why, for instance, the social fund in Britain is going to the local authorities, whereas here we simply do not have the infrastructure. That is one of the issues that I will highlight. Following what Paula said, that was one of the big issues raised at the Social Development

- Committee. That is just one example of how disproportionate a lot of it is.
1283. **Mr Swann:** We need the childcare strategy out of the Office of the First Minister and deputy First Minister (OFMDFM) as soon as possible.
1284. **Mr Brady:** Absolutely. It is a big issue.
1285. **The Chairperson:** Are we of a mind here? Do we need to discuss it any further?
1286. **Lord Morrow:** My confusion is that I do not know why we are discussing it, because it says quite clearly here, “equality human rights issues raised”. We are not a policy committee here. If the Social Development Committee has not even got to the stage where it can make decisions, what are we doing? Are we making the decisions for it?
1287. **Ms Ruane:** It is not often that we agree, but I think maybe we should say that the following issues were raised in relation to sanctions, suggest groups that may be affected, and recommend that, when it goes back to DSD, it brings forward mitigating wording or whatever. There will be people who will be better.
1288. **The Chairperson:** That is the recommendation in the report that we will put to the Assembly, and then we will go from there. Happy enough?
- Members indicated assent.*
1289. **The Chairperson:** The next one is nominated claimants. The nomination of a single claimant has been perceived as adversely impacting women. However, the Department has the power to divide the payment or to make the payment to the female partner if that is considered appropriate. Are we content that any adverse impact on women, if identified, may be addressed?
1290. **Mr Eastwood:** The issue, though, is that a lot of women in abusive relationships do not tell anybody. The Department may not be in a position to realise that a women is an abusive relationship, and the situation may continue without anybody realising. So, I do not know whether this quite cuts it.
1291. **Mr Weir:** From that point of view, the idea imported from across the water for the single nominated claimant was one of the areas where, again, there was broad consensus that this was not something that was particularly appropriate as an operational issue. As I understand it, it is one of the areas where the Department has pressed for and got that difference for Northern Ireland. It is essentially operational. I think we should welcome the fact that that has been effectively agreed with, I think, the Department for Work and Pensions or whatever the opposite number is in London. I think we all agree that a single nomination may not be appropriate in all circumstances. We should welcome the fact that that flexibility has been agreed by the Department. I do not think that there is too much of a gap.
1292. **The Chairperson:** The Department appears to agree.
1293. **Ms P Bradley:** Again, we debated this at length in the Committee for Social Development. The Minister came forward with the split payment, but it maybe needs to go a little bit further. That is the only difference here, especially for the likes of someone in an abusive relationship or something like that. When we talked about it at the time, we looked at the parent with care rather than one person or the other. You cannot say whether the female or the male is the abuser or the person being abused, so maybe we should look at the parent with care. Again, the Committee for Social Development looked at this, and it was going to put that forward as a recommendation to the Minister saying that we need to take this just one step further. I think that everything written down there would alleviate the concerns that are there.
1294. **Mr Brady:** I just want to follow on from what Paula said about the main carer, who is usually the woman. The point about abusive relationships — Colum is absolutely right. There are many abusive relationships that simply are not made public because the person being abused has nowhere else to go

- or feels that they have nowhere else to go. That was one of the issues with split payments. That has always been policy. I worked in a social security office 30-odd years ago, and if there was an abusive relationship or a problem with gambling or drink, a split payment could be made. The perpetrator got a single amount of benefit, and the partner, who was usually the woman, got an amount for herself and her children. That was always the policy. There has been a lot of debate about that. Obviously, we need to see. We talked about the default position, as well, I think, for the split payment and the main carer. What the Social Development Committee may or may not do in that respect needs to be firmed up. I think that the general principle has been outlined.
1295. On the whole issue of the cap and the amount of smaller families benefiting and larger families not necessarily, depending on the number of children you have, there is almost a social engineering aspect to that. Iain Duncan Smith is almost telling people how many kids they can have, which is peculiar to say the least.
1296. **The Chairperson:** If an abusive relationship is not revealed, how on earth can the Department —
1297. **Ms P Bradley:** There is a way round that, in that the parent with care receives the benefit. Generally, the parent with care is female. We are generalising here, as that is not always the case. There are many, many men out there who suffer at the hands of abusive women. We know that; that happens. However, on the whole, women are the main carers at home. Rather than saying that the benefit goes to one parent or the other, we look at the parent with care.
1298. That is how we are trying to bring that about, where they do not then have to disclose — no one has to disclose what is going on in their relationship if they do not want to, but the parent with care receives the benefit. At the moment, you can tick on a form with your tax credits whether it is for a joint couple to receive or who receives it. We want that to be the same on the universal credit: you would tick who receives it. Again, that could come into a problem where someone is in an abusive relationship, so then we want to look at the parent with care.
1299. **The Chairperson:** You say the parent with care. I am learning here —
1300. **Ms P Bradley:** That is primarily to receive the child benefit and the children's elements of any benefits.
1301. **The Chairperson:** If neither parent is working, who is the parent with care?
1302. **Mr Brady:** Just a technical point on that: normally, the woman gets child benefit, while child benefit still exists. Child benefit is a qualifying benefit. You will only get benefit for a child if you are getting child benefit for that child, because that is an indication that they are a dependent child. That is usually the woman, and that is the logic or the rationale that was used.
1303. **Ms P Bradley:** Maybe I did not explain it properly.
1304. **Mr Brady:** No, I think you did, but —
1305. **Ms Ruane:** Paula, you said that you can take the tax credit, yet here it says in DSD's response:
- "Couples are treated as a single unit in most of the existing benefits and tax credits."*
1306. **Ms P Bradley:** Yes, they are. They are treated —
1307. **Ms Ruane:** So, you have to opt out.
1308. **Ms P Bradley:** You have to opt out.
1309. **Mr Brady:** Yes.
1310. **Ms Ruane:** OK.
1311. **The Chairperson:** What are we putting in the report?
1312. **Ms P Bradley:** I have now confused myself totally.
1313. **Mr Swann:** "Parent with care", I think.
1314. **Ms P Bradley:** It just needs to be tightened up a little bit.

1315. **Ms Ruane:** Should we signal that we have had a discussion around this for the report and that the Social Development Committee is recommending “parent with care”, and that is something that needs to be looked at further?
1316. **Ms P Bradley:** I think that is —
1317. **Mr Swann:** Has the Social Development Committee formally recommended that, before we recommend that it —
1318. **Ms P Bradley:** We have not got to our formal recommendations, Chair. With the Social Development Committee, we have got to drafting the recommendations, but we have not got to formalising them.
1319. **Mr Brady:** As Isaac Butt once said, the poor are often talked about in this house, but never entertained. You are still talking about them. Hopefully we will entertain them when the Social Development Committee goes back into session.
1320. **The Chairperson:** OK. How are we doing? Folks, how are we generally for time here?
1321. **Lord Morrow:** Looks like it is endless, Chair.
1322. **The Chairperson:** Well, it is 4.20 pm. We are meeting again tomorrow. Has anybody —
1323. **Ms Ruane:** Is this the biggest part? I mean, tomorrow’s does not seem as —
1324. **The Chairperson:** I would prefer —
1325. **Ms Ruane:** I could be wrong.
1326. **Lord Morrow:** Wait until tomorrow.
1327. **The Chairperson:** I suggest that we keep going until 5.00 pm if we need to. Does that meet most people’s timescales?
- Members indicated assent.*
1328. **The Chairperson:** OK, the next one is universal credit. You have got it there on page 6, the various submissions. The main focus of the Bill, obviously, is on the promotion of individual responsibility and the encouragement of people into work. The Human Rights Commission does not appear to disagree with that fundamental premise, but it does raise concerns that the lack of employment and corresponding ineffectiveness of employment programmes renders this unattainable. We have had previous discussions about ethnic minorities, where the Northern Ireland Council for Ethnic Minorities (NICEM) has made its input as well. Any thoughts, folks?
1329. **Lord Morrow:** The Human Rights Commission says that it believes:
- “proposals in the Bill may not fulfil its stated aim of supporting people back into work.”*
1330. I suspect that it has put forward its recommendation as to how that can be corrected and a more effective and efficient policy put in place. Do we have a copy of its recommendation?
1331. **The Chairperson:** It is at tab 10 of the submission, Maurice. It is not a recommendation. The commission is pointing out its misgivings about the —
1332. **Lord Morrow:** Yes, but it is easy to say that you do not agree. The next test is to tell us how to do it. If you are saying that this is not the way to do it, there is an obligation on you to say, “Here is a better way. Here is the way to do it.”
1333. **The Chairperson:** Paragraph 14 of the submission states:
- “The Commission advises that the Committee ensure that the Welfare Reform proposals are verifiably calibrated to support people into work.”*
1334. Can somebody explain what “verifiably calibrated” means?
1335. **Mr Weir:** Presumably it relates to the old idea of the benefits trap. If you shift towards that, you do not actually find yourself worse off, potentially, by —
1336. **Mr Brady:** We are talking about the working poor. There is a huge number of people working here who are equally badly off as unemployed people. That is why tax credit, family credit and the family income supplement were introduced. Interestingly, in incentivising people to get into work, we have been

- told that under universal credit, if you get a part-time job of two or three hours a week, you will lose your entitlement to help with your mortgage interest. I am not sure that I know anybody who will work for three hours a week and lose their help with mortgage interest. As far as I can see, that is disincentivisation.
1337. The other thing is that under universal credit, if you are in a part-time job, you are encouraged to get a better-paid job. You have to spend 35 hours a week looking for a job and, therefore, will not really have a lot of time to work in your part-time job. There are big issues around that.
1338. I find this quite interesting, if not bizarre. We have been told that the whole idea of universal credit is to simplify the benefit system. However, as yet, nobody, including the Department, has been able to sit down and explain to me how universal credit would actually work. The idea is that you go in at one end on benefits and come out at the other end working. You have all these tapers. However, I am not sure that anybody has explained adequately how all this will work. It is also all very much dependent on the IT system being up and running to deal with it properly.
1339. The only thing is that we have been given six months' grace. It will be April 2014 before it is introduced here rather than October next year. It was suggested by a member of Peter's party on a panel that I was also on that if you are going to introduce this, you should let it run in Britain for three or four years to see how it works out there. That was the suggestion of a member of your party who shall remain nameless, but I am sure that you know who it is. That would seem a sensible way of doing things if we are introducing a whole new system like this.
1340. Universal credit is a very complex concept. It has inherent difficulties. There are parts of it that, instead of incentivising people to get into work, will disincentivise people from going to look for work. Those parts include losing your mortgage interest and having to look for another part-time job, with the idea that you move up the earnings scale.
1341. **Mr Weir:** I take on board the point about some of the practical outworkings. There is obviously the separate issue of migrant workers. Leaving that aside, there are issues about the practicalities and whether all this stuff was particularly well thought through. However, I am not sure that there are particular human rights or equality implications.
1342. The point was raised about the mortgage interest side of things, which, on the face of it at least, seems a little perverse. Did we get any response on the specific point about the mortgage side? Is there a particular reason for that? If doing a very small amount of work actually means that the person is worse off, that seems to run against the theory behind a lot of this stuff. Did we get a response on that? Is there an opportunity to get a specific answer on that point?
1343. **The Chairperson:** I do not recall getting anything. I do not think that we needed clarification. The way that it works is fairly clear. The question is why it is in there in that format, which seems to be a clear disincentivisation, as Mickey called it.
1344. **Mr Weir:** Chair, I am saying that, at least on the face of it, in some of the practicalities and outworkings, there is a reasonable argument that there may be explanations that do not appear to be particularly sensible. Having said that, I am not sure that they fall purely within human-rights-type issues or equality, as opposed to being something that may not be particularly well thought through, but maybe the information in relation to this has been well thought through.
1345. **The Chairperson:** Something that is an incentive or a disincentive does not necessarily need to be an infringement of human rights.
1346. **Mr Weir:** I understand that. The point is that there should not be anything in legislation that acts as a disincentive to work: that would be perverse. Maybe

- there is information that we did not get from the Department. It may be interesting to see the thinking behind it.
1347. **The Chairperson:** Can we investigate this a little bit further with the Department? In whose presentation did it crop up?
1348. **Mr Weir:** It may have been in a meeting that you missed, Chair. I could be wrong about that, but I remember it being mentioned.
1349. **Mr Eastwood:** It was on the back of evidence that we had previously from the Law Centre.
1350. **The Chairperson:** I am sorry, just bear with me for a second. Mr Pollock from the Department appears to have confirmed that that is exactly the case as you interpreted it. He said that a zero-earnings rule applies to the support for mortgage interest schemes.
1351. **Ms Ruane:** The other thing that we need to take seriously is NICEM's comment in relation to schedule 1, paragraph 7. It refers to EEA nationals with a right to reside, as jobseeker's allowance discriminates against EU citizens on grounds of nationality. There are proceedings under way, and I think that we need to note that and flag it up. A couple of groups have said that, including the welfare reform group.
1352. **Mr Eastwood:** The Law Centre also said it.
1353. **The Chairperson:** When Robin and I were over with the Committee Chair in London, we raised the various points that the AIRE Centre had made. Although it appeared to be just around the corner from where he sits, he had not heard of it, although others have commented that they feel that it is a very worthwhile and effective organisation. Its point about the issue is very clear. It is just a question of whether we wait.
1354. **Mr Weir:** Along the lines of what Cairtriona said, we should note the concerns being raised about this particular provision and that there are legal proceedings under way that may challenge its validity on the basis of EU law. If proceedings have already started, the issue will be decided one way or the other by the courts. I appreciate the earlier point about things that may be a couple of years down the line, but we need to acknowledge that there have been concerns raised and that legal proceedings have started.
1355. **Ms Ruane:** Yes, but where it is different here is that we have section 75, but they do not have that in England, Scotland and Wales. This would tick the race box in relation to section 75, so we will probably need to name that as well.
1356. **Mr Weir:** I do not think so, but if there are proceedings saying that it is incompatible under EU law, it will either be found to be compatible, in which case, it is legally OK, or it will be found to be incompatible, in which case, it will be incompatible across not just the whole of the UK, but any similar type of provision that will be there through the EU. In this regard, I understand the point that you are making, but I do not think that section 75 is overly relevant.
1357. **Ms Ruane:** I still think that it needs to be named just to note the differences that we have here.
1358. **The Chairperson:** OK. In our report, it would be perverse for us to recommend a different approach in advance of the outcome of the European proceedings. We can note that we share the concerns expressed —
1359. **Ms Ruane:** We want to make sure that everyone's rights are protected.
1360. **The Chairperson:** — and highlight the particular peculiarity of Northern Ireland in terms of section 75. Is that OK?
1361. **Ms Ruane:** NICCY seemed to present the best option for payment options. Did you discuss at the Committee for Social Development whether claimants should decide on their payment options?
1362. **Ms P Bradley:** I am sorry, Chair. I had to nip out, so I have probably missed most of this. We discussed that issue at the Committee for Social Development after

- the Minister mentioned the option of biweekly payments. The default position is monthly payments, and you have to opt out of that. We discussed that.
1363. **Ms Ruane:** Would it not be better to give the option of bimonthly or monthly payments at the very start?
1364. **Mr Weir:** There is one complication with that. I would have thought that, from an administrative point of view, it is probably a lot easier to administer payment once a month. However, giving people the option to opt out and ask for bimonthly payments seems to cover it. I am a little bit concerned that this may end up, for the sake of argument, costing an extra few million pounds in administration. I think that it is covered if people have the option of opting for bimonthly payments rather than giving them complete carte blanche.
1365. **Mr Brady:** The option is already there in the system. However, Iain Duncan Smith's rationale in the Houses of Parliament for monthly payments was not about administration. He said that it was to get people used to getting a monthly salary when these mythical jobs appear. Dead on. That is the kind of rationale that is being used. It is not some cold, calculated —
1366. **Mr Weir:** I appreciate that, but we have negotiated an option for payment to be bimonthly for anybody who wants it. That covers it.
1367. **Ms P Bradley:** The option is there. Therefore, there are no inequalities.
1368. **Ms Ruane:** There may still be inequality because it is designed as an opt-out. You often find that people are not made aware that they can opt out. Why not make it that people can choose?
1369. **Lord Morrow:** They can.
1370. **Ms Ruane:** They should be presented with the choices at the start.
1371. **Mr Brady:** It is my understanding, from what the Department said, that it, not necessarily the claimant, will make the decision on who gets the split payment. The option should be open to the person. We are back to what we discussed before about abusive relationships, and so on. It has to be the choice of the claimant rather than an arbitrary choice by the Department. Therein lies the difficulty. I take your point, Lord Morrow, that it is an option, but the difference is that it should be the choice of the person who is getting the payment as opposed to the choice of the person who is paying it, who may well make the decision for administrative rather than human reasons.
1372. **Lord Morrow:** If it is an option, it is an option. Therefore, if the person opts for a fortnightly payment, they will get it. Is that not right?
1373. **Mr Brady:** My point is that the option has to be the person's; it is not for the Department to decide whether you should get it fortnightly or monthly. The individual circumstances of each case have to be taken into account, and, therefore, the person should have the option. I agree that the option is there, but it depends who makes the decision.
1374. **Mr Eastwood:** What is the latest proposal — Sorry, Chair.
1375. **The Chairperson:** I will come to you in a second.
1376. **Ms P Bradley:** I agree with what has been said. The default position at the moment is that people will be paid monthly unless they request to be paid fortnightly. As Mickey said, the Department will then decide whether they meet the criteria, whatever those might be, to get the fortnightly payment. I am worried that some people will be left in the position where they cannot manage or cannot budget. I know from witnesses who came to the Social Development Committee and from my experience as a single parent for many years how difficult it is to budget over a monthly period. So, the default position is grand as it stands, but everybody should be given the choice based on them, not on their merits and how they fit into a, b or c categories. We discussed in the Committee for Social

- Development whether to make that recommendation.
1377. **Ms Ruane:** I agree with everything that Paula said. For the wording, I suggest that we look at the first line of NICCY's position:
- "Payment options should be given to claimants."*
1378. Claimants should have the right to choose.
1379. **The Chairperson:** The first line of the DSD's response to EQIA issues states that there is provision "to enable couples to nominate" which partner should receive the benefit. Is this a different issue?
1380. **Mr Brady:** That relates to who receives the payment; it does not state whether the payment is to be made monthly or fortnightly.
1381. **Ms Ruane:** Yes, the issue is whether the payment is to be made monthly or fortnightly.
1382. **The Chairperson:** Is there not an option of monthly or fortnightly payments?
1383. **Ms P Bradley:** The default is monthly. It is a different issue.
1384. **Mr Eastwood:** Paula explained it quite well, Chair.
1385. **The Chairperson:** You have a go now.
1386. **Mr Eastwood:** I was trying to find out myself. Is it basically that people can opt out of monthly payments but will not necessarily get that opt-out because the Department can say no. Is that right?
1387. **Mr Brady:** That is exactly right.
1388. **Mr Eastwood:** The ideal scenario is that people can decide.
1389. **Ms Ruane:** Yes, people should be asked whether they want to be paid fortnightly or monthly, and they could just tick the relevant box, rather than the Department saying that it does not think that they should get their payment fortnightly.
1390. **Mr Eastwood:** It is bound to save the Department a bit of time and effort as well.
1391. **Ms Ruane:** There are enough pressures to be put through. If we are looking at the good management of money for people on a low income, weekly payments would be better. However, that is another issue.
1392. **Ms P Bradley:** Let us not confuse the issue any further.
1393. **The Chairperson:** Are we agreed? Maurice, I think that I heard a murmur of disagreement.
1394. **Lord Morrow:** I do not agree with that theory. I suspect that I deal with as many of this type of case as any other MLA at this table because I have specially trained staff. I do not agree with that conclusion at all. I am one of those who wants, to the best of my ability, to look after people deemed to be at the margins of society, as maybe we all were at one time. I hear members reflecting their personal positions. Maybe we can have a day in here when we can all come in and tell our stories: what our backgrounds are; where we come from; and all the rest. I am happy enough with that. Sometimes, however, we get to the stage of wanting this nanny state to do everything for us. I want people who are sitting at the margins to have a chance in life, but I do not agree with what is being advocated by members around the table.
1395. **Ms P Bradley:** I will try to add some clarity. The Minister has already agreed to the fortnightly payment option. We debated that, which is grand. In an ideal world, in which people could manage their money monthly, we would not need to have this conversation. However, it is not an ideal world, and I know that there are people who struggle to try to manage their money on a two-weekly basis. We need to look at their predicament. I know that DSD said that it would put in a task force to help people manage their money. For some people, that will not help at all. If we can agree that the default position remains

- monthly but that everyone should have the option, regardless of reasons, to be paid fortnightly, I think that that would probably be acceptable.
1396. **Mr Brady:** Most people find budgeting difficult, whether they are employed or not. Obviously, it depends on the amount of money coming into a household. However, Lord Morrow mentioned people who are marginalised. We are talking about people who are most vulnerable; those on long-term benefit who live from day to day. A question struck me during a recent debate in the Chamber on food banks: what is the difference between a soup kitchen in the 1930s and a food bank now? As far as I can see, the only difference is a tin opener. It is interesting when we consider the areas in which food banks are prevalent and which are relatively affluent; towns in north Down such as Newtownards, Bangor, and so on. Most food banks are run by voluntary/church organisations. We are not talking about the normal circumstances that may have prevailed a few years ago, when there was higher employment; we are talking about people who, in most circumstances, find it difficult to budget anyway. People who have been used to receiving benefit weekly or fortnightly would struggle. It is the same as people who are paid weekly or fortnightly moving to a salary that is paid monthly. They find it difficult. It is a fact of life.
1397. **Ms P Bradley:** We also cannot forget the working poor, who are a big part of welfare reform. Many people are working and getting benefits. At the moment, they may be getting their pay monthly and their tax credits every two weeks, which helps them to pay for childcare, oil, or whatever it may be, during the month. We are not just talking about people who are on benefits non-stop; we are talking about the working poor.
1398. **Mr Brady:** To follow up on that: a report came out about six weeks ago in England and it stated that to have a reasonable standard of living, you have to earn at least £7·20 an hour. The minimum wage is £6·19, so, proportionately here, people get the minimum wage and are paid below what people say that you need. These are people who are working: they are not people who are on benefit. I just wanted to make that important point.
1399. **Lord Morrow:** Mr Chairman, I do not know whether that lecture was designed for me to try to educate me about poverty need. I do not need it, thank you very much. I am dealing with it on a daily basis, six days of the week. I had them in my office when I left it this morning. I know about it at first hand: I do not need any lectures, thank you.
1400. **Mr Brady:** With respect, it was not intended to be a lecture.
1401. **Lord Morrow:** I accept that.
1402. **The Chairperson:** It is expressions of opinion. We seem to be arguing over something that the Minister has already agreed.
1403. **Lord Morrow:** We are arguing about a whole lot of things that are not relevant here today, so we might as well argue about that, too, Mr Chairman.
1404. **The Chairperson:** I think that we can move on from this one.
1405. We come to lone parent conditionality, which is around the lack of childcare provision and the disproportionate impact that that has on female jobseekers. The Department has assured us that claimants will not be sanctioned for lack of childcare. Is the Committee content to accept that assurance?
1406. **Ms P Bradley:** I think that we have to. We have to take it on its merit and how it is written. Should that change, we will have cause for concern to bring it back. However, we have to take the written word.
1407. **Mr Brady:** On that point and to follow on from what Paula said, the Social Development Committee discussed the fact that a monitoring exercise should be put in place, not just in relation to people who have been sanctioned because of childcare issues or whatever, but in general terms. There should be

- statistics showing the number of people sanctioned and why they have been sanctioned. It is a monitoring exercise to see whether some sanctions are disproportionate to the alleged offences or whatever. It seems reasonable. I think that the Department should be doing it as a matter of course.
1408. **Ms Ruane:** In relation to our report, I think that we should note the number of organisations that raised the issue of the lack of childcare provision in the North, and we should say that we need a plan to deal with childcare. A report was done recently on the cost of childcare here, and it is significantly higher. There is definitely an adverse impact on working people for all the reasons that Mickey outlined earlier about the local councils in England. Therefore, that needs to go in as well.
1409. **Mr Swann:** I referred earlier to the OFMDFM childcare strategy. The £12 million sitting there is crucial.
1410. **Ms Ruane:** Yes, but let us be clear, £12 million is not going to sort out childcare.
1411. **Mr Swann:** It is a start —
1412. **Ms Ruane:** We certainly need to get the childcare strategy, but we also need to understand that the childcare issue is much bigger than £12 million, and every Department needs to be looking at the provision of childcare. DSD's part in this is to recognise that lack of childcare is a huge barrier to any single parent — man or women — going into the workforce.
1413. **Mr Swann:** We should have had that strategy in place prior to now, and been delivering through all the other Departments — the likes of the Department of Agriculture and Rural Development, DSD and the Department for Regional Development. That is the failure: we have to get that moving.
1414. **Ms Ruane:** We need the strategy, and we need all Departments playing their role in that.
1415. **The Chairperson:** As regards our role, can we accept the Department's assurance that claimants will not be sanctioned for lack of childcare? We will put in a proviso that, should there be any change to that — to me, that is a policy change —
1416. **Ms Ruane:** The monitoring that Mickey is talking about —
1417. **The Chairperson:** The monitoring issue as well.
1418. **Ms Ruane:** And the preamble in relation to the disparity in the provision of childcare here and in England, Scotland and Wales.
1419. **Ms P Bradley:** It states there that no one has ever:
“been sanctioned for lack of affordable childcare.”
1420. **The Chairperson:** I did not get that at all, Paula, sorry.
1421. **Ms P Bradley:** The issues paper states that the Department said that no one has ever been sanctioned for lack of affordable childcare. We need to believe what is written.
1422. **Lord Morrow:** We are in danger of reinventing the wheel, Chair.
1423. **The Chairperson:** The next issue is the benefit cap, which is based on the premise that families should not be better off on benefit than in work. Some respondents identified a possible disproportionate adverse impact of a benefit cap on children in large families, single women, including lone parents, and ethnic minorities. Is that in conformity with the equality requirements?
1424. **Mr Weir:** With respect, if we are talking about a cap that is the equivalent of £35,000 a year before tax possibly impinging on people's human rights, there is a danger that we might look slightly ridiculous, to be perfectly honest.
1425. **Mr Brady:** That is the way it was put, and Lord Freud mentioned the £35,000 gross £26,000 net very specifically in the House of Lords. I feel that there is an equality issue for larger families,

- because children at one end of the scale will be discriminated against financially. I do not know anybody who would sit here and tell me that the benefits system is good, in the sense of the amount of money that it gives people.
1426. The Committee for Social Development asked how many families here would be getting the equivalent of that in benefits. What we are talking about is something that relates to the south-east of England, where you have people being put up in hotels and landlords being paid £2,000 a week for a three-bedroom terraced house. That has no relevance whatsoever here. We need to put things into context when talking about the benefit cap. It really is not relevant here, I have to say. However, that does not mean that it is right. It is not, because it will affect larger families. Historically, we have larger families here in the North. Whatever side of the community we are on, there are larger families.
1427. **Lord Morrow:** Is the member agreeing with this £35,000 cap or not?
1428. **Mr Brady:** I am not agreeing with the cap, no.
1429. **Lord Morrow:** Do you think that it should be higher or that there should be no cap?
1430. **Mr Brady:** I do not think that there should be any cap. Each family should be taken as an individual family, depending on its circumstances, as is done now.
1431. **Lord Morrow:** If you apply that to benefits, should you not apply it in the workplace, too?
1432. **Ms Ruane:** We do: working family tax credit.
1433. **Lord Morrow:** We do? You are not paid in here according to how many of a family you have.
1434. **Mr Brady:** Surely the minimum wage already does that. The hourly rate that you are paid already does that.
1435. **Ms Ruane:** And for childcare, you are paid per child.
1436. **Mr Brady:** That is why tax credits, family income support —
1437. **Lord Morrow:** There are people on the poverty line who are in full-time employment.
1438. **Mr Brady:** With respect, it is not to do with the amount of benefit being good but the amount in wages being bad. That is the problem. That is why —
1439. **Lord Morrow:** Wages are not high enough, you are saying.
1440. **Mr Brady:** That is why we have working tax credit and the family income supplement, and why family credit was introduced in the 1970s. In fact, the Government had to set up a special Department then to deal with civil servants' claims for family income supplement, because their own staff were not being paid proportionately. Those have all been issues historically — minimum wage, and so on.
1441. **The Chairperson:** There is obviously going to be a benefit cap. The notion that we would propose that there should not be one is just not realistic. I do not think that it would pass this Committee.
1442. **Lord Morrow:** That is not what the member is saying. You did not say that, did you?
1443. **Mr Brady:** I did not say that there should not be a benefit cap. I do not agree with the benefit cap. I think that each family should be taken on its individual circumstances.
1444. **The Chairperson:** That is the same thing.
1445. **Ms Ruane:** No, it is not.
1446. **Mr Brady:** No, it is not, because if you have a large family and there is a benefit cap, the amount of benefit that your family can get is to be restricted. What I am saying is that the number of families here that that kind of cap will affect will be minimal.
1447. **The Chairperson:** Are you saying that there should be a benefit cap that could —

1448. **Mr Brady:** I do not really see the need for it here.
1449. **Mr Weir:** I think that he said that there should not be a cap, because from a practical point of view, it probably would not make a difference. You said that there should not be a cap.
1450. **Mr Brady:** There should not be a cap.
1451. **Ms P Bradley:** Again, this is an issue on which the Committee for Social Development did not find agreement, I have to say, out of a lot of issues on which we probably did not find great agreement. We have actually benefited out of this greatly because the cap was set on south of England rates, where rent and whatnot are much higher than we pay. I know that when we asked about the number of people who might be affected, it worked out to be around 200 or 100-and-something. That is because the benefit cap does not apply to anybody who is in receipt of DLA; it is null and void against certain benefits. So, that means that the number who could be affected is quite low. From my point of view — and I know this from my discussions in the Committee — I agree that there should be some sort of cap. However, I certainly understand Mickey's comment. It will affect a small number of people.
1452. **Mr Brady:** We will agree to disagree.
1453. **Ms P Bradley:** As clear as mud.
1454. **The Chairperson:** I am not even sure what we have agreed to disagree on.
1455. **Lord Morrow:** I am very interested in seeing the final report.
1456. **Ms Ruane:** So are we.
1457. **Lord Morrow:** I would like some steer on what is likely to be in the report. I want to make it clear that I am not going to vote in one House for a cap of £35,000 and then come here and vote for no cap. I am in favour of the cap at £35,000.
1458. **The Chairperson:** That appears to be a movable feast in itself anyway. When the time comes to introduce the cap, the actual levels will be based on more up-to-date estimates.
1459. **Lord Morrow:** That is fair enough. However, I am not sure what this Committee is saying, and I want to make what I am saying quite clear. If it takes me to propose that in a motion, I am quite prepared to do that, but I do not want any ambiguity in this. As I said, a lot of things are going to be couped into this report, so it could be very interesting to see how the mixture comes out the other end.
1460. **Mr Eastwood:** I do not think that there is any ambiguity at all.
1461. **Lord Morrow:** Mickey and I do not agree.
1462. **Mr Eastwood:** There is nobody arguing with what you think; it is quite clear.
1463. **Mr Brady:** That will probably be about the time, and so forth. Surely the report will come to the Committee so that it can be discussed before it is finalised.
1464. The other point that I would make is that, with respect, members of your party who voted against the Welfare Reform Bill in the Parliament in Britain have told us that they are likely to vote for the Bill in the Assembly.
1465. **Mr Weir:** That is one of the joys of being part of the United Kingdom.
1466. **Mr Brady:** With respect, people have made an issue of voting against welfare reform in the Houses of Parliament, but given what we are hearing from some quarters, it seems that they are likely to vote for it here.
1467. **Mr Weir:** I appreciate that there is going to be a majority and minority position on some of these things, just as we might have on other issues. Could I propose that the Committee believes that there is not an infringement on human rights or equality on the basis of having a benefits cap?
1468. **Ms Ruane:** The whole Committee cannot agree to that.
1469. **Mr Weir:** Sorry; that is actually what a majority vote would be.

1470. **Ms Ruane:** Sorry; gabh mo leithscéal.
1471. **Mr Weir:** The minutes will reflect who voted what way on the proposal, so people's positions can be protected.
1472. **The Chairperson:** We can either vote on something like this or record that there is a disagreement.
1473. **Ms Ruane:** That happens on the Assembly and Executive Review Committee.
1474. **The Chairperson:** I would be inclined not to push it to a vote every time.
1475. **Mr Brady:** I have a quick point to make on that. Paula mentioned that probably 200 families or fewer will be affected, so is it OK for them to not have their human rights respected and for the majority to have their human rights respected? I did not think that it worked like that. I thought that you were putting in place legislation that would affect everybody across the board and that would not be selective about the numbers of families that would or would not be affected. I thought that you put in place legislation that meant that everybody had the same right, if you like, for benefit. The benefit cap is denying individuals, albeit a small number, who, as was mentioned, are on the margins of society.
1476. **The Chairperson:** If we vote on it, the Committee will clearly be in favour of a benefits cap. We could vote on it, record that vote and add a rider that a substantial minority of the Committee indicated its concern about the small number of larger families that might be affected. We could actually do that without a vote. Are you happy enough?
1477. **Lord Morrow:** The decision of the Committee would be what?
1478. **Mr Weir:** That the majority of the Committee is happy to support a benefits cap but that a substantive minority is not.
1479. **Ms Ruane:** You are making a presumption there.
1480. **Mr Weir:** We can test it with a vote, then. That is easily enough done.
1481. **Ms Ruane:** Why do you need to say “a majority of the Committee”? Why could you not just say “some members of the Committee believed y and others felt x”?
1482. **Mr Weir:** With respect, we previously had a vote, the outcome of which was five all and clearly divided down the middle. In that case, it was fair to say “some members” and “others”. If the majority holds a particular opinion, the wording should reflect that. Otherwise, people will not have a clue about whether it is the majority or minority of members. Quite frankly, we could dance around this, so the easiest thing may be to have a vote on it.
1483. **The Chairperson:** Are members in favour of a benefits cap at the level suggested?
- Ayes 7; Noes 4.*
- AYES**
- Lord Morrow, Mr Elliott, Mr Lunn, Mr Ross, Mr Swann, Mr Weir, Ms P Bradley.*
- NOES**
- Mr Brady, Mr Eastwood, Ms McGahan, Ms Ruane.*
1484. **The Chairperson:** Are the victors in that vote content that there should be reference to the minority opinion —
1485. **Mr Weir:** I am more than happy.
1486. **The Chairperson:** — in respect of the small number of larger families that may be affected? Is that OK?
1487. **Mr Eastwood:** The pointlessness of it.
1488. **The Chairperson:** Sorry?
1489. **Mr Eastwood:** I am not going to open the debate again. Keep going.
1490. **Lord Morrow:** I do not know why we do this, but anyway. The vote reflects, I think, six to five —
1491. **Mr Weir:** Seven to four.
1492. **Lord Morrow:** Seven to four — whatever it is. That gives a fair indication of what was happening. If that has to be written

in some sort of gold ink, let us get on with it.

1493. **The Chairperson:** I am trying to keep it balanced. There is a substantial minority opinion that reflects a concern. I am sorry to prolong this, but even those of us who voted for the benefit cap could have a reservation. It is only 200 families, but there may be some requirement in the future to provide for them differently. We are not going to put it to another vote, believe me.
1494. **Mr Eastwood:** Chair, is it the intention to go through the whole paper today?
1495. **The Chairperson:** No; we are nearly done.
1496. **Mr Weir:** I thought that 5.00 pm was the cut-off point.
1497. **Mr Eastwood:** That would do me because I have other things to do.
1498. **The Chairperson:** We can leave it there and come back to it tomorrow.
1499. **Ms Ruane:** There are three areas left to come back to tomorrow.
1500. **The Chairperson:** OK. I thank you kindly.

8 January 2013

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Michael Cochrane
 Mr Colum Eastwood
 Ms Bronwyn McGahan
 Lord Morrow
 Mr Alastair Ross
 Ms Cairtriona Ruane
 Mr Peter Weir

1501. **The Chairperson:** Yesterday, we covered most of the main issues raised in the written submissions, and now we have only the final two or three issues to cover. We need to talk about the situation with personal independence payment (PIP) versus disability living allowance (DLA). A range of organisations expressed concern about the transition. We want to know whether these concerns identify any possible breaches of the human rights of disabled people, such as the right to independent living, or any equality implications.

1502. **Mr Brady:** A contract has been awarded to Capita, I think, to do the assessments for the transfer, which has been suspended here until 2015 for people who have indefinite awards. The difficulty will be if it is carried out in the same manner as the work capability assessment. We heard some indications of how that was going yesterday. It has been proven to be a shambles because the majority of people turned down by the assessors are winning their appeals. That means an expense to the public purse, as well as the time factor involved.

1503. I argue that the primacy of medical evidence in assessments would solve a lot of problems because these should be medically based. Unfortunately, they are tick-box exercises, and the work

capability assessments involve no real assessment. If that is replicated in the assessment for transfer from DLA to PIP, that will create even more problems. The medical evidence should have primacy, particularly if the reports are from a specialist GP or psychiatrist.

1504. The decision-maker does not necessarily see the medical evidence until the appeal stage. A lot of the appeals are successful because the appeal tribunals get the relevant medical evidence. The decision-maker, however, who makes the original decision does not have that and relies on the tick-box exercise. Rather than replicating the flaws in the work capability assessment, this is an opportunity to flag up the fact that the new assessment could be done in a better way that could save a lot of money and prevent a lot of trauma and problems for the people concerned.

1505. **The Chairperson:** Are most of the appeals successful?

1506. **Mr Brady:** The majority of them are. The figure given to the Committee for Social Development was something like 66% to 70%, which is high for appeals. One of the issues raised here in the North is why so many people get DLA. It is because, historically, we have a higher rate of disability. However, as someone who worked in the advice sector for many years, I should also point out that we have a very good voluntary infrastructure here, which ensures that people get the benefits to which they are entitled. DLA is not given out on some charitable whim; people have to go through a very rigorous procedure. That has almost been forgotten. Our very good advice infrastructure here ensures that people get their entitlement.

1507. **Mr Weir:** I do not disagree with a lot of what Mickey said. My issue relates to our specific role. I do not know whether we want to make some reference in our report to the need to take care

when implementing the assessment. It strikes me that that is, potentially, where the problem will lie, rather than in the legislation. I am not sure that the simple shift in the legislation to PIP has any equality or human rights implication. However, perhaps we could refer to the need to ensure that care is taken with the implementation of the assessment and to the need to be wary in light of the number of successful appeals against work capability assessments. We could find some words to express that. I am not sure, however, that we can do much about the legislation itself.

1508. **Mr Brady:** I would just like to reply to that, Chair. One of the issues raised about the transfer is that there will be a 20% cut. We have to assume that a proportion of that 20% will be disallowed for whatever reason, not necessarily because of their condition. It could be because it is felt that they do not qualify, and that may will infringe the human rights of people with certain conditions. The point that I am making is that if someone comes in with medical evidence that is simply not good enough and they do not qualify, then that is not a problem. However, if people have good enough medical evidence and long-term chronic conditions that are well documented with specialist evidence from GPs, psychiatrists, psychologists, community psychiatric nurses or whatever, then it does not seem unreasonable. If that is available — GPs normally have copies of all the reports when somebody has been referred — and it is all on computer, it is simply a matter of them putting in a code and the computer printing out the reports. That is the point that I am making. However, it needs to be flagged up at this stage. It may be a recommendation or a suggestion by the Committee in the report. I do not think that it is an unreasonable request that a benefit that is medically based should not have the best medical evidence available when the decision is being taken.

1509. **Mr Eastwood:** Is it the case, Mickey, that 20% will be cut? Is it target based?

1510. **Mr Brady:** It would appear to be; yes. That is what we have been told.

1511. **Mr Weir:** I understand — others can correct this — that central government in London have talked about 20%, and I think that they are talking about that on the basis of a belief, which I do not necessarily share, that transferring across will shake a certain number of people out of the system who do not deserve to be in it or whatever. I am not necessarily saying that I agree with that, but it is not a question that the budget itself will be cut; it is still, in that sense, demand led, but they believe that, ultimately, fewer people will qualify.

1512. **Mr Brady:** With respect, Chair, it reinforces the point that if your medical evidence is good enough and you satisfy the criteria as a result of that medical evidence, you get the benefit. If it is not good enough, presumably those people will come within that 20% remit. It is a straightforward enough point. You are talking about shaking people out of the system, and I do not disagree with that if those people do not qualify because their condition does not merit the benefit. However, if the condition merits the benefit as a result of the medical evidence, and the decision-maker is able to make an informed decision rather than a decision that is not informed, the appeal tribunals are making informed decisions because the medical evidence is being made available to them.

1513. **Mr Weir:** I think that there is not a great deal of a gap. When I talk about shaking people out of the system, the thinking from central government is what they think will be the case. If they are making that estimate, I think that they are grossly overestimating the number of people who would not qualify.

1514. **Mr Brady:** To finish that point, and I do not want to prolong it, an article was published recently in one of the English newspapers, which dealt with the fact that a lot of disabled people were being accused of getting benefits to which they were not entitled. There have been a number of attacks against people with disabilities. It is almost like a hate

- crime because, essentially, leading up to welfare reform, people who were unemployed and on benefit were virtually criminalised by the media. It creates the mindset that those people are getting something to which they are not entitled. That is a dangerous precedent to set, and it is something that we need to be aware of.
1515. **Mr Eastwood:** It is fine if it is the Government making an estimate of what a potential result will be as a result of this. However, if it is target driven, there is a serious equality and human rights issue because, as Mickey said, it should be based on need and not on targets of trying to get rid of 20% of the number of claimants. We need to be very wary of that.
1516. **The Chairperson:** I would be surprised to see a savings target figure in any Bill. It seems a very odd way to go about business. However, if it is there in that form, I do not see how it is automatically an infringement of somebody's human rights. The infringement would —
1517. **Mr Eastwood:** If you are disabled, you are disabled. You should be —
1518. **The Chairperson:** The infringement would surely be if decisions were starting to be made on the basis of the requirement for a 20% cut, and then you would have clear evidence. That would be a different thing. However, with regard to what we are supposed to be doing, which is assessing the Bill as it sits, is the mention of a 20% potential saving discriminating against anybody? I do not see how it is, automatically.
1519. With regard to the other point that you made, Mickey, about the primacy of medical evidence, when we go through previous Hansard reports later, we will come to that on several occasions. The point was very definitely made. However, what do we put in our report about this item? I think that there is general sympathy for Mickey's point about the primacy of medical evidence. I do not really mind too much if we slightly exceed our remit in some of these situations. There is no reason why we should not flag something as having the potential —
1520. **Mr Weir:** I am talking off the top of my head, but to reflect the point whether there is some sort of line about care needing to be taken on the implementation of the assessment to ensure that there is proper cognisance taken of medical conditions to ensure that those who are entitled to this receive it, or something of that nature. I am drafting off the top of my head, but something of that nature.
1521. **Ms McGahan:** On the back of Mickey's point about medical evidence having primacy, I have sat on tribunals and people are questioned on how their condition affects them. Depending on how they answer, that could actually win or lose their appeal. Therefore, despite having excellent medical evidence, they are asked how their condition affects them. I have sat on tribunals and witnessed it, so —
1522. **Mr Weir:** I do not disagree with Bronwyn, but having been on tribunals for many years, as I am sure others have, even the test under the current law on DLA is actually how it affects you. The medical evidence is evidence as to how it affects you, but it is how it affects you rather than purely your medical situation. Therefore, in that pure sense, it may be tightening, but the principle is not changing. Unfortunately, I am sure that we are all aware of constituents who, because they have very difficult medical circumstances but maybe go above and beyond what, in theory, they should be able to do actually maybe do not help themselves in terms of that side of things. However, the test is actually on the basis of how it affects you, rather than directly your medical condition at present.
1523. **Mr Brady:** Obviously, a number of people who are in receipt of DLA have progressive and degenerative conditions. Sometimes at appeals — certainly at appeals that I have attended over the years — the tribunal tends to look at the person on that day. They could sit comfortably on the

- day; we have heard all that kind of stuff before. The difficulty is for that person to articulate how they feel tomorrow or the day after. If you have medical evidence that indicates that they have a progressive degenerative condition, as an example, that will show that the condition is getting progressively worse rather than progressively better and it may not be a static condition. That is where the primacy of medical evidence comes into its own, I feel. It is the same particularly with people who have psychological problems. If you have somebody who is bipolar, they could be on top of the world today but in bed for three weeks from the day after. It is that kind of assessment there —
1524. **Mr Weir:** I understand that, Mickey. I suppose that the only thing on the appeal bit, as you know it is also obviously supposed to be judged on the basis of whenever actually the thing was turned down, which might be three months or six months earlier, rather than on the day itself.
1525. **Mr Brady:** The general point that I am making is that the person who makes the initial decision is well informed of the medical evidence, rather than it being disallowed, having to go through an appeal, winning your appeal and all that time and money in that sense, because the majority of people who are winning their appeals have their benefits backdated anyhow, so it cuts out the middleman, if you like, in terms of the appeals. It makes it easier for the person to be dealt with in the long term, and even in the shorter term. It is a common-sense argument.
1526. **The Chairperson:** We will put together suitable wording and have a look at it next Monday or Tuesday.
1527. **Mr Swann:** On Mickey's point about the contractor being employed, issues were raised about the management of the contractor in regard to compliance with section 75 issues and a number of other matters that we also said that we would get back to.
1528. **Mr Brady:** On that point, one of the issues raised in Royston House, which is the headquarters for examinations, is that there is no disabled access, which seems peculiar.
1529. **Mr Eastwood:** You cannot get in to win your appeal.
1530. **Mr Copeland:** Nor indeed does the Appeals Service, which is located in Cleaver House.
1531. **The Chairperson:** The Committee Clerk has reminded me of the Human Rights Commission's (HRC) concern that private contractors:
"carrying out functions that properly belong to the state"
1532. — are not necessarily subject to the jurisdiction of the Human Rights Act. Is that the point that you are making?
1533. **Mr Swann:** Yes.
1534. **The Chairperson:** I do not know whether I got an answer to the question about the situation with nursing homes, and so on.
1535. **Ms Ruane:** Where is that? Is it in the HRC submission?
1536. **Mr Eastwood:** The commission makes a fair point. It proposes:
"private contractors carrying out functions that properly belong to the state"
1537. should be subject to the jurisdiction of the Human Rights Act. The commission says that that should be in an amendment to the Bill.
1538. **The Chairperson:** I am looking at the Hansard report of the Human Rights Commission's exchange on that. Professor O'Flaherty was very explicit about it. Was he saying that that matter has already gone to judicial review in GB? I will give members a moment to read that exchange. Do any members have any thoughts on that?
1539. **Mr Brady:** The work capability assessment has prompted a lot of this. The British Medical Association in England and Scotland declared

- that the assessment was not fit for purpose. I think that, last year, 32 people who declared an illness died a short time after being found capable by one of those assessments. Those are the kinds of issues that have maybe reinforced the argument about the private contractors. The DLA-to-PIP transfer is run by Capita, but, like Atos, it would not have a big background in medical assessment work. In fact, in Scotland, Atos contracted back to the local health authority, having made a profit of about £18 million.
1540. **The Chairperson:** I am sorry, Mickey, I am trying to do two things at once.
1541. **Mr Brady:** I was just saying that Atos has been flawed, and I think that in Lanarkshire in Scotland, it got a contract for something like £40 million that it contracted back to the local health authority. So a statutory authority was giving money to a private contractor that then contracted back to a statutory authority, while making a profit of approximately £18 million. That is the kind of thing that maybe prompted this reaction.
1542. **Mr Eastwood:** I do not know whether we have had any response from the Department for Social Development (DSD) on this. Dr Russell was offering the Department an alternative so that it would ensure:
- “Human Rights Act compliance is assured under social clauses in the contracts.”*
1543. I do not know whether we have had any feedback from DSD on that, but it would be another issue to consider.
1544. **The Chairperson:** I do not think that we have had any feedback on it, but it seems to be something that we should clearly be mentioning, should we not? If it has already been —
1545. **Mr Weir:** As Colum has indicated, there seem to be a couple of options. From reading through the evidence, I think that what is being sought is a certain level of clarity. I note, for instance, Dr Russell’s response that it is wrong to say that they would not be subject to the Human Rights Act. I think that their view is that it is probably covered, but they want the assurance of it being fully covered in that regard. Whatever route is taken — a couple have been suggested — we may want to say that we need clarity on that, or something of that nature.
1546. **Ms Ruane:** Further down, whoever was chairing at the time said that it was obvious in the case of nursing homes, but Professor O’Flaherty said that they still had to go through an expensive legal process. They are looking for legal certainty. It seems that there are two options there, are there not? One is the social clauses, and the other is —
1547. **Mr Weir:** Social clauses or on the face of the Bill, I think.
1548. **Ms Ruane:** To provide a degree of certainty through specific provision in the Bill; yes.
1549. **The Chairperson:** It is back to the usual conundrum. We are being guided by UK legislation, some of which is already subject to challenge by Europe or by the UK courts. I think that the view would be that we just have to wait to see what happens with the rulings that come out of those challenges. However, in this case, it has already been subject to a review and found to be unsatisfactory, though I would like to see what the full judgement was. Surely we can make a recommendation that we do not need to go there.
1550. **Mr Eastwood:** Coming at it later offers us an opportunity to make sure that it is clear in the Bill, in the social clauses or wherever. It needs to be clarified somewhere.
1551. **Mr Weir:** I think that there is reference to legal clarity or something of that nature.
1552. **The Chairperson:** Legal certainty.
1553. **Mr Weir:** There are a couple of routes to providing legal certainty. They have not been prescriptive about the routes that have been suggested, so maybe we should not be prescriptive either.

1554. **Mr Eastwood:** I am surprised that the Department has not thought about it.
1555. **The Chairperson:** We are cleverer than the Department.
1556. **Mr Brady:** Professor O’Flaherty said that, where there is a potential for ambiguity, this is an opportunity to clarify that ambiguity.
1557. **The Chairperson:** We will be recommending that it should be clarified before it comes to the House. Are members OK with that?
- Members indicated assent.*
1558. **The Chairperson:** We will move on to housing benefit and to the underoccupancy penalties and their implications, particularly for the disabled and children, especially in view of Northern Ireland’s current housing stock. The Committee should note that the Bill does not detail these regulations. This policy change will be made under the confirmatory resolution procedure. Does the Bill, as it stands, comply with equality and human rights requirements in this respect?
1559. **Lord Morrow:** Did you say “confirmatory”?
1560. **The Chairperson:** Yes.
1561. **Lord Morrow:** Thank you. I just wanted to clear that up.
1562. **Mr Brady:** As opposed to “affirmatory”. I can feel a lecture coming on. I think that we will avoid it today.
1563. **The Chairperson:** Quite a bit of attention was paid to this item when the presentations were made. What are your thoughts about it? I keep looking at you, Mickey.
1564. **Mr Brady:** I do not know why. The issue with underoccupancy here is that the Housing Executive, in its presentation to the Social Development Committee, stated very clearly that it could not cope with it; it does not have the housing stock. The other issue, of course, is the nature of housing here in the North. The example given was that, in north

Belfast, you may have a number of underoccupied houses in the New Lodge area and there may be smaller dwellings in Tiger’s Bay but, realistically, somebody from the New Lodge is not going to want to move to Tiger’s Bay. Unfortunately, that is just the nature of housing where we live. Obviously, that may change in the future. Historically as well, housing associations and the Housing Executive have built family-sized houses, so we do not have the stock. All of this underoccupancy is predicated on what happened in the south-east of England, where landlords were getting £2,000, paid by the local authority. You can see the rationale to some degree as to why that needed to be changed there, but it has absolutely no relevance here.

1565. There is also a whole issue around the size of a box room. Should that be used for storage? In most Housing Executive houses, you can barely get a bed into such a room, unless you were to sleep diagonally.
1566. The other issue is that people with disability may need a room for a physio or an occupational therapist to do assessments. They may need storage facilities for wheelchairs. There are all those issues. Take into account, as has already been mentioned, that we have a much higher rate of disability and have more people on disability living allowance. Therefore, all sorts of issues prevail here that are simply not relevant to what happens in England. That needs to be borne in mind when we are dealing with underoccupancy.
1567. **Ms Ruane:** And the other issue, Chair —
1568. **The Chairperson:** Hold on a wee minute. We will do this in order.
1569. **Ms Ruane:** Gabh mo leithscéal.
1570. **Mr Eastwood:** I agree with Mickey. Part of our job is to see things that are specific to Northern Ireland. This is one issue that, I think, stands out, for all the reasons that Mickey gave about disability and everything else and because of the interface areas. My office is inundated with people. I have a massive list of people waiting

- on housing. The housing waiting list in Derry is something like 2,000. We just cannot build the houses quickly enough.
1571. **The Chairperson:** It is the same in Lisburn.
1572. **Mr Eastwood:** I am sure that it is. There are just not enough houses to deal with this issue, and the Housing Executive has already said so. This is one point on which I think we must be very strong. There are particular issues that affect Northern Ireland that do not apply across the water. It is our job to do this, and this aspect stands out for me.
1573. **Mr Copeland:** I apologise for my unfortunately, and increasingly characteristic, late arrival and my early departure.
1574. **Mr Weir:** Do not apologise for your departure, Michael.
1575. **Mr Copeland:** I saw smiles around the table when I said that. I am a member of the Social Development Committee and have purposely and studiously avoided being a member of this Committee, but Tom asked me to represent him.
1576. I struggle with the Bill in some respects. It is essentially a Northern Ireland Executive Bill, although it may well have its parents — if it has parents — in Westminster. On the issue of housing benefit, as others have said, housing is the biggest single issue that I, and, I presume, anyone around this table, will ever deal with. It is consistent and persistent. We sought some sort of clarity and heard the Housing Executive basically say that it cannot do this because the properties simply do not exist. We investigated and were assured that that was known and that funding would be made available to build properties that would allow houses in multiple occupation, which are almost unheard of in this part of the United Kingdom but are quite common elsewhere in the United Kingdom. Therefore, not only is there an actual physical difference but a social change will have to take place arising from this. That is coupled with the increase in the single-room rate to the age of 35.
- In my experience, and I do not want to generalise too much, but by the time people get to that age, if they are living by themselves, there is some other underlying reason that dictates why they do. You are basically putting people who may have medical or psychological difficulties into circumstances with other people who have exactly the same difficulties. You will not get a balanced society. You will get pockets that will be affected not only by the changes to housing benefit but by the changes to universal credit and the introduction of PIP. You will get a very small and vulnerable section of the community that feels disproportionately the effects of the proposals.
1577. To encapsulate that, I understand the Wednesbury principles, probably not as well as others do, but we should not be taking any decisions that are patently so laughable that no sensible person could have arrived at them. If we are looking at circumstances in which we need shared accommodation or one-bedroom properties, the first place to look is at planning applications to see whether anything has been done to ensure that a supply of the properties that will be required is available. I wrote to the relevant Minister and am sorry to say that the grand total of planning applications that have been received, which would have begun the process of addressing the consequences of this legislation, is zero.
1578. Therefore, on the one hand, we have a stated policy intent that may, in itself, be robust, but the actuality of the policy outcome may be different from the policy intent. We must examine very carefully the implications for those who, in my view, could be disproportionately affected by legislation that is probably quite satisfactory, given the circumstances, in the other part of the United Kingdom that will be most adversely affected, which is the city of London.
1579. In London, however, housing benefit of £100,000 to £150,000 a year is not unheard of. Housing benefit for most of our people is considerably less —

- £2,000 a week in some cases. The same solution is being applied to what are essentially two different problems.
1580. **Ms Ruane:** From listening around the table, there does not seem to be any disagreement on points 25 and 28 of the Human Rights Commission's submission. At point 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 ... housing stock they should not be penalised."*
1581. At point 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."*
1582. That deals with that section 75 category of persons with dependants and disability. Disability is also one of our nine grounds.
1583. I agree with everyone else. This is one of the very important areas, and it is important to get it right. I am like the rest of you: in Warrenpoint, you cannot get a house for love or money. People are coming to our office day and daily because the housing stock is totally inadequate. It is the same in Newry.
1584. **Mr Brady:** One of the issues that has caused this problem has been the sell-off of Housing Executive houses to tenants. Ten or 15 years ago in my constituency, the Housing Executive had a stock of around 12,500 houses, which is now down to fewer than 3,000.
1585. One of things that was discussed at the Committee for Social Development — Paula and Michael will agree — was that were this measure to be introduced, the person would be penalised only if suitable alternative accommodation were available. That was only a suggestion, and, as far as I know, no decisions were made on it.
1586. Bearing in mind what the Housing Executive and the housing associations have said, that will not happen in the near future. It will take a very long time. As you know, a housing strategy review is ongoing that may well indicate that "smaller dwellings" means dwellings with one or two bedrooms.
1587. A lot of older persons' dwellings were built 25 to 30 years ago. They were built that way because the Housing Executive got a subsidy. They are now single persons' dwellings and are few and far between. The housing stock is just not there.
1588. **Mr Eastwood:** I agree with Mickey's suggestion about suitable alternative accommodation, but I would like to see how "suitable" is defined.
1589. **Mr Brady:** That is one of the problems. It is about what is suitable. We have specific, prevailing circumstances here, and although a property may be physically suitable, there may be many other reasons why a person cannot move, including because of the nature of housing in this part of the world. That has to be taken into account.
1590. **The Chairperson:** It may just be geographical.
1591. **Mr Copeland:** There are also the unforeseen consequences of some of this, where, when families have split up, parental access to children may depend on having somewhere for them to stay. I understand that not everyone is exposed to those circumstances, but where there is a situation in which there is shared custody of children or visitation rights and the children are to be encouraged to maintain relationships with parents, there needs to be some laxity given and humanity of interpretation available to those who make the awards. None of these things, particularly housing, is ever black and white.
1592. There are also instances of properties that have been amended, particularly with the provision of a bedroom for a disabled person, and that actually creates a void bedroom somewhere else in the property. There is an endless

- series of permutations. Whatever is said, we have to legislate for all the possibilities in some way.
1593. **The Chairperson:** The peculiarity of this country is the demographic of the particular areas. There is not much point in offering someone a house in west Belfast if the person needs to live in east Belfast.
1594. **Mr Copeland:** In my experience, it is even more regional than that. There is no point in offering somebody a house on the left-hand side of the Albertbridge Road if the person is from the right-hand side. It goes beyond normal sectarian parameters. It is about local regionality.
1595. **The Chairperson:** I am a broad-brush man.
1596. Members, as regards our remit, how detailed do we want to be about this? In our opinion, is the Bill as it stands liable to cause a breach of people's human rights or other equality considerations?
1597. **Mr Weir:** It is about the extent to which it is implemented. The point that Mickey made is a very good one: there should not be penalisation where there is a lack of housing stock. Our definition in a broader sense is suitable. It seems a fairly common-sense point that people should not lose out because they are not moving to somewhere that does not actually exist, or does not exist practically for them. I do not know whether something could be framed around that, but that is the crucial bit.
1598. Although a lot of this may be driven by the London situation, the aim of some of it is to address the argument that our housing stock is not fit for purpose to meet the people's needs. Down the years, one of the complications is that the focus has been so heavily on family accommodation. That was done with the best will in the world, and it is understandable why it was done. To be honest, stuff for individuals has often tended to be stuck at the bottom of the pile. Therefore, people are sometimes in the wrong type of accommodation. That then creates lengthy housing waiting queues in different areas, which we all know about. If there were better matches for people, there could be benefits.
1599. The key is to ensure that people do not lose out because of the lack of suitable alternatives. That is the crunch point.
1600. **Mr Eastwood:** And those other issues around disability and single parents.
1601. **Mr Weir:** Yes. Whether it is suitable accommodation should take cognisance of a situation of disability or child custody. Some reference is being made there on that side of things. "Suitable" means a number of different things. For example, if you are being offered somewhere where you cannot accommodate the joint custody of a child, that will not be particularly suitable for some people. If you are being offered a property that is physically big enough but is not disability-friendly or does not have disability access or anything of that nature, that may not be suitable either. It is a question of working on something of that nature.
1602. **Mr Brady:** This is enabling and primary legislation, which is why it is so important to get it right. What flows from this are the regulations and the guidelines. Things such as suitability and people being sanctioned should be contained in the guidelines. In other words, for the person who is making the judgement or decision on whether it is suitable accommodation, that should be contained in the guidelines. However, that will be relevant only if the proper parameters are put in place for the guidelines to reflect the intention of the Bill.
1603. **Mr Eastwood:** You can imagine yourself debating with the Housing Executive what "suitable" means in a particular case. You can just see that happening. The definition needs to be very clear.
1604. **Mr Weir:** I have a slight degree of reticence, in that I do not want to drill too deeply into the "suitable" thing.
1605. **Mr Eastwood:** I do not think that we need to necessarily, but we can give examples.

1606. **Mr Weir:** The slight complication is that if we drill too deeply, we may miss various things. The argument then may be that, because we did not mention those things, we regard them as things that should be included.
1607. **Mr Brady:** We are talking about common sense, which unfortunately is not that common. That is why the guidelines and the outline of the guidelines are so important. However, they have to reflect what is in the Bill, and that is the issue.
1608. **The Chairperson:** I think that we can put together a form of words that will reflect those views, because I do not hear much disagreement here.
1609. **Mr Copeland:** I suggest that we look at the current terminology for reasonable accommodation, because we are actually expanding on “reasonable”. The Housing Executive has what it calls “three reasonable offers”. It can be spoken to on things that would not necessarily fall within the context of what people understand as “reasonable”. It can make allowances for a former abusive partner living in the street, so it can be quite flexible. It is important that that degree of flexibility remain in the system to allow, as my colleagues have said, the exercising of common sense.
1610. **The Chairperson:** OK. We can incorporate the word.
1611. Following our discussion yesterday about confirmatory or affirmative —
1612. **Ms P Bradley:** Chair, did you wait until Lord Morrow left? And Caitríona.
1613. **The Chairperson:** Now that Lord Morrow is away, yes. Michael, you were not here yesterday. We did not come to a decision on whether we would accept the advice of some of the presenters to us that all the regulations should be done under affirmative resolution procedure in the Assembly. The regulations that will detail this particular aspect will be done under the confirmatory procedure. You might want to reflect on that, in view of the fact that we could not come to a decision yesterday about it.
1614. Is this not a situation in which there could be an unavoidable delay? The Bill will have been passed and the regulations enforced, and it could be six months before anything can be done about them. Is it as simple as that?
1615. **Mr Weir:** I appreciate that there is a short space of time, but I wonder whether we could get a wee bit more clarification on exactly how DSD intends to take that aspect through. It all got a bit confusing at one stage yesterday. Whoever drafted the DSD response on the affirmative and confirmatory resolution procedures seemed to get the two mixed up a little bit, if memory serves me right. They seemed to talk about affirmative and confirmatory. It may be useful, before we go back too much, to get a little bit of clarification. Whoever was talking about the confirmatory procedure seemed to think that it was the same thing as affirmative.
1616. **The Chairperson:** It clearly is not, but I was not intending —
1617. **Mr Weir:** No, but I do not know whether the same person drafted the responses to all the aspects or whether it was a number of people. We need to be entirely clear about what route the Department intends to take any of the housing benefit stuff down. There is a wee bit of confusion about the way in which it is —
1618. **The Chairperson:** We can possibly do a wee bit of work between now and Monday on this. We should revisit it and get some proper clarification, because it is important.
1619. **Ms Ruane:** One thing that concerns me about the DSD response was the kind of feeling that it was potentially wasting the Committee or Assembly’s time. The report needs to be absolutely clear that it is the Assembly’s job to do that and that we, as a Committee, do not see that as a waste of time.
1620. **The Chairperson:** Yes. I voted your way yesterday. I do not disagree with that.

1621. **Ms Ruane:** I just wanted that on the record. It is important.
1622. **The Chairperson:** Anybody else? We will reflect on that, bring it back on Monday and agree the wording. Are there any other issues?
1623. **Mr Eastwood:** Chair, there is just one — it might have been brought up yesterday when I stepped out — around the housing benefit and extra room stuff. Foster NI talked about the impact on foster and kinship carers. That is a very specific issue. If people who foster kids then have a couple of months without children in the house, they will lose their housing benefit. That should have been mentioned.
1624. **The Chairperson:** What did the Department say about it?
1625. **Ms Ruane:** It has not said anything. Perhaps we need to get something off to it.
1626. **Mr Eastwood:** It did not want to give blanket exemptions.
1627. **The Chairperson:** It made a comment on the other side of the page.
1628. **Mr Swann:** One of the points that it made at that time was whether, if you foster but were 40 weeks between fostering a child, you would still be eligible for the rebate.
1629. **Mr Brady:** The words used were “ad infinitum”. In my experience, fostering is a priority for most trusts. There is a lack of fostering. Therefore, there would be the prospect of somebody not having a child to foster for that length of time. The other thing is that children who are fostered become available very, very quickly. It would seem reasonable that if someone is fostering a child and, for whatever reason, is then no longer fostering that child but is willing to take another child, some reasonable period of grace has to be given to those people. Otherwise, if a child who needed to be fostered came along tomorrow, and we were in that position, it might well put people off. They are being penalised. If you are available for fostering, you need the facility to take that child in at very short notice. If you are being penalised, you are going to think twice, and say, “What’s the point?” It is an administrative thing as well, I imagine.
1630. **The Chairperson:** It is pretty basic stuff, really. If you want people to foster, they have to have the capacity to be able to do so.
1631. **Ms Ruane:** I had a meeting with some of the trusts about fostering. There is a lack of uptake, and the trusts are trying to encourage more uptake. However, there are also child protection issues around space, where children sleep and everything else. That is something that we should be raising. It is not really good enough for the Department to say that we cannot have a blanket exemption. We need to be encouraging foster carers.
1632. **Mr Eastwood:** It is a disincentive.
1633. **The Chairperson:** I do not sense any disagreement over that at all. We will incorporate that.
1634. Does anybody want to draw attention to any of the other key issues on that particular page?
1635. **Ms Ruane:** Did we deal with the monitoring framework? In its submission, the welfare reform group states that a framework of monitoring needs to be in place for “post-legislative implementation”. It also states that there is no infrastructure to impose the clauses. Perhaps we need some more clarity on how the Department views that clauses are going to be implemented. Have we covered all that?
1636. **The Chairperson:** Where are we? It is page 14, members, if you are following events. Caitríona is referring to the welfare reform group’s comment.
1637. **Mr Brady:** One of the issues raised yesterday concerned the monitoring of people if sanctions were introduced: the level of sanctions; the number of people who had been sanctioned; the reason why they had been sanctioned;

- and which particular group they came within, whether that be lone parents or people who failed to attend an interview. People do not attend interviews for various reasons. It may seem to people that they are unable to attend, but they may be sanctioned by the Department because it feels that they did not make the effort. There are a lot of individual circumstances.
1638. The other thing is the comment from Niamh, Mencap and Disability Action about the “legal principle of reasonableness” as a basis for approaching welfare reform. Those groups also commented that an “impact appraisal assessment” in line with UK Treasury guidelines should be looked at. There seems to be no reason why that should not happen. We are constantly told that this is supposed to mirror what happens at Westminster. Again, what is coming from those groups does not seem an unreasonable suggestion.
1639. **The Chairperson:** Yes, but again, what is our remit here? There is nothing we can do.
1640. **Mr Brady:** I suppose that I am suggesting that that is a reasonable way forward and something the Department should consider doing. One of our remits, apart from the equality and human rights issues, is probably to put forward suggestions on how the Department could actually deal with things in a reasoned manner.
1641. **Mr Weir:** I have to say that I do not particularly object. The only problem is that I am not even quite sure what an “impact appraisal assessment in line with UK Treasury guidelines” means, to be perfectly honest.
1642. **Mr Brady:** Perhaps we should get some clarification.
1643. **Mr Weir:** I think that everybody can accept that we need to monitor the situation.
1644. **Mr Brady:** Unless it is a bit like that memorandum, Chair, and is a secret. This may be another one. We might get a summary, if we are lucky.
1645. **Ms Ruane:** The other point, made by NICCY, is that the framework of the UN Convention on the Rights of the Child must be upheld. There is just a blank space after that. What does that mean in practical terms? Given the level of poverty and child poverty here in the North, that is something that we should be looking at.
1646. **The Chairperson:** Those are just comments that the organisations made along the way; they did not necessarily make specific recommendations.
1647. **Ms Ruane:** I am aware of that. However, I just think that, given the levels of child poverty here, it might be worth our while looking at what the framework would actually mean and getting a bit more detail on it.
1648. **The Chairperson:** We will do that between now and Monday.
1649. **Ms Ruane:** OK. Thank you.
1650. **The Chairperson:** I am reliably informed that, somewhere in yesterday’s pack, there is a definition of the impact appraisal assessment in line with UK Treasury guidelines.
1651. **Mr Eastwood:** Is that the distributional impact analysis?
1652. **Ms Ruane:** That is the other one.
1653. **The Chairperson:** That definition is in the letter from the Department of Finance and Personnel (DFP) that was in yesterday’s pack.
1654. **Ms Ruane:** Is that the same as the distributional impact analysis, which the Human Rights Commission mentioned?
1655. **The Chairperson:** I do not know.
1656. **The Committee Clerk:** No, I do not think so. I do not know what that is.
1657. **Mr Eastwood:** Can we find out about that as well?
1658. **Ms Ruane:** Yes, can we find that out? The Human Rights Commission mentioned it.
1659. **The Committee Clerk:** Yes.

1660. **The Chairperson:** It would be useful if we enquired to find out what all these things are.
1661. Nobody else wishes to raise issues arising from the written submissions. Are members content to have those written submissions published on the website?
- Members indicated assent.*
1662. **The Chairperson:** In today's meeting pack, you will find copies of the Official Report of the oral evidence sessions. Having gone through what we have gone through over the past two days, we need to know whether there is anything else in the Hansard transcripts that anybody feels is worthy of comment and that we have not discussed. I know that you will all have spent all night and most of this morning studying the transcripts, but I will give you a moment or two to flick through them.
1663. I spent a wee bit of time on them, which the yellow pen marks can prove. However, just about everything that I highlighted has been covered.
1664. **Ms Ruane:** Was the response from the Law Centre included in the table?
1665. **The Committee Clerk:** No. The table covered only the written submissions. The Law Centre did not provide a written submission.
1666. **Ms Ruane:** OK; right. The Law Centre flagged up treating EU workers differently. That is covered in our papers. We will deal with that on Monday with the Human Rights Commission.
1667. **The Chairperson:** Dr Russell from the Human Rights Commission referred to the requirements under sections 6, 24, 14 and 26 of the Northern Ireland Act 1998. I think that he was responding to questions from Tom Elliott. He appeared to say that we cannot necessarily escape our obligations by just saying, in simple terms, that it is up to Westminster.
1668. **Dr Russell stated:**
- "it is the devolved competency of the Executive and the Assembly, and it is the responsibility within that competency to ensure compliance with the ECHR and all the ratified UN standards."*
1669. He said that the Department of Finance and Personnel may not have replicated the actions that were considered necessary across the water. Perhaps it should have.
1670. **Mr Eastwood:** We can ask DFP whether it has done that.
1671. **Mr Weir:** That was yesterday's answer.
1672. **Mr Brady:** The issue of lodgers was raised in the Law Centre's presentation. The Housing Executive and DSD told us that they were doing a pilot scheme in Craigavon on underoccupancy. It involved going to people who would be affected and encouraging them to take in lodgers. That raises all sorts of other questions. I asked Les Allamby how that might affect a person's benefit, and he said:
- "I understand from Lord Freud that if you take in a lodger who brings in income, that should not have an impact."*
1673. Can we get clarification on that? I am not sure that we ever got anything back on how it might have an impact. I cannot imagine that any income coming into the house would not affect benefit. Based on what is normally done, that does not make sense.
1674. **The Chairperson:** What page are you on, Mickey?
1675. **Mr Brady:** It is in the third and fourth paragraphs on page 14 of the transcript of the Law Centre's evidence. It mentions the pilot scheme in Craigavon, which the Housing Executive mentioned to the Committee for Social Development. The idea was that you would take in a lodger so that you would not be underoccupied and penalised. However, some income would have to be generated from that lodger. What would be the normal rate for a lodger? If the going rate for bed and breakfast were £100, would you be able to keep that

- £100 and maybe feed them on crackers or something?
1676. **Mr Swann:** There is also the issue of the tenancy agreement with the Housing Executive.
1677. **Mr Brady:** Issues about that were not clarified. I raised that because it was in the Law Centre's submission.
1678. **Mr Weir:** I take on board what Mickey said, and I have no problem seeking an answer to that. However, I am not quite sure whether that is a human rights or an equality issue. The wider issue on the legislation is that it is important that we get a wee bit of clarification on that. I am not sure that that informs a great deal one way or the other.
1679. **Mr Brady:** I think that the issue is that you are being encouraged to take a stranger into your house when you may not want to, and the only reason that you will have to do it is because you will be penalised otherwise. I would have thought that, apart from anything else, that is an infringement on your individual circumstances. They are actively encouraging people to take strangers into their house. Child protection and all sorts of other issues may be involved.
1680. **Mr Weir:** We will get the answer.
1681. **Mr Brady:** That is why I raised it; I am not just being awkward.
1682. **Ms Ruane:** Peter, when the Law Centre attended the Committee, you said:
"If there is a challenge in respect of the main legislation across the water, and a court case shows that it is against EU law, any change would have to be replicated".
1683. An interesting answer from Les Allamby might be worth including in the report. He said that it is:
"not primary legislation for the purposes of the Human Rights Act. Therefore, a challenge is more likely to happen here."
1684. I think that that needs to be factored in.
1685. **The Chairperson:** It was your question, Peter.
1686. **Mr Weir:** Chair, the more general and simple point is that if something is found to be incompatible against EU law, which applies across the whole of the UK, it will clearly get changed across the whole of the UK. If it is found to be compatible with EU law, there will not be a change.
1687. **Ms Ruane:** Yes, but Les Allamby's point is that, given the differences between the legislation here and that in England, it is more vulnerable to challenge here. That is what I am reading from what he said.
1688. **Mr Weir:** I do not necessarily accept that, to be perfectly honest. If it replicates the provisions, it is going to be incompatible across the UK.
1689. **Mr Brady:** Surely the whole issue is on the memorandum of compatibility with the European Convention on Human Rights, which, apparently, the Committee in England was not allowed to see. We may be lucky to get a snippet of it. Surely that would give us a much better idea of whether it has been taken into account or not. At this point in time, we do not know, because it is a secret — it is a mystery.
1690. **The Chairperson:** That being the case, we could return to the issue if and when we get the memorandum. The Committee Clerk has contacted the Department again about the timescale for receipt of the summary of the human rights memorandum, but we have not had a response. The Human Rights Commission has confirmed that, if required, it may be available to brief us orally on Monday. It is on standby, and I am sure that it will be pleased to come. We will continue to press the Department for the summary. It seems unreal to promise something and to ignore the timescale that we are working under, so I imagine that we will have it.
1691. **Mr Eastwood:** Maybe they are very aware of the timescale that we are working to.
1692. **The Chairperson:** I am sure that that point has been made.

1693. So, we can address that point again when the time comes, Caitríona.
1694. Are there any other issues that members would like to raise?
1695. **Ms McGahan:** I know that we issued a request to the equality unit for it to come here, and I do not think that we got a response. Can we reissue that request?
1696. **The Chairperson:** It did not reply.
1697. **Ms Ruane:** I think that Bronwyn made a very important point; I think that we should reissue that request. It is not good enough that one of our Departments has not even replied.
1698. **The Committee Clerk:** I sent a reminder last night. It has not replied to that.
1699. **The Chairperson:** It is probably trying to agree what to say to us.
1700. **Mr Brady:** I want to make the point that it is an equality unit, and we are dealing with equality. We have it within the context of the Assembly, yet it has not even replied. I presume that the unit is still in the same building. Is it?
1701. **The Chairperson:** It is in the same country anyway.
1702. **Mr Brady:** Part of the country. We will agree to disagree on that.
1703. **The Chairperson:** Is everybody agreed that we should demand a response from the Office of the First Minister and deputy First Minister (OFMDFM) equality unit?
1704. **Mr Swann:** I first raised the issue because it was crucial to what we were doing, and the Committee stated at that time that it was shocked that it did not even acknowledge a response.
1705. **The Chairperson:** A majority of the parties around the table have indicated that they are aggrieved about that.
1706. **Mr Weir:** I think that we can ask, but if it has ignored us so far, I am not overly confident that it will not ignore us for the next year.
1707. **Mr Eastwood:** Surely part of its responsibility is to respond to us, given that we are an Ad Hoc Committee on equality.
1708. **The Chairperson:** You would think so. Given that this is a new Committee, we do not know what particular rules apply. I do not know what timescale the unit is bound by, but we are certainly bound by ours. I probably need to push that button.
1709. **Mr Swann:** If the unit itself is not responding to us, are there any other more direct means of communication for us? Should we be writing —
1710. **Mr Eastwood:** Does anybody know any of the Ministers?
1711. **Mr Swann:** — to OFMDFM or to the Chair of the Committee for the Office of the First Minister and deputy First Minister to see whether they can put any —
1712. **Mr Eastwood:** As a member of the Committee for the Office of the First Minister and deputy First Minister, I would go straight to the Ministers, because we do not always get the quickest response either from the Department.
1713. **Ms Ruane:** I think that it is important that if a Committee that the Assembly has set up writes to the Department, it gets an answer. If it does not get an answer, questions need to be asked. Did the second request that you sent come from the Chairperson?
1714. **The Committee Clerk:** We asked it formally originally. We then wrote and expressed our disappointment that it did not come and give us an oral briefing, and we requested a written briefing. We have not had a response to that formal letter. I e-mailed it a wee reminder. I was actually told that the person I had been speaking to before has now moved post and that a new person is dealing with it. However, I still have not had any further response about whether it is going to give us a response.

1715. **Ms Ruane:** Should there be a letter from the Chair of this Committee to the First Minister and deputy First Minister making that request?
1716. **The Chairperson:** I think that the issue is certainly important enough to justify that. We still have time but not a whole lot. Monday sounds as though it will be very busy, but if we keep a bit of discipline, it does not need to be that long, and there would be time for a presentation from people in that unit.
1717. **The Committee Clerk:** You will have to write to the Chair of the Committee for the Office of the First Minister and deputy First Minister for that to be considered by the Committee next Wednesday.
1718. **The Chairperson:** Do you mean tomorrow?
1719. **The Committee Clerk:** I do not think that it is meeting tomorrow.
1720. **Ms McGahan:** It is.
1721. **Mr Eastwood:** As far as I know it is.
1722. **Ms Ruane:** It is meeting tomorrow.
1723. **The Committee Clerk:** OK. Well, then, I can get that off today and ask for it to be tabled.
1724. **The Chairperson:** We will get that off today. You are on that Committee, Colum, as are you, Bronwyn.
1725. **Ms McGahan:** Yes.
1726. **The Chairperson:** You can push the case for it to be considered on the day.
1727. Does anything else spring to mind?
1728. The draft forward work programme in members' packs is still pretty much intact. We will see where we get with the various episodes that we are trying to arrange for Monday. Are members content with the way forward?
1729. **Mr Weir:** I do not want to press the Committee Clerk too much on this, but given that we are meeting on Monday, is the idea to have some wording with us by close of play on Friday so that we are not coming to it completely fresh on Monday?
1730. **The Committee Clerk:** I was going to prepare a summary of the Committee's discussions yesterday and today. That may form the basis of some type of agreement about the report, and so forth.
1731. **The Chairperson:** OK. Is there any other business?
1732. The next meeting will be on Monday in the same room at 2.30 pm. Just keep an eye on whether you have questions. Thank you all very much.

14 January 2013

Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
 Mr Robin Swann (Deputy Chairperson)
 Ms Paula Bradley
 Mr Mickey Brady
 Mr Colum Eastwood
 Mr Tom Elliott
 Mr Fra McCann
 Ms Bronwyn McGahan
 Lord Morrow
 Mr Alastair Ross
 Mr Peter Weir

1733. **The Chairperson:** We now come to our consideration of the Committee's position, which we were always bound to come to eventually. We have to start trying to agree a few things. We have been gathering information since 26 November. I propose that we review the main aspects of our previous discussions and either come to a conclusion or make a recommendation on each of them. After the briefing from the Human Rights Commission, we will consider the main question of whether the provisions of the Welfare Reform Bill are in conformity with equality and human rights requirements. We will probably not have time to finish our discussion before that briefing session. However, we can resume afterwards.

1734. **Mr Brady:** I apologise for being a bit late. I know that there was an issue last week about public and private sessions. Perhaps you are not necessarily aware that the session was not being recorded last week. I was stopped out in the corridor, but I presume that, obviously, the button is on now.

1735. **The Chairperson:** We are in public session at the moment, Mickey. The confidential nature of the human rights memorandum that we have means that we are going to go into private session when the Human Rights Commission arrives. The issue last week was settled as far as it is going to be settled.

1736. Members have been provided with the key issues under consideration. The first one is the adequacy of the equality impact assessment (EQIA), which we have returned to a number of times. As you know, a number of responses, particularly that from the Equality Commission, raised concerns about the process and its adequacy, the lack of consideration of up-to-date and relevant data, and the absence of the identification of adverse impacts or alternative policies. I could read on, but you all have the paper, and I will take it that you have read it. Does anybody have any thoughts about this? The Committee Clerks have done their best to put the information in the form of questions for consideration. Those are in bold print. We can take them one by one. The first issue that we have to consider is whether the potential adverse impacts that are associated with the Welfare Reform Bill are reflected in the actual provisions of the Bill, rather than our being in the situation of having fears about them down the line when the regulations are published. Do you have any thoughts, folks?

1737. **Mr Brady:** How can the regulations reflect something that is not in the Bill? They have to reflect something that is in the Bill. I think that that point has been made throughout, Chair.

1738. **The Chairperson:** It has, but we are only considering the Bill.

1739. **Mr Brady:** Exactly. Any adverse impacts have to be dealt with in the enabling Bill — the primary legislation — because the regulations flow from that. So, if the Bill is not right or adequate, surely the regulations that come from it will be flawed as well.

1740. **The Chairperson:** It is surely quite possible that there will not be an adverse impact that we can highlight in the Bill but that may appear through the regulations.

1741. **Mr Brady:** Issues such as the zero earnings have been raised. What about underoccupancy, the disability living allowance (DLA), personal independence payment (PIP) assessment, or the work capability assessment, which even at the moment is having an adverse effect? Those issues should be dealt with in the enabling Bill. The regulations will come from what is in the enabling Bill. If it is going to have an adverse affect, by definition, the regulations will also have to, because they come from it. That is a fact.
1742. **Mr Weir:** I appreciate where Mickey is coming from, but, by the same token, I do not inherently see that adverse implications arise directly out of the Bill. I think that there are issues that will need to be examined when we get to regulation stage. I think that the concern is that, purely from the point of view of this Committee's remit, we can look only at the Bill. Although we can flag up that concerns have been raised over the implications that may arise in regulations from the Bill itself, I do not see where we can actually draw the conclusion that adverse impacts will come directly from the Bill.
1743. **Mr Brady:** Just in response to that, and with respect to Peter, not one organisation that came before either the Social Development Committee or this Committee said that the Bill will not have particular adverse effects. I have yet to meet any organisation that has come before either Committee and said that this is a good Bill. Even members from your own party have expressed concern about the Bill and have said that it is not a good piece of legislation. How a bad piece of legislation does not impact adversely on people, I am not quite sure.
1744. **Mr Weir:** With respect, the concerns that I have heard have been about what could arise out of the regulations, rather than directly from the Bill. We have a particular remit for this. There is no problem indicating that concerns have been expressed over what could happen in the regulations; that has been flagged up with us. However, I do not see how we can draw the conclusion that there is an adverse impact from the Bill itself. Maybe some words can be formulated to reflect that.
1745. **Mr Brady:** Just to clarify, Peter is saying that if the Bill goes through in its present form and the regulations come from that, we could then change the regulations at a later stage. Is that what you are saying?
1746. **Mr Weir:** With respect, the regulations will have to be voted through on their own merit. That is the whole point of what is being put forward. Indeed, that is why, for instance, we debated the circumstances by which particular regulations should be subject to affirmative resolution. I do not know whether there is maybe some form of wording that could reflect that there was a division of opinion on that, because I do not think that there is going to be a meeting of minds.
1747. **Mr Brady:** Could we possibly come to an agreement on the idea that the regulations flow from the Bill? They have to, by definition.
1748. **The Chairperson:** I do not think that there is any disagreement there.
1749. **Mr Brady:** They cannot come from any other source. Therefore, if the Bill is flawed, and there are issues in it that have an adverse effect, how can the regulations not have the same effect? One is predicated upon the other. That is a fact. If you have an enabling piece of primary legislation, its ultimate purpose is in the regulations that will flow from it. I thought one of the issues for this Committee was to ensure that the Bill is compliant with human rights and equality issues and that it will not have an adverse effect as a result of a lack of compliance with those issues.
1750. **Mr Weir:** I have not heard any direct evidence to suggest that it is not compliant with human rights or equality issues. I cannot simply dismiss the Bill in that sense. I have no doubt that we could indicate that, clearly, regulations flow from the Bill, that there has been concern over regulations, and that, as

- part of the process, there will need to be close scrutiny of those regulations to make sure that they do not have an adverse effect. However, I do not think that we can condemn the Bill in that sense. That falls outside our remit. I repeat that I suspect that this is something on which there may not be a meeting of minds, to be honest with you.
1751. **Mr Brady:** Could I just finish by saying —
1752. **The Chairperson:** Hold on a minute, Mickey. I want to get a few more people in, if I can. I will come back to you.
1753. **Mr Eastwood:** I agree with Peter on one thing: we are not going to get agreement on this. However, it is important to say that every single piece of evidence that we have had has told us that the Bill will have adverse effects on, for example, people with disabilities, which is just one section. We are not going to agree on this. That is quite obvious. For me, it is very clear that a number of things in the Bill will obviously have an impact on, for a start, people with disabilities.
1754. **The Chairperson:** Do they have an adverse impact on one particular group as opposed to others?
1755. **Mr Eastwood:** People with disabilities is one group. There have been so many different examples; that is only one. Children are another example.
1756. **Mr Brady:** I want to make a point. Where the regulations and the Bill are concerned, we have been told that one will follow the other directly. There is going to be no space in between; it will happen almost the next day. In Britain, the regulations came out in December, so they have had a period between the two. We are talking about parity. Parity is comparing like with like. We are not getting parity on the Bill and the regulations. If the Bill is there one day and the regulations the next, and it then goes for Royal Assent or whatever it takes to put the Bill through, I am not sure that we are going to have an opportunity. That is why I am putting forward the point of view that the Bill has to be right. As Colum said, many groups, including Disability Action,
- have said that there will be an adverse effect on people with a disability. Now, I am not sure what the definition of the word “adverse” is. I thought that it was something that was going to have an ill effect, rather than a beneficial effect, on someone.
1757. So far, nobody has said that the Bill will have a beneficial effect for the disabled, those who are in receipt of sickness employment support allowance or the various other claimant groups. The point about entitlement has been made repeatedly. However, I still make the point that, to get entitlement, you will have to satisfy criteria. If those criteria are changed adversely in how they impact on that person’s entitlement to benefit, that is another issue.
1758. **The Chairperson:** Both sides have said that we are not going to come to a meeting of minds on this; that is fairly obvious. I am slightly worried by what you said in particular, Peter. You said that the Bill does not throw up any adverse impacts that we can identify but that the regulations might. Therefore, there would need to be a very close scrutiny of the regulations. Yet last week, when we had a vote on the level of resolution that would be required to scrutinise those requirements, you voted in favour of the lesser form of resolution.
1759. **Mr Weir:** With respect, our amendment on that was that if a regulation meant a policy change, it should be dealt by way of affirmative resolution. The point that we made was that the general nature of the regulations under welfare reform will mean that some will deal with policy changes and some will essentially be, for example, mechanical or technical. The record will show who voted in favour of that position and who did not. We stated very clearly that affirmative resolution should be in place for any policy change. I think that that was the wording that we suggested. That would give a degree of protection. I think that it would be an abuse of the system if we used affirmative resolution for every single thing in that regard. I do not think that the use of affirmative resolution for

- technical changes that do not involve any change in policy is the appropriate way forward.
1760. **The Chairperson:** Can you see any discussion down the line about whether a particular change is a policy change or a technical change?
1761. **Mr Weir:** As I understand it, there is a technical difference — we got correspondence on this — between affirmative and negative resolution. With negative resolution, you can pray against something, which would effectively put it on to the Assembly's schedule. The scrutiny would not be any less rigorous if we did not use affirmative resolution. However, where you do not have it, there is not the opportunity to effectively block any regulation if it is the mind of the Committee that is dealing with it to do so. I think that there is adequate protection in that.
1762. **Mr Brady:** It is generally accepted by most people that this is the biggest change in social security policy since 1948. The technicalities are simply the mechanics of putting in place methods by which the policies will be implemented. It is as simple as that. The technicalities do not change the policies; they implement them. They put in place a mechanism by which the policies, benefits or whatever are implemented. However, those benefits are predicated on the changes in benefit on policy.
1763. Policy and technicalities are two different things, because the technicalities simply implement the policies. If the policies are not right, the technicalities will not change that. They will not change the adverse effect but will simply put in place the logistics of putting the benefits out to people, whether it is universal credit or whatever.
1764. I thought that we were here to talk about the changes and how they will affect, adversely or otherwise, the human rights and equality considerations of the various groups. I am not sure whether technical changes have anything to do with that; they will simply implement the policies.
1765. **Mr Weir:** Chair, all that I will say is that there will be a range of regulations and that some of them will bring policy changes into place. The Department has indicated that affirmative resolution will be used if there are any major policy changes, and it is clearly the Committee's wish that that should be the case as a minimum. The Committee for Social Development will spend a large amount of time scrutinising the Bill and reviewing any policy changes.
1766. Mickey is right that there will be certain things that are policy and certain things that are technical. If the issues are technical, I do not think that it will require affirmative resolution. If they reflect a policy change, it will. I think that that is a reasonable enough position to take on that. There is an argument over whether particular regulations might bring in adverse impacts, but I have not heard anything arising directly from the Bill itself that shows an adverse impact.
1767. **Mr Brady:** I feel that the argument is very straightforward. The regulations will implement the policies as they go through and will reflect the enabling legislation, which is the Welfare Reform Bill.
1768. **The Chairperson:** We have managed already to cross over from point a to point b, but that was probably my fault. We will not agree about this. I can only suggest that we reflect everyone's point of view and emphasise that the Committee's opinion is that anything that is remotely to be considered as a policy change should be considered under affirmative resolution in the future. I cannot see what else we can do. We have already voted on the affirmative and confirmatory situation, and I do not propose that we vote again. Are you happy enough with that? I am not saying that you have to be happy, but can you agree to it?
- Members indicated assent.*
1769. **The Chairperson:** As you can read for yourselves, the next point is about the

- EQIA being a “living document”. Do members have any thoughts about the extent to which a flexible, responsive EQIA could address adverse impacts that are yet to be identified? The next points are all connected, particularly that about the Equality Commission’s powers.
1770. **Mr Brady:** I am worried about its lifespan. It is not so much about its being a living document but about how long it will live for. Will it require resuscitation at the end of the regulations? Therein lies the problem. “Living document” is kind of a nebulous term. What does that actually mean? Does it mean that every time that something is challenged, the Department will take it into account? The bottom line in all this is that we have been told that the EQIA is flawed because of the lack of statistics and various other issues. How will this living document address that? How long will it live for?
1771. **Lord Morrow:** To some degree, the document’s strength is that it recognises that changes may come and that it will change to take into account the new circumstances that may arise, subject to all the procedures that it must go through. I do not have a problem with its being called a “living document”. It is only in quite recent years that I heard that term. The first time that I ever heard it mentioned was by the planning office when changes were made in planning procedures. It came up with the idea of a living document, and I think that, at the time, all councils bought in to it and said that it was a good thing because we all were representing our constituents on issues but were finding it difficult to get information. So, we have it repeated here that this is a document that is likely or liable to change in response to changing circumstances. I do not have a problem with that. I would have a problem if it were otherwise.
1772. **The Chairperson:** I certainly hope that it does not turn into the type of living document that the Planning Service used.
1773. **Lord Morrow:** I used that only as an example.
1774. **The Chairperson:** That just means that it is all things to all men and that it can be changed at any time. However, I take your point about this document.
1775. The next point asks whether we should be advising the Department to consider extending its evidence gathering to include the data on the other four section 75 equality strands: religious belief; political opinion; racial background; and sexual orientation. Are you content that we give the Department that advice in our report?
1776. **Mr Weir:** From what I understand and from what the Department has said, I think that it is trying to take on board as much information as it can. I take the view that, as has been indicated, when you are talking about benefits, you are talking about the entitlement side of things. I am not sure whether an extension to include qualitative rather than quantitative data would be particularly helpful. I would welcome efforts to widen the scope of the data and to use any such data to extend equality grounds or something of that nature. Perhaps the language has fallen short of what is in that point, but I would welcome ongoing efforts to extend the data to ensure that they are as comprehensive as possible.
1777. **The Chairperson:** Some of the people who presented to us seemed to think that these data were probably available but that sufficient effort had not been made to collate them from the various sources from which they could be drawn.
1778. I am not getting any reaction here.
1779. **Mr Brady:** The bottom line in all this is that if the legislation goes through based on the current EQIA, which various organisations have told us is flawed, whether it is living or not, I am not sure how that can be changed. It can be monitored, certainly, but if it does have an adverse effect, will further legislation be introduced to change its impact?

1780. **The Chairperson:** That, surely, is the idea of this: if the EQIA is living and is capable of being amended as the years go on, it will not need to be resuscitated. It will be coupled with the role of the Equality Commission, which is to examine and have powers to instigate an investigation into the effects of the EQIA. Is that a sufficient guarantee or do we feel that it should be more than that?
1781. **Mr Brady:** It just seems that if you are going to do an EQIA, the point is to try to get it right at the start, and things can then flow from that, rather than get it wrong, have something put in place and try to change it afterwards. That seems to be a peculiar way of doing things.
1782. **Mr Eastwood:** It seems that we are agreed that we should ask the Department to extend its data collection, in whatever form that takes. If we are saying that we should be collecting more data, maybe we have agreed, without realising it, that the EQIA was not up to scratch in the first place.
1783. **Mr Weir:** I would not go as far as that. I take on board the argument that the data do not reflect all the equality grounds, and I accept that they clearly do not. I would question the relevance of some of the equality grounds, and I take on board the Department's assertion that this is based on entitlement.
1784. I would welcome any additional or new data that could be sourced to help in this process. Surely everyone can agree on that, but it does not necessarily mean that we believe that what is there is flawed or inadequate. I would not take that position, to be perfectly honest.
1785. I cannot remember the exact wording, but in its earlier evidence, the Department acknowledged that not all data had been reflected. Perhaps someone can remind me of the exact wording.
1786. **Mr Swann:** The Department said:
"We recognised the data deficits".
1787. **Mr Weir:** Yes, but having said that, it went on to say that the equality elements were adequate because there is an entitlement side. I am happy enough to reflect that the Department has acknowledged that there are data deficits. However, it also indicated that it believes that this is on the basis of entitlement and that it welcomes any efforts that are made to widen the sources of data to better inform decisions, or something of that nature.
1788. **Mr Swann:** I am going back to the summary that the Committee Clerk prepared. Once the Department admitted that there were data deficits, it said that it was going to look at a policy simulation using Her Majesty's Revenue and Customs data and the family resources survey data from 2010-11. The issue is whether the Department has done that, and that goes back to Mickey's point about how long this thing keeps on living and the point at which it comes to a final conclusion.
1789. **The Chairperson:** That is the point that I was making a moment ago. Some of these data are there, but the Department has not put them together yet.
1790. **Mr Eastwood:** I accept Peter's point; that is his position. However, I do not think that we are in a position to preempt whether it would have an impact on some of the grounds that have not been looked at. The job of the EQIA is to get it right in the first place. We can decide after that whether there is an impact. The EQIA is for assessing the impact, and it obviously did not do that for a number of different sections.
1791. **Mr Weir:** With respect, I contend that they are not relevant.
1792. **Mr Eastwood:** My position is that we cannot tell whether they are relevant until you do the impact —
1793. **Mr Weir:** With respect, I really fail to see how anyone can explain the relevance of sexual orientation, for instance, to a benefit entitlement.

1794. **Mr Eastwood:** Whatever we think about it, we have had evidence that says that to the contrary.
1795. **Mr Weir:** I accept the acknowledgement that there is a data deficit. There is ongoing work to try to improve those data. I also accept, although I suspect that you do not, the Department's position, which is that the thing has been covered adequately because there is an entitlement. I acknowledge and welcome the work that is ongoing, and I encourage more of it. However, I do not accept that the EQIA is inadequate. I believe that there are constant efforts to try to improve things. That is to be welcomed, but I do not regard it as inadequate.
1796. **Mr Eastwood:** That is your position and opinion. Those things may not be relevant or anything else, but the whole point of an EQIA is to decide that. It is not about deciding before that and then not looking at all the issues that should be looked at.
1797. **Mr Weir:** With respect, an EQIA was carried out in a perfectly reasonable fashion. You have to apply some level of common sense to it as well.
1798. **Mr Brady:** An extract from the Equality Commission's response to the departmental consultation on the original EQIA states very clearly:
- "We are also concerned that the Department has not taken any steps to address the existing data gaps it has identified in relation to religious belief, political opinion, racial background and sexual orientation. It is not acceptable for an EQIA to merely record that no data are available. Furthermore, in the absence of any data no comments can be made on potential effects. It is incorrect to simply assume that 'social security benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these 75 categories.'"*
1799. **It also states:**
- "Indeed, previous analyses suggest that characteristics like religious belief, political opinion, racial background or sexual orientation can put individuals at higher risk of exclusion and poverty which in turn could impact on an individual's need for support through social security benefits."*
1800. The Department admitted that it does not have the data on those areas, so how can it be said that you have an adequate EQIA when it is lacking in data, which may impact on those groups under section 75?
1801. **The Chairperson:** We have already agreed to differ on whether the EQIA was adequate. It is a question of what riders we put on that opinion. One of them would be to advise the Department to continue its data collection on the other four section 75 equality groups. I agree with others who have spoken; for the life of me, I cannot see how membership of one of those four groups is a disadvantage in an entitlement to a benefit. We can point out to the Department that we think that it should continue to gather evidence. We can include a rider to encourage the Equality Commission to keep a close eye on what is happening and to say that if it feels that it is necessary for it to use its powers of investigation, it should do so.
1802. The last point on the suggested response from the Committee Clerk is whether it would be appropriate to suggest a time frame for updates. Do we need to put a bit of pressure on the Department or the Equality Commission or do we just record our different views and carry on?
1803. **Mr Brady:** The difficulty that I have is whether the monitoring and the living document will have any impact on or change the core elements of welfare reform, which, at that stage, may already be having an adverse effect on various claimant groups.
1804. **The Chairperson:** If something comes to light, as, apparently, it already has across the water, where there is a clear possibility of that, there are various avenues for people to challenge the legislation. The European Court of Human Rights (ECHR) has instigated a complaint already.
1805. **Mr Brady:** Are we talking about legal challenge?

1806. **The Chairperson:** Absolutely. That is what happens with legislation.
1807. **Mr F McCann:** If a number of legal challenges on aspects of the Welfare Reform Bill are outstanding, would it not be sensible to wait to see what the outcomes are?
1808. **The Chairperson:** As far as our consideration is concerned, Fra, we cannot wait. We have to report.
1809. **Mr F McCann:** That is an opinion that you have. What will happen if, after the collection of evidence, people come back at some stage after we have gone through the Bill — as they have the right to do — and say that they have seen clear evidence that it has impacted on people adversely?
1810. **The Chairperson:** If you take the situation in which the Westminster Bill is being challenged legally through the courts, I do not think that it is reasonable for us to assume the outcome of that challenge and make some sort of a change to our —
1811. **Mr F McCann:** You will not be assuming: you will be waiting to see. If it is a victory, it will have an impact here, but we will have already put people through hardship.
1812. **Mr Weir:** There is a wider issue there in certain regards. If we are suggesting that the legislation be put on ice until we know the result of the legal challenge, we have already heard that if the Welfare Reform Bill is delayed, we will be out a massive amount and that a lot of the people who will lose out directly will be the claimants. There is a divergence of view on the adequacy of the EQIA, albeit general comments could be made. I may be paraphrasing this a bit, but do we agree that we should encourage the Department to continue to seek more evidence? Do we also agree that there is an ongoing monitoring role for the Equality Commission?
1813. **Mr Eastwood:** Do you mean that we are not agreed or that we are agreed?
1814. **Mr Weir:** There are two assertions. We are not agreed on the adequacy of the EQIA. I would have thought that we could agree that we should encourage the Department to seek more information on the data deficits. Indeed, I thought that we could welcome the fact that there has been some work, but that we should encourage more. Broadly speaking, I thought that we would agree on that. Similarly, to say that there should be close and continued monitoring by the Equality Commission is something, presumably, that is not particularly controversial either.
1815. **Mr F McCann:** Picking up from where Peter is going on this: is he saying that every single organisation and group that came here and spoke about their concerns got it wrong?
1816. **Mr Weir:** With respect, given the nature of the evidence that we will be seeking, I suspect that you will not get groups — for instance, if you wanted to pull in the TaxPayers' Alliance, I am sure that it would say that its complaint about welfare reform is that it does not go far enough. My point, generally, is this: I think that it is a factual statement to say that there is not agreement in the Committee on the adequacy of the EQIA, because some of us feel that, given the circumstances, it was adequate in its nature. Clearly, however, there are those who believe that it was inadequate and that the whole EQIA is flawed as a result. There will not be a consensus on this.
1817. Surely there could be agreement on the two other propositions, one of which is the desire to encourage the Department to keep on gathering additional data, and surely there could be agreement for an ongoing role for the Equality Commission in monitoring that. I do not see the latter two as being overtly controversial. We may need to accept that we need to reflect a difference of opinion on the EQIA.
1818. **The Chairperson:** I think that this is where we are at, members. We could talk round this all day. As I understand it, we have agreed on the potential inadequacy of the EQIA to start with, and

- the other things flow from that. Are you content for the Committee Clerk to try to reflect that discussion in the report, which we have to agree tomorrow? This is about as far as we can take this one.
1819. The next issue has really been covered, and it deals with the regulations.
1820. **Mr F McCann:** Before we go on to that, I want to know something for my own information, because it seems a lifetime ago when we were discussing this at the Social Development Committee. I know that the Department has been mentioned quite a lot here, but everybody at the Committee raised serious concerns about some of the information that we were given by the Department. We keep talking about the Equality Commission and its ability to deal with the flaws. However, opinions differed on whether the Equality Commission had the power to challenge, deal with and tackle the Bill, and whether its authority supersedes Westminster's. Has that issue been cleared up?
1821. **The Chairperson:** I do not think that it has that authority, but I am —
1822. **Mr F McCann:** Section 75 specifically deals with here.
1823. **Mr Weir:** I think that the commission's ability to challenge is confined to raising issues and to, potentially, take legal action. I think that there may be a case of mixing up the context of the challenge of Westminster. They are two separate issues.
1824. **Mr F McCann:** We are dealing with Westminster legislation that was drawn up purely with England in mind but has been transposed to here. Section 75 would surely enable the commission to tackle what we see as any flaws that would have an adverse impact on people here.
1825. **Mr Weir:** Ultimately, it would figure if courts were asked to decide on it. There is no hierarchy of clauses in constitutional law. As in any legal challenge, you have to wait to see how the court rules. It is not a question of section 75 superseding any other domestic legislation. Presumably, should people feel that there is a particular issue to challenge in court, they will take it to court and see what the judgement is.
1826. **Mr Brady:** Just a point on that: I have asked the Equality Commission at least twice — in the Social Development Committee and here — which of the two has primacy. Is it the Welfare Reform Bill, as a piece of legislation, or section 75? Neither Committee has been able to establish that, or, if they have, I have not been made aware of it. Britain does not have section 75. So, which has primacy? You would assume that the Equality Commission, which deals with such issues, would have some handle on this matter. Which has primacy? This is not an issue in Britain because Britain does not have section 75. Section 75 is relevant to here under the Good Friday Agreement. If we introduce legislation that, under section 75, would have an adverse effect on groups, how does that square?
1827. **Mr Weir:** It would ultimately be by way of a legal challenge and the decision taken in the courts. I suppose that this is where people have difficulty in being utterly definitive. We are talking about the court potentially having to decide to what extent which of two conflicting pieces of legislation would prevail. To be fair, that is why I think that it is probably impossible for the Equality Commission or anybody to answer that question fully. Constitutional lawyers may be better placed to give an answer.
1828. **Mr Brady:** Maybe we should ask constitutional lawyers.
1829. **The Chairperson:** For the purposes of our discussion, that is, perhaps, for another day.
1830. The next section concerns the regulations. We discussed this matter fully the week before last, and we had another good go at it today. Again, we are not going to agree about this. The Committee Clerk would like us to clarify exactly what regulations we agree and disagree on.

1831. **Mr Weir:** Correct me if I am wrong, and I am sure that Mickey will, but I suppose that there is consensus that, as a minimum, anything that involves a policy change brought about by the regulations should require affirmative resolution. I think that the only difference or divergence is whether that should extend to all regulations or just to those that change policy. Is that a reasonable summation of where the difference lies?
1832. **Mr Brady:** With respect, the regulations flow from the Bill. So, they will be predicated on the outcome of the Welfare Reform Bill.
1833. **Mr Weir:** I understand that, but my point concerns purely the regulations. The proposition that I put forward met with mixed views from Committee members. It was that we should amend the original proposal that all regulations should be subject to affirmative resolution, and make only those that effect policy change subject to affirmative resolution. What I am saying is that I presume you would accept at least that anything that is a policy change would require affirmative resolution procedure. If what we are saying is that it should be a subset of the regulations, everyone is at least agreed that any policy change in regulations should require affirmative resolution procedure. The difference, then, is whether that should extend to all regulations. That is what I am trying to say.
1834. **The Chairperson:** Both of you appear to be recommending a change to the current Bill. There is no reference to affirmative resolution —
1835. **Mr Weir:** I am not sure whether you actually put whether something is passed by affirmative resolution. Is that on the face of the Bill?
1836. **The Chairperson:** The explanatory and financial memorandum does not indicate that any of the regulations will be subject to the affirmative procedure. It is usual for social security regulations to be subject to confirmatory resolution procedure.
1837. **Mr Weir:** What I would say is that, strictly speaking, there may be a change being sought to the explanatory memorandum. That is not directly on the face of the Bill. We could certainly make a recommendation that, as a minimum, all regulations that make policy changes would require affirmative resolution, and that there is a difference of opinion as to whether it should go further than that.
1838. **Mr Brady:** All the regulations will reflect policy changes that are contained in the Welfare Reform Bill. What Peter was talking about earlier were technical changes. However, those technical changes are simply mechanisms by which the policy changes will be implemented. So, all the regulations — the definitive regulations, when we get them — will reflect the policy changes and, in my opinion, should be subject to debate and the affirmative resolution procedure.
1839. **Mr Weir:** I am trying to provide a summary of the position that we have reached: I do not think that there is going to be a great deal of “Oh my God.” involved. Everyone agrees that where there is a policy change, it should definitely be made by way of affirmative resolution procedure. The difference of opinion is on whether that should apply to all the regulations or only some of them. We should reflect that there is a difference of opinion on the extent to which it should apply, but that at least there is acceptance of the policy bit. That should reflect the position that we came to, effectively.
1840. **Mr Brady:** The only thing is that we do not know what the regulations on policy change are going to contain because we are not going to get the regulations until a couple of days beforehand. If we are making a safety net, I suggest that all the regulations should be subject to affirmative resolution procedure.
1841. **Mr Weir:** I understand that position, but there is not the need for it.
1842. **The Chairperson:** We have moved past that, Mickey. We are not agreeing on it. We tried to do so by way of a vote

- and it did not work. Well, it did work, because we took the decision not to agree. Peter's summary of the situation is pretty much my understanding of it, with appropriate reservations being expressed.
1843. **Mr Brady:** Those are reservations because, at this point, we do not know what the regulations will say.
1844. **The Chairperson:** We will reflect that. Can we move forward on that basis?
1845. **Mr Brady:** You are the Chair, and, as you say, a vote was taken. It was a democratic vote, as far as I am aware.
1846. **The Chairperson:** I am the Chair and I am not in a position to make a decision about this.
1847. **Mr Brady:** No, but I think that you are reflecting what has already been discussed.
1848. **The Chairperson:** That is all I can do. It is OK. The representatives of the Human Rights Commission will be here in a few minutes. The next section deals with sanctions. I will not read it out as it is in front of you.
1849. **Mr Weir:** I think that this was an issue on which there was a slight difference of emphasis, but we reached a certain level of consensus on it, more or less. What the Committee Clerk has drafted probably covers the broad consensus on sanctions.
1850. **The Chairperson:** There is suggested wording, Mickey and Fra.
1851. **Mr Brady:** Is this in relation to sanctions, Chair?
1852. **The Chairperson:** Yes.
1853. **Mr Brady:** One of the issues brought up is that draconian sanctions will be imposed for up to three years. People who serve a prison term of two years and come out of jail will still have to serve a further year under the sanctions regime. Basically, we are saying that this is like a double whammy. You go through the judicial system, which punishes you, and then the social security system punishes you as well. That was also discussed in relation to lone parents. Technically, a person will be a lone parent while their partner is in prison, and this will have an effect on children.
1854. **The Chairperson:** The wording talks about:
"amended to mitigate the impact...on lone parents, and those with mental health issues and children."
1855. **Mr Brady:** How does it mitigate the impact on the person who comes out after two years in prison and has a further year to do; the person who moves back into the family situation but whose benefit is still sanctioned for a further year?
1856. **The Chairperson:** I am not sure that we can go into that level of detail with respect to a recommendation. Do you want to suggest how to widen the recommended wording?
1857. **Mr Brady:** Obviously, it mentions "extreme hardship or destitution" and it would be reasonable to assume that someone who does not have benefit for a further year, and does not have the prospect of work possibly because of the situation they find themselves in, may well be a candidate for "extreme hardship or destitution". Part of the difficulty for such people is that under welfare reform, hardship payments received will have to be paid back, unlike at present. So, those will be taken out of future benefit, which will cause further hardship.
1858. **Mr Weir:** I think that what we have there, from the DUP point of view, is reasonable. We would not be prepared to go further than that. I am not sure whether Mickey has suggested this, but if there were specific references to those coming out of jail, and so on, I do not think that we would be keen to amend the recommendation to include that. However, we feel that the position of lone parents, mental health issues and children is covered. I do not think that we would be supportive of any further additions to that recommendation.

1859. **The Chairperson:** If we start to identify particular categories that could possibly be affected, we would have quite a long list. Could we think about adding something after the word “children”, so that the recommendation might read, for example, “any sanctions imposed on lone parents, those with mental health issues, children or others potentially affected.” I am just thinking aloud here. Is there some sort of slightly vague wording that would not offend anyone? I am looking at the body language, and I am not encouraged.
1860. **Mr Eastwood:** The phrase, “others potentially affected” might do it, Chair.
1861. **Mr Brady:** What about, “others affected by higher sanctions”.
1862. **The Chairperson:** It already refers to the impact of sanctions. We do not need to say that again.
1863. **Mr Weir:** My preference is to leave the wording as it is.
1864. **Ms P Bradley:** I agree. This is going to end up an exhaustive list.
1865. **The Chairperson:** That is what I am trying to avoid.
1866. **Mr Eastwood:** It will not be exhaustive if we say “others”, though.
1867. **Ms P Bradley:** How do we define “others”?
1868. **Mr Eastwood:** You do not need to.
1869. **Ms P Bradley:** We had briefings from various organisations and these are the ones that they brought to our briefings. We have paid attention to that. I do not know how we can go on any further.
1870. **Mr Brady:** In defining the word “others”, the regulations will deal specifically with those areas. That is the whole problem, in a sense, because we do not know what is going to be in the regulations. However, they will reflect the particular categories. Those are the specifics within the context of the regulations. The word “others” would then be defined with regard to the regulations.
1871. **Mr Weir:** Our concern is that if we make reference to “and others”, what will flow from that? Unless we get the wording right, there is a danger of something else flowing from it.
1872. **The Chairperson:** This is only our recommendation.
1873. **Mr Weir:** I appreciate that. However, personally speaking, I would not be happy with going beyond what is there.
1874. **Mr Brady:** As this is only a recommendation, Chair, I do not see any difficulty in adding to it because it will be debated anyhow.
1875. **The Chairperson:** Yes, it is. We can leave the wording the way it is and add in a minority opinion. We seem to be doing this in every single item.
1876. **Mr Eastwood:** It could be a majority opinion, Chair.
1877. **Mr Brady:** We are not going to add “Uncle Tom Cobley and all”. We are just suggesting the addition of “others”, are we not?
1878. **Mr Weir:** Maybe the simplest thing would be to put it to a vote. If the word “others” is included in the report, I do not think that people are going to —
1879. Whether or not it is put in, people can make reference within that. I do not know. If there were an amendment to add “and others” to it, I would vote against it.
1880. **The Chairperson:** We are at 2:30 pm. Is it worthwhile shelving this for a few minutes and asking the Human Rights Commission about it?
1881. **Mr Weir:** I think that it may be something that will go back and forth. If there is a proposal to put in “and others”, maybe we should vote on it. If it gets in, it gets in; if it does not get in, it does not get in. It would mean that we could start afresh with item D.
1882. **Mr Swann:** I have a slight concern about a paragraph in section C of the recommendations. The last section reads:

- “in order to minimise the potential for extreme hardship or destitution.”*
1883. I am concerned that this is still a bit weak. No sanctions should enforce destitution. I do not know whether this needs to be strengthened. Certainly, keep the phrase, “minimises the potential for extreme hardship”, but I do not think that any sanction should cause destitution.
1884. **The Chairperson:** Point taken.
1885. **Mr Weir:** What about the phrases, “avoid destitution” or “avoid creating destitution”? I suggest that the latter wording might cover it.
1886. **Mr Swann:** Or, “causing destitution”?
1887. **The Chairperson:** I am open to suggestions.
1888. **Mr Swann:** I would like the statement to be a bit stronger than, “minimise the potential”.
1889. **Mr Weir:** What about, “avoiding destitution”, “avoid creating destitution” or “avoid causing destitution”?
1890. **Mr Eastwood:** Does the phrase “in order to avoid extreme hardship or destitution” cover it? Take out “minimise the potential for” and put in “avoid”.
1891. **The Chairperson:** In the papers that we saw originally, the Department surely made it clear that, as far as it was concerned, nothing in the Bill would provoke a situation of destitution for anybody. Think of some wording that would hold it to that.
1892. **Mr F McCann:** Most of the people we are dealing with are on benefits and are already paid at what is probably recognised as poverty level. Any impact creates the possibility of destitution. That is where the debate and the argument are. We raised it. As Mickey said, somebody who is found guilty of benefit fraud, or whatever, will be penalised far more severely, because they would be refused benefit. However, somebody who may be going to jail for five years could walk out and automatically get it. That has to have an impact on a family.
1893. **The Chairperson:** To me, destitution means way beyond being a few pounds a week below the perceived poverty level. To me, destitution is sleeping on cardboard in Sainsbury’s porch.
1894. **Mr F McCann:** Your opinion and mine —
1895. **Mr Weir:** Amending it as Robin suggested, to cover the point, could be done by simply adding the words “or avoid destitution”. Does that cover the point? It qualifies it in a different way to the hardship side of it.
1896. **Mr Brady:** If you take benefit levels by the Government’s definition, subsistence level is the lowest amount that you can live on. That always seems to have been forgotten somewhere in the mix. There is a myth that people on benefits are well off. The reason why people on benefits are sometimes better off than people who work is to do with low wages. It has absolutely nothing to do with high benefits. The point is about destitution. If the people we are talking about are sanctioned and do not have benefits, they can apply for hardship payments. Under welfare reform — this legislation — hardship payments are recoverable from benefit. Therefore, even when benefit is reinstated, that person is going to be below subsistence level, because they will have to pay back the hardship payment. It was the same in the context of the social fund. It was a case of, “We are doing you a favour by giving you an interest-free loan, but we are perhaps putting you £20 below subsistence level.” In some cases, that can cause destitution. It is a concept.
1897. I can go back 30 years, when there were surveys done about what a person needed to have a reasonable quality of life. It was having an outdoor coat, two pairs of outdoor shoes and one proper cooked meal a day. It was that kind of thing. We are talking about very, very low levels of expectation for people on benefit. It is a myth that they are all doing very well and are enjoying some

- sort of beneficial lifestyle. That is all nonsense, and it needs to be nailed.
1898. When we talk about destitution, we need to clarify what it is. We are now talking about food banks, and we had a debate about them. We are back to soup kitchens. In the 1930s, they talked about the depression, destitution and soup kitchens. We have food banks now but we are not having the same kind of debate.
1899. **Mr Weir:** As regards the exact wording, we are saying that there needs to be an amendment. One of the aims is to avoid destitution, so we should simply use the words “avoid destitution”. That will not take away from the other bits about potential for minimisation. It makes it clear that we do not want sanctions to be such that we create destitution. We should simply add in the word “avoid”, because we are already saying that they need to amend what is there.
1900. **The Chairperson:** Colum suggested some time ago that we take out the phrase, “in order to minimise the potential” and replace it with, “in order to avoid”.
1901. **Mr Eastwood:** I think that that strengthens it a wee bit, Chair.
1902. **The Chairperson:** I would not have any great issue with that.
1903. **Mr Weir:** What about, “to avoid the potential”? If we take out the word “potential”, we are automatically assuming that there will be destitution as opposed to there being the potential for it.
1904. **Mr Brady:** The whole purpose of sanctions is punishment. That is what they are there for; they are not there to be beneficial. They are there to punish you and make you aware that you have been a naughty boy or girl, that you need to comply, and that if you do not do so, you may well be in some destitution.
1905. **The Chairperson:** No. The purpose of this section of the Bill is to provide for sanctions, but it should be qualified by saying that those sanctions will not drive people into extreme hardship or destitution. I go back to Colum’s suggested wording, “in order to avoid extreme hardship or destitution”. Peter is suggesting, “avoid the potential for”. We are playing with words here really, folks.
1906. **Mr Swann:** I am still of the mindset that this is about destitution. The words, “to minimise the potential for extreme hardship”, can be in there; I do not have a problem with that. However, this is about destitution.
1907. **Mr Weir:** Should we leave it as it is but add the words, “or avoid destitution”? Simply including the word “avoid” qualifies it at a different level.
1908. **The Chairperson:** I do not want to add to the playing with words, but it would probably be, “and avoid destitution”.
1909. **Mr Weir:** OK; “and avoid destitution”.
1910. **Mr Swann:** I am happy with that.
1911. **Mr Eastwood:** OK; so it is “in order to minimise the potential for extreme hardship and avoid destitution”.
1912. **The Chairperson:** Is that all right?
Members indicated assent.
1913. **The Chairperson:** Paragraph (d) in your papers is on the question of nominated claimants. There is suggested wording there for our consideration.
1914. **Ms P Bradley:** I agree with that wording, Chair.
1915. **The Chairperson:** I am getting nods of agreement from my right. Are we OK with that one?
Members indicated assent.
1916. **The Chairperson:** The next paragraph is on universal credit. You have the staff’s thoughts on the thrust of the discussion that we had. You also have our recommended wording for the report, and you may or may not wish to adopt that.
1917. **Ms P Bradley:** I agree with that wording as well, Chair.

1918. **The Chairperson:** Do we have agreement on this?
1919. **Mr Brady:** One of the points raised was about the zero earnings rule. That has not been mentioned specifically. The person will lose their entitlement to mortgage interest payment if they work for one or two hours, but that will probably be covered in the overall discussion.
1920. **The Chairperson:** I enquired about this earlier today. The person told me that that is already the case and that this is not a change. Is that correct?
1921. **Mr Brady:** Not that I am aware of. There have been changes in the amount paid for mortgage interest and how long it is paid for. This change will mean that if someone works for one or two hours a week, they will lose their entitlement.
1922. **The Chairperson:** The person whom I spoke to was involved in the formulation of the UK Welfare Reform Bill and said that that is not actually a change. I do not know.
1923. **Mr Eastwood:** Either way it is bad.
1924. **The Chairperson:** I would not disagree with that, but is it a breach of someone's human rights or equality rights?
1925. **Mr Brady:** It is certainly a disincentive for people to look for work.
1926. **The Chairperson:** But is it a breach of their human rights or equality rights? It applies to everybody.
1927. **Mr Brady:** If the underlying principle of welfare reform is to encourage people to work, and you have something that discourages them from working, that is more of a policy error.
1928. **Mr Weir:** A reasonable enough argument could be made that it is not a particularly sensible proposal, and that may be taken up by the Committee. There may be a little bit of debate as to how much is in place at this stage. I am not sure that it is a direct breach on human rights or equality grounds, but it may be a breach of common sense.
- Having said that, there might be a good reason that I have not thought of.
1929. **Mr Eastwood:** I am trying to think of one.
1930. **Mr Weir:** I am not sure that, directly speaking, it is a human rights or equality issue.
1931. **Mr Brady:** It would be an interesting amendment to say that this is not a sensible regulation.
1932. **Mr Weir:** I have every faith in the good sense of the Committee for Social Development to give suitable consideration to that when it comes to its turn.
1933. **Mr Brady:** We will take that compliment when it is given.
1934. **Mr Weir:** Absolutely. I am sure, Chair, that the Committee for Social Development will take it in the spirit in which it was meant.
1935. **The Chairperson:** That is very important, whether it already applies or otherwise. It seems like one of the more crazy rules that I have ever come across. Could we make a recommendation in our report that the Committee for Social Development takes another look at that?
1936. **Ms P Bradley:** It will do that anyway, Chair.
1937. **Mr Brady:** We will certainly look at that.
1938. **Mr Weir:** It is not unreasonable for it to take another look at it. The only slight complication is that, presumably, there will be quite a lot of things in the broader Bill that might be worth looking at. The only problem is that if you make a recommendation that one specific bit falls outside human rights and equality and needs to be looked at again, is that more or less an endorsement that everything else does not need to be looked at? If you pick out one thing, it can, by definition, give the impression that everything else is grand when it may or may not be.
1939. **Mr Eastwood:** Could you say that it is particularly detrimental to women, given

- the childcare situation and given that they might want to work only a couple of hours a week? Or to carers?
1940. **Mr Weir:** With the best will in the world, while tenuous, Mr Eastwood's approach is very imaginative, but we did not get any direct evidence where people said, "We do not think that this is sensible". Nobody said that, on equality grounds, it will be overly detrimental to one section. Members could bring that up in the debate, but I am not sure that it could be part of a full recommendation.
1941. **Mr Brady:** To put Peter at ease, the Committee for Social Development will look at all those aspects.
1942. **Mr Weir:** My faith is confirmed.
1943. **The Chairperson:** It will have the Hansard report as well. Colum's suggestion was pretty inventive.
1944. **Mr Eastwood:** I thought that it was pretty good myself.
1945. **The Chairperson:** We are content with the wording of (e).
1946. Paragraph (f) is on lone parent conditionality. We have the summary of our discussion and the suggested wording. I am not too sure whether the Committee is content; that would be a first.
1947. **Mr Brady:** In my experience, under previous Ministers, the Department said that lone parents would not be sanctioned. I know people who were not initially sanctioned but were at a later stage. That goes back to 2007, 2008 and 2009. I am not sure that we can accept assurances from the Department. It has to be stronger than that. It has to be stated. As has been said on many occasions, we do not have a childcare strategy in place, never mind affordable or available childcare in most, if not all, parts of the North. That is a fact.
1948. **The Chairperson:** The suggested wording says that lone parents have not been penalised for lack of childcare. However, you are suggesting that they have been.
1949. **Mr Brady:** I am going by personal experience of people coming in. One case in particular stands out. Three children were involved, and the mother was put under severe pressure by the Department because there was no available childcare and she was not available for work-focused interviews, and so on. It did not happen initially, but it did after a period of time.
1950. **The Chairperson:** Any thoughts, anyone?
1951. **Ms P Bradley:** I was given to believe by the Department that there have been none, and now Mickey tells us different.
1952. **Mr Brady:** It did actually, yes.
1953. **Ms P Bradley:** I may be getting confused between this Committee and the Social Development Committee. In one of them, we were told that there had been no sanctions against women and lone parents in general, because of affordable childcare, but we hear differently now.
1954. I think that the bottom part helps with monitoring the sanctions. If the Department says that it will not sanction lone parents, and we ask that this is monitored, surely that will give us feedback as to whether lone parents are sanctioned?
1955. **Mr Swann:** Could we strengthen that last comment? I get a disconnect between the top two, where it says "have not and will not be", but then we ask the Department to put in procedures to monitor sanctions against lone parents. If we say in the first section that there should not be any sanctions, we should not be asking the Department to monitor them. We should put in something to the effect that "the Department must ensure".
1956. **Ms P Bradley:** If we are asking for that to be monitored, we can tell from that whether the Department has breached its assurance. I know that that does not help the person who is —
1957. **Mr Brady:** That is the point that I was going to make. That person will already have been affected.

1958. **The Chairperson:** The only bit of it that disturbs me is what I started off with: that lone parents have not been sanctioned, when at least one member says that they have been. We do not actually need to say that at all; just something to the effect that “the Committee is content to accept assurances from the Department that lone parents will not be penalised.”
1959. **Mr Weir:** The other point that occurred to me is this. To take up the point that Robin Swann made, there is not quite a disconnect. Look at the wording. The first bit is very specific that lack of childcare will not lead to sanctions. That does not mean that there can be no sanctions at all against lone parents.
1960. **Ms P Bradley:** For other reasons.
1961. **Mr Weir:** It talks about the potential impact upon women and children with respect to the monitoring of sanctions against lone parents. Let us take an example. Mickey made the point about the jail situation. If you have someone who has conducted a very major fraud against the Department, that person may or may not be a lone parent. Say, for example, that he had defrauded the Department of £70,000. That person is going to be sanctioned. He may be a lone parent; but presumably there still needs to be some monitoring of the sanctions in those circumstances to make sure that there is no detrimental impact upon the child. That goes wider. That is not an issue of whether there is a childcare situation. So the scope of the second part of that is wider than the childcare issue. That is where the two could marry.
1962. **Mr Swann:** I accept Peter’s point on that. I read it the other way. Maybe we should ask the Department to monitor sanctions against lone parents that are not associated with childcare issues?
1963. **Mr Weir:** No. The complication is as follows: one of the things is that we need to ensure that someone is not penalised for that. If you say that we are not monitoring the situation, how do you know that someone has not been penalised if you are not looking at it? The second part covers both situations.
1964. **Mr Brady:** The only reservation that I have is about assurances given by the Department that people have not been sanctioned. What Peter is talking about is that there are two different types of sanctions. What we are talking about is that lone parents should not be sanctioned because they cannot attend work-focused interviews, etc. You are talking about major sanctions with which no one will argue. If someone commits that level of fraud, it is obviously a serious offence.
1965. **Mr Weir:** Clearly, under those circumstances, that should still be looked at. Whatever the impact on the individual who has committed the fraud, the Department should still look at the impact on, and what provision can be made for, the child or children of that lone parent. That part of it would kick in under those circumstances.
1966. **Mr Brady:** My experience over the years, irrespective of who is in charge, is that the Department will have targets. I have no doubt about that. All the social security offices will have targets, teams have targets. There are good targets and bad targets; it is all part of the context of social security. If we accept assurances from the Department today, that may change next week. If the Department decides to take on a regime of targets, that is the difficulty I have.
1967. **The Chairperson:** Colum, was it you next and then Fra? I am not quite sure.
1968. **Mr Eastwood:** I do not know. You are the Chair.
1969. **The Chairperson:** All right. *[Laughter.]*
1970. **Mr Eastwood:** I think that it is very difficult to accept assurances. However, if Mickey is right and people have been penalised in the past because of this, how do we accept assurances that say otherwise? I certainly cannot, if there is a question mark.
1971. **Mr Weir:** As it does not absolutely guarantee that they exist, what about

- saying that the Committee “welcomes” assurances? In that way, it is content, but it moves the content to accept.
1972. **Mr Eastwood:** Maybe, but you would need to take out the bit about the past tense, the “have not”.
1973. **The Chairperson:** You could leave it in and say that the Committee “notes the assurances”. It does not mean that we agree with them.
1974. **Mr Weir:** Maybe, to take the reference to the past tense, we cannot change it. We can have a debate. I had not heard, but I take Mickey’s word, that there may have been a rare case where something has happened in the past. What about saying that “the Committee is content to accept assurances that lone parents will not be penalised for lack of childcare”? That is looking to the future, and it does not call into question whether we do or do not accept what has happened in the past, and there may be a difference of opinion there.
1975. **The Chairperson:** That was my suggestion a few minutes ago. We could say, “lone parents will not be penalised”, and leave out the reference to the past.
1976. **Ms P Bradley:** I agree, Chair. Take out “the past”.
1977. **Mr F McCann:** How can you stand over a guarantee like that? I will give an example. A few years ago, we put forward an amendment against the introduction of sanctions, and the Minister said that sanctions would be rarely used. Since then, thousands — maybe tens of thousands — of people have been sanctioned at one level or another. Unless you have guarantees in writing —
1978. **Mr Weir:** The best that you can say is “content with assurances”. With regard to that, one of the assurances is that people will not be penalised for lack of childcare. That is different from saying that there will not be any sanctions. It is saying that the lack of childcare is not the cause. That, effectively, is a defence.
1979. **Mr F McCann:** It does not ensure that although the Department may say that now, what happens in a year’s time or two years’ time? Should something be written in the guarantees that it would have to stand by?
1980. **The Chairperson:** The Committee is clearly not content to accept assurances from the Department on the issue — not as a whole, anyway. Could we just say, “the Committee notes the assurances from the Department”? We are not expressing contentment, disbelief or otherwise. We are just noting the fact that the Department has given those assurances that, in future, lone parents will not be penalised.
1981. **Mr Eastwood:** I do not particularly accept the assurances, but it is a fair enough point. For anybody who does not want to see the Department bring in sanctions against lone parents because of the lack of childcare, having it in writing that it has at least assured us that it will not do it will help the cause in some way. However, it does not mean that we are completely confident that it will not happen.
1982. **The Chairperson:** I know, but we are not content. I want to get rid of the word “content” if we are not content. What about “notes”? Is “notes” all right?
1983. **Ms P Bradley:** We need to put in “lack of affordable childcare”, rather than “lack of childcare”.
1984. **The Chairperson:** Hold on a minute. “The Committee notes the assurances that lone parents will not be penalised for lack of childcare”. What was the next one, Paula?
1985. **Ms P Bradley:** Put in “lack of affordable”, rather than “lack of childcare”. If you are earning or whatever, childcare is available at astronomical charges.
1986. **Ms McGahan:** What about saying “affordable and flexible”? Full-time day care child facilities are contract-based. People cannot afford them.

1987. **The Chairperson:** Do you accept the words “affordable” and “flexible”?
1988. **Mr Weir:** I do not have a particular problem in principle. I am just slightly concerned that we do not start defining a number of different aspects. “Affordable” is a very clear-cut point. I would have more concern about “flexible”.
1989. **The Chairperson:** What about “available”?
1990. **Mr Brady:** Chair, it has to be affordable and available. I could live in Newry and have affordable childcare in Banbridge.
1991. **Mr Weir:** Maybe we could say “affordable available childcare”, or something of that nature.
1992. **Ms McGahan:** From personal experience, we cannot get people to use contract-based childcare because it is so expensive.
1993. **Mr Weir:** That relates to affordability.
1994. **Ms P Bradley:** That falls under the issue of affordability as well. The issue of affordable childcare includes the matter of when you go on holiday, the school holidays and all the different things that you have to cover even when your children are not using it because of various circumstances. If they are sick, you still have to pay for their place. That all falls under the category of affordable. In an ideal world, you would only have to pay for childcare as you use it. It would be pay as you go, but that is not how it is.
1995. **The Chairperson:** I have heard “affordable”, and that seems to be agreed upon. I have heard “available” and “flexible”. I have not heard “accessible”. That is coming into my head. What about “accessible”? I have heard the term “accessible childcare” many a time. That covers the point that it might be available in Maghera but you live in Newry.
1996. **Mr Swann:** If we put in too many adjectives, we will be doing the Department’s job for it, and it can start to use those criteria.
1997. **The Chairperson:** We are only putting in two.
1998. **Mr Swann:** Four, I thought.
1999. **The Chairperson:** No, I want a choice of one of those. I am going with “accessible” unless anyone contradicts me.
2000. **Ms P Bradley:** I can live with that one.
2001. **The Chairperson:** We will put in “affordable and accessible”. OK, I think we are doing well.
2002. **Ms P Bradley:** Do not even say it.
2003. **The Chairperson:** We did not come to an agreement on the benefit cap. It boils down to whether we are content that there is no recommendation.
2004. **Mr Weir:** There was a majority and a minority opinion on that. That covers everyone’s position.
2005. **The Chairperson:** What covers everyone’s position?
2006. **Mr Weir:** What is written down there, basically.
2007. **The Chairperson:** That is not a suggested wording. It is a summary of the Committee Clerk’s understanding of our discussion.
2008. **Mr Weir:** I think that it does encapsulate it.
2009. **Mr Elliott:** I am sure that wording similar to that can be encapsulated in the report.
2010. **The Chairperson:** Are we recommending that there should be a benefit cap or not making a recommendation?
2011. **Ms P Bradley:** We are recommending that we do not change what is before us.
2012. **Mr Brady:** I think that that reflects the Committee thought or debate about it, without any recommendation.
2013. **The Chairperson:** So, we will use the last two paragraphs as part of the report.

2014. **Mr Elliott:** It does say in the minutes that the Committee is in favour of a benefits cap at the level suggested. Obviously, we came to a decision.
2015. **The Chairperson:** We took a vote on this, I think. From memory, it was seven to votes to four, so there was a significant minority opinion that it could impact on a very small number of families. I think that 200 families was the figure given. That reflects that the majority was in favour of the cap, and a minority opinion was expressed. Is that OK?
- Members indicated assent.*
2016. **The Chairperson:** The next point concerns PIP versus DLA benefit. Again, there is a recommended wording here. The Committee recommends that the Department:
- “closely monitors the assessment process ... in order to identify any potential human rights implications for disabled people.”*
2017. **It is also suggested that the Committee recommends that the Department:**
- “provides legal clarity that private contractors carrying out functions that properly belong to the state are subject to the jurisdiction of the Human Rights Act 1998”.*
2018. **Mr Brady:** Can we not recommend that the Department puts in place the process? The difficulty with the work capability assessment by Atos is that it is a flawed process. It has been monitored extensively. Professor Harrington has put out his third report without having set a foot here in the North to assess how the work capability assessments are carried out. Apparently, he went into centres in England and monitored the process very closely. He has not done that here. Whatever information he has for here, he has not come to see it for himself. Therefore, it is incumbent on the Department to put in place a process. It has monitored it closely in England, and in his third report in the space of three years, he has put in several recommendations and there is still a problem with the process. We have a different provider here — Capita — for the transition from DLA to PIP
- People’s indefinite awards have been put back by 21 months to 2015. That is an opportunity for the Department to put in place a process. You can monitor, but what if it is a bad process? We have talked about the primacy of medical evidence and all of that. That can all form part of the process that is put in place, and it needs to be a good process rather than a flawed one. The British Medical Association said that the work capability assessment is not fit for purpose. Those are its words, not mine.
2019. **The Chairperson:** You do not think that that is covered by the first paragraph?
2020. **Mr Brady:** In my opinion, no.
2021. **The Chairperson:** What is the opinion of anybody else here?
2022. **Mr Weir:** What sort of wording are you suggesting, Mickey?
2023. **Mr Brady:** “The Department puts in place a process that ensures” or words to that effect. The wording is:
- “The Committee recommends that the Department for Social Development closely monitors the assessment”.*
2024. We should say that it should put in place a process. I am not sure of the exact wording and how that might pan out, but we should state that the process should be fit for purpose. It is very clear that the other process is not.
2025. **The Chairperson:** The purpose, from our point of view, is contained in the last few words of that first paragraph:
- “to identify any potential human rights implications”.*
2026. That is our remit.
2027. **Mr Brady:** I understand that, but it is not unreasonable to suggest that if the process is proper and fit for purpose, it is less likely that there will be a potential human rights breach for disabled people. I presume that the monitoring process will look at those breaches after they have been committed. It is almost retrospective.

2028. **The Chairperson:** I do not hear anybody dissenting, but, at the same time, I do not hear anybody agreeing. I am still not clear about how —
2029. **Mr F McCann:** I agree.
2030. **The Chairperson:** Thank you, Fra.
2031. **Mr Brady:** In fairness, the second paragraph states:
“The Committee recommends that the Department for Social Development provides legal clarity that private contractors”.
2032. In a sense, that follows on from putting in place a proper and fit-for-purpose process, not just monitoring, if you know what I mean.
2033. **The Chairperson:** It is a different issue. That is why it is separate.
2034. **Mr Swann:** Taking on board what Mickey said, if we recommend that the Department establishes the process, surely it would just adapt the one that is already there.
2035. **Mr Brady:** Our recommendation is that the one that is already there is flawed. We are talking about two different things, because the process for the transfer from DLA to PIP has not come in. All that we are saying is that if the process continues, you will simply have a replica of the work capability assessment. It has been accepted universally, even, I think, by people in the room, that that is a flawed process. I think that Lord Morrow gave an example of someone whose sight was apparently perfect but who was actually blind in one eye. I have heard about cases of people having dementia tests and being asked to count backwards from 400 to 350 to assess their mental health. I have been told about a case, which I have mentioned before, about somebody who had a Down’s syndrome child who was asked when it started and when they felt they might get better. That is the kind of thing that is happening at the moment. I think that it is not unreasonable for the Committee to suggest a process that will avoid the potential for breaches of human rights for disabled people.
2036. **The Chairperson:** What if we said, “The Committee recommends that the Department for Social Development puts in place an assessment process for the determination of entitlement to personal independence payments that will identify any potential human rights implications.”? Is that along the lines of what you are thinking?
2037. **Mr Swann:** You do not want to just identify them; you want to make sure that they do not —
2038. **The Chairperson:** The first thing it has to do is to identify those implications.
2039. **Mr Brady:** We have talked quite a lot about the primacy of medical evidence. Is that a different issue?
2040. **The Chairperson:** We will get to it. What are your thoughts about what I have suggested? The wording is “The Committee recommends that the Department puts in place an assessment process ... that will identify any potential human rights implications.”
2041. **Mr Eastwood:** What about “in order to avoid”? You need to get to the point —
2042. **The Chairperson:** OK, sure: “In order to avoid any potential human rights implications.” Is that OK? I am getting nods of agreement. That is agreed.
2043. **Mr F McCann:** It is only because Peter left the room.
2044. **Mr Eastwood:** There is someone looking for you out there, Peter.
2045. **Mr Weir:** Taxi for Eastwood.
2046. **The Chairperson:** Mickey, what was your next point about the primacy of medical evidence? I am not too sure about this one.
2047. **Mr Brady:** I am looking at the second paragraph, which says:
“The Committee recommends that the Department for Social Development provides legal clarity that private contractors carrying out functions”.
2048. There should be something about the primacy of medical evidence being

- included as part of the assessment process. Essentially, what is happening at the moment is that medical evidence is only being found or dealt with at the appeal stage. I think that everybody is more or less agreed on that. The decision-maker who makes the initial decision is going by the tick-box exercise on the form, which is usually completed by a nurse. Most of the medical evidence that people take into those assessments is ignored.
2049. **Mr Weir:** I want to make two points on that. First, I understand where Mickey is coming from, but again, I am not sure that there is a direct human rights or equality issue. Secondly, even under the current DLA arrangements, the decision is not based purely on medical evidence but on the impact that a medical condition has on you. That is the current legal position.
2050. **Mr F McCann:** It is changing.
2051. **Mr Weir:** That is what it is at the moment. Whatever way regulations may potentially shift some of the grounds, the point is that, at present, the decision is not made purely on medical evidence. It is made on the basis of how your medical condition affects you. It is impact-based rather than medical-based. Again, with the greatest degree of respect, I am not sure that that is a human rights issue in any event. I would not support a direct recommendation on that.
2052. **Mr F McCann:** I thought that the goalposts were being moved. You are right to say that, at present, it is about how you cope with your illness, but under the new system, it will be about how you can work or what you can do within your illness.
2053. **Mr Weir:** With respect, what you can do within your illness is what is being asked for at present. Let us look at an example of that. On the basis of what you can do at present with your current medical condition, for example, when it comes to the high rate of mobility element, it is about the distance you can walk without severe discomfort, or being unable to walk or virtually unable to walk. Similarly, one of the key elements on the care side — I appreciate that some folk sitting across the table are experts on this — is the cooked-meal test. It is based on what an individual can do. There may be shifts within those, but the primacy of medical evidence is not a key element at present. Also, from a practical point of view, it may be ill-advised or sensible where there are any shifts, but I do not believe that it is a human rights or equality issue. As such, I do not think that we should make any direct recommendations on that.
2054. **Ms McGahan:** I suggest that medical evidence should have primacy and that we should have it incorporated.
2055. **Mr Weir:** It is not at present.
2056. **Ms McGahan:** No, but I have been at tribunals where people have had excellent medical evidence, but when it came to the questions about how their condition affected them, the appeals were being turned down on the basis of their answers. There have also been people who did not have strong medical evidence but got through because of the way in which they answered questions. So, I would strongly recommend that medical evidence is given primacy and should be incorporated into the process.
2057. **Mr Weir:** The point is that that argument is based on whether there should be a change to the current law on that basis. If the situation as regards DLA is already that medical evidence is not taken as a prime source and that decisions are based on how the condition affects you, I do not think there should be a recommendation on the change to PIP on that side of it. I think that there will be highly relevant issues when you come to some of the regulations on PIP, but it is not a human rights issue, and it is not something that we should be recommending directly in the report.
2058. **The Chairperson:** That is the problem that I have with it. It may be a matter for the Committee for Social Development to have a look at in the fullness of time.

2059. **Mr Brady:** In fairness, I accept that. Peter is saying that it is not what is there currently, but the issue that is currently there is that, for the majority of people who appeal — something like 66% to 70% — the medical evidence is produced on appeal and those people go through their appeals without any problem in a lot of cases. The point that you are making is that, in DLA case law at the moment, it is not what causes your condition, it is how it affects you. PIP is moving a stage further to how you cope with your condition. Most people will accept that the people who do the assessments are not necessarily objective, but subjective. If, for instance, somebody has a condition, and it is the subjective view of the assessor that they can lift weights or walk further and you have a specialist report that says that they cannot, that is part of the issue. In fairness, I think the Chair is right. The Committee for Social Development will be dealing with that. There is no point in prolonging this discussion.
2060. **The Chairperson:** Are you happy enough with the amended first paragraph and the second paragraph, as it stands? Do you want me to read it out again or are you happy enough?
- Members indicated assent.*
2061. **The Chairperson:** The next section deals with housing benefit and underoccupancy penalties, and so on. Once again, you have a suggested wording to encapsulate our thoughts. There are two aspects to it.
2062. **Mr F McCann:** Chair, are you looking at it as two different elements?
2063. **The Chairperson:** There are two separate elements to the response.
2064. **Mr Eastwood:** I think the spirit of it is right, but the only aspect is that it states:
- “the Department for Social Development takes into account in its calculation of housing benefit exceptional circumstances”.*
2065. I think that you are going to find it really difficult to do that, unless you have exemptions. I know that they have said that they do not want a blanket exemption, but I think that the cost of having to do this on an individual basis each time is going to spiral out of control. As it is, we are dealing with cases in which you cannot get occupational therapists out to houses to look at things; there are eight to 12-week waiting times sometimes. You are going to have to go out and assess every disabled person’s house again in order to individually decide whether they are exempt. I think it is going to be a nightmare to deliver. I would rather see a blanket exemption for people with a disability.
2066. **Mr Weir:** I think the purpose of the reference is to try to tie it in with the human rights of the disabled person and children. I suppose the problem with trying to square the circle with regard to the practicalities is that you may need to look at the individual circumstances, because you may have a situation in which a particular disability may have a very minimal impact on housing needs, while some disabilities may have a very strong impact.
2067. **Mr Eastwood:** I understand that, but I think that the effort, time and money that it is going to cost to check every single disabled person’s house in Northern Ireland is going to be a nightmare.
2068. **Mr Weir:** We are making a general recommendation in that regard. Precisely how that is brought through will depend on exactly what impact that then has on the legislation. I take on board what Colum has said, but I would be a bit more cautious about that if this were a direct amendment to the Bill as opposed to simply a Committee recommendation.
2069. **Mr Eastwood:** Thanks for that. There is another concern. Do people get hit first and then have to apply for the house to be checked and all that? I just think that this has the potential to be disastrous.
2070. **Mr Brady:** At the moment, if someone gets DLA, it is accepted that there is a disability that has been assessed and

- that they have gone through a process. PIP may well be a qualifying benefit that indicates that the person has a degree of disability that is going to hinder their bodily functions or whatever. I am just —
2071. **Mr Weir:** The one complication is that this reads across to housing benefit. The complication is that DLA covers a wide range of people at different levels on the care and mobility sides. In quite a few of those cases, that will have some impact on someone's housing need. In other cases, it will have no bearing whatsoever on housing need.
2072. **Mr Brady:** But, again —
2073. **Mr Weir:** For example, it may well be that you need levels of adaptation and care if you have a certain disability or need wheelchair access. That may have certain impacts. On the other hand, a fear of going outside, for instance, may not have any particular impact on someone's housing benefit. It strikes me as a fairly blunt instrument.
2074. **Mr Eastwood:** You could base it on mobility.
2075. **Mr Weir:** Let us take an example on the basis of mobility. You may have a situation in which some high-rate mobility claimants would require additional housing space, but not all would. Similarly, a lot of low-rate mobility claimants will not necessarily require any additional housing space. I do not know how much this will change under PIP, but, currently, the low rate is a little bit more to do with the mental health aspect of being outdoors and the need to be with someone; that assurance, if you like. That may not have any impact at all on someone's housing needs. Similarly, on the care side, you could have different people at different stages of care and a lot of them will have additional housing needs. For others, because of the nature of their condition, it will have absolutely no impact whatsoever.
2076. I think that it is a very blunt instrument. You are suggesting that it should be a tick-box exercise and that, because someone gets DLA, that should automatically have a particular read-across to their housing benefit.
2077. **The Chairperson:** Mickey, before you come back on that, let me get my head around this. Your original suggestion was that someone's existing circumstances and the assessment that has already been done should be taken into account.
2078. **Mr Brady:** In fairness, I take Peter's point, but the reason that there are three rates of care component is that there are different degrees of disability. There are also two rates of the mobility component. Low-rate mobility is basically for people who suffer panic attacks and cannot go out alone. I am not sure how that might impact on their housing situation. With PIP, there will be enhanced rates, which would indicate a higher degree or level of disability. It is only a suggestion.
2079. **The Chairperson:** I am listening to all the suggestions, but I am constantly keeping human rights and equality in my head. Little as I know about these sorts of cases, to be honest, as regards our recommendation that the Department should take into account exceptional circumstances, I do not see how having to undergo a further assessment under PIP legislation instead of DLA legislation would affect anybody's human rights. It may add to the burden of work for a lot of people, but will it affect anybody's human rights or their equality status?
2080. **Mr F McCann:** Surely it would if someone is assessed differently than they were under DLA.
2081. **The Chairperson:** Yes, but there is no direct connection between DLA and PIP.
2082. **Mr F McCann:** Someone may have been assessed as being not fit for work or not having sufficient mobility, but, under PIP, they may be looked at completely differently. It will obviously affect and impact on the rights of people because the goalposts will have been moved.
2083. **The Chairperson:** If you follow that through, what you are suggesting is that

- they should not be reassessed at all for PIP.
2084. **Mr F McCann:** What they should do is look at the impact that medical evidence has. That is not taken into consideration at present.
2085. Many will be affected by underoccupancy, the bedroom tax or whatever they want to call it. There are quite a number of things in there. People's disabilities, mental health problems and social problems are not being considered. This is not wide enough to allow you to deal with that.
2086. **The Chairperson:** I think that Colum has a solution.
2087. **Mr Eastwood:** No, I do not. I have more problems. The other difficulty is where the parents of a kid who is severely disabled have had their house adapted but the kid is no longer living there. Will they be penalised for having a disabled child who may have died, moved out or whatever? That is another one that is crazy.
2088. **Mr F McCann:** I posed a question on adaptations in Committee. If somebody has raised a family in a house where adaptations have been made for a child and if, because some people move on, there are two additional rooms, what happens to the family in the house? They said that would need to look for alternative accommodation.
2089. **The Chairperson:** There may come a point when some other family's need for a house like that is greater.
2090. **Mr F McCann:** But the person is still there. So, they are being penalised just because they have two additional rooms.
2091. **The Chairperson:** I thought you said that people have moved out.
2092. **Mr F McCann:** The premise of all this is that there are properties available to house people.
2093. **Mr Eastwood:** That is the other problem. Good luck finding one in Derry.
2094. **The Chairperson:** That is covered by the second paragraph.
2095. **Mr Brady:** I would like to make a point about a disability. The referral for an OT assessment goes from a GP to an occupational therapist. If, for instance, you get a disabled facilities grant for a private dwelling, social housing or whatever, that goes through the grant section of the Housing Executive. So, there is a record of people who have that, and there is no reason why that could not be cross-referenced to some degree. Going back to the point made earlier about technicalities as opposed to policy, I think that we could talk about this all day, but I presume that the Committee for Social Development will debate and discuss it anyway.
2096. **The Chairperson:** We can just leave it the way it is and let the Social Development Committee go into the detail.
2097. **Mr Weir:** I appreciate the different ways that things can be tweaked when it comes to the exact wording of legislation. I think the one advantage of the present way in which it is drafted is the catch-all line:
- "in order to respect the human rights of disabled people and children".*
2098. Purely for our remit, it is focused on the human rights side, but that may be an unreasonable position. It strikes me as an area where the Committee for Social Development will have to do a bit of work. I am not sure that we are in a position to refine that bit too much today. It is clearly something that needs to be adjusted and got right.
2099. **The Chairperson:** OK. Is there any particular reason why the second paragraph refers to international human rights law? Is that wide enough?
2100. **Mr Weir:** I am not necessarily disagreeing with you here. To pick up on your point, where is the direct tie-in with international human rights law? I might be wrong, but this is pretty much the only place in the recommendations where we have directly mentioned

- international human rights law as opposed to general human rights or whatever.
2101. **The Chairperson:** Apparently, the Human Rights Commission mentioned international human rights law.
2102. **Mr Weir:** Is that purely in relation to reasonable alternative accommodation? I understand the general point. There is no point penalising someone for such and such if there is absolutely no alternative available, because that would be unfair. I understand the general principle. I am just trying to work out where the international human rights law tie-in is. Obviously, it has mentioned that in some way.
2103. **The Chairperson:** That is why I mentioned it. We will look it up for tomorrow.
2104. **Mr F McCann:** I have made this point before: the reality of life in places like Belfast is that, for many people, there is no reasonable alternative. I used the example of lower Oldpark, where perhaps 30 or 40 houses are lying empty. If somebody from the New Lodge wanted to move there, that might be seen as reasonable, but the reality of life in Belfast is such that it would not happen.
2105. **Mr Weir:** I understand that, Fra, and I think that it is a reasonable enough point. The only issue is how exactly you define “reasonable alternative”. To be fair, we have all had someone come in to us about what counts as three reasonable offers. What is reasonable and what is not is probably circumstantial.
2106. **Mr F McCann:** Across the North, and especially in areas of Belfast, a reasonable offer is within the confines of the areas that a person who is looking for housing has identified. Somebody from the Falls will not say that one of their areas of choice is the Shankill. That needs to be taken into consideration.
2107. **Mr Weir:** I understand that. It may be that “no reasonable alternative” is the best wording that we can have. I appreciate the fact that in west Belfast or north Down, for example, someone identifies three estates in their area. They might be offered a place in a different estate, which would still not objectively be regarded as unreasonable, but there is an issue around what constitutes reasonableness. From that point of view, we are probably not going to define that, but it is perhaps reasonable enough wording for the recommendation. I understand the point that is being made, and it is a slightly double-edged sword.
2108. **Mr Brady:** The Housing Executive told the Social Development Committee very clearly in its evidence that if this were to be implemented in the morning, it would not have the alternatives. The issue is downsizing. We do not have the housing stock of one- or two-bedroom properties. That is a long-term project. Even the Department would accept that, particularly with the strategy on housing. It will be a long time before suitable alternative, reasonable accommodation is available, not only in areas into which people do not want to move. People would be downsizing from a three-bedroom house to another three-bedroom house in a different area. That is the reality.
2109. **Mr F McCann:** What is not being taken into consideration are the differences between here and parts of England. Huge swathes of cities in England can deal with things like this. We do not have that here. There is still the problem of the impact of people moving from one area to another.
2110. **Mr Weir:** I take that on board. The lack of current housing stock is clearly a major problem, and we will refer to it in a general sense. To be fair to the folk in England, there may be a lot of big cities, but it is not just as easy as saying that people can go to one area or another. I know that there are particular problems in Northern Ireland, but we should not underestimate the fact that if people are living in a particular city in England, there may be many areas that people

- would not want to touch with a barge pole for a variety of reasons.
2111. **Mr Eastwood:** It is the lack of housing stock. *[Interruption.]*
2112. **The Chairperson:** Four people are trying to speak, and the member who indicated is not getting a chance.
2113. **Ms McGahan:** There is a lot of talk about housing deficit. In Dungannon district, there are almost 1,000 people on the housing waiting list, but figures that we obtained from Land and Property Services show that there are 600 vacant properties in Dungannon town alone, so there is no joined-up approach among the agencies. That is a serious issue.
2114. **The Chairperson:** Again, we are straying away from our remit.
2115. **Mr Eastwood:** These are all grand ideas in theory, but there is no chance of trying to find people one- or two-bedroom properties anywhere. The difficulties in certain estates with flat-type accommodation and antisocial behaviour are completely unworkable, but that is probably more an issue for the Department for Social Development.
2116. **The Chairperson:** All we can do is put in the protection that the Department should not apply sanctions in those situations. That protects people's rights under international human rights law. Does anyone recollect whether the Department gave us an assurance that it would not apply sanctions?
2117. **Mr Eastwood:** No, I do not think so.
2118. **The Chairperson:** We could change the report to say that we note the Department's assurance, but we did not get an assurance. I think that it is OK the way it is.
2119. **Mr Brady:** Fra said that I had not mentioned Newry today, but I intended to. To get away from the old Belfast scenario, in Newry, we do not have the sectarian divisions of Belfast and other parts of the North, and there is still no suitable alternative housing stock. The problem is not only prevalent in Belfast or Derry but right across the North, and we need to be aware of that.
2120. **The Chairperson:** Good old Newry. Is the Committee content with the wording that the Committee for Social Development is content to take it forward?
- Members indicated assent.*
2121. **Ms P Bradley:** I am still interested to know what the international human rights law is, because it seems to fit in with the "no reasonable alternative accommodation". The "no reasonable alternative accommodation" has to be related to that specifically, or is it not?
2122. **The Chairperson:** The Committee Clerk's paper states:
- "The definition of appropriate or suitable accommodation was suggested as 'reasonable' in the sense that it is currently used by the Northern Ireland Housing Executive."*
2123. That was Michael Copeland's —
2124. **Ms P Bradley:** That is quite broad.
2125. **Mr Weir:** Rather than trying to define it, why do we not leave it?
2126. **The Chairperson:** We can take a final look at that tomorrow.
2127. Points were raised on one or two other issues, and it was agreed that further information and clarification would be sought.
2128. With regard to NICCY's submission, members requested further information on the UN Convention on the Rights of the Child. Did we get any?
2129. **The Committee Clerk:** Yes.
2130. **The Chairperson:** Members have the full text of its submission. Are we going to delve into this or not? Can we note it?
2131. **Mr Weir:** When the report is drawn up, I assume that it will include the Hansard report and the submissions that have been made. Presumably, it could be one of the submissions. UN conventions tend to be quite widely drawn. Therefore, you could debate all day on the applicability of individual references.

2132. **The Chairperson:** We looked for clarification of the post-legislative monitoring arrangements advocated in the Welfare Reform Group's submission. There is a short note about that in your papers. I am not sensing a huge interest in some of these issues.

2133. **Ms P Bradley:** I think that we have covered those.

2134. **Mr Weir:** With regard to monitoring, the Equality Commission made specific recommendations. Have we not covered that already?

2135. **The Chairperson:** Sorry, I am clearly losing the will here. A huge document is tabled today for your consideration. You asked for it, and you got it. Perhaps we are content to note that.

Members indicated assent.

2136. **The Chairperson:** Members queried the term "distributional impact analysis" in the submission from the Human Rights Commission and requested a definition. Have we got a definition?

2137. **The Committee Clerk:** Yes; it is in the pack.

2138. **The Chairperson:** I am sorry: it is in your meeting pack.

2139. **Mr Weir:** Who queried it? The paper says "members".

2140. **The Chairperson:** I have a feeling that it was you.

2141. **Mr Weir:** If that is the case, Mr Chairman, I have deliberately expunged it from my mind.

2142. **The Chairperson:** I think that we will just have to note that as well.

2143. **Mr F McCann:** I thought that Peter would have had that definition.

2144. **Mr Weir:** I will perhaps do some analysis of the definition.

2145. **The Chairperson:** The final item in members' papers is the Hansard report of the Law Centre briefing. Members requested clarification of the impact of income from lodgers on benefit

entitlement. You should all have the departmental response. Are we all happy?

Members indicated assent.

2146. **The Chairperson:** Members, we are nearly done with our consideration. Can we now consider the main question that concerns us? Are the provisions of the Welfare Reform Bill in conformity with the requirements for equality and the observance of human rights? It is a yes or no question. I know that we have talked our way round the issue and that people have reservations about some aspects. However, that is the main question to which we have to give an answer, even if it is only a majority opinion. Are the provisions of the Bill in conformity with the requirements for equality and the observance of human rights? We will have to take a vote.

2147. **Mr Swann:** Is it a straight yes or no answer, considering all the concerns that have been raised from both sides? Does it have to be a straight yes or no?

2148. **The Chairperson:** You may be right. Perhaps it is not a straight yes or no. Perhaps it is a yes, but with the caveats and recommendations that will be in the report. On balance, subject to those recommendations —

2149. **Mr Swann:** We could say yes or no and then put forward a full report with the concerns.

2150. **Mr Elliott:** Would it not be more appropriate to see the agreed final report and then answer?

2151. **Mr Brady:** Tom is right. A lot of concerns have been raised. Until we see those addressed —

2152. **Mr Weir:** I take what Tom says on board. There may be something in it, in that we give an answer pretty much at the end. However, on that basis, the end might be tomorrow. Can we clarify whether there is a specific implication, from the Committee's point of view, from the answer it gives, whether that is yes or no? Say, for example, the Committee agreed to say no. Does that effectively

- scupper the legislation? What are the implications?
2153. **The Chairperson:** I do not see how we can scupper the legislation. We have been given a particular task, and we will pass it back to the appropriate authority. It will then undergo further consideration and, hopefully, what we have said will be taken into account. I take Tom's point that the question should perhaps be asked tomorrow, but I do not think that the answer will be any different tomorrow than it is today.
2154. **Mr Elliott:** Possibly not. I am not disagreeing with that.
2155. **The Chairperson:** My reasoning is that we have had several issues of clear disagreement across the Committee.
2156. **Mr Brady:** Whether the answer is yes or no — particularly if it is no — if the report highlights the inadequacies of the Bill in relation to human rights, surely it will be incumbent on the Assembly to right those gaps. Ultimately, it is a devolved matter. My understanding is that our purpose is to determine whether the Bill is compliant with human rights and equality issues. If there are issues in the report that say that it is not, it is incumbent on the Social Development Committee and the Assembly to ensure that those gaps are dealt with; otherwise, we are putting through a Bill that is non-compliant. Surely the whole purpose of this Committee is to ensure that the Bill is compliant.
2157. **The Chairperson:** There are two ways to go about this. At some point in the process — we are very near the end of it — we could simply take a straight vote, which is perhaps six votes to four in favour of the view that the Bill is compliant with various human rights and equality provisions.
2158. **Mr Eastwood:** Do you think that people will try to pre-empt the outcome of the vote?
2159. **The Chairperson:** That is the first view. The second view is that we do not answer the question. In light of the number of issues that we have flagged up, I wonder whether it is sufficient to say that we do not believe that the Bill is compliant. We can issue a report that gives a balanced view of the various opinions on the Committee and does not come to any conclusion. I am not sure that that is totally satisfactory, but it can also be done that way.
2160. **Mr Weir:** That seems to be the issue. One way or another, we can come to a conclusion; I suppose that we will do that tomorrow. Another question is: should we come to a conclusion? If we simply produce a report and make no comment as to whether we think the Bill is compliant, that is a bit of a cop-out, whatever the score is or whether it is likely to be a majority position. As a Committee, we might say that it is non-compliant with equality and human rights; or we might say that we have some concerns and believe that improvements could be made, but we still believe the Bill to be compliant. Something can be compliant but still be a lot of other things. It could be compliant but massively open to improvement. If we come to the conclusion that the Bill is not compliant with human rights, we are saying that it should not be passed by the Assembly.
2161. **The Chairperson:** There has been one common view from all sides throughout these meetings that the Bill is perhaps compliant, but we reserve our position on the regulations that follow. Mickey has made that point over and over again. I take his point that the Bill has to be right in the first place or the regulations are bound to be wrong. However, with regard to the actual Bill, can we say that the Bill should be left as it stands? Can anyone challenge the Bill as it stands without waiting for the regulations? Let us put it that way. Can you point to something in the Bill, rather than making an assumption about what is coming down the line in the regulations that would cause a breach — an obvious or potential breach — or a potential cause for action by ECHR or whatever? That is my question.

2162. **Mr Brady:** There are issues for people with disabilities. There is a whole issue around sanctions. What we are getting are not regulations that say that lone parents will not be sanctioned if they cannot find available, affordable and suitable childcare. Those issues need to be addressed in the context of the Bill, and regulations will come out of that that deal specifically with such issues. On the face of it, all the evidence that we have had, both in the Social Development Committee and here, are serious concerns expressed in relation to the Bill's non-compliance with human rights and an EQIA that falls far short of what might be expected. That has been stated on numerous occasions.
2163. **The Chairperson:** However, a deficient EQIA, in itself, is not a breach of people's human rights. It is what might flow from that.
2164. **Mr Brady:** We are also here to deal with equality. Surely a fundamental purpose of an EQIA is to equality proof legislation. It has been suggested to us that that could not have been done because the first EQIA and, indeed, the second EQIA that the Department carried out have been inadequate. We are told that this organic, living document will solve all the problems, but I am not sure that that is necessarily the case; however, it is a matter of opinion.
2165. **The Chairperson:** We can accept Tom's suggestion and return to this finally tomorrow. We will still have a draft report, but it will be something to be finalised, and we will run through it again.
2166. **Lord Morrow:** I thought that you were going to say that it is something to look forward to.
2167. **The Chairperson:** Members, thank you very much.
2168. **Mr Swann:** Have we had a response from the Office of the First Minister and deputy First Minister's equality unit?
2169. **The Chairperson:** No.
2170. **Ms McGahan:** We raised that in Committee. The unit is following up on that.
2171. **The Chairperson:** It has been raised by the staff, by me and by you in Committee. We are one day away from completion of our report and still have not received it. That is a very disappointing situation, and it perhaps needs to be taken up. However, from the point of view of our deliberations, we are perhaps beaten on that one and will not get it in time, which is very disappointing.



Northern Ireland
Assembly

Appendix 3

Written Submissions

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11 December 2012

Sheila Mawhinney
Room 241, Parliament Buildings,
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Dear Sheila,

Submission to Ad Hoc Committee

I have been working with a working group, under the auspices of NIC-ICTU on the equality implications of the Welfare Reform Bill. I have not been able to establish whether Congress has included a submission on EU law implications in its response to the Committee.

I have therefore thought it best to make this submission in a personal capacity in case it is necessary to do so in order to bring these matters to the attention of the Committee.

If Congress has made a submission on these matters, this submission may merely be treated as an endorsement of the position of Congress.

If that is not the case, I hope that these submissions will be taken into account by the Committee.

Yours sincerely,

Barry Fitzpatrick
Law and Policy Consultant
Formerly Jean Monnet Professor of European Law, University of Ulster (1997-2002)

EU law issues

Welfare law is governed by EU in terms of free movement of EU migrant workers, the scope of the Race Directive 2000 and Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

NICEM has made submissions on the first two provisions.

1 The 1979 Directive

There appears to have been less attention paid to the 1979 Directive. Article 3 of the Directive states:-

“Article 3

1. This Directive shall apply to:
 - (a) statutory schemes which provide protection against the following risks:
 - sickness,
 - invalidity,
 - old age,
 - accidents at work and occupational diseases,
 - unemployment;
 - (b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a).
2. This Directive shall not apply to the provisions concerning survivors' benefits nor to those concerning family benefits, except in the case of family benefits granted by way of increases of benefits due in respect of the risks referred to in paragraph 1 (a).”

Article 4 states:-

“Article 4

1. The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns: - the scope of the schemes and the conditions of access thereto,
 - the obligation to contribute and the calculation of contributions,
 - the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.
2. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity.”

2 Developments in EU law since the 1979 Directive

I make reference below to case law from the early 1990s of the (then) European Court of Justice on 1979 Directive. However, it is important to appreciate developments in EU law since that time.

First the Lisbon Treaty¹ specifically identifies “equality between women and men” amongst the ‘Common Provisions’ in the opening Articles of the Treat. Article 2 states:-

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Secondly, the EU Charter of Fundamental Rights,² incorporated into the Lisbon Treaty, makes particular reference to “equality between women and men” in Article 23 (‘Equality between women and men’), which states:-

“Equality between women and men must be ensured in all areas, including employment, work and pay.” (emphasis added)

Thirdly, the Charter now includes a right to social security and assistance within the fundamental rights recognised by the EU. Article 34 (‘Social security and social assistance’) states:-

- “1. *The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.”*

In these circumstances, I submit that provisions in the Welfare Reform Bill (and any subsequent Regulations) must be viewed from the perspective that those which may be indirectly discriminatory against women must be subject to rigorous standards of objective justification.

3 Case law on the 1979 Directive

The most significant case on the 1979 Directive is *Commission of the European Communities v Kingdom of Belgium*. (Social policy) [1991] EUECJ C-229/89 (7 May 1991).³ The Court applied a lower threshold of objective justification in welfare cases than it did, at that time, in employment cases. Nonetheless, justification must be established.

“19 On the other hand, if the Kingdom of Belgium can show that the means chosen meet a necessary aim of its social policy and that they are suitable and requisite for attaining that aim, the mere fact that the system of allowances favours a much greater number of male workers cannot be regarded as an infringement of the principle of equal treatment.” (emphasis added)

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- 1 Formally known as the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (6655/2/08 REV 2, Brussels, 28 May 2010),
- 2 The Court of Justice of the European Union (CJEU) recognises fundamental rights, in the Charter as equivalent to Treaty rights. For example, in Case C-229/11 Alexander Heimann ([2012] EUECJ (08 November 2012), the Court, in relation to the right to annual leave, states, “The right to paid annual leave is, as a principle of European Union social law, expressly laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, which Article 6(1) TEU recognises as having the same legal value as the Treaties.
- 3 According to the judgment, the case concerned the following. “The Belgian provisions on unemployment benefit, which have remained in force after that date, accorded, in so far as the calculation of such benefit is concerned, preferential treatment to unemployed persons who in their capacity as head of household had as a dependant a spouse, a person with whom they were cohabiting, a parent or a child without income. The Commission took the view that this category was predominantly made up of men.”
-

On the facts of the case, “in the current state of Community law”,⁴ the Court accepted that Member States could favour those with dependants in their welfare policy.

4 Case law on indirect discrimination

A recent case⁵ on the non-employment provisions of the Race Directive 2000, which include ‘social security’ and ‘social protection’, shows how the Court deals with indirect discrimination cases. The Advocate General states, at paragraph 100 of his Opinion, “Article 2(2)(b) of Directive 2000/43 provides in relation to indirect discrimination that the provision, criterion or practice in question is lawful if it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, i.e. proportionate.”

I submit that, in light of the Lisbon Treaty, including the Charter, a more rigorous approach to the test of objective justification must be taken, namely:-

- 1) Does the measure have a legitimate aim?
- 2) Is the measure appropriate, or suitable, to achieve that aim?
- 3) Is the measure necessary to achieve that aim? As the Advocate General states, at paragraph 109 of his Opinion, “[a] measure is necessary where the legitimate aim pursued could not have been achieved by an equally suitable but more lenient means.”
- 4) In any event, is the measure proportionate? As the Advocate General states, at paragraph 117 of his Opinion, “[a]ccording to the principle of proportionality, measures which adversely affect a right guaranteed by EU law – here the prohibition of discrimination based on ethnic origin – must not cause disadvantages for the individual which are disproportionate to the aims pursued. In other words the legitimate aim pursued must be reconciled as far as possible with the requirements of the principle of equal treatment and the right balance must be found between the different interests involved.”

5 The 1979 Directive – ‘nominated person’

On this point, it can be mentioned that the original intention to pay UC to a ‘nominated person’ within a couple may be indirectly discriminatory under the 1979 Directive.

It is submitted that the nominated person will most likely be the male partner in an opposite-sex couple.

Applying the four tests of objective justification, we can say the following:—

- 1) Does the measure have a legitimate aim? Yes, it is legitimate to have a single payment for UC.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Yes, if having a single payment is a legitimate aim, it is suitable to require a couple to nominate a recipient.
- 3) Is the measure necessary to achieve that aim? No, there has already been a ‘concession’ that it is not necessary and that the payment can be split between partners.
- 4) In any event, is the measure proportionate? No. If the concession had not been made, payment to a nominated person in a couple could not be judged as proportionate as *the entire payment* would have been made predominantly to male partners in couples and the female partner would not have received any payment.

⁴ Para 22 of the judgment.

⁵ C-394/11 Valeri Hariev Belov [2012] EUECJ (20 September 2012)(Opinion of the Advocate General).

Indeed, we also submit that this provision would have not satisfied the lower objective justification test from the early 90s case against Belgium.

5.2 The 1979 Directive – other gender issues

It is also necessary to consider the gender implications of other aspects of the Bill in order to establish whether an indirect discrimination challenge can be mounted.

For example, in Congress's submissions, it is stated, in relation to Lone Parent Conditionality,⁶ "The document states that **Lone Parents with children aged 5** and over will move either to Jobseekers Allowance or Employment and Support Allowance dependant on their circumstances. The movement of Lone Parents into the full conditionality group of Jobseekers Allowance will have an adverse effect on this group and this has a **direct impact on women** as more than 96% of Lone Parents are women. The document talks of an agreement under Jobseekers Allowance but this will be replaced by a commitment and the stringent conditionality requirements will apply to this group under Universal Credit.

The document refers to increased opportunity and equality of opportunity between men and women but as Northern Ireland has no childcare strategy and Lone Parents are already dealing with cuts applied to the help for childcare this mitigation has no tangible credibility."

Applying the four tests of objective justification, we can say the following:-

- 1) Does the measure have a legitimate aim? Arguably, yes; it is legitimate to encourage lone parents with a child of 5 or over into the labour market.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Arguably, yes; if encouraging lone parents with a child of 5 or over into the labour market is a legitimate aim, it is suitable to apply conditions to them.
- 3) Is the measure necessary to achieve that aim? Arguably, no; there are other ways to encourage lone parents into the labour market without applying conditionality to them.
- 4) In any event, is the measure proportionate? No. In light of the particular circumstances of NI, where there is a significant lack of childcare facilities and no childcare strategy, there will be a significant disproportionate impact on female lone parents.

I therefore submit that this measure is not objectively justified in NI legislation.

I also submit that this measure is not objectively justified under the terms of the *Commission v Belgium* judgment.

6 Conclusion

All UK legislation, including devolved NI legislation, is subject to EU law, including provisions on free movement of EU workers, the Race Directive 2000 and the Equal Treatment in Social Security Directive 1979, and are subject to interpretation and application in accordance with EU Treaties, including the EU Charter of Fundamental Rights.

In this section, I have focused on the 1979 Directive and sought to show that the provisions of the Bill must be tested on the basis of 'particular disadvantages' suffered by women which cannot be objectively justified.

I have identified two issues of particular concern. First, I submit that the previous intention to provide a single UC payment to a nominated claimant in a couple is not objectively justifiable.

6 At para 7.7.

Any attempt to renege on this concession would be subject to challenge as being indirect discrimination against women contrary to the 1979 Directive.

Secondly, I have picked up on Lone Parent Conditionality. In light of the particular circumstances of NI, in this context, the inadequacy of childcare facilities and the absence of a childcare strategy in NI, I submit that the imposition of conditionality on lone parents with children of 5 or over is also indirectly discriminatory against women and is also contrary to the 1979 Directive.

Cara-Friend

Sheila Mawhinney
Room 241, Parliament Buildings,
Ballymiscaw, Stormont,
Belfast, BT4 3XX

11 December 2012

Dear Sheila,

Re: Submissions to Ad Hoc Committee

Cara Friend has had sight of the submissions of the Equality Coalition and fully endorses them.

There are some issues of particular concern to the LGB sector which we would like to bring to the Committee's attention. We are therefore including submissions on these matters in this letter of endorsement.

1 Section 75

We endorse the submissions of the Equality Coalition on the failure of the DSD to abide by section 75 and also on its failure to comply with its equality scheme.

The DSD EQIAs on the Welfare Reform Bill fail to consider adverse impact on grounds of sexual orientation on the basis of 'lack of data'. It is clear from ECNI Guidance,¹ as quoted by the Coalition,² that public bodies, in performing these statutory duties, should collect quantitative data, where possible but also collect qualitative data.

While Cara Friend supports any attempts to collect quantitative data, for example, on recipients on welfare benefits, it is virtually impossible to even invite LGB people in Northern Ireland to declare their sexual orientation as part of a monitoring process on welfare recipients. Indeed, we are not aware of the DWP collecting such monitoring data in Great Britain.

Therefore, the DSD's equality scheme requires the Department to collect qualitative data on the potential adverse impacts on LGB people of the provisions in the Welfare Reform Bill. It has been a fundamental principle of equality mainstreaming since the NI Act 1998 that there should be 'equality of the inequalities'. If a Government Department relies purely on quantitative data, let alone where meaningful data cannot be collected, it is failing to comply with its equality scheme and also is, as set out in the Coalition's analysis, breaching section 75.

Not only has the DSD so far failed to have its revised equality scheme approved by the ECNI; nor has it had its audit of inequalities and action plan approved. This ought to have been provided an opportunity to conduct a thorough audit of LGB issues in relation to welfare, housing and other matters within the remit of the Department. The LGB sector does not have the resources to respond to many draft audits of inequality. This was therefore also an opportunity to conduct a gap analysis of missing qualitative data and to prepare a programme to fill those gaps.

Further, the DSD is engaged with the OFMDFM on the preparation of a Sexual Orientation Strategy and Action Plan, anticipated to be published in draft form in the foreseeable future. What role has the DSD played in this exercise?

1 ECNI practical guidance on EQIAs 2005, at page 11.

2 "It specifies the need to '[c]ollect and analyse existing quantitative data by relevant equality category as a minimum base from which to judge outcomes' and also '[u]se qualitative or evaluative research or information gathered by government and bodies such as voluntary, community and trade union organizations.'"

There is extensive engagement on the part of the LGB sector with public bodies within the remit of the Department, particularly the NIHE. The LGBT Advocate, located within the Rainbow Project, deals extensively with housing issues. The NIHE acknowledges in its 12th Report to the ECNI that “[w]e achieve this by ensuring equality considerations are incorporated in our policies from the outset. This approach is supplemented by developing policy statements on key equality areas in housing such as Good Relations and anti-sectarianism, Race Relations and Migrant Workers, Sexual Orientation, Children and Young People, and Disability.”³ The sector also participates in the NIHE Consultative Forum on Equality and has responded to the NIHE draft audit of inequalities and action plan.

It appears that no attempt has been made by the DSD to collect, let alone analyse, available qualitative data.

2 Some potential LGB issues on welfare reform

In this short submission, we can only highlight some potential issues for LGB welfare recipients and their families.

- Universal Credit payments: We welcome the ‘flexibility’ whereby UC payments can be split between partners in a couple. Lesbian mothers remaining in opposite-sex relationships would be significantly disadvantaged by a sole payment to one partner.
- Conditionality for lone parents: Already submissions by NIC-ICTU indicate that 96% of lone parents are women. There is anecdotal evidence to suggest that many lesbian parents are lone parents also. If the absence of adequate childcare facilities in NI and the absence of a childcare strategy, as compared to GB, lone lesbian parents will be placed at a significant disadvantage by the application of conditionality to lone parents with children over 5.
- Housing: We are concerned that single LGBs up to the age of 35 are expected to live in Multiple Occupation Housing. Already the provisions on MOH occupancy for single LGBs up to the age of 25 place significant pressure on young LGBs who have left home because of abusive family relationships and/or experiences in abusive communities. There is ample evidence of widespread homophobic harassment in housing and in communities more generally. Younger LGBs are expected to live in MOH, whether it exists or not, in situations where they may suffer further homophobic harassment or be forced back into abusive family relationships and/or abusive communities. Now it proposed to extend this provision to LGBs up to the age of 35.
- PIPs entitlement: Little attention is being paid to the development of PIPs. However there is evidence that people with mental disabilities and people with HIV are finding it more difficult to satisfy new criteria for receipt of PIPs. There is ample evidence of significant mental health issues amongst LGB people. There is therefore considerable concern that new criteria for receipt of PIPs and other disability-related benefits will place LGB welfare recipients at a significant disadvantage.
- PIPs assessment: We are very concerned at the contracting-out of these assessments. Assessments associated with disability involve issues of sensitivity and confidentiality. Such sensitivity and respect for privacy can (hopefully) be expected from NHS professionals. However, it is a source of great concern that issues of the sexual orientation of a person with disabilities may arise during these assessments and we have no guarantee that these issues will be appropriately treated by contracted-out assessors.
- Discrimination in administrative action: Although legislative action is not directly covered by equality statutes, administrative action is covered. For example, regulation 12 of the Equality Act (Sexual Orientation) Regulations (NI) 2006 prohibits discrimination in the course of carrying out of public functions, including in relation to any form of social security, healthcare and any other form of social protection. Such a duty remains with the Department/SSA and cannot be avoided by contracting-out. The contractor could also be

3 <http://www.nihe.gov.uk/news-latest-equality-progress-report-launched> (6 September 2012).

liable for claims of indirect discrimination on grounds of sexual orientation and failure to make reasonable adjustments on grounds of disability.

In this short submission, we have raised issues surrounding potential breaches of section 75 and failures to comply with the Department's equality scheme. We have also attempted to highlight some LGB issues surrounding welfare reform which a well-informed Government Department should have attempted to identify in its EQIA and in complying with its equality scheme generally.

While endorsing the Coalition's submissions, we hope that the Committee will take these submissions into account also.

Yours sincerely,

Steve Williamson
Director

Equality Coalition



**Submission from the Equality Coalition to the
Ad Hoc Committee on Conformity with Equality Requirements
In relation to Proposals for Welfare Reform Bill
December 2012**

1. Introduction

The Equality Coalition is a broad alliance of non-governmental organisations whose members cover all the categories listed in section 75 of the Northern Ireland Act 1998 ('s75'), as well as other equality strands. It was founded in 1996 and was instrumental in putting equality at the forefront of the agenda at that time, specifically in relation to the Belfast/Good Friday Agreement and ultimately the public sector duty in s75.

The Equality Coalition now has over 80 members, many of which are umbrella organisations. It is co-convened by the Committee on the Administration of Justice and UNISON. The Equality Coalition continues to provide a forum for unity between all sectors when working for equality, through recognising multiple identities, mutual support between members and respect for the diversity of its members' work and views. We welcome this opportunity to submit evidence to the ad hoc committee on conformity with equality requirements ('the Ad Hoc Committee') in relation to the Department for Social Development's ('DSD') current proposals for a welfare reform bill ('the Welfare Reform Bill').

This submission will focus on the scope and application of s75; it will highlight deficiencies in the application of s75 to the Welfare Reform Bill and make recommendations on how to conform to these equality requirements. This submission will not provide detailed information on the equality impacts of each aspect of the Welfare Reform Bill or on each equality group named in s75. Several members of the Equality Coalition have submitted evidence in this regard, which we commend to the Ad Hoc Committee.

2. Understanding the Scope and Application of s75

2.1 Background

Given the enduring inequalities in our society,¹ s75 was introduced to ensure that public policy was developed and implemented in a manner that helps promote equality of opportunity and mitigate any adverse impacts² on the nine named equality groups (relating to religious belief, political opinion, racial group, age, marital

¹ Evidence of the many inequalities in our society is included in the audits of inequalities carried out over the last two years by public authorities designated under s75.

² Namely, discriminatory detriment.



National Energy Action
Northern Ireland Association for Mental Health
North West Community Network
Northern Ireland Anti Poverty Network
Northern Ireland Association for the Care and Resettlement of Offenders
Northern Ireland Council for Ethnic Minorities
Northern Ireland Community for Refugees and Asylum Seekers
Northern Ireland Community Voluntary Association
Northern Ireland Hospice
Northern Ireland Gay Rights Association
Northern Ireland Public Service Alliance
Northern Ireland Rural Women's Network
Northern Ireland Women's European Platform
NSPCC
NUS-USI Students
Omagh Women's Area Network
Organisation of the Unemployed Northern Ireland
Parents Advice Centre
Participation and the Practice of Rights Project
Pobal
Princes Trust
Pat Finucane Centre
Public Interest Litigation Support Project
Queer Space

Rainbow Project
Relate NI
Rural Community Network
Sai-Pak Chinese Community Association
Save the Children
Social Economy Agency
South Tyrone Empowerment Programme
The National Deaf Children's Society
Training for Women Network
Ulster People's College
UNISON
Upper Springfield Development Trust
Victim Support NI
WEA-NI
Women into Politics
Women's Aid Federation Northern Ireland
Women's Resource and Development Agency
Women's Support Network
Youth Net
174 Trust



status, sexual orientation, gender, disability and dependants). Disadvantaged groups already suffer barriers to accessing public services and to enjoying full participation in society. It is therefore crucial to consider the impacts of policies on these groups and use policy development and implementation to promote equality of opportunity.

The existence of s75 is well known, but the requirements for fulfilling the duty in practice are often misunderstood. S75 requires that a designated public authority, such as DSD, shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity between the nine equality groups. In order to fulfil this duty, public authorities must comply with both:

- the definition of 'due regard'; and
- the requirements of Schedule 9 Northern Ireland Act 1998 ('Schedule 9').

Each of these provide more detailed information to inform public authorities how to apply s75.

2.2 Definition of 'Due Regard'

'Due regard' is considered by the Equality Commission for Northern Ireland ('ECNI') to mean that 'the weight given by a public authority to the need to promote equality of opportunity is proportionate to the relevance of the particular duty to any function of the public authority.'³ For a similar public sector race equality duty in Great Britain,⁴ Dyson LJ defined due regard as:

*the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing.*⁵

The above definition has also been applied to the meaning of 'due regard' in s75 by our local High Court in 2011.⁶ In that case, the Lord Chief Justice Sir Declan Morgan, referred to other caselaw⁷ which summarised some key principles for having 'due regard'. These principles were confirmed and added to by the English Court of Appeal,⁸ as follows:

- the duty must be fulfilled before and at the time of the decision, not as justification after the fact;
- the duty is to have due regard, not to achieve results or to refer in terms to the duty (although it is good practice to keep an adequate record);

³ ECNI, S75: A Guide for Public Authorities, April 2010, page 27.

⁴ S71 Race Relations Act 1976, as amended; now superseded by s149 Equality Act 2010.

⁵ Baker [2008] EWCA Civ 141.

⁶ 'Tasers', JR1 Application [2011] NIQB 5.

⁷ Brown [2008] EWHC 3158.

⁸ Domb [2009] EWCA Civ 941.



- the test of whether a decision maker has had due regard is a test of the substance of the matter, not of mere form or box-ticking,
- the duty must be performed with vigour and with an open mind;
- it is a continuing duty; and
- it is a non-delegable duty.

2.3 Requirements of Schedule 9

In addition to the need to have 'due regard', Schedule 9 provides more detailed information on how s75 is applied. It provides that an equality 'scheme shall show how the public authority proposes to fulfil the duties imposed by s75.'⁹ It specifies that each equality scheme must contain (among others):

- arrangements for assessing and consulting on the impact on equality of opportunity of policies adopted or proposed;
- arrangements for monitoring and publishing any adverse impact of such policies;
- arrangements for publishing the results of the assessments of equality impacts, including:
 - measures which might mitigate any adverse impact; and
 - alternative policies which might better achieve the promotion of equality of opportunity; and
- arrangements for ensuring and assessing public access to information and services.

Schedule 9 also requires that, in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account the assessment and consultation carried out in relation to equality impacts. It sets out procedures for complaints and investigations to ensure that public authorities do not breach any of the commitments included in their equality schemes.

In addition, Schedule 9 sets out that the equality schemes must conform to any guidelines as to form or content which are issued by ECNI with the approval of the Secretary of State ('Guidelines'). The ECNI's 2010 guide¹⁰ on s75 also contains information on how to assess a policy's impact on equality of opportunity, namely through screening and systematic analysis in equality impact assessments ('EQIA'). DSD commits to using screening and EQIAs to assess the impacts of its policies on equality in both its 2001 equality scheme¹¹ (currently in force) and its 2011 draft equality scheme (awaiting approval by the ECNI).

⁹ Para 4(1) Schedule 9 Northern Ireland Act 1998.

¹⁰ See <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

¹¹ See http://www.dsdni.gov.uk/dsd_equality_scheme.pdf.



The ECNI has released practical guidance on EQIAs.¹² This guidance sets out the steps required to carry out an EQIA and underlines the importance of:

- the consideration of available data and research;
- the use of that information to decide whether there is (likely to be) a differential impact on a relevant group;
- consideration of measures which might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity; and
- taking into account all of the above when making a decision with respect to the proposed policy.

DSD states in its equality scheme that it will carry out EQIAs in accordance with the procedures set out in this ECNI guidance.¹³

This submission will now set out three key areas where DSD has failed to comply with the above requirements in relation to the Welfare Reform Bill, which is therefore not in conformity with equality requirements.

3. Applying s75 to the Proposals for Welfare Reform

We appreciate that DSD endeavoured to carry out a full EQIA on the Welfare Reform Bill. The draft EQIA was released for consultation in September 2011 and the final EQIA was published in April 2012. However, the Equality Coalition maintains that DSD has not fully complied with s75, due to three key deficiencies in the EQIA process.

3.1 Insufficient Consideration of Data and Research

The need for a public authority to consider fully the available data and research when applying s75 is clear from Schedule 9 and its associated guides, and also from case law on the meaning of 'due regard'. DSD did not consider all, or sufficient, data for its 2011/2012 EQIA and so has failed to comply with the equality requirements of s75.

In order for a public authority to have 'due regard' within the meaning of s75, it must consider available data. Otherwise, it would merely be guessing as to what impacts a proposed policy might have on the nine equality groups. It is clear from Schedule 9 that a public authority must 'assess' (not guess) the impacts, and so sufficient data must be required. Furthermore, the DSD equality scheme recognises that, without sufficient information, it is not possible to conduct meaningful analysis of the impact of its policies on all of the nine categories.¹⁴

¹² See <http://www.equalityni.org/archive/pdf/PracticalGuidanceEQIA0205.pdf>.

¹³ See para 3.6 of DSD's 2001 equality scheme.

¹⁴ See para 5.2 of DSD's 2001 equality scheme.



In its practical guidance on EQIAs, the ECNI states that 'relevant, reliable and up to date information is essential' to carrying out an EQIA.¹⁵ It specifies the need to '[c]ollect and analyse existing quantitative data by relevant equality category as a minimum base from which to judge outcomes' and also '[u]se qualitative or evaluative research or information gathered by government and bodies such as voluntary, community and trade union organizations'.¹⁶

The caselaw on 'due regard' also makes clear that sufficient information is necessary in order to fulfil the equality duty. Several judgments have underlined the need for the statutory equality duty to be carried out in substance and with vigour,¹⁷ which is not possible without recourse to the underlying data. Indeed, not only must sufficient and relevant data be considered, but a public authority could err in not taking the correct approach to the data available, which could lead to an incorrect appreciation of the impacts arising.¹⁸

Several submissions to DSD's original EQIA, to the DSD Committee and to the Ad Hoc Committee have outlined the deficiencies in evidence used by DSD in its 2011/12 EQIA.¹⁹ We will not duplicate the detail of these submissions but, in overview, the data used was both incomplete and out of date.²⁰ The data did not include information on most of the s75 categories or on all the policy areas covered by the Welfare Reform Bill. It also did not include the data from the Department for Work and Pension's policy simulation model. Critically, only aspects of this data were added to the final EQIA and none of this data was included in the draft EQIA (which precluded stakeholder comment on likely impacts).²¹

Therefore, DSD did not use all data available in carrying out its EQIA, as required by statute, case law and administrative commitments. Several stakeholders have provided relevant data and evidence of impacts, both in response to the EQIA and since that time, which have not been taken into account by DSD. It is therefore necessary for DSD to reconsider its EQIA and reassess equality impacts of the Welfare Reform Bill, using all available data and research, in order to comply fully with s75 and so be in conformity with equality requirements.

3.2 Insufficient Consideration of Alternative Policies

The need for a public authority to consider alternative policies to better promote equality of opportunity when applying s75 is clear from Schedule 9 and its associated guides, and also from case law on the meaning of 'due regard'. DSD did

¹⁵ ECNI practical guidance on EQIAs 2005, at page 11.

¹⁶ As above. See also pages 12 – 21.

¹⁷ Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).

¹⁸ *R (Kaur and Shah) v London Borough of Ealing* 2008] EWHC 2062 (Admin), paras 45 – 47.

¹⁹ See, for example, submissions of Welfare Reform Group, NICEM, Disability Action and Mencap.

²⁰ This also conflicts with Schedule 9's requirement for public access to information, see para 4(2)(f).

²¹ This data has still not been published in full, which also conflicts with Schedule 9's requirement for public access to information, see para 4(2)(f).



not consider alternative policies to better promote equality of opportunity in its 2011/2012 EQIA and so has failed to comply with the equality requirements of s75.

Schedule 9 states that a public authority must publish details of any consideration given to 'alternative policies which might better achieve the promotion of equality of opportunity.'²² This requirement is repeated in the ECNI Guidelines on s75²³ and in DSD's equality scheme.²⁴ In addition, the ECNI practical guidance on EQIAs states that '[t]he consideration of mitigating measures and alternative policies is at the heart of the EQIA process. Different options must be developed which reflect different ways of delivering the policy aims.'²⁵

The caselaw also supports the need to consider alternative policies in order to have 'due regard'. In a recent case on the similar statutory equality duty in Great Britain,²⁶ the High Court found that a Council's decision on a social care policy was unlawful as (among other reasons) 'there was a failure in the material prepared for consideration... to address the questions which arose when considering whether the impact... was so serious that an alternative which was not so draconian should be identified and funded to the extent necessary by savings elsewhere.'²⁷

In the 2011/2012 EQIA on the Welfare Reform Bill, DSD did not publish any consideration of alternative policies that could better promote equality of opportunity. It noted some mitigation to adverse impacts in its draft EQIA, but this is not sufficient to better promote equality of opportunity. We recognise that DSD is constrained to some extent by the parity principle, but this constraint is not absolute²⁸ and should not prevent the full consideration of alternative policies, including regard to impacts on equality and other countervailing factors.

It is therefore necessary for DSD to reconsider its EQIA, including consideration of alternative policies that might better promote equality of opportunity for the nine named groups, in order to comply fully with s75 and so be in conformity with equality requirements.

3.3 Insufficient Account taken of Impacts and Consultation

The need for a public authority to take into account the assessment of equality impacts and consultation in making a decision on policy is clear from Schedule 9 and its associated guides, and also from case law on the meaning of 'due regard'. DSD did not sufficiently take into account the equality impacts and consultation stemming

²² Para 9(1)(b) Schedule 9.

²³ At page 34.

²⁴ At para 6.2.

²⁵ At page 29.

²⁶ *R (W) v Birmingham City Council* [2011] EWHC 1147 (Admin).

²⁷ As above, Mr Justice Walker at para 183.

²⁸ See, for example, Fitzpatrick and Burrows, *An Examination of Parity Principles in Welfare and Wider Social Policy*, 2012, found at <http://www.niccy.org/article.aspx?menuId=14265>.



from its 2011/2012 EQIA and so has failed to comply with the equality requirements of s75.

Schedule 9 states that '[i]n making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account the assessment and consultation carried out' in relation to the policy's equality impacts.²⁹ This is repeated in the ECNI Guidelines on s75,³⁰ which also states that '[t]his is an important commitment and failure to comply with it could lead to complaints of failure to comply with a scheme'³¹ The ECNI practical guidance on EQIAs also makes it clear that 'the public authority shall take into account any EQIA and consultation carried out in relation to the policy' and states that it is 'essential that the public authority fully complies with this commitment.'³²

The practical guidance on EQIAs clarifies that '[i]t is not sufficient merely to take equality into account; it must be accorded considerable weight. That is, the need to promote equality of opportunity must be given due regard or weight in accordance with Section 75.'³³ 'At this point all available information should be combined in a decision or decisions on an existing or proposed policy or policies, together with the rationale for that decision. Decision-making documentation must show how the impact of alternative policies and mitigation, and that the implications for other policies associated with the EQIA were considered.'³⁴ These requirements are echoed in the many judgments that require the equality duty to be carried out 'with vigour and an open mind' in order for 'due regard' to be satisfied.³⁵

Although DSD lists the consultees' responses to the Welfare Reform Bill in an annex to its final EQIA, it has not sufficiently taken into account the impacts or consultation responses received. This is clear, as DSD has not changed any aspects of the policies included in the Welfare Reform Bill from the draft to the final EQIA. This suggests that DSD did not apply s75 'with vigour and an open mind'. Moreover, the final EQIA does not show any additional consideration of alternative policies or mitigation based on the consultees' evidence of impacts in their consultation responses. In addition, the evidence available in April 2012 has now been superseded by more recent research, which requires further consideration by DSD.

Therefore, in order to comply with s75 and so be in conformity with equality requirements, it is necessary for DSD to reconsider its EQIA to take fully into account all available evidence and the assessment of equality impacts and consultation when making a decision on the Welfare Reform Bill.

²⁹ Para 9(2) Schedule 9.

³⁰ At page 34.

³¹ At page 45.

³² At page 43.

³³ At para 6.1, page 43.

³⁴ At para 6.2, page 44.

³⁵ Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).



We understand that the Welfare Reform Bill is, in part, enabling legislation and that DSD intends to apply s75 to the future regulations on specific policies that stem from the bill.³⁶ However, any likely adverse impacts of the Welfare Reform Bill, and any possibilities to better promote equality of opportunity for the nine named groups, must be considered before the passing of the current bill. Several judgments have made clear that the duty must be fulfilled 'before and at the time of the decision.'³⁷

In one case, the High Court quashed a borough council decision as, '[o]nce the [borough] had identified a risk of adverse impact, it was incumbent upon the borough to consider the measures to avoid that impact before fixing on a particular solution. It erred in having recognised the problem whilst merely hoping to assess its extent after it had settled on its criteria.'³⁸ DSD must address the adverse impacts before legislating on the Welfare Reform Bill.

4. Conclusion – Required Action

The Ad Hoc Committee has been established to examine and report on whether the Welfare Reform Bill is in conformity with equality requirements. The Equality Coalition strongly maintains that the current Welfare Reform Bill is not in conformity with equality requirements, as DSD has not complied with s75.

In order for the Welfare Reform Bill to be in conformity with equality requirements, DSD must reconsider its EQIA and reassess the equality impacts of the Welfare Reform Bill, using all available data and research. It must consider mitigation of any adverse impacts found and also alternative policies that could better promote equality of opportunity. When taking its decision in relation to the contents of the Welfare Reform Bill, DSD must take fully into account the assessment of equality impacts and the evidence and consultation responses received from stakeholders.

We recognise that the Assembly is under time pressure to legislate on the Welfare Reform Bill but, given that DSD has not complied with s75, it is possible that further delay could be incurred through a complaint or investigation on these deficiencies. The Ad Hoc Committee cannot apply s75 on DSD's behalf, as it is not designated under s75 and the statutory equality duty is non-delegable.³⁹ We therefore call on the Ad Hoc Committee to request that DSD reconsiders its EQIA and reassesses the equality impacts of the Welfare Reform Bill, in order to comply with s75 and be in conformity with equality requirements.

³⁶ We note that DSD only commits to screening some aspects of the derivative regulations and policies (see final EQIA). However, every policy (and regulation) stemming from the Welfare Reform Bill must be screened in order to comply with s75 and its associated ECNI guidance.

³⁷ Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).

³⁸ *Kaur and Shah*, reference above, at para 44.

³⁹ Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).



Appendix
List of Member Organisations of the Equality Coalition

Action Mental Health
Age NI
An Teasmann TSG
An Munia Tober
Artsekta
Aware Defeat Depression
Banardos
Belfast Islamic Centre
Business and Professional Women
Committee on the Administration of Justice
Cara- Friend
Carers NI
Children in Crossfire
Children in Northern Ireland
Childrens Law Centre
Chinese Welfare Association
Citizens Advice Bureau
City Bridges
Coiste na nIarchimí
Community Development and Health Network
Confederation of Community Groups
Conference of Religious of Ireland- Northern Ireland
Community Organisations of the South Tyrone Area
Corrymeela Community
Craigavon Travellers Support Committee
Disability Action
Falls Community Council
Fermanagh Women's Network
Ginger Bread
Housing Rights Service
Human Rights Consortium
Include Youth
Inclusive Mobility and Transport Advisory Committee
Integrated Services for Children and Young People
Irish Congress of Trade Unions
Law Centre NI
HERE NI
Local Initiatives for Needy Communities
Mencap
Mindwise
National Children's Bureau

Equality Commission



Welfare Reform Bill (Northern Ireland)

Submission to the Ad Hoc Committee on Conformity with Equality Requirements

December 2012

1. The Equality Commission for Northern Ireland welcomes the opportunity provided by the Ad Hoc Committee, established to consider and report on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights, to set out further its concerns about aspects of the Bill.
2. The Commission has concerns that the impacts and potential impacts of aspects of the Bill have not been fully considered by the Department of Social Development in bringing forward its proposals to date and that this may not be in conformity with its obligations under s75 of the Northern Ireland Act 1998 (NIA 1998) and the requirements of its Equality Scheme.
3. This submission sets out the areas where the Equality Commission has concerns about the effective application by the Department of Social Development of its equality and good relations duties; it also sets out our concerns about the potential adverse impacts of aspects of the Bill.

Equality duties

4. The duties set out in s75 NIA 1998 oblige the Department, as all public authorities, to pay due regard to the need to promote equality of opportunity across nine equality strands and regard to the desirability of promoting good relations across three strands. The Equality Scheme sets out how the Department will fulfill these duties, in line with the provisions of Schedule 9 of the NIA 1998 and the Commission's guidance on form and content of equality schemes.¹
5. In order to fulfill these duties, the Department is obliged to have arrangements in place for assessing and consulting on the likely impact of policies on the promotion of equality of opportunity and for publishing the results of such assessments, as well as for monitoring any adverse impact of policies adopted on the promotion of equality of opportunity.
6. In making any decision with respect to a policy, the Department is obliged to take into account the impact assessment and the consultation carried out in relation to the policy. It is also obliged to have arrangements in place to publish the results of the equality impact assessment and, in doing so, to state the aims of the policy to which the assessment relates and give details of any consideration given by the authority to measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity and any alternate policies which might better achieve the promotion of equality of opportunity.
7. Schedule 9 of the NIA 1998 sets out the Equality Commission's role in respect of the duties – it includes keeping under review the effectiveness of the duties, offering advice to public authorities and others in connection with the duties and carrying out a range of functions set out in the Schedule, such as approving public authorities' Equality Schemes and investigating

1 Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities, ECNI, April 2010

- complaints or initiating investigations where there is a complaint or the Commission forms a belief that a public authority may have failed to comply with its Equality Scheme.
8. The Ad Hoc Committee will be aware that the Department of Social Development published a Draft Equality Impact Assessment of the Welfare Reform Bill in September 2011, for public consultation, in line with the requirements of its Equality Scheme and its equality duties. In its response to the Department, the Commission considered the extent to which the impact assessment was carried out in a manner consistent with advice contained in our Practical Guidance on Equality Impact Assessment.²
9. In broad terms, our response to the DSD consultation concluded that it provided no substantive analysis of the proposals nor did it provide any real consideration of the potential adverse impacts, including in the Northern Ireland context.³
10. With regards to the way in which the EQIA was conducted, the Commission expressed considerable concerns about how some of the steps recommended in our guidance had been completed:
- we pointed out that the data considered by the Department was extremely limited and that it was essential to gather and consider a wide range of qualitative and quantitative data, in order to determine how the proposed policies will impact on people;
 - while recognising that assessing the impacts of a policy can be challenging at a strategic level, we emphasised that a proper analysis of the impacts of the proposed policy is at the core of any EQIA, the purpose of which is to identify any potential negative impacts and take steps to address these. The Commission was particularly concerned with the minimalist approach taken by the Department to this part of the EQIA. In some places, there was no assessment at all;
 - we noted with concern the high number of assumptions, expectations and vague possibilities which are put forward as mitigating measures, without any evidence to support these.⁴
 - we indicated that it was crucial that the Department was clear about the extent to which the policy options presented in the EQIA could be altered/amended in light of the outcomes of the EQIA consultation and what the possible alternative policy options are.
11. The Committee will be aware that the Final EQIA was published on 4 May 2012. We remained concerned that, while some additional data and considerations were introduced into the Final EQIA, it did not fully address the issues which had been raised through the consultation process. Indeed, the completed EQIA remained very similar to the consultation version and thus our concerns remained about the limitations of the data considered, proper analysis of the impacts of the proposals, identification of adverse impact and adequate consideration of mitigating measures and alternative policies.
12. The Minister when publishing the Final EQIA indicated he intended that the Department would continue' to look at the possible equality impacts as the Bill moves forward' and that 'Work is ongoing within my Department to analyse the impact of policies across the various Section 75 groups'.⁵

2 Practical Guidance on Equality Impact Assessment, ECNI, February 2005

3 Response to the Department for Social Development's Consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment, ECNI, December 2011

4 for example on page 35: "*the change could act as a stimulus* [...]"; page 43: assumption that older recipients "*will generally either have a working partner or capital over £ 16,000*"; pages 46 and page 59: support to continue to move towards work assumes that jobs are readily available; page 58 : "*there is a possibility that younger lone parents are likely to have more recent experience of the labour market*"; page 60: "*it is envisaged that flexibilities and operational easements in place will ensure that no one will be penalised* [...]".

5 Department for Social Development News Release, Publication of completed Equality Impact Assessment on Welfare Reform Proposals, 4 May 2012

13. We raised our ongoing concerns about the EQIA with the Department of Social Development in June 2012 and have had assurances from officials that the original Equality Impact Assessment was the first part of what they consider will be a lengthy assessment process to determine the impact of the various elements of the Welfare Reform Bill, and that there will be further equality screening and possibly further EQIAs carried out on the detail of some of the reforms, particularly as the Regulations are made. Indeed, we have been assured that the intention is to update the EQIA following review of additional data received from HMRC recently, which will improve the information available and the Department's ability to identify potential adverse impacts.
14. Engagement with officials is ongoing, as we seek to ensure that the Department fulfills its obligations to consider the impact of its proposals in a timely manner and gives adequate consideration to mitigating measures and alternative policies. While the Bill is itself an enabling mechanism, there remains the requirement to consider the impact of its proposals as well as the impact of Regulations as they are developed.
15. The Commission also has the power to initiate investigation, where it believes that there has been failure to comply with an approved equality scheme or in pursuance of a complaint by a directly affected individual who considers there may have been such a failure. Determinations of whether public authorities are in compliance with their Equality Scheme follow such investigations and a report is completed by the Commission. This may include recommended actions for the public authority where a failure to comply with its scheme has been found.
16. In this instance, investigation by the Commission is an option, and if a failure to comply with its Equality Scheme was found, then a possible recommendation may be to the Department to conclude its equality impact assessment properly. The Commission is monitoring closely what the Department is doing to address its concerns about the Equality Impact Assessment and to ensure the effective application of its duties.
17. It is crucial that the potential adverse impacts identified through the development of the Bill and evidence presented to date are addressed by the Department and any further mitigating measures or alternative options are identified and considered. This would also allow the Assembly to consider further amendments to the Bill or identify where the potential adverse impact should be considered in the screening of the Regulations.
18. It is also important, as pointed out by the Joint Committee on Human Rights in its Report of its Legislative Scrutiny of the Welfare Reform Bill in Britain, that there is consideration given to assessing the cumulative impact of the proposed reforms on individuals and groups from an equality perspective.⁶

Potential adverse impacts

19. For the purposes of the Committee's consideration of compliance with the equality requirements, the following points are made in terms of the potential adverse impact of aspects of the Welfare Reform Bill and actions that could be further considered:

Payment of Universal Credit (Clauses 2-7, Payments clauses 97- 99)

20. We are concerned that the Department has not fully considered potential equality impacts in this regard. The payment of the new Universal Credit to the main earner following joint claim and joint assessment may leave carers (usually women) and dependents, without the benefits of income. Whilst the Final EQIA (pages 40-41) states that the Department intends to retain powers to split payments and to override nomination by members of a couple and to guide payments if required, the payment of Universal Credit to the primary carer, usually the mother

6 Legislative Scrutiny: Welfare Reform Bill, Joint Committee on Human Rights, HL Paper 233, HC 1704, December 2011

of the children, is not the default position. We had previously noted that the importance of payment of benefit to women in their 'caring for dependents role' was an important social security reform of the 1970s, when it was considered necessary to allow certain benefits to be paid to women, including Child Benefit, recognizing that women more readily spend on children and the household essentials.⁷ The Department should carefully consider the potential equality impacts of its proposals; identify actions to mitigate potential impacts; and ensure that such actions are reflected in the Bill and/or Regulations

Housing Benefit and Under-Occupancy (Clause 69)

21. The proposals are likely to have an adverse impact on those with dependents, men and women generally, disabled people and on the grounds of religious belief/political opinion. While the Final EQIA notes 'Households containing a disabled adult and with a non-resident carer will be assessed as having a reasonable requirement for an additional room. This will have the effect of reducing the number of disabled claimants affected by the measure' it is not clear if this extends to those with fluctuating conditions. The Department should also consider the impact on those with dependents, who are separated from their partners/family but who may require additional rooms to accommodate access to their children. There may also be impacts in regard to a tenant's ability to move, due to the segregation of social housing in Northern Ireland. The specific potential adverse impacts created through the lack of availability of smaller (1-2 bedroom) social housing in Northern Ireland are not addressed in the EQIA. The Commission considers that the implementation of welfare reform must take full account of the availability, accessibility and appropriateness of the current housing stock in Northern Ireland and include relevant mitigating measures for affected groups, whether through amendments safeguards or changes to timescales.

Standard Disability Premium (Clause 12)

22. The removal of the direct link between receipt of the 'Standard Disability Premium' addition to Income Support for those in receipt of Disability Living Allowance under Personal Independent Payments is likely to result in loss of income and therefore a potential adverse impact on disabled people. The Final EQIA identifies a cash loss of £39 per week for 29,000 disabled households but does not identify this as an adverse impact stating that 'transitional protection put in place will mean that there are no cash losses as a direct result of the move to Universal Credit where circumstances remain the same' (page 35). This should be given further consideration by the Department.

Work Capability Assessment (Clause 38)

23. The EQIA does not include an assessment of the potential adverse impacts arising from measures for implementation of the Work Capability Assessments for work-related activity under the Universal Credit. Given that the transition from Incapacity Benefit to Employment Support Allowance resulted in 33% of all decisions being overturned at the First-tier Tribunal at the Social Entitlement Chamber (following a lengthy appeals process likely to cause unwanted stress and anxiety to the claimant)⁸, we consider that the Department should give clear consideration to potential adverse impacts and mitigating measures to ensure that fair, appropriate and individualised assessment processes and practices are put in place in Northern Ireland.

7 Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment, Briefing for Assembly Committee for Social Development, ECNI, March 2012

8 Department for Social Development News Release, 67% of Employment and Support Allowance appeals upheld in Department's favour, 1 August 2012

Lone Parent Conditionality (Clauses 13 to 18, 21 to 27 and Clauses 58 to 60).

24. The lone parent conditionality provision requires that lone parents be available for work when their child reaches the age of 5 years. The Commission is concerned about the potential for adverse impacts arising from this and the lack of appropriate, accessible and affordable childcare in Northern Ireland. The Department should consider the potential for adverse impacts and associated mitigating measures – including those that may support to parents with young children to meet the conditionality requirements of entitlement for Universal Credit/Income Support, and for those parents belonging to the Employment Support Allowance work-related activity group.
25. In addition, while recognising and endorsing parity, the DSD EQIA consultation document and thus the Welfare Reform Bill does not fully consider the proposals in the context of Northern Ireland policy and legislation not subject to parity. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation. There is thus no statutory requirement for the provision of childcare in Northern Ireland where it is asserted that the situation on both availability and affordability of childcare is the worst in the UK⁹.

Conclusions

26. The Commission trusts that this submission assists the Committee in its important role and would be happy to provide any further commentary or information related to our statutory remit considered necessary.

Annex 1: The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

The Commission’s remit also includes overseeing the statutory duties equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations, as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).

The Commission, along with the NIHRC, has also been designated as the ‘independent mechanism’ in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).

Fostering Network NI

The Fostering Network NI – Issues for Foster and Kinship Carers in Welfare Reform

1. Introduction

- 1.1 The Fostering Network is the leading charity for foster and kinship carers in NI and we work to improve outcomes for children in care. We have 1900 members who are approved foster carers, including kinship carers, and we provide support, training and advice to ensure they can transform the lives of children in care.¹
- 1.2 We also deliver the flagship Fostering Achievement scheme on behalf of the Health and Social Care Board. This provides additional resources and support to improve the educational outcomes of children in care; it includes the award winning Letterbox Club.
- 1.3 The Fostering Network (UK) campaigned at Westminster to seek significant changes to the Welfare Reform Bill on behalf of foster carers a number of which were accepted by the Department for Work and Pensions. ²However, there remain a number of outstanding issues with the Welfare Reform Bill as proposed that could have a significant impact on fostering and which the Fostering Network would ask the Committee to address. In particular we want to ensure that the DSD Committee replicates these assurances for approved foster and kinship carers in Northern Ireland.

2. Children in Care in NI

1. There are currently 2644 children and young people in care in NI. This represents a 5% increase since last year and an underlying trend of increases since 2006. There is nothing to suggest that this trend is about to change and we should expect for the next five years either a continuing upward trend of children coming into care or it remaining at a similar level.
2. At the same time that the overall numbers of children in care has continued to increase the percentage looked after in foster or kinship care has also continued to grow. In NI at March 2012 75% of the total number of children in care were cared for by either foster or approved kinship carers. This represents an 18% increase over the last six years.
3. Care Matters and Transforming Your Care have both clearly indicated that they see foster and kinship care as the placement of choice for the future of care in Northern Ireland. Residential care has continued to shrink in-terms of the percentage of young people placed there and while there will always be some young people for whom this is appropriate, the majority of children and young people should be placed in a family setting.

3. Foster and Kinship Care in NI

1. We currently have around 2000 approved foster and kinship carers in Northern Ireland. However, not all of these are available for full-time care placements and many carers only undertake respite care.

1 Throughout this briefing we refer to foster and kinship carers. These are both carers who are approved as foster carers by Health and Social Care Trusts and are caring for a looked after child or children. An approved kinship carer is a family member or friend of a looked after child who has been approved as a foster carer and provides their care. They are treated differently for the purposes of tax and benefits than informal kinship carers whose needs are not addressed within this briefing.

2 See <http://www.dwp.gov.uk/docs/ucpbn-8-foster-carers.pdf>

2. Each week here, there are 2 children who require foster care and for whom a placement cannot be found because of lack of carers. We are already in a deficit position with the number of carers and it is also the case that for foster care to work effectively there needs to be space in the system. Matching a child with the best carer possible for them means we should ideally have more carers than placements required so that we have space to choose properly for children and to ensure carers are not over-loaded with too many placements.
3. There are also on-going concerns about the demographics of foster and kinship carers. Many carers are older and have been caring for a significant period of time and may be unable to continue caring. The ability to recruit new foster and kinship carers is critical to the ongoing needs of the most vulnerable children who come into care.
4. The vast majority of foster carers in NI are recruited by Health and Social Care Trusts, with only around 8% recruited by independent or voluntary foster care providers.
5. Unlike the position in England and Wales the very vast majority of carers in NI are voluntary and are not paid a fee. We have a small percentage of fee paid carers but most carers only receive an allowance to cover the costs of feeding and clothing a child and covering the cost of pocket money and birthdays, Christmas and one holiday per year.
6. In both Britain and NI there are many foster and kinship carers who rely on the tax and benefit system to support the work they do. However, given that NI has a substantially lower number of fee paid foster carers then any reduction in their access to benefits will have a substantially higher impact.
7. The Welfare Reform Bill as it currently stands could have a significant impact on the ability of Health and Social Care Trusts to recruit foster and kinship carers and by default a significant impact on the most vulnerable children in NI.

4. Impact of 2011 Changes on Single Room Rents

1. In January 2011 there were changes to Local Housing Allowances that have already begun to impact on foster and kinship carers and their ability to provide care for children.
2. New regulations came into force that meant for single people under 35 years of age their housing benefit claim would be restricted to the cost of shared accommodation, regardless of the kind of accommodation they currently occupied.
3. The Fostering Network is aware of a number of cases where single carers, who have no children of their own but are providing a foster or kinship placement have had their Housing Benefit reduced and have had to find the difference themselves. In one case this amounted to having to find almost £40 per week. Clearly shared accommodation was not an option for this carer and yet there is no exemption under the new regulations. (SR2011 No 293 – the Housing Benefit (Amendment No 2) Regulations (Northern Ireland) 2011.
4. The potential impact of further reducing access to housing benefit for approved foster and kinship carers could have a hugely detrimental effect on our ability to provide family based placements for children who need them.

5. Impact of Welfare Reform

1. As the Welfare Reform Bill was making its way through Westminster it became clear that it could have a significant impact on the ability of foster and kinship carers to offer a home to some of the most vulnerable children and young people.
2. A number of assurances were provided by the Westminster government in-relation to the impact of the Act on foster carers. These were:

- **Fostering Income would continue to be disregarded for the purposes of benefit calculation**
 - **The sole or main carer of fostered children under 16 would not have to seek work outside of fostering**
 - **Other exceptions may be made to reflect exceptional need**
 - **Benefit payments would run on for a period of eight weeks after a fostered child leaves the placement.**
3. The provisions under the Welfare Reform Bill in-relation to under- occupancy could both prevent people becoming foster or kinship carers and make it more difficult for those who currently are carers to continue.
4. There was some recognition of this as the Bill passed through Westminster and it was agreed to create a ring-fenced fund that would provide additional support to carers.
5. An additional sum was to be added to The Discretionary Housing Fund which would be applied to local authorities in Britain and was estimated to help 5,000 foster carers.
6. Current evidence from the Fostering Network suggests that the discretionary nature of this support has not worked well. The response is patchy with some foster carers having access to the Fund and others not. The impact of this on foster placements is a significant cause of concern.
- 7. The Discretionary Housing Fund does not operate in Northern Ireland. Therefore a compensation based solution is not possible and there is already a lack of parity.**
- 8. The Fostering Network calls on the Committee to insert an exemption into the clause in the Bill which removes entitlement to all rooms that are under-occupied for approved foster and kinship carers.**
6. **Priorities for DSD Committee**
- 6.1 The Fostering Network in NI would ask the DSD Committee in their scrutiny of the Welfare Reform Bill to write to the Minister and ask him to clearly outline the impact of the Bill on Foster and Kinship Carers and to provide similar assurances as were given in Westminster.
- 6.2 The Fostering Network would ask the DSD Committee to seek clarification from the Minister in-relation to the under occupation rule and its impact on approved foster and kinship carers. It would also ask the Committee to raise with the Minister inserting an exemption to the under occupation rule for approved foster and kinship carers.
- 6.3 The Fostering Network would further ask the Committee to clarify with the Minister if he is unwilling to give an exemption to the under occupation rule for approved foster carers and kinship carers how will he ensure they are compensated in a similar way to England.
- 6.4 The Fostering Network would also ask the DSD Committee to write to the Minister regarding the impact of the single room rent on foster and kinship carers since its introduction.

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Dr Rory O’Connell

Comment on the Welfare Reform Bill

I thank the Ad Hoc committee for the opportunity to respond to comment on the Welfare Reform Bill. I am a senior lecturer at Queen’s University School of Law and I am writing in an individual capacity.

Yours sincerely,

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I wish to comment on the ‘Household Benefit cap’ in clause 95 of the Bill. Clause 95 allows for regulations to introduce a benefit cap based on estimated average earnings.

There are several human rights issues here. In terms of human rights standards I am relying especially on the right to non-discrimination.¹ In addition there is a right to social security and a right to an adequate standard of living provided in the International Covenant on Economic Social and Cultural Rights.² The relevant principles in international human rights law suggest that **non-discrimination** is fundamental – this requires that special attention be paid to the impact of measures on vulnerable or disadvantaged groups;³ beyond that any reduction in these rights (‘retrogression’) must be shown to be justified, that is to say **a proportionate means of achieving a legitimate aim**; no reduction should result in the denial of the **minimum** core of these rights.⁴

The Joint Committee on Human Rights (JCHR) identified several possibly discriminatory effects of the equivalent measure in GB. The JCHR indicated that the cap would particularly

1 Article 14 of the European Convention on Human Rights (ECHR); Article 2 of the International Covenant on Economic Social and Cultural Rights.

2 ICESCR – Article 9 and Article 11. In certain cases the withdrawal of a social welfare or security payment may breach the right to property in the European convention on Human Rights (Article 1, Protocol 1), or may even breach the right to be free from torture, inhuman and degrading treatment in the ECHR: *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66, [2006] 1 AC 396.

3 ICESCR general comment 20 has some comments on the non-discrimination point eg para 38 “Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination.” para 41 “National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.” Available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

4 The minimum core of the right to social security is defined as:
 (a) To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies;
 (b) To ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;
 (c) To respect existing social security schemes and protect them from unreasonable interference;
 (d) To adopt and implement a national social security strategy and plan of action;
 (e) To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups;
 (f) To monitor the extent of the realization of the right to social security
 General Comment on the Right to Social Security <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement>. Footnotes omitted.

affect large families with several children;⁵ possibly members of certain ethnic minorities;⁶ single women including lone parents;⁷ and indirectly children.⁸

The DSD Equality Impact Assessment (EQIA) concludes that ‘the majority of households affected by the policy will have children’, and that the policy would likely affect more single women than single men as there are more lone single female parents.⁹ Again according to the EQIA the cap will impact on larger families.

The DSD EQIA did not address issues of equality in relation to religious belief, political opinion, racial group or sexual orientation. This is a serious concern given that the JCHR has suggested there would be a disproportionate effect on certain ethnic minorities.

The DSD EQIA indicated a number of measures of mitigation: the benefits cap would be based on the median income in England and Wales, which is higher than the NI level; households where someone receives disability living allowance constant attendance allowance or where there is a war widow will be exempt; also exempt will be households where someone is in receipt of Working Families Tax Credit; the impact on lone parents is said to be mitigated by measures to move them into work and so qualify for Working Families Tax Credit.

This EQIA raises further questions which the Committee may want to address when considering the Bill. These questions relate to whether the measure is non-discriminatory in effect as well as purpose; whether it is proportionate (appropriately tailored to achieve a legitimate aim) and whether it protects access to the minimum essential core of human rights.

- First, how feasible will it be for lone parents (who are disproportionately women according to the Department) to move into work, taking into account their child care responsibilities?
- Second, how will the impact on children be mitigated? The policy will affect particularly larger households, ie households with children. While the proposals indicate a differential cap will be set for households with children, there is no suggestion that this would be based on the number of children.
- Third, does the exemption for households where someone claims DLA sufficiently protect people with disabilities?
- Fourth, will persons subject to the household benefit cap be entitled to apply for support from any discretionary hardship fund in case of difficulties? This may be necessary to ensure that persons affected still have access to essential needs.
- Fifth, the DSD EQIA simply does not address issues of religious or political opinion, sexual orientation or racial background. The DSD EQIA did not address issues of equality in relation to religious belief, political opinion, racial group or sexual orientation. This is a serious concern given that the JCHR has suggested there would be a disproportionate effect on certain ethnic minorities.
- Sixth, it may be worth inquiring how many persons will be subject to the cap, and how the process of monitoring it will work? Will the cost of monitoring this system be greater than any savings from the cap?

5 Para 1.56 <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/23305.htm#a14>

6 Para 1.57. According to the JCHR it was estimated that 30% of persons affected would be from ethnic minorities while only 20% of the overall benefit population were from an ethnic minority.

7 Para 1.58

8 Para 1.58.

9 Available at <http://www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/eqia-welfare-reform-bill.htm>, page 27.

Irish Congress of Trade Unions Northern Ireland



The Irish Congress of Trade Unions (ICTU) is the single umbrella organisation for trade unions on the island of Ireland. The organisation is required, through its mission statement, to strive to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality

The Northern Ireland Committee (NIC) of the ICTU is the representative body for 34 trade unions with over 215,000 members across Northern Ireland. In membership terms, it is the largest civil society organisation in Northern Ireland. Information on the NIC is available on www.ictuni.org

This submission is in two parts.

Part 1 supports the submission by NICEM

Part 2 supports the submission by the Equality Coalition

Part 1

EU law issues

Welfare law is governed by EU in terms of free movement of EU migrant workers, the scope of the Race Directive 2000 and Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

NICEM has made submissions on the first two provisions.

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1. This Directive shall apply to: (a) statutory schemes which provide protection against the following risks:

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(b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a).

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1. The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns: - the scope of the schemes and the conditions of access thereto,

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"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member

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States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Secondly, the EU Charter of Fundamental Rights,² incorporated into the Lisbon Treaty, makes particular reference to “equality between women and men” in Article 23 (‘Equality between women and men’), which states:-

“Equality between women and men must be ensured in all areas, including employment, work and pay.” (emphasis added)

Thirdly, the Charter now includes a right to social security and assistance within the fundamental rights recognised by the EU. Article 34 (‘Social security and social assistance’) states:-

“1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.”

In these circumstances, we submit that provisions in the Welfare Reform Bill (and any subsequent Regulations) must be viewed from the perspective that those which may be indirectly discriminatory against women must be subject to rigorous standards of objective justification.

3 Case law on the 1979 Directive

The most significant case on the 1979 Directive is Commission of the European Communities v Kingdom of Belgium. (Social policy) [1991] EUECJ C-229/89 (7 May 1991).³ The Court applied a lower threshold of objective justification in welfare cases than it did, at that time, in employment cases. Nonetheless, justification must be established.

“19 On the other hand, if the Kingdom of Belgium can show that the means chosen meet a necessary aim of its social policy and that they are suitable and requisite for

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³ According to the judgment, the case concerned the following. “The Belgian provisions on unemployment benefit, which have remained in force after that date, accorded, in so far as the calculation of such benefit is concerned, preferential treatment to unemployed persons who in their capacity as head of household had as a dependant a spouse, a person with whom they were cohabiting, a parent or a child without income. The Commission took the view that this category was predominantly made up of men.”

attaining that aim, the mere fact that the system of allowances favours a much greater number of male workers cannot be regarded as an infringement of the principle of equal treatment.” (emphasis added)

On the facts of the case, “in the current state of Community law”,⁴ the Court accepted that Member States could favour those with dependants in their welfare policy.

4 Case law on indirect discrimination

A recent case⁵ on the non-employment provisions of the Race Directive 2000, which include ‘social security’ and ‘social protection’, shows how the Court deals with indirect discrimination cases. The Advocate General states, at paragraph 100 of his Opinion, “Article 2(2)(b) of Directive 2000/43 provides in relation to indirect discrimination that the provision, criterion or practice in question is lawful if it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, i.e. proportionate.”

We submit that, in light of the Lisbon Treaty, including the Charter, a more rigorous test of objective justification must be taken, namely:-

- 1) Does the measure have a legitimate aim?
- 2) Is the measure appropriate, or suitable, to achieve that aim?
- 3) Is the measure necessary to achieve that aim? As the Advocate General states, at paragraph 109 of his Opinion, “[a] measure is necessary where the legitimate aim pursued could not have been achieved by an equally suitable but more lenient means.”
- 4) In any event, is the measure proportionate? As the Advocate General states, at paragraph 117 of his Opinion, “[a]ccording to the principle of proportionality, measures which adversely affect a right guaranteed by EU law – here the prohibition of discrimination based on ethnic origin – must not cause disadvantages for the individual which are disproportionate to the aims pursued. In other words the legitimate aim pursued must be reconciled as far as possible with the requirements of the principle of equal treatment and the right balance must be found between the different interests involved.”

5 The 1979 Directive – ‘nominated person’

⁴ Para 22 of the judgment.

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On this point, it can be mentioned that the original intention to pay UC to a 'nominated person' within a couple may be indirectly discriminatory under the 1979 Directive.

Clause 2 of the Bill states:-

"Claims

2. -(1) A claim may be made for universal credit by—

- (a) a single person, or
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(2) Regulations may specify circumstances in which a member of a couple may make a claim as a single person."

Clause 99 of the Bill states:-

"99. In section 5 of the Administration Act (regulations about claims and payments), after subsection (2A) there is inserted—

"(2B) The power in subsection (1)(j) to make provision for the person to whom a benefit is to be paid includes, in the case of a benefit awarded to persons jointly, power to make provision for the Department to determine to which of them all or any part of a payment should be made, and in particular for the Department—

- (a) to determine that payment should be made to whichever of those persons they themselves nominate, or
- (b) to determine that payment should be made to one of them irrespective of any nomination by them."

It is submitted that the nominated person will most likely be the male partner in an opposite-sex couple.

Applying the four tests of objective justification, we can say the following:—

- 1) Does the measure have a legitimate aim? Yes, it is legitimate to have a single payment for UC.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Yes, if having a single payment is a legitimate aim, it is suitable to require a couple to nominate a recipient.
- 3) Is the measure necessary to achieve that aim? No, there has already been a concession that it is not necessary and that the payment can be split between partners.

4) In any event, is the measure proportionate? No. If the concession had not been made, payment to a nominated person in a couple could not be judged as proportionate as the entire payment would have been made predominantly to male partners in couples and the female partner would not have received any payment.

Indeed, we also submit that this provision would have not satisfied the lower objective justification test from the early 90s case against Belgium.

5.2 The 1979 Directive – other gender issues

It is also necessary to consider the gender implications of other aspects of the Bill in order to establish whether an indirect discrimination challenge can be mounted.

For example, in Congress's submissions, it is stated, in relation to Lone Parent Conditionality,⁶ "The document states that **Lone Parents with children aged 5** and over will move either to Jobseekers Allowance or Employment and Support Allowance dependant on their circumstances. The movement of Lone Parents into the full conditionality group of Jobseekers Allowance will have an adverse effect on this group and this has a **direct impact on women** as more than 96% of Lone Parents are women. The document talks of an agreement under Jobseekers Allowance but this will be replaced by a commitment and the stringent conditionality requirements will apply to this group under Universal Credit.

The document refers to increased opportunity and equality of opportunity between men and women but as Northern Ireland has no childcare strategy and Lone Parents are already dealing with cuts applied to the help for childcare this mitigation has no tangible credibility."

Applying the four tests of objective justification, we can say the following:-

- 1) Does the measure have a legitimate aim? Arguably, yes; it is legitimate to encourage lone parents with a child of 5 or over into the labour market.
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We therefore submit that this measure is not objectively justified in NI legislation.

We also submit that this measure is not objectively justified under the terms of the Commission v Belgium judgment.

6 Conclusion

All UK legislation, including devolved NI legislation, is subject to EU law, including provisions on free movement of EU workers, the Race Directive 2000 and the Equal Treatment in Social Security Directive 1979, and are subject to interpretation and application in accordance with EU Treaties, including the EU Charter of Fundamental Rights.

In this section, we have focused on the 1979 Directive and sought to show that the provisions of the Bill must be tested on the basis of 'particular disadvantages' suffered by women which cannot be objectively justified.

We have identified two issues of particular concern. First, we submit that the previous intention to provide a single UC payment to a nominated claimant is not objectively justifiable. Any attempt to renege on this concession would be subject to challenge as being indirect discrimination against women contrary to the 1979 Directive.

Secondly, we have picked up on Lone Parent Conditionality. In light of the particular circumstances of NI, in this context, the absence of a childcare strategy in NI, we submit that the imposition of conditionality on lone parents with children of 5 or over is also indirectly discriminatory against women and is also contrary to the 1979 Directive.

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NI Association for Mental Health, Disability Action and Mencap

Ad Hoc Committee on Conformity with Equality Requirements of the Welfare Reform Bill 2012

Submission of Evidence

1. Introduction

This Submission of Evidence has been prepared by Niamh (The Northern Ireland Association for Mental Health), Disability Action and Mencap. It focuses on the human rights and equality aspects of the Welfare Reform Bill, which impact disabled people¹. We consider that the work of the Ad Hoc Committee has specific relevance to disabled people in Northern Ireland.

The Ad Hoc Committee has been established under the provisions of the Northern Ireland Act 1998, consequent to the Peace Settlement. The high levels of disability in Northern Ireland, particularly of mental ill-health are related to the conflict. Further disabled people's ability to have equal access to goods and services, and employment; as well as enjoy their human rights has been significantly affected by historical under-investment in infrastructure and services.

Commentary within and outwith the Assembly on the welfare reform agenda has recognised that there will be a significant and differential impact on disabled people. It is essential that action is taken to mitigate negative impacts of welfare reform on these groups.

This submission of evidence provides:

- a summary of the legal framework for the Ad Hoc Committee
- a discussion of parity
- examples of the impact of welfare reform on disabled people; and
- recommendations that address human rights and equality concerns regarding both the primary legislation (the Welfare Reform Bill 2012) and the secondary legislation (the Regulations).

Niamh

Niamh is the largest and longest established mental health charity in Northern Ireland. We deliver community based mental health services in every constituency through Beacon and Carecall; undertake mental health research; and seek to influence public and political debate about mental health through our public affairs work and campaigns.

Disability Action

Disability Action works to ensure that people with disabilities attain their full rights as citizens, by supporting inclusion, influencing Government policy and changing attitudes in partnership with disabled people.

Disability Action is unique in its work, as it is the only Northern Ireland wide pan disability organisation working with disabled people with various disabilities; physical, mental, sensory, learning and hidden. Our work is important as one in five people in Northern Ireland has a disability.

¹ We note that this Submission of Evidence was prepared in advance of the announcements in relation to PIP by the Minister for Disability, Esther McVey MP on 13 December 2012.

Mencap

Mencap is the voice of learning disability. Everything that we do is about valuing and supporting people with a learning disability, and their families and carers across Northern Ireland. In Northern Ireland we deliver a range of services, support a membership network of local groups and clubs, and campaign for equal opportunities and chances for people with a learning disability.

2. Summary of Legal Framework for Ad Hoc Committee

2.1 The Principle of Lawfulness

The Belfast Agreement reflected a consensus political and societal desire to achieve reconciliation, tolerance and mutual trust and protection as well as serving to vindicate the human rights of all. The political parties committed themselves to “partnership, equality and mutual respect as the basis of relationships within Northern Ireland”. The *Northern Ireland Act 1998* was introduced to provide a legislative basis for and a backdrop to the new political dawn envisaged by the signatories to the Agreement.

Whilst primarily concerned with the Constitutional arrangements for power sharing, the Northern Ireland Act 1998 also mandates that the Northern Ireland Assembly and its Ministers uphold and protect the rights guaranteed to the people of Northern Ireland under the European Convention on Human Rights. This is implicit in provisions of the 1998 Act, which requires that the overarching ethos of legislative standards is to be derived from the provisions of the ECHR.

For example, section 6 of the 1998 Act provides that a provision is outside the legislative competence of the Assembly if it is incompatible with any of the Convention rights - therefore provisions introduced within any legislative framework, whether primary or secondary legislation, must be human rights compliant. More specifically, section 24 of the 1998 Act provides that a Minister² or Northern Ireland Department has no power to introduce subordinate legislation or to do any act in so far as that would be incompatible with any Convention right; therefore, should Regulations (as subordinate legislation) be introduced in furtherance of the anticipated Welfare Reform (NI) Act 2013 which are prima facie in breach of any of the ECHR rights, the Minister and/or Department will be acting unlawfully if they introduce such legislation, and a challenge to any such legislation is very likely to result in the non-compliant regulations being struck down by a Court. More commonly referred to in Northern Ireland are the equality provisions of section 75 which require a public authority to have due regard to the need to promote equality of opportunity between categories of person, which includes sexual orientation. Detailed submissions have been forwarded to the Committee on section 75, for example, by the Equality Coalition, and in the interests of avoiding duplication it is not intended to rehearse those arguments again, except to say that we strongly advocate the adherence to both the spirit and the specifics of section 75 and the ancillary structures set up to ensure compliance with it.

The Northern Ireland Act 1998 also served to provide the statutory basis for two significant post-conflict commissions: the Northern Ireland Human Rights Commission (established under sections 68-72) and the Equality Commission (established under sections 73-78). It is our view that the existence of and the expertise within these Commissions provides a purpose built structure which should be used to assess, monitor and advise the Departments as regards the compatibility and outworking of the subsequent regulations required by the general provisions of the anticipated Welfare Reform (NI) Act 2013.

Not all equality and human rights breaches may be apparent on the face of either primary or secondary legislation, and it is for this reason that both Commissions should operate as overseers of compliance as the provisions of the Act and the regulations roll out. Such a

2 “Minister”, unless the context requires otherwise, means the First Minister, the Deputy First Minister or a Northern Ireland Minister: s.7 (3)

role would allow possible breaches to be identified, assessed and rectified, without resort to expensive and protracted litigation.

Individual examples of difficulties could be analysed so that consideration could be given to whether the difficulties represent a rights breach of general application or are fact specific to that individual. This would result in either a considered approach to amending the regulation to ensure future compliance, or it could result in a context specific remedy to the individual concerned with associated learning around application of systems, etc. focused on whatever was the source of the difficulty for that individual.

2.2 Taking Due Regard of Ratified Instruments and the ECHR in Policy Making

The OFMdfM guide on policy making³ is clear that policy makers must be outward looking and use information and experiences from the regional, national, European and international situations and ‘make use of OCED and EU mechanisms etc’⁴. The policy is also clear with regard to the European Convention on Human Rights (ECHR) which the policy comments is incorporated into domestic law and warns policy makers that, “for the first time, individuals who consider that their Convention rights have been breached will be able to seek redress in the courts in Northern Ireland instead of having to incur the cost and delay of taking a case to the European Court of Human Rights in Strasbourg”.⁵

The focus of the policy guidance is compliance with the ECHR and the Human Rights Act. The OFMdfM policy guidance comments that, “where necessary, existing legislation must be examined to identify provisions which might not be compatible with the ECHR and future policy and legislation developed taking account of the ECHR, the Human Rights Act and the Northern Ireland Act”⁶.

The policy guidance from the OFMdfM reflects the current status of international agreements in the UK as stated by Assembly Research Briefing paper, which concluded that the comment that “the justifiability of the UN treaties is questionable”. However it is clear in court proceedings that UK ratified instruments are viewed by the judiciary as colouring the interpretation of the ECHR (this is illustrated in the *Burnip, Trengove, Gorry v SSWP* [2012] EWCA Civ 629 case cited in the Under-occupancy section below).

2.3 Recommendations

We recommend that the Ad Hoc Committee explicitly states in its report that both the primary legislation (the Welfare Reform Bill 2012) and the secondary legislation (the Regulations) must be human rights and equality compliant before they are passed by the Assembly in line with the provisions of the Northern Ireland Act 1998.

We recommend that the Ad Hoc Committee seeks confirmation that both Commissions will operate as overseers of compliance as the provisions of the Act and the regulations roll out in order that possible breaches are identified, assessed and rectified, without resort to expensive and protracted litigation.

We recommend that the Ad Hoc Committee demonstrate innovative leadership by considering how the primary and secondary legislation (including the systems of review, monitoring and sanctions that it establishes) comply not only with the Human Rights Act and the ECHR but also Northern Ireland’s international obligations under UK ratified instruments.

3 OFMdfM, A Practical Guide to Policy Making, <http://www.ofmdfmi.gov.uk/policy/link>

4 OFMdfM, A Practical Guide to Policy Making, <http://www.ofmdfmi.gov.uk/policy> Page 6 (website accessed December 2012)

5 Ibid page 40

6 OFMdfM, A Practical Guide to Policy Making, <http://www.ofmdfmi.gov.uk/policy> Page 41 (website accessed December 2012)

3. Parity

We recognise that parity is a central consideration in progressing the Welfare Reform Bill and Regulations through the Assembly. As members of the Northern Ireland Welfare Reform Group we share the Group's position, which is articulated in its Briefing on Parity⁷.

As an alliance of disability organisations, we are of the view that the principle of parity only works when jurisdictions are working from the same position; we are not doing this in regard to Northern Ireland with regard to: our higher incidence of disability, differing policy environment, and differing social context due to the conflict. We note that there are precedents that exist for breaking parity. We are concerned that the lack of data from the Department of Social Development generated through policy simulation models means that the full equality and human rights impacts in Northern Ireland are not possible to quantify.

3.1 Higher incidence of disability

It is widely accepted that in Northern Ireland there is a higher rate of disability. The reasons for this include the conflict, higher levels of social deprivation and ill health. There are also differences in the type of disability experienced, with a significantly higher incidence of mental health disability here.

The most recent statistics show that just over 10% of NI population is in receipt of DLA. In the last decade the proportion of working age population in receipt of DLA has risen from 8% to 9% and it is twice the rate of Britain. Research evidence would suggest that 'part of the explanation for higher receipt of DLA in Northern Ireland lies in the worse levels of ill health'.

In a research report commissioned by WAVE Trauma Centre and funded by OFMDFM, "Injured in the Troubles: the needs of individuals and their families" (May 2012), it states, "No comprehensive census of those injured is available; therefore, it is not easy to provide a definitive estimate of the number of people who are living with injury as a result of the Troubles in Northern Ireland.....This report provides an overview of the current estimates of numbers of people injured which range from 8,383 to 100,000".

In relation to economic and financial needs the report states that "injured people identified economic needs and money worries as a major stressor". It further states that "since many injured people rely entirely on the benefits system, the current review of disability benefits is causing great anxiety".

Earlier research has highlighted the prevalence of mental ill-health due to the conflict; and secondly the severity of mental ill-health related to the high levels of Post Traumatic Stress Disorder. (Bunting, Murphy, O'Neill and Ferry, 2011; Bamford Review, 2007; Appleby, 2005). The "Troubled consequences: A report on the mental health impact of the civil conflict in Northern Ireland" report, published by Commission for Victims and Survivors (October 2011), provides a detailed analysis of prevalence, help-seeking and service use.⁸

3.2 Differing policy environment

In Northern Ireland the policy environment is significantly different to the rest of the GB, and in particular disability policy. For example in England and Wales there is an Independent Living Strategy and a Disability Strategy which have key indicators and measures.

In Northern Ireland the final draft **Disability Strategy** has not yet been launched. The fact that we have had no such strategy or policy in Northern Ireland demonstrates that we are not working from a position of parity.

7 <http://www.niamhwellbeing.org/SiteDocuments/WRG%20Parity%20Briefing%20Paper%20Nov%202012%20Final.pdf>

8 This report was prepared by the Bamford Centre for Mental Health and Wellbeing at the University of Ulster in Partnership with the Northern Ireland Centre for Trauma and Transformation and Compass (Niamh's research section)

In Northern Ireland we also do not have an effective **Childcare Strategy**. A consultation has been launched on this strategy but this is only the start of the process. In England the National Childcare Strategy was launched in 1998 and updated in 2004. The fact that we have had no such strategy or policy in Northern Ireland demonstrates that there we are not working from a position of parity.

As mentioned earlier Northern Ireland does not have an Independent Living Strategy, we also do not have a system of personalisation in relation to how social care is delivered. In Part 3 of the **Welfare Reform Bill 2009** legislation was brought forward in GB in relation to Choice and Control and how disabled people are given more rights to choice and control in how they have care delivered. In Northern Ireland we did not bring forward this piece of legislation which demonstrates another area where parity does not exist for disabled people here.

Finally in relation to **disability equality legislation** disabled people in Northern Ireland do not have parity with disabled people in other areas of the UK. The Equality Act in GB strengthened the rights of disabled people in relation to discrimination legislation. However, in Northern Ireland similar legislation has not been brought forward; this demonstrates another area where parity does not exist for disabled people here.

We currently have around 175 people with a learning disability who continue to have a hospital as their home address in Northern Ireland⁹; and are waiting to be resettled into the community. This is not the case in the rest of the UK where no-one with a learning disability lives in a long stay hospital. The “Bamford Review of Mental Health and Learning Disability: Equal Lives” was published in 2005; whereas the equivalent report in Britain “Valuing People” was published in 2001. Therefore there has been greater progress in the rest of the UK in addressing inequalities that people with a learning disability have historically faced.

3.3 Differing social context

Decades of conflict have created a different social context in Northern Ireland from the rest of the UK. There has been historical under-investment in infrastructure and services that would enable disabled people to realise their human rights such as the rights to participate in public and political life, and to live independently. Examples of poor infrastructure are the lack of comprehensive accessible transport particularly in rural areas; the lack of an appropriate housing stock. Examples of poor services are the lack of appropriate childcare that would enable the parents of disabled children to engage in education, training and employment; and the lack of appropriate and accessible education and training programmes.

Further, the provisions of the Welfare Reform Bill presume a freedom of movement between different areas for education, training and employment. However, a continuing legacy of the conflict is that individuals cannot live in all areas or indeed travel through and to certain areas because of continued sectarian division.

Disabled people are vulnerable to hate crime and we consider that they will be put at greater risk if they have to travel through and / or to areas that are unsafe because of sectarianism. We note that the absence of accessible, reliable public transport means that disabled people report to our organisations that they have to use their current benefits to fund travelling by taxis in order to minimise the risk of hate crime.

For individuals whose mental ill-health is a consequence of conflict-related trauma it is not appropriate for them to be required to travel to or through areas where conflict-related events took place. The relationship between mental health and the conflict is illustrated by Niamh’s research into our day support services reported this year. 91% of our members were raised in Northern Ireland; and 36.5% reported “some” or “a lot” of political violence in their neighbourhood. 39.5% reported having personally suffered “some” or “a lot” as a result of the conflict. The impacts of the conflict reported included having to move due to intimidation

(16.7%), having personally experienced damage to their home as a result of a bomb (10.9%), experiencing personal injury as a result of cross community violence (7.7%); and having family or friends injured in cross-community violence (19.3%).

For some claimants it may be difficult to initiate discussion about these conflict-specific issues with welfare benefits assessors and officers. Therefore it is incumbent on the Assembly to amend the primary and secondary legislation to ensure that the legislation in Northern Ireland is appropriate for the differing social context.

3.4 Precedents of breaking parity

In addition to Part 3 of the Welfare Reform Bill 2009, we note that parity has been broken also in relation to: water rates, and winter fuel payments. Further we note the intentions of the Executive to break parity around a reduction in Corporation Tax and Airport Tax.

3.5 Lack of Northern Ireland Impact Data

As the Department for Social Development has not yet confirmed or published the policy simulation modelling in Northern Ireland as stated in the Equality Impact Assessment (EQIA) we are still in a situation that we do not know the number of disabled people that will be impacted by some elements of the Bill. For example, we do not know how many people will be impacted by the removal of Disability Living Allowance and the introduction of Personal Independence Payment. The only statistic available about the lack of policy modelling is from the HM Treasury – Budget 2010 Policy Costings.

It states that, “This measure will introduce an objective medical assessment and revised eligibility criteria for both new and existing working-age claims for Disability Living Allowance, to be rolled out from 2013/14. The assessment will follow a similar process to the Work Capability Assessment (WCA) used for claims to Employment and Support Allowance, with a points based system to assess eligibility to the different rates of the benefit”.

“Drawing on the evidence of the impact of the WCA, the central assumption for this policy is that it will result in a 20 per cent reduction in caseload and expenditure once fully rolled out. It is assumed that existing claimants would be reassessed over three years, with 25 per cent of the caseload reassessed in the first year, 75 per cent by the end of the second year and 100 per cent by the end of the third year¹⁰.”

So in essence we do not know how many people in NI will be impacted by this change. Using the crude 20% that was in the Chancellors budget statement in 2010 would mean that 23,400 people currently entitled to DLA will not be eligible for PIP

3.6 Recommendations

We recommend that the Ad Hoc Committee considers its scope to develop provisions that reflect the specific conditions present in Northern Ireland with regard to the: (i) higher levels of disability; (ii) different policy environment; and (iii) different social context consequent to the conflict.

We recommend that the Ad Hoc Committee seeks further data from the Department of Social Development (with regard to policy simulation modelling and the differential impact of Section 75 groups) and the Department of Finance and Personnel (with regard to the Impact Appraisal Assessment on human rights).

4. Examples of Impact

In this section we discuss key concerns with regard to the fulfilment of equality and human rights requirements by the Welfare Reform Bill and Regulations. We illustrate the issues

10 http://www.hm-treasury.gov.uk/d/junebudget_costings.pdf

raised with examples from our work with individuals with various disabilities: physical, sensory, learning, mental health and hidden.

4.1 The Principle of Reasonableness

We consider the legal principle of reasonableness to be central to the operation of welfare reform. Using the example of the Claimant Commitment under Universal Credit, it should be asked: is it reasonable for a person with a disability to be required to attend a training course or work placement in an area which may not be accessible to them due to lack of accessible transport or in a building that is not accessible?

4.1.1 Recommendations

We recommend that the Regulations clearly set out conditionality requirements for carers and disabled people; and that individual circumstances are considered at all times.

We recommend that the legal principle of reasonableness is the basis for the operation of welfare reform. This means that all parts of the social security system take into account at all times the specific circumstances of carers and disabled people; and are sufficiently flexible to reflect fluctuating and degenerative conditions, and altered circumstances.

4.2 The Principle of Legal Certainty

Fundamental to ensuring human rights and compliance is the principle of legal certainty; this is central to all disabled claimants being treated fairly and consistently. We are concerned that there is a significant scope for arbitrary treatment under the Welfare Reform Bill and Regulations.

For example under the Welfare Reform Bill there is a significantly enhanced role for the Personal Adviser. If the Personal Adviser does not have awareness, knowledge and skills to engage with an individual who has specific and potentially complex disabilities there is a significant risk of arbitrariness in how the social security system operates. Further this enhanced role could leave an individual claimant vulnerable if they complain about the conduct of or appeal the decision of the Personal Adviser.

In order to reduce arbitrary treatment and decision making; and to create legal certainty that disabled claimants will receive an appropriate service it is essential that systems are put in place to deliver consistent practice. Such systems would include: core and tailored training for public sector workers and staff employed by private contractors; clear and unequivocal guidance; supervision of practice; review and monitoring of decision making; and a complaints and appeal system that protects disabled claimants.

4.2.1 Example of Impact

The arbitrariness of the current system is illustrated by the experiences two middle aged men who have longstanding diagnoses of mental illness. They reside in supported accommodation provided by Niamh through its Beacon service – one in East Belfast, the other in South Belfast. This accommodation is staffed 24 hours per day. Both men receive support from their statutory mental health service. Both have been in receipt of Incapability Benefit and were reviewed in 2011-2012 for transitioning to Employment and Support Allowance. It is the view of the men and the services that they are not capable of training or employment; and this was communicated through the assessment forms and additional evidence provided by the statutory mental health services.

The man living in East Belfast transitioned onto ESA following a paper review of his case. The man in South Belfast experienced a year of the Social Security Agency insisting that he attend a face to face assessment despite both statutory and voluntary sector mental health services evidencing that this would be detrimental to his mental health and that he did not have the capacity to participate. After a year of social security advocacy by his services, the manager

of the accommodation where the man lived attended the Appeal Panel, which decided that he should go onto ESA on the basis of documentation and oral evidence from the service.

4.2.2 Recommendations

We recommend the development of transparent criteria for the operation of welfare reform with regard to disabled claimants.

We recommend the development of systems that ensure that disabled claimants experience consistent treatment at all stages of the social security process.

4.3 Provision of Independent Advice and Representation

Whilst we welcome the cross-party commitments and Ministerial statements to protecting the most vulnerable members of our society including disabled people, the individuals with whom we work experience an undermining of their lives through the changes to the social security system.

We have direct experience of how welfare reform has undermined already disabled people's rights to live independently, to participate in public and political life, to enjoy private and family life, and to be healthy. We consider that there is a real danger of disabled people falling into destitution if mandatory protections are not put in place. This is a serious concern in light of the severe sanctions regime that is being proposed.

4.3.1 Example of Impact

If a claimant is seriously depressed he or she may not answer their phone or their door, or open their mail. They may not be aware that they are not complying with the requirements of the social security system for example to complete an application or assessment form; to attend for assessment; or to fulfil the requirements of their claimant contract. Individuals experiencing mental illness may not have insight into how profoundly their ability to engage with education, training and employment is undermined by their current condition; and may enter into unrealistic and unhealthy commitments in their claimant contract.

Claimants with fluctuating conditions such as mental ill-health may enter into arrangements with their Personal Adviser when they are well but if their condition deteriorates, they may not be able to keep up with such agreements. Individuals who have fluctuating conditions may not understand that they need to communicate how severely their condition impacts them at a medical assessment; or they may, in their desire to recover their mental health, overestimate the pace and extent of this recovery.

In summary disabled claimants need independent advice and representation to help them negotiate the social security system particularly the radical changes created by welfare reform. The providers of this advice and representation need to have awareness, knowledge and skills to engage with disabled claimants.

4.3.2 Recommendation

We recommend the introduction of a mandatory provision of independent advice and representation to disabled claimants provided by advisers who have the awareness, knowledge and skills to engage with them.

4.4 Private Providers

The welfare reform programme gives extensive, wide ranging and core roles to private contractors. As disability organisations we have extensive negative experience of the delivery of medical assessments under the Incapacity Benefit / Employment and Support Allowance transition. Concerns about the performance of the private contractor have been well rehearsed in the media, in discussion in Westminster and the Assembly, and in reports including the Harrington Reviews and the recent report of the Public Accounts Committee.

This experience foreshadows the allocation of public funds to private contractors with regard to all aspects of welfare reform.

It has been established in law that those contractors providing goods and services on behalf of the state are considered to be carrying out duties of the state and therefore are designated as “public authorities”. As public authorities these organisations will be required to promote and protect the human rights of their service users under the provisions of the Human Rights Act and the European Convention of Human Rights.

It is implicit in this that Departments and Ministers cannot delegate equality and human rights duties through private contractual arrangements, which may seek to limit the liability of private contractors. The thread of human rights runs from the Department through to the service user by whatever means the Department uses to provide the necessary services. It is for this reason that it is essential that human rights and equality clauses are clear on the face of any contracts entered into with private contractors.

Rather than wait for legal sanctions the Department should front load checks and balances relating to human rights and equality to ensure compliance and protect service users. Such a methodology would also provide an inbuilt review system by which performance can be assessed, shortfalls addressed and failings sanctioned.

4.4.1 Recommendations

We recommend that all human rights and equality clauses are clear on the face of any contracts entered into with private contractors.

We recommend that robust systems of checks and balances relating to human rights and equality compliance are put in place including an inbuilt review system by which performance can be assessed, shortfalls addressed and failings sanctioned.

4.5 Regulations

A central requirement for compliance with human rights and equality is the creation of legal certainty. With regard to the Welfare Reform Bill, we consider that this test is not met for the following reasons.

- The draft Regulations have not been published and these will provide the detail of how the primary legislation will be implemented
- A satisfactory EQIA has not been produced by the Department of Social Development using up to date and comprehensive data
- The data from the policy simulation modelling of different components of the Welfare Reform Bill has not been published by the Department
- It is not apparent whether the Department of Finance and Personnel has produced an Impact Appraisal Assessment on human rights in line with HM Treasury Guidance.
- The absence of these documents raises the following issues.
- We do not know the baseline from which the Welfare Reform Bill will be operating;
- We do not have data on the differential impact of specific parts of the legislation on groups covered by Section 75
- We do not have the detail of how welfare reform will operate
- We do not have any evidence base to assess whether the policy intentions of welfare reform that is: (i) to return individuals to education, training and employment; and (ii) to continue to provide (and indeed redirect) social security resources in order to protect the most vulnerable in society, will be realised by the legislation.

There is no legal certainty and there are significant risks that arbitrary implementation of welfare reform will seriously impact the lives of disabled people, compromising their fundamental rights.

4.5.1 Recommendations

We recommend that the Regulations should be passed by affirmative resolution in order to ensure scrutiny by Assembly.

We recommend that the Ad Hoc Committee requests access to all relevant data including policy simulation modelling, and Impact Appraisal Assessments before making its final assessment on the Bill's human rights and equality compliance.

We recommend that the Ad Hoc Committee recommends that the Department of Social Development produces a substantial EQIA on the Welfare Reform Bill based on comprehensive and current evidence; and that it does this in a timely manner than enables firstly scrutiny by (i) the Equality Commission for Northern Ireland in fulfilment of its statutory function, and (ii) voluntary and community organisations working with Section 75 groups.

We recommend that the Ad Hoc Committee recommends that the Department of Social Development produces a substantial EQIA on the draft Regulations based on comprehensive and current evidence; and that it does this in a timely manner than enables firstly scrutiny by (i) the Equality Commission for Northern Ireland in fulfilment of its statutory function, and (ii) voluntary and community organisations working with Section 75 groups.

We recommend that the Ad Hoc Committee recommends that the Department of Finance and Personnel publishes an Impact Appraisal Assessment on human rights in line with HM Treasury Guidance for the Welfare Reform Bill, and for the draft Regulations when these are issued.

4.6 Under-Occupancy

The provisions of the Welfare Reform Bill as currently drafted will require individuals to move into smaller accommodation by reducing the amount of Housing Benefit that they receive. The requirement to move to accommodation with fewer bedrooms raises the following concerns amongst disability organisations.

- Such accommodation may not be accessible for individuals with certain disabilities.
- Such accommodation may not enable the individual to have in home care as required.
- Such accommodation may not be available in areas where the individual has established, family, peer and service support networks, or in areas where the individual feels safe.
- If such accommodation is not available an individual may be forced to move into inappropriate shared accommodation.
- Such accommodation may reduce the individual's access to their children, if they are separated.

We consider that the outworking of the under-occupancy provisions are:

- (i) disruption of social / care / health support networks, and domestic care arrangements;
- (ii) increased risk to personal safety;
- (iii) increased risk of compromising the individual's mental health and recovery;
- (iv) disruption of family life;
- (v) limitation of an individual's right to live independently;

- (vi) limitation of an individual's right to participate in public and political life;
- (vii) increased risk of destitution if the individual is unable to find appropriate alternative accommodation, remains in their home, and proceeds to get into debt with their rent and other household expenses as their income reduces.

4.6.1 Background

From April 2013 it is proposed to introduce size criteria for new and existing working age housing benefit claimants living in the social rented sector. The size criteria will replicate the size criteria that apply to claimants in the private rented sector and whose claims are assessed using the Local Housing Allowance Rules.

The EQIA states that “the impact of the measure on households containing a disabled claimant or partner suggests that a higher proportion of households containing a disabled person would be more likely to be affected by the introduction of the size criteria”.

It further states that “households containing a disabled adult and with a non-residential carer will be assessed as having a reasonable requirement for an additional room. This will have the effect of reducing the number of disabled claimants affected by the measure”.

The mitigating measure only takes into account the need for an overnight carer and does not take into account the extra space that may be needed for aids and equipment, medical equipment or to provide therapies in the home.

It also does not take into account other factors in living in a particular area, for example, being close to family or friends that provide support, accessing community service, transport and being part of the community. The provision of accessible housing options may already significantly reduce the choice a disabled person has over where to live. By implementing the housing criteria as it currently stands disabled people may not have the opportunity to live independently in their own community.

Our view is that in relation to disabled people the issue is more complex than the number of rooms. The issue is one of reasonable space, firstly for the disabled person to live and move freely, and secondly to accommodate a care-giver. Care-givers are not always family members; they may be employees with a live in status that requires more than an additional bedroom.

4.6.2 Case Law

In the case of *Burnip v. Birmingham City Council*¹¹, Mr Burnip took a case under Article 14 of the ECHR in relation to measures brought forward in the Welfare Reform Bill 2009. Mr Burnip had a severe disability which meant he needed the presence of carers throughout the night in a private rented flat in which he lived. This meant he needed a two bedroom flat. The problem was that the HB amount he received was in relation to a one bedroom flat, without taking into account the need for an additional bedroom because of disability. The claimant argued that this was unlawful discrimination under ECHR.

The Judge held that the Secretary of State had not yet established an objective and reasonable justification of the discrimination effect of the HB criteria. He considered in detail the other benefits received by the claimant, and in particular the fact that they could receive ‘discretionary housing payments’ to cover some shortfall between their HB allowance and their actual rent. However, he found that because these payments were discretionary and there was no guarantee of them being provided, they could not, by themselves, justify the discrimination.

While there has been legislative amendments to fix the problem, and this is carried over to the new bill in which it will allow for “one additional bedroom in any case where the claimant,

11 *Burnip, Trengove, Gorry v SSWP* [2012] EWCA Civ 629

or claimants partner is a person who requires overnight care” it does not give consideration to those who may need additional room for therapy and equipment.

There is also some interesting commentary in relation to the UNCPRD. Whilst the Judge reached his conclusions on discrimination without reference to the CRPD he noted that the European Court of Human Rights has “shown increased willingness to deploy international instruments as aids to construction of the ECHR”. He summarised the correct use of the CRPD as follows:

“If the correct legal analysis of the meaning of Article 14 discrimination in these circumstances of these appeals had been elusive or uncertain (which I have held that it is not), I would have resorted to the CRPD and it would have resolved the uncertainty in favour of the appellants. It seems to me that it has the potential to illuminate our approach to both discrimination and justification.”

Human rights advocates have commented that “those bringing, or thinking of bringing, disability discrimination claims in future therefore would be well advised to look at the CRPD if the domestic law or the ECHR is not clear”.

If we consider the CRPD in terms of this element of the WRB and in particular article 19 – the right to independent living and being included in the community. It states that “people with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in particular living arrangements”.

4.6.3 Example of Impact

J is 43 years old and has Downs Syndrome. He now lives in his own flat but it has taken him over twenty five years to get a home of his own. J has now been living independently for just over two years in a social housing two-bedroom flat. He did not request the two-bedroom flat, but it was the only one that was offered to him. He has now finally settled in and to him it is his “home”. Since moving in, he has adopted the extra bedroom as his “office” complete with a computer. The room also has a spare fold-out bed for family and friends to visit and stay.

J and his parents are now very concerned that he may have to move as a result of this new policy, taking him away from his local community and support networks. They feel that it would be very disruptive and affect his mental well-being. Since moving to his flat, J has for the first time felt that he also has some rights, as well as some choice over his own life. Having to move would destroy his aspiration to live more independently and would most likely have a negative knock-on effect on the many new skills he has acquired, as well as undermining his confidence.

J currently lives a relatively short distance from his parents, who support him as much as they can. He also gets 17 ½ hours support from a support worker. If J was forced to move further away from his parents and support network as a result of the changes to the Housing Benefit regime, this would most likely lead to J needing more support paid for by the State.

4.6.4 Recommendations

We recommend that the introduction of the under-occupancy provision in the Welfare Reform Bill is deferred until the housing stock in Northern Ireland matches the housing needs of disabled people in the population.

We recommend that criteria are developed to make the assessment of Housing Benefit entitlement, equitable for disabled claimants i.e. by addressing the issues raised in this section.

4.7 Reduction in the term of entitlement to benefits when in hospital / care setting

We are concerned that the intention to reduce the period that an individual is in a hospital or care setting before their benefits are stopped will have serious consequences for the individual's rights to live independently and to participate in public and political life; and may lead to destitution. We are concerned both about the intention to limit the term and also the potential delay in recommencing benefits once the individual is discharged.

Further, the requirement to pay back any hardship payment may lead to a risk of destitution. Disabled claimants struggle already to survive on benefit payments, particularly because of the additional costs of having a disability. The requirement to repay any hardship payment will undermine their ability to pay for basic necessities: accommodation costs, food, transport; and make them vulnerable to legal and illegal money lenders.

4.7.1 Background

Whether the two rates of PIP will be payable to those undergoing medical treatment as an inpatient at a hospital or similar institution when any of the costs of the treatment, accommodation or any other related treatment are met from public funds is to be determined by future regulations. This decision must take into consideration the provision of health and social care in Northern Ireland. At present Transforming Your Care and the Review of Adult Social Care are only at consultation stage. Whilst TYC is moving towards a model of more community based services the reality is that in Northern Ireland at present many community based services are not in place and therefore people are more likely to have extended stays in hospital. The difference in provision in health trust areas also needs to be taken into consideration. For example, some treatments are available in a person's home in one area and in another area they are only available with admission to hospital.

Any such future regulations must be specific to Northern Ireland and reflect our different system of health and social care provision.

Under PIP, families will lose the right to retain Motability vehicles if they spend 28 days or more as a hospital in-patient in any 365 day period. This fails to recognise how people with disabilities depend on these vehicles and how often many disabled people with complex needs have to stay in hospital. Disabled people, particularly in rural areas in Northern Ireland, do not have any other viable option for transport other than their vehicle from the Motability scheme.

At present the information in the EQIA does not demonstrate any attempt to mitigate the impact for this group. The statement in the EQIA is not relevant as the person's loss of income will not be met by the benefits outlined in the narrative.

The cumulative effect of the loss of income is not considered. For example, a person who receives low rate care will probably not qualify for support from social services. They are therefore probably using their low rate care to provide services they require to live independently, for example, help with cooking and cleaning.

As it is likely that there will be higher proportion of people in Northern Ireland impacted in comparison to their counterparts in the rest of GB then the Department has failed to measure the impact and put in place mitigating measures.

4.7.2 Recommendations

We recommend that the term of entitlement is not reduced for individuals in hospital and residential care.

We recommend that a system to reinstate benefits as soon as the person is discharged from hospital and residential care.

We recommend that the claimant does not have to repay a hardship payment.

4.8 Universal Credit

4.8.1 Severe Disability Payment

The removal of the Severe Disability Premium (SDP) under Universal Credit is a key concern. Extra support for disabled adults is built into the Universal Credit differently to the current system of premiums and tax credits. In some instances the loss of the SDP will lead to some people being less well off under the Universal Credit.

4.8.2 Families with Disabled Children

The Welfare Reform Bill EQIA illustrated the entitlement changes for household in the population pool segmented by disability. However, the EQIA does not consider the impact on disabled children and only reflects households.

Children with disabilities may also be impacted by Universal Credit. Under the new benefit there will be a 'disability addition' and a 'higher addition' for disabled children. Children who are in receipt of higher rate DLA (Care component) will get the 'higher addition', which will be paid at a similar level as now. However, those children who are currently receiving the lower level of support through the 'disability element' (because they receive low or middle rate DLA care component) will now receive the new 'disability addition' which will be worth only £27 instead of the current £54.

The NICCY report¹² found that "Large families where there is a severely disabled child are at risk of being affected by the benefit cap and this could potentially impact on the lives of 6,500 children in Northern Ireland".

4.8.3 Example of Impact

A is a twenty two year old with a learning disability who lives in Maghera with their family.

Currently, A receives Disability Living Allowance at the low rate for care and mobility. A works sixteen hours a week in paid employment. At present A uses the mobility component to pay for transport costs to travel the journey in and out of the workplace. If A did not receive this element of benefit A would simply not be in a position to afford the costs and therefore could potentially have to give up her employment.

A's mother says that A "loves her job, if A cannot for any reason get to work she become extremely frustrated." A has also studied hard for her driving license and has just, within the last month, bought a care which they are preparing for driving on the road. A has saved hard for the money to do this and is intending to use their mobility component to fuel the car. This will give A even greater independence.

A lives at home with five other members of the family, three of whom are in full time education. A's mother is a full-time carer and her father is unable to work because of a long term illness. A contributes forty pounds per week into the family household, twenty of which is her care component of DLA. A's mother has said that if A was unable to continue contributing at the current level and it was to be reduced that "there would be no food in the house at the weekend"

It is clear to see from A's story how vital benefits are to this individual and their family. If A was to lose her entitlement to DLA under the new assessment process for PIP, it would have a detrimental impact on her independence. Currently, A receives approximately £40 per week in care and mobility components of DLA. A also earns approximately £99 per week in wages (A is paid minimum wage). After contributing to the household budget, saving for a car and covering the cost of travel to work, A would then have a small budget for paying for social activities, any other transport costs and buying personal items. It is likely that if A lost her

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DLA then this would restrict her personal life and the activities they could enjoy. The outcome of having DLA withdrawn from this person will have an impact on her entire family. A is aware of the contribution she makes into the family budget and is keen for this to continue.

4.8.4 Recommendations

We recommend that the impacts of the removal of the Severe Disablement Payment are assessed and that mitigating measures are put in place.

We recommend that the EQIA on the Welfare Reform Bill and the Regulations assesses the impact on families with disabled children.

5. Concluding Comments

We welcome the recognition that welfare reform will have significant and specific impacts on disabled claimants; and that there is a cross party and Ministerial commitment to protect the most vulnerable members of our society.

We welcome any further opportunity to provide assistance to the members of the Ad Hoc Committee and the Assembly as it progresses welfare reform.

Submission by the Northern Ireland Commissioner for Children and Young People to the Ad Hoc Committee on Conformity with Equality Requirement, Welfare Reform Bill.



The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with the 2003 Commissioner for Children and Young People (NI) Order with the primary aim of safeguarding and promoting the rights and best interests of children and young people in Northern Ireland.

NICCY has a statutory duty to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to have regard to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

The Commissioner has publically stated her concerns regarding the potential impact that the Welfare Reform Bill and subsequent regulations will have on children and young people across Northern Ireland. We commissioned two reports on the issue of Welfare Reform which were launched on 26th April 2012 entitled "Welfare Reform Making Children Visible: Assessing the Impact on Children" and "Welfare Reform Making Children Visible: The Partiy Question"¹. The Commissioner also submitted written evidence to the Department for Social Development (DSD) Committee on 19th October 2012 and gave oral evidence on 25th October 2012.

The Commissioner called in her oral evidence to the DSD Committee for the Bill and subsequent regulations to be scrutinised against the standards set out in the UNCRC to ensure that the Bill and Regulations are not only Human Rights compliant but also Child Rights compliant. This submission builds on our foregoing reports and evidence from the perspective of children's rights particularly in relation to the relevant provisions of the UNCRC.

The UNCRC was the first legally binding international instrument to incorporate the full range of human rights – civil, cultural, economic, social and political.

The four core principles of the Convention are non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and respect for the views of the child (Article 12). These four principles permeate the Convention, however all the rights contained in it are indivisible and should be read in conjunction with the core principles and all of the other rights.

By agreeing to undertake the obligations of the Convention the UK, as a State Party, have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. They are also obliged to develop and undertake all actions and policies in the light of the best interests of the child and my role is to advise Government and if necessary challenge Government if this does not happen. It is with this in mind that I make my submissions to this Ad Hoc Committee.

1 <http://www.niccy.org/article.aspx?menuid=14265>

I will turn to the specific Articles of the UNCRC which are engaged and potentially infringed by the Welfare Reform bill shortly but it is important to place on record again my entire dissatisfaction regarding the EQIA which has been produced by the Department in this regard.

I wrote to the Minister in November 2011 expressing my concerns that the Department had failed to meet their statutory responsibility under Section 75 to assess the impact of these proposed policies on children and young people and asking him to review the EQIA. The Minister responded to me in December 2011 indicating that the EQIA document specifically stated the “Department does not, as a matter of course, monitor certain s75 groupings for the purposes of administering the system in Northern Ireland, primarily because benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these Section 75 categories”. I concur with the submission of the Equality Commission for Northern Ireland in their December 2011 response to the EQIA when they state:

“It is not acceptable for an EQIA to merely record that no data is available². Furthermore, in the absence of any data no comments can be made on potential effects. It is incorrect to simply assume that “social security benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these s75 categories”³

I would reiterate again, that although generally children are not direct recipients of benefits, any change to the benefits system which is paid to any member of a family, irrespective of who the claimant is, would have an impact on the children of the family.

I note that the officials in their briefing to this Ad Hoc Committee on 27th November 2012 recognise that there are data limitations in the EQIA which have been highlighted by stakeholders. I am pleased to hear that they are looking at options of how to address these deficiencies and consider the document to be a “living document”. I would urge, again, the Minister to conduct a further EQIA to ensure that the potential impacts on children and young people in particular are assessed.

At this juncture it is important to preface my specific remarks regarding the potential incompatibilities of the current Bill with children’s rights, by reiterating how difficult it is to make firm submissions in the absence of the regulations which will contain the details of the practical application of the Bill. This is a concern that I know is shared by both ECNI and the Northern Ireland Human Rights Commission and other agencies. I reiterate the call of the NIHRC for the regulations and secondary legislation to be subject to the affirmative resolution procedure in the Assembly in due course.

As set out above, the UNCRC and compliance with same should be the starting point when assessing the Bill for its impact on children’s rights. General Comment No 5 (2003) from the Committee on Children’s Rights confirms this.

In assessing the impact of the Welfare Reform Bill on children in Northern Ireland certain key rights under the UNCRC are particularly relevant. These are:

- Article 2: The right to enjoy all human rights, without discrimination.
- Article 3: That the best interests of the child must be a primary consideration.
- Article 4: State parties shall take all appropriate measures to implement children’s economic, social and cultural rights to the maximum extent of their available resources.
- Article 6: The right to live and to development “to the maximum extent possible”.

2 References to ECNI (2005): Practical Guidance on Equality Impact Assessment, para2.9 page 14.

3 Page 23 of original DSD EQIA consultation document.

- Article 7: The right for children to know and as far as possible to be cared for by their parents.
- Article 9: Children must not be separated from their parents unless it is in their best interests. Every child has the right to stay in contact with both parents unless this might harm them.
- Article 12: The right for children to participate and express their views.
- Article 16: The right to private and family life.
- Article 18: Both parents share responsibility for bringing up their child and Governments must help parents by providing services to support them, especially of the child's parents work.
- Article 19: The right to protection from maltreatment.
- Article 23: The right for disabled children to enjoy a "full and decent life", and their right to "special care" and assistance.
- Article 24: The right to enjoy "the highest attainable standard of health".
- Article 26: The right to benefit from Social Security.
- Article 27: The right to a standard of living adequate for the child's development Governments must help families who cannot afford this.
- Article 28: The right to education.

With these specific rights in mind I now turn to assess various implications of the Bill against this framework.

Regarding the proposals which impact on housing benefit, I welcomed the flexibility that the Minister was able to secure regarding direct payment to landlords. However, the proposed housing benefit cap for social housing rented sector has potential to have a major impact on children and young people as it currently stands which may infringe some of the above rights. The reduction of housing benefit on the basis of "under occupancy" may mean that single claimants may need to move to single room accommodation. This will impact on claimants who are the non-resident carer of children (accepted to be in most cases a separated father) who will be unable to offer overnight contact to their children. This could infringe upon the child's rights under Articles 7 and 9 regarding being cared for and staying in contact with both parents.

Similarly, disabled children can require an additional room for equipment etc. Again, any reduction based on under occupancy could detrimentally impact on their rights under Article 23 (children with disabilities) and Article 27 (right to an adequate standard of living).

In assessments for under occupancy there are possible implications for foster parents who may require additional bedroom on an ad hoc basis and also parents of children in temporary care, who may return home.

Further, any cap or cuts to housing benefit which may require a family to move house could cause a child to become disconnected from their community, school and/or leisure activities. All of which are protected by individual rights under the UNCRC, as well as the core rights which are read in conjunction with the specific articles.

We submit therefore that in order to uphold the rights of children in circumstances such as the above that the Department should ensure that housing benefit assessments of non resident parents, parents of disabled children, foster carers and parents of children in temporary care are conducted in such a way so as to take into account of the best interests of the children when making the decisions as to housing benefit entitlement.

The conditionality and sanction regime under the Bill has potential to infringe on the rights and best interests of children and young people (Article 3) who, in families which have potential to be sanctioned, will be impacted in relation to their standard of living (protected by Article 27). Even with the Westminster commitment to continue to pay the “child element” of benefits to “sanctioned” parents this does not go far enough to protect the rights and best interests of children in “sanctioned” families as removal of any income from household budgets will have a severe impact on children.

The proposed benefit cap has the potential to impact on the rights of children in larger families to an adequate standard of living.

The proposal to introduce Universal Credit as a new single means-tested support for working age people who are in and out of work also has potential to infringe on the rights of children and young people, particularly in relation to their Article 26 rights to social security and Article 27 rights to an adequate standard of living. Again, I welcomed the flexibilities negotiated by the Minister regarding splitting payments between joint claimants and the frequency of payments but remain concerned that the Department are working to establish criteria as to when claimants will be able to avail of these flexibilities. I am already on record as stating that the choice of payment options should lie with the claimant who should be able to simply opt in to either split payments or more frequent payments without having to satisfy any additional criteria. Having to satisfy additional criteria in order to avail of these flexibilities could lead to further stigmatisation of claimants and if these criteria cannot be met by a particular family the default payment cycle of monthly payments or payments being made to the primary claimant could result in budgeting difficulties and the associated impact on standards of living for the children of the family.

Article 26, the right to social security, has the potential to be infringed by the abolition of the Social Fund. The Social Fund and the availability of crisis funding has long been a mechanism which has assisted families in urgent hardship. If the Social Fund is not replaced by a “ring fenced alternative” which is protected in the budget, as an emergency fund for families, it will result in a failure to provide for the best interests of the child in accordance with Article 3 and is likely to result in the breach of other articles including the right to enjoy the highest attainable standard of health under Article 24, and the Article 27 right to an adequate standard of living. I remain deeply concerned that in the proposals, claimants who seek emergency funding and who have a certain level of debt or rental arrears will be refused assistance. It is these families who are already at breaking point who will be most in need of emergency crisis funding.

We have already discussed children with disabilities above but in particular I have concerns that the change from Disability Living Allowance (DLA) to Personal Independence Payments (PIP) will impact negatively on the rights of both disabled children and children of disabled parents. There are currently about 5,000 young people aged 16-20 receiving DLA. The mobility element of DLA is vital for the additional transport costs many young disabled people incur. The removal of this could result in the reduction of a young person’s independence if changes are implemented as currently envisaged and could result in a breach of Article 23 which ensures that children with disabilities have the right to live a full and decent life in conditions to promote dignity and independence.

One of the starkest examples of a prospective impact on the rights of children with disabilities is the proposal to change the eligibility criteria for qualification for contributory Youth Employment and Support Allowance. Currently there is a special arrangement whereby certain young people with long term significant or severe disabilities can qualify for Youth ESA without having to satisfy the usual National Insurance contributions which requires other claimants to have paid a minimum amount of contributions to qualify. If the proposed changes are confirmed then young people with severe disabilities will only be entitled to ESA if they satisfy the contribution conditions. This is of particular importance to certain groups

of disabled young people and failing to protect the rights of these young people may infringe Article 23 as set out in the paragraph above.

In conclusion, in order to ensure that this bill and subsequent regulations are compliant with children's rights they must be measured against the framework for the UNCRC. Only if the best interests of children and young people are a paramount consideration in the minds of your Committee and the Department will this Bill and the regulations will the ethos of the UNCRC and the rights of children be upheld. We have pointed to a number of matters which have potential to breach the specific rights of children as currently drafted. This Committee, the DSD Committee, the Assembly and the Department have an opportunity at this juncture and at the time of laying the regulations to ensure that they are assessed against the international standards to ensure their compliance with not only human rights generally but children's rights specifically. To fail to do so is to fail to uphold the rights of some of the most vulnerable members of our society.

Patricia Lewsley-Mooney

12th December 2012

The Northern Ireland Council for Ethnic Minorities (NICEM)



Company Registration No: NI. 36868
Inland Revenue Charity No: XR 11970

**Submission to the Ad Hoc Committee on Conformity with Equality Requirements,
Welfare Reform Bill 2012**

December 2012

1. Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation working to promote a society free from all forms of

racism and discrimination and where equality and human rights are guaranteed. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.²

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed. Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

Over the course of the last few months the Committee on Social Development has heard evidence from a number of groups representing the interests of women, persons with disabilities and children and the impact of the Welfare Reform Bill on those groups, as well as others, has been well documented. When NICEM presented evidence to the Committee on 31 October 2012, we informed the committee that since the Belfast Migrant Centre opened in 2010, 41% of cases related to welfare benefits. The migrants presenting to the centre are not only migrants but they are also persons with disabilities, females and persons with young families. Therefore, it is important to bear in mind, that persons with multiple identities may become the subjects of multiple discrimination as a result of the Welfare Reform Bill.

In our evidence, both oral and written, we raised concerns about the capacity of this Bill, as drafted, to treat EEA nationals differently to Irish or British citizens. In our last submission, we also mentioned that since the Welfare Reform Bill is a piece of enabling legislation, it is difficult to assess what the full impact of the new system will be as most details will be set out in the regulations, which have not yet been drafted in Northern Ireland. However, we have looked at the draft regulations in Great Britain and are concerned that the same approach will be taken in Northern Ireland, given the fact that the Bill before the Assembly today largely mirrors the Welfare Reform Act 2012 in Great Britain.

In this submission we will focus specifically on the concept of equality in domestic, international and EU law and set out the particular requirements, which the Welfare Reform Bill must comply with.

2. Legislative scrutiny and Welfare Reform Bill 2012

NICEM would like to welcome the use of Standing Order 35 in setting up this Committee to examine the equality requirements and observance of human rights in

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document “Black and Minority Ethnic Communities” or “Minority Ethnic Groups” or “Ethnic Minority” has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

relation to the Bill. Mainstreaming equality and human rights was a key element of the Belfast/Good Friday Agreement and the Assembly has a vital role to play in scrutinising the work of the Executive to ensure that equality and human rights have not been compromised in the development of law and policy.

During NICEM's evidence to the Committee on Social Development, we noted the absence of a Joint Committee on Human Rights (JCHR) (such as that in Westminster) in the Northern Ireland Assembly. NICEM would continue to argue there is a need for such a joint committee to scrutinise bills to ensure compliance with equality and human rights. However, NICEM believes there is a potential to use the petition of concern in the Assembly as a warning sign to signal the need for pre-legislative scrutiny similar to the level of scrutiny carried out by the JCHR in Westminster. This would provide ample time for the relevant government agencies, i.e. the NI Human Rights Commission and the Equality Commission NI, to provide expert evidence, which can then feed into the ad hoc committee's report and subsequently be taken as a point of departure in the relevant statutory committee.

3. The equality framework in Northern Ireland and the Welfare Reform Bill

3.1. EQIA: Section 75 requirements and monitoring data

According to the Equality Commission's Revised Guidance (2005):

“the main aim of section 75 is to ensure that equality opportunity is ‘mainstreamed’ by public authorities in their policy making, policy implementation and policy review.”³

The Commission's 2012 Outline Guide highlights that:

“the Section 75 statutory duties aim to encourage public authorities to address inequalities and demonstrate measureable positive impacts on the lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.”⁴

The Outline Guide goes on to consider the meaning of ‘due regard’ in the section 75 duty. According to the Guide, having ‘due regard’ and ‘regard’ means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of a particular duty, to any function of a public authority. Therefore, having ‘due regard’ and ‘regard’ entails taking a proportionate approach in determining the relevance of equality opportunity and/or good relations to a particular function or policy.”⁵ In our view the partially completed EQIA of the Welfare Reform Bill fails to meet the requirement of “due regard”.

³ See Chapter 1 of the Revised Guidance for discussion on mainstreaming equality, at page 1.

⁴Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities - An Outline Guide, 2002, Equality Commission for Northern Ireland, available at: http://www.equalityni.org/archive/pdf/S75_Public_Authorities_Outline_Guide.pdf

⁵ *Ibid.*

In *Brown*⁶, the closure of a post office in a rural area was challenged on the basis of failure to comply with a disability equality duty⁷, and in particular the failure to carry out a disability equality impact assessment. The Court held that public authorities did have to assess the impact their proposed policies had on equality and in order to prove they had give 'due regard' to the relevant equality needs consideration must be given to the following:

"a. When a public authority makes decisions that do or might affect an equality group, it must be made aware of its duty to have due regard to the equality goals in the equality duties. An incomplete or erroneous appreciation of these duties will mean that 'due regard' has not been paid.

b. The 'due regard' must be exercised with rigour and with an open mind. It is not a question of "ticking boxes". The duty has to be integrated within the discharge of the public functions of the authority (the equivalent Section 75 duty). It involves a conscious and deliberate approach to policy-making and needs to be thorough enough to show that 'due regard' has been paid before any decision is made.

c. If the public authority has not specifically mentioned the relevant general equality duty when carrying out a particular function, this does not mean that the duty to have 'due regard' has not been performed. However, it is good practice for the policy itself or the public authority to make reference to the duty and any code or other non-statutory guidance. This will reduce the chance of someone successfully arguing that 'due regard' has not been paid to equality considerations. This is also likely to enable a public authority to ensure that factors relevant to equality are taken into account when developing a policy.

d. It is good practice for public authorities to keep an adequate record showing that they had actually considered their equality duties and pondered relevant questions. Appropriate record-keeping encourages transparency and will discipline those carrying out the relevant function to undertake their disability equality duties conscientiously. If records are not kept, it will be difficult, evidentially, for a public authority to persuade a court that it has fulfilled its general equality duty."

When the principles developed in the *Brown* case are applied to the DSD's completed EQIA, it is clear that the requirements under section 75 have not been discharged. Having read through both the consultation EQIA document of September 2011 and the completed EQIA of April 2012, NICEM is not satisfied that the Department's completed EQIA is comprehensive. It is argued that the EQIA has only been partially completed since it does not recognise the potential adverse impact on certain groups, such as ethnic minorities due to the fact that the Department claims it does not hold information on its administrative systems. We are deeply concerned that twelve years after the entry into force of the section 75 duty, the Department has no monitoring data on race, religion, political opinion and

⁶ R(Brown) v Secretary of State for Work & Pensions [2008] EWHC 3158 (Admin).

⁷ Enshrined in the Disability Discrimination Act 2005. This is similar to the equality duty in section 75.

sexual orientation in relation to this particular policy, which the Committee is well aware will have wide reaching impact on every section of the community.

3.2. Equality Requirements: Using available data sources

Under the Racial Equality Strategy 2005-2010 the Department has appointed a Race Champion (senior management board level) to implement six shared aims of the Strategy through a departmental Action Plan. The aims relevant to the Welfare Reform Bill include the elimination of racial inequality and the promotion of equality of opportunity in all aspects of life, as well as equal access to public services.

The 2006 DSD Action Plan highlighted a lot of actions, which were to be taken forward by the Northern Ireland Housing Executive. In October 2007 the Housing Executive published the Black and Minority Ethnic and Migrant Worker Mapping Update. The update collected all relevant data on race (both settled and new migrant communities) from different sources, as well as the Executive's own data on the breakdown by ethnic origin of position 1 applicants in social housing at local government district (LGD) level, as well as the waiting list. The latest update is in February 2012⁸.

In July 2011, the OFMDFM launched the Guidance for Monitoring Racial Equality for all public authorities, which was the outcome of the inter-departmental working group, including DSD, led by the OFMDFM. NICEM indirectly involved with the Project by working with the Equality Head of the 5 Trusts, the Department of Health and OFMDFM under NICEM Ethnic Monitoring Project by pilot ethnic monitoring in the Child Health Care Hand Book and the Patient Administrative System in the hospital. The success of the pilot translated into the OFMDFM approved Guidance for Monitoring Racial Equality.

3.3. The Completed EQIA: The potential and imminent differential impacts on race

Firstly, the language and cultural barrier for ethnic minority access to public services are commonly recognised by all public authorities, including DSD. The justification of the policy applied to all regardless argument will potentially become indirect discrimination but for the ethnic group that could not be in compliance with the requirements. In this regard the new online by computerisation to implement the Bill is falling short of EQIA as the only group recognised is the older people despite without statistics but not race⁹.

The language barrier also impacts on the uptake rate of entitlements in the current benefit system. The benefit system is so complex for a non-national to understand and it can pose difficulties to apply without help or advice. We also

⁸ http://www.nihe.gov.uk/bme_and_migrant_worker_mapping_update_2012.pdf

⁹ See p.45 of the completed EQIA.

envisage that when the new Universal Credit system is put in place in April 2014 as proposed there is a big challenge to communicate the changes to the ethnic minority claimants who cannot speak English. Simply just to publish leaflets in foreign languages and the use of interpreters might not necessarily discharge all the duties under section 75. We look forward to seeing the response from the Department in this regard, particularly in terms of what mitigation factor the Department will take into consideration.

Moreover, the proposal for the administration of universal credit takes as a point of departure that all these claimants have a bank account. This is not necessarily the case for ethnic minorities, particularly for EEA nationals on jobseeker's allowance. Under the current anti-terrorism legislation persons wishing to open a bank account must have resided in the UK for at least six months and must have proof of residential address, such as tenancy agreement and/or utility bills with the name of the applicant. Therefore, the requirement to have a bank account would delay access to entitlements for minority communities.

Secondly, as already mentioned in the introduction, members of ethnic minority communities may also have other protected characteristics which is known as multiple identity. We must acknowledge that the Department has the statistics that based on the claimant's gender, marital status, dependents and disability under the current welfare benefit entitlements. We might have a situation that an ethnic minority disabled woman with no English skills and with dependent children might have more disadvantage than the local woman in similar situation. Moreover the current data set is one size to fit all situations. There are different disadvantaged groups within each data set according to their status. Regrettably, the completed EQIA does not take this into account nor does it consider the issue of multiple identities, which may lead to a claimant being in a further disadvantaged position. It may have the effect of creating further poverty, particularly for ethnic minority women on joint claim and joint assessment will leave women without income.

Due to the continued economic downturn, the impacts on the new migrant community are enormous, particularly those from the former A8 and the current A2 national. Therefore, it is crucial that 'due regard' is paid to section 75 equality of opportunity duty.

4. The equality framework in international and EU law and the Welfare Reform Bill

The right to equal treatment is a key concept of the international human rights legal framework. In addition, the right to social security is enshrined in a number of international human rights instruments to which the UK is a party. Of particular relevance to this Committee is the fact the principles of non-discrimination and equal treatment underpins human rights instruments. For example, according to Article 5 of the United Nations Convention on the Elimination of Racial Discrimination (CERD):

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(e) Economic, social and cultural rights, in particular:

...

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

Moreover, Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) (which has been incorporated into domestic law by the Human Rights Act 1998) recognises a right to property, which includes social security.¹⁰ Again, the concept of non-discrimination is enshrined in Article 14 of the Convention in terms of the enjoyment of other Convention rights. Moreover, case law has demonstrated that Article 3 of the Convention prohibits the creation of an environment, which would lead to state-enforced destitution.¹¹

The right to social security is also enshrined in Article 34 of the EU Charter of Fundamental Rights and the principle of non-discrimination is enshrined in Article 21. While the Charter only has legal effect when implementing EU law, it is highly relevant for EU migrant workers because they are exercising their EU Treaty right to free movement and therefore the Charter comes into effect. Moreover, Article 2 of the Treaty on the European Union provides:

‘[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

Similarly, Article 3 TEU states that the Union:

‘shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.’

In addition, the principle of non-discrimination on the basis of nationality is enshrined in article 45 of the Treaty on the Functioning of the European Union (TFEU).

Moreover, the Racial Equality Directive 2000/43 prohibits discrimination on the grounds of racial or ethnic origin in the provision of social protection, including social security, social advantages and access to the supply of public housing¹². The concept of discrimination as defined in the Directive includes direct and indirect discrimination as well as harassment. In relation to the Welfare Reform Bill, NICEM is particularly concerned that the administration of Universal Credit online, with the

¹⁰ *Stec v. United Kingdom* (2005) 41 E.H.R.R. SE18.

¹¹ *Regina v. Secretary of State for the Home Department (Appellant) ex parte Limbuela (FC)*, [2005] UKHL 66.

¹² Articles 2 and 3(e)(f) Directive 2000/43/EC.

requirement for an individual to have a bank account, would indirectly discriminate against migrants. As a result of anti-terrorism legislation, it is more difficult for migrants to open a bank account when they initially arrive so this could further discriminate in terms of access to benefits.

Finally, it is important to bear in mind that social security is also an area of co-ordination in EU law, and this is governed by Regulation 1408/71 and Regulation 884/2004. The principle of equality of treatment for EEA nationals is enshrined in Article 4 of EU Regulation 884/2004.

4. The compatibility of specific provisions of the Welfare Reform Bill 2012 with EU law

As already mentioned, the Welfare Reform Bill is a piece of enabling legislation and the key tenets of the proposals will be set out in the regulations. Schedule 1 of the Bill provides for regulation-making powers. Paragraph 7 of Schedule 1 provides:

7. Regulations may provide that a claimant who -
- (a) asserts a right to reside in the United Kingdom under the EU Treaties, and
 - (b) would otherwise fall within section 19, 20 or 21,¹³
- is to be treated as not falling within that section.

As already mentioned in our submission to the Committee for Social Development, this provision gives the power to directly discriminate against EU nationals (who are not British or Irish), which is unlawful under EU law. NICEM recommends that this provision be deleted from the Bill.

Lastly, as already mentioned social security is an area of coordination in EU law and therefore there are pieces of EU primary and secondary legislation which must be considered when reforming the welfare system. It should be borne in mind that infringement proceedings by the European Commission are currently ongoing on the basis of the UK's application of the right to reside test. In addition, it is unclear what particular benefits will fall within the remit of Universal Credit. At the moment there are certain EU laws regulating certain benefits, such as special non-contributory benefits.¹⁴ Thus, careful consideration must be given to the equality requirements under EU law as well as international instruments and the domestic equality framework.

Therefore, NICEM calls upon the Committee to put in place safeguards within the Bill to ensure that those provisions do not provide a pathway for discrimination in the regulations.

¹³ Sections 19-21 relate to work-related requirements.

¹⁴ These include income based JSA; Employment and Support Allowance (contribution-based); DLA mobility component; State Pension Credit). Income support used to be considered a special non-contributory benefit but has now been de-classified.

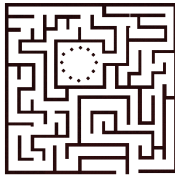
5. Further Information

For further information in relation to this submission please contact:

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THE AIRE CENTRE

Advice on Individual Rights in Europe

Observations on the Welfare Reform Bill (Northern Ireland) and Regulations pursuant to that Bill

1. The AIRE Centre is a specialist legal charity, whose mission is to promote awareness of European Law rights and to assist marginalised individuals and those in vulnerable circumstances to assert those rights.
2. The AIRE Centre makes the following observations on the Welfare Reform Bill (Northern Ireland) and future draft regulations.

Schedule 1, Paragraph 7

3. Sections 19 to 21 of the Welfare Reform Bill ('the WRB') exempt certain categories of person from some or all of the work related requirements set out in sections 15 to 18 of that Bill. Schedule 1, Paragraph 7 of the WRB purports to grant the power to draft Regulations that provide that a claimant, who would otherwise fall within the scope of sections 19 to 21, is to be treated as not falling within them if (s)he is asserting a right to reside in the UK under EU Treaties.
4. Schedule 1, paragraph 7 of the WRB, if enacted, will run contrary to basic principles of EU law because it purports to grant a wide power to discriminate against Union citizens on grounds of nationality.
5. Such discrimination is prohibited by Article 18 of the Treaty on the Functioning of the European Union states that '*within the scope of the application of the [EU] Treaties and without prejudice to any special provisions contained in them, any discrimination on grounds of nationality shall be prohibited*'. On this basis, the AIRE Centre submits that Schedule 1, para 7 of the WRB should be deleted.

Comparison with the Welfare Reform Act 2012

6. Sections 15-21 and schedule 1, para 7 of the WRB are identical in wording to their counterparts in the Welfare Reform Act 2012, which applies in England and Wales. In Westminster, draft Universal Credit Regulations have been produced. Regulation 83 of these draft regulations provides that EEA nationals asserting the right to reside in the UK as a jobseeker are to be treated as falling outside sections 19 to 21 of the Welfare Reform Act 2012. This provision discriminates on grounds of nationality *and* disability.
7. Regulation 7 of the Draft Universal Credit Regulations 2012 makes it a condition of qualifying for Universal Credit that a claimant is habitually resident in the UK. For the reasons given in paragraph 8, below, The AIRE Centre submits that this requirement is unlawful as a matter of EU law, and urges the Northern Irish administration not to include such a requirement in its own Regulations.

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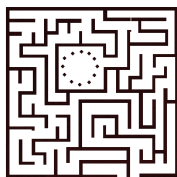


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THE AIRE CENTRE

8. Universal Credit will replace income-based Jobseeker's Allowance and Employment and Support Allowance (income-related). Both of these benefits are listed as special non-contributory benefits under Annex X of Regulation 883/04. Thus they are covered by Article 4 of Regulation 883/04, which prohibits discrimination on grounds of Nationality. The Supreme Court, in *Patmaliece* [2011] UKSC 11, found that the habitual residence test is indirectly discriminatory, and is justified on grounds independent of nationality. However, the European Commission has subsequently issued infringement proceedings against the UK on the basis that the habitual residence test, applied to special non-contributory benefits, amounts to unlawful discrimination under EU law. Whilst the Westminster administration may wish to continue to impose a legal test that violates European Union law, we urge the authorities in Northern Ireland to refrain from doing so.

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Organisation No.
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The Northern Ireland Human Rights Commission

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.¹ 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.**
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%.² 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.
16. The Government is under a positive obligation to prevent individuals from falling into destitution.³ 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.

1 HM Treasury 'The Green Book: Appraisal and Evaluation in Central Government' 2003

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

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

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.⁴ 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.⁵ Furthermore, it identified a substantial gap in demand and supply, with one childcare place for every 7.4 children.⁶
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.
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.⁷ 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.

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

5 Employers for Childcare (2012) Northern Ireland Childcare Costs Survey 2012, page 9

6 Ibid, page 53

7 See Northern Ireland Housing Executive http://www.nihe.gov.uk/welfare_reform [accessed 06.12.12]

27. In the joined cases of *Burnip, Trengove and Gorry*⁸ 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.**

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

Northern Ireland Public Sector Alliance (NIPSA)

YOUR REF

OUR REF A/AM/KB

By E-Mail

Ms Sheila Mawhinney
Committee Clerk
Ad Hoc Committee
Room 241
Parliament Buildings
BELFAST
BT4 3XX

12th December 2012

Dear Sheila

Evidence to the Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill

NIPSA is fully supportive of the Equality Coalition submission to the Ad Hoc Committee and would be co-signatory to the document.

NIPSA believes that there are a significant number of equality and human rights issues which are outlined below and forms part of the ICTU submission and the Equality Coalition submission which are appended to this report.

This submission is in two parts.

Part 1 supports the submission by NICEM.

Part 2 supports the submission by the Equality Coalition.

Part 1

EU law issues

Welfare law is governed by EU in terms of free movement of EU migrant workers, the scope of the Race Directive 2000 and Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

NICEM has made submissions on the first two provisions.

1 The 1979 Directive

There appears to have been less attention paid to the 1979 Directive. Article 3 of the Directive states:-

“Article 3

1. This Directive shall apply to: (a) statutory schemes which provide protection against the following risks:
 - sickness,
 - invalidity,
 - old age,

- accidents at work and occupational diseases,
 - unemployment;
- (b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a).
2. This Directive shall not apply to the provisions concerning survivors' benefits nor to those concerning family benefits, except in the case of family benefits granted by way of increases of benefits due in respect of the risks referred to in paragraph 1 (a)."

Article 4 states:-

"Article 4

1. The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns: - the scope of the schemes and the conditions of access thereto,
 - the obligation to contribute and the calculation of contributions,
 - the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.
2. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity."

2 Developments in EU law since the 1979 Directive

We make reference below to case law from the early 1990s of the (then) European Court of Justice on 1979 Directive. However, it is important to appreciate developments in EU law since that time.

First the Lisbon Treaty¹ specifically identifies "equality between women and men" amongst the 'Common Provisions' in the opening Articles of the Treat. Article 2 states:-

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

Secondly, the EU Charter of Fundamental Rights,² incorporated into the Lisbon Treaty, makes particular reference to "equality between women and men" in Article 23 ('Equality between women and men'), which states:-

"Equality between women and men must be ensured in all areas, including employment, work and pay." (emphasis added)

Thirdly, the Charter now includes a right to social security and assistance within the fundamental rights recognised by the EU. Article 34 ('Social security and social assistance') states:-

1 Formally known as the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (6655/2/08 REV 2, Brussels, 28 May 2010),

2 The Court of Justice of the European Union (CJEU) recognises fundamental rights, in the Charter as equivalent to Treaty rights. For example, in Case C-229/11 Alexander Heimann ([2012] EUECJ (08 November 2012), the Court, in relation to the right to annual leave, states, "The right to paid annual leave is, as a principle of European Union social law, expressly laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, which Article 6(1) TEU recognises as having the same legal value as the Treaties.

“1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.”

In these circumstances, we submit that provisions in the Welfare Reform Bill (and any subsequent Regulations) must be viewed from the perspective that those which may be indirectly discriminatory against women must be subject to rigorous standards of objective justification.

3 Case law on the 1979 Directive

The most significant case on the 1979 Directive is *Commission of the European Communities v Kingdom of Belgium. (Social policy) [1991] EUECJ C-229/89 (7 May 1991)*.³ The Court applied a lower threshold of objective justification in welfare cases than it did, at that time, in employment cases. Nonetheless, justification must be established.

“19 On the other hand, if the Kingdom of Belgium can show that the means chosen meet a necessary aim of its social policy and that they are suitable and requisite for attaining that aim, the mere fact that the system of allowances favours a much greater number of male workers cannot be regarded as an infringement of the principle of equal treatment.” (emphasis added)

On the facts of the case, “in the current state of Community law”,⁴ the Court accepted that Member States could favour those with dependants in their welfare policy.

4 Case law on indirect discrimination

A recent case⁵ on the non-employment provisions of the Race Directive 2000, which include ‘social security’ and ‘social protection’, shows how the Court deals with indirect discrimination cases. The Advocate General states, at paragraph 100 of his Opinion,

“Article 2(2)(b) of Directive 2000/43 provides in relation to indirect discrimination that the provision, criterion or practice in question is lawful if it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, i.e. proportionate.”

We submit that, in light of the Lisbon Treaty, including the Charter, a more rigorous test of objective justification must be taken, namely:-

- 1) Does the measure have a legitimate aim?
- 2) Is the measure appropriate, or suitable, to achieve that aim?
- 3) Is the measure necessary to achieve that aim? As the Advocate General states, at paragraph 109 of his Opinion, “[a] measure is necessary where the legitimate aim pursued could not have been achieved by an equally suitable but more lenient means.”
- 4) In any event, is the measure proportionate? As the Advocate General states, at paragraph 117 of his Opinion, “[a]ccording to the principle of proportionality, measures which adversely affect a right guaranteed by EU law – here the prohibition of discrimination based on ethnic origin – must not cause disadvantages for the individual which are disproportionate to the aims pursued. In other words the legitimate aim pursued must be reconciled as far as

3 According to the judgment, the case concerned the following. “The Belgian provisions on unemployment benefit, which have remained in force after that date, accorded, in so far as the calculation of such benefit is concerned, preferential treatment to unemployed persons who in their capacity as head of household had as a dependant a spouse, a person with whom they were cohabiting, a parent or a child without income. The Commission took the view that this category was predominantly made up of men.”

4 Para 22 of the judgment.

5 C-394/11 Valeri Hariev Belov [2012] EUECJ (20 September 2012)(Opinion of the Advocate General).

possible with the requirements of the principle of equal treatment and the right balance must be found between the different interests involved.”

5 The 1979 Directive – ‘nominated person’

On this point, it can be mentioned that the original intention to pay UC to a ‘nominated person’ within a couple may be indirectly discriminatory under the 1979 Directive.

Clause 2 of the Bill states:-

“Claims

2. -(1) A claim may be made for universal credit by—

- (a) a single person, or
 - (b) members of a couple jointly.
- (2) Regulations may specify circumstances in which a member of a couple may make a claim as a single person.”

Clause 99 of the Bill states:-

“99. In section 5 of the Administration Act (regulations about claims and payments), after subsection (2A) there is inserted—

“(2B) The power in subsection (1)(j) to make provision for the person to whom a benefit is to be paid includes, in the case of a benefit awarded to persons jointly, power to make provision for the Department to determine to which of them all or any part of a payment should be made, and in particular for the Department—

- (a) to determine that payment should be made to whichever of those persons they themselves nominate, or
- (b) to determine that payment should be made to one of them irrespective of any nomination by them.”.

It is submitted that the nominated person will most likely be the male partner in an opposite-sex couple.

Applying the four tests of objective justification, we can say the following:-

- 1) Does the measure have a legitimate aim? Yes, it is legitimate to have a single payment for UC.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Yes, if having a single payment is a legitimate aim, it is suitable to require a couple to nominate a recipient.
- 3) Is the measure necessary to achieve that aim? No, there has already been a concession that it is not necessary and that the payment can be split between partners.
- 4) In any event, is the measure proportionate? No. If the concession had not been made, payment to a nominated person in a couple could not be judged as proportionate as the **entire payment** would have been made predominantly to male partners in couples and the female partner would not have received any payment.

Indeed, we also submit that this provision would have not satisfied the lower objective justification test from the early 90s case against Belgium.

5.2 The 1979 Directive – other gender issues

It is also necessary to consider the gender implications of other aspects of the Bill in order to establish whether an indirect discrimination challenge can be mounted.

For example, in Congress's submissions, it is stated, in relation to Lone Parent Conditionality,⁶ "The document states that **Lone Parents with children aged 5** and over will move either to Jobseekers Allowance or Employment and Support Allowance dependant on their circumstances. The movement of Lone Parents into the full conditionality group of Jobseekers Allowance will have an adverse effect on this group and this has a **direct impact on women** as more than 96% of Lone Parents are women. The document talks of an agreement under Jobseekers Allowance but this will be replaced by a commitment and the stringent conditionality requirements will apply to this group under Universal Credit.

The document refers to increased opportunity and equality of opportunity between men and women but as Northern Ireland has no childcare strategy and Lone Parents are already dealing with cuts applied to the help for childcare this mitigation has no tangible credibility."

Applying the four tests of objective justification, we can say the following:-

- 1) Does the measure have a legitimate aim? Arguably, yes; it is legitimate to encourage lone parents with a child of 5 or over into the labour market.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Arguably, yes; if encouraging lone parents with a child of 5 or over into the labour market is a legitimate aim, it is suitable to apply conditions to them.
- 3) Is the measure necessary to achieve that aim? Arguably, no; there are other ways to encourage lone parents into the labour market without applying conditionality to them.
- 4) In any event, is the measure proportionate? No. In light of the particular circumstances of NI, where there is an absence of a childcare strategy, there will be a disproportionate impact on female lone parents.

We therefore submit that this measure is not objectively justified in NI legislation.

We also submit that this measure is not objectively justified under the terms of the Commission v Belgium judgment.

6 Conclusion

All UK legislation, including devolved NI legislation, is subject to EU law, including provisions on free movement of EU workers, the Race Directive 2000 and the Equal Treatment in Social Security Directive 1979, and are subject to interpretation and application in accordance with EU Treaties, including the EU Charter of Fundamental Rights.

In this section, we have focused on the 1979 Directive and sought to show that the provisions of the Bill must be tested on the basis of 'particular disadvantages' suffered by women which cannot be objectively justified.

We have identified two issues of particular concern. First, we submit that the previous intention to provide a single UC payment to a nominated claimant is not objectively justifiable. Any attempt to renege on this concession would be subject to challenge as being indirect discrimination against women contrary to the 1979 Directive.

Secondly, we have picked up on Lone Parent Conditionality. In light of the particular circumstances of NI, in this context, the absence of a childcare strategy in NI, we submit that the imposition of conditionality on lone parents with children of 5 or over is also indirectly discriminatory against women and is also contrary to the 1979 Directive.

6 At para 7.7.

Part 2

EU law issues

Welfare law is governed by EU in terms of free movement of EU migrant workers, the scope of the Race Directive 2000 and Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

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8 The Court of Justice of the European Union (CJEU) recognises fundamental rights, in the Charter as equivalent to Treaty rights. For example, in Case C-229/11 Alexander Heimann ([2012] EUECJ (08 November 2012), the Court, in relation to the right to annual leave, states, “The right to paid annual leave is, as a principle of European Union social law, expressly laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, which Article 6(1) TEU recognises as having the same legal value as the Treaties.

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We submit that, in light of the Lisbon Treaty, including the Charter, a more rigorous test of objective justification must be taken, namely:-

- 1) Does the measure have a legitimate aim?
- 2) Is the measure appropriate, or suitable, to achieve that aim?
- 3) Is the measure necessary to achieve that aim? As the Advocate General states, at paragraph 109 of his Opinion, “[a] measure is necessary where the legitimate aim pursued could not have been achieved by an equally suitable but more lenient means.”
- 4) In any event, is the measure proportionate? As the Advocate General states, at paragraph 117 of his Opinion, “[a]ccording to the principle of proportionality, measures which adversely affect a right guaranteed by EU law – here the prohibition of discrimination based on ethnic origin – must not cause disadvantages for the individual which are disproportionate to the aims pursued. In other words the legitimate aim pursued must be reconciled as far as possible with the requirements of the principle of equal treatment and the right balance must be found between the different interests involved.”

5 The 1979 Directive – ‘nominated person’

On this point, it can be mentioned that the original intention to pay UC to a ‘nominated person’ within a couple may be indirectly discriminatory under the 1979 Directive.

Clause 2 of the Bill states:-

“Claims

2. -(1) A claim may be made for universal credit by—
 - (a) a single person, or
 - (b) members of a couple jointly.
- (2) Regulations may specify circumstances in which a member of a couple may make a claim as a single person.”

Clause 99 of the Bill states:-

“99. In section 5 of the Administration Act (regulations about claims and payments), after subsection (2A) there is inserted—

- “(2B) The power in subsection (1)(j) to make provision for the person to whom a benefit is to be paid includes, in the case of a benefit awarded to persons jointly, power to make provision for the Department to determine to which of them all or any part of a payment should be made, and in particular for the Department—
- (a) to determine that payment should be made to whichever of those persons they themselves nominate, or

- (b) to determine that payment should be made to one of them irrespective of any nomination by them.”.”

It is submitted that the nominated person will most likely be the male partner in an opposite-sex couple.

Applying the four tests of objective justification, we can say the following:-

- 1) Does the measure have a legitimate aim? Yes, it is legitimate to have a single payment for UC.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Yes, if having a single payment is a legitimate aim, it is suitable to require a couple to nominate a recipient.
- 3) Is the measure necessary to achieve that aim? No, there has already been a concession that it is not necessary and that the payment can be split between partners.
- 4) In any event, is the measure proportionate? No. If the concession had not been made, payment to a nominated person in a couple could not be judged as proportionate as the entire payment would have been made predominantly to male partners in couples and the female partner would not have received any payment.

Indeed, we also submit that this provision would have not satisfied the lower objective justification test from the early 90s case against Belgium.

5.2 The 1979 Directive – other gender issues

It is also necessary to consider the gender implications of other aspects of the Bill in order to establish whether an indirect discrimination challenge can be mounted.

For example, in Congress's submissions, it is stated, in relation to Lone Parent Conditionality,¹² “The document states that Lone Parents with children aged 5 and over will move either to Jobseekers Allowance or Employment and Support Allowance dependant on their circumstances. The movement of Lone Parents into the full conditionality group of Jobseekers Allowance will have an adverse effect on this group and this has a direct impact on women as more than 96% of Lone Parents are women. The document talks of an agreement under Jobseekers Allowance but this will be replaced by a commitment and the stringent conditionality requirements will apply to this group under Universal Credit.

The document refers to increased opportunity and equality of opportunity between men and women but as Northern Ireland has no childcare strategy and Lone Parents are already dealing with cuts applied to the help for childcare this mitigation has no tangible credibility.”

Applying the four tests of objective justification, we can say the following:-

- 1) Does the measure have a legitimate aim? Arguably, yes; it is legitimate to encourage lone parents with a child of 5 or over into the labour market.
- 2) Is the measure appropriate, or suitable, to achieve that aim? Arguably, yes; if encouraging lone parents with a child of 5 or over into the labour market is a legitimate aim, it is suitable to apply conditions to them.
- 3) Is the measure necessary to achieve that aim? Arguably, no; there are other ways to encourage lone parents into the labour market without applying conditionality to them.
- 4) In any event, is the measure proportionate? No. In light of the particular circumstances of NI, where there is an absence of a childcare strategy, there will be a disproportionate impact on female lone parents.

12 At para 7.7.

We therefore submit that this measure is not objectively justified in NI legislation.

We also submit that this measure is not objectively justified under the terms of the Commission v Belgium judgment.

6 Conclusion

All UK legislation, including devolved NI legislation, is subject to EU law, including provisions on free movement of EU workers, the Race Directive 2000 and the Equal Treatment in Social Security Directive 1979, and are subject to interpretation and application in accordance with EU Treaties, including the EU Charter of Fundamental Rights.

In this section, we have focused on the 1979 Directive and sought to show that the provisions of the Bill must be tested on the basis of 'particular disadvantages' suffered by women which cannot be objectively justified.

We have identified two issues of particular concern. First, we submit that the previous intention to provide a single UC payment to a nominated claimant is not objectively justifiable. Any attempt to renege on this concession would be subject to challenge as being indirect discrimination against women contrary to the 1979 Directive.

Secondly, we have picked up on Lone Parent Conditionality. In light of the particular circumstances of NI, in this context, the absence of a childcare strategy in NI, we submit that the imposition of conditionality on lone parents with children of 5 or over is also indirectly discriminatory against women and is also contrary to the 1979 Directive.

Yours sincerely



ALISON MILLAR

Deputy General Secretary

docs/2012/NIPSA Submission Supporting Equality Coalition

NIPSA Support Paper - Equality Coalition Submission

Submission from the Equality Coalition to the Ad Hoc Committee on Conformity with Equality Requirements in relation to Proposals for Welfare Reform Bill

1. Introduction

The Equality Coalition is a broad alliance of non-governmental organisations whose members cover all the categories listed in section 75 of the Northern Ireland Act 1998 ('s75'), as well as other equality strands. It was founded in 1996 and was instrumental in putting equality at the forefront of the agenda at that time, specifically in relation to the Belfast/Good Friday Agreement and ultimately the public sector duty in s75.

The Equality Coalition now has over 80 members, many of which are umbrella organisations. It is co-convened by the Committee on the Administration of Justice and UNISON. The Equality Coalition continues to provide a forum for unity between all sectors when working for equality, through recognising multiple identities, mutual support between members and respect for the diversity of its members' work and views. We welcome this opportunity to submit evidence to the ad hoc committee on conformity with equality requirements ('the Ad Hoc Committee') in relation to the Department for Social Development's ('DSD') current proposals for a welfare reform bill ('the Welfare Reform Bill').

This submission will focus on the scope and application of s75; it will highlight deficiencies in the application of s75 to the Welfare Reform Bill and make recommendations on how to conform to these equality requirements. This submission will not provide detailed information on the equality impacts of each aspect of the Welfare Reform Bill or on each equality group named in s75. Several members of the Equality Coalition have submitted evidence in this regard, which we commend to the Ad Hoc Committee.

2. Understanding the Scope and Application of s75

2.1 Background

Given the enduring inequalities in our society,¹ s75 was introduced to ensure that public policy was developed and implemented in a manner that helps promote equality of opportunity and mitigate any adverse impacts² on the nine named equality groups (relating to religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability and dependants). Disadvantaged groups already suffer barriers to accessing public services and to enjoying full participation in society. It is therefore crucial to consider the impacts of policies on these groups and use policy development and implementation to promote equality of opportunity.

The existence of s75 is well known, but the requirements for fulfilling the duty in practice are often misunderstood. S75 requires that a designated public authority, such as DSD, shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity between the nine equality groups. In order to fulfil this duty, public authorities must comply with both:

- the definition of 'due regard'; and

1 Evidence of the many inequalities in our society is included in the audits of inequalities carried out over the last two years by public authorities designated under s75.

2 Namely, discriminatory detriment.

- the requirements of Schedule 9 Northern Ireland Act 1998 ('Schedule 9').

Each of these provide more detailed information to inform public authorities how to apply s75.

2.2 Definition of 'Due Regard'

'Due regard' is considered by the Equality Commission for Northern Ireland ('ECNI') to mean that 'the weight given by a public authority to the need to promote equality of opportunity is proportionate to the relevance of the particular duty to any function of the public authority.'³ For a similar public sector race equality duty in Great Britain,⁴ Dyson LJ defined due regard as:

*the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing.*⁵

The above definition has also been applied to the meaning of 'due regard' in s75 by our local High Court in 2011.⁶ In that case, the Lord Chief Justice Sir Declan Morgan, referred to other caselaw⁷ which summarised some key principles for having 'due regard'. These principles were confirmed and added to by the English Court of Appeal,⁸ as follows:

- the duty must be fulfilled before and at the time of the decision, not as justification after the fact;
- the duty is to have due regard, not to achieve results or to refer in terms to the duty (although it is good practice to keep an adequate record);
- the test of whether a decision maker has had due regard is a test of the substance of the matter, not of mere form or box-ticking,
- the duty must be performed with vigour and with an open mind;
- it is a continuing duty; and
- it is a non-delegable duty.

2.3 Requirements of Schedule 9

In addition to the need to have 'due regard', Schedule 9 provides more detailed information on how s75 is applied. It provides that an equality 'scheme shall show how the public authority proposes to fulfil the duties imposed by s75.'⁹ It specifies that each equality scheme must contain (among others):

- arrangements for assessing and consulting on the impact on equality of opportunity of policies adopted or proposed;
- arrangements for monitoring and publishing any adverse impact of such policies;
- arrangements for publishing the results of the assessments of equality impacts, including:
 - measures which might mitigate any adverse impact; and
 - alternative policies which might better achieve the promotion of equality of opportunity; and

3 ECNI, S75: A Guide for Public Authorities, April 2010, page 27.

4 S71 Race Relations Act 1976, as amended; now superseded by s149 Equality Act 2010.

5 Baker [2008] EWCA Civ 141.

6 'Tasers', JR1 Application [2011] NIQB 5.

7 Brown [2008] EWHC 3158.

8 Domb [2009] EWCA Civ 941.

9 Para 4(1) Schedule 9 Northern Ireland Act 1998.

- arrangements for ensuring and assessing public access to information and services.

Schedule 9 also requires that, in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account the assessment and consultation carried out in relation to equality impacts. It sets out procedures for complaints and investigations to ensure that public authorities do not breach any of the commitments included in their equality schemes.

In addition, Schedule 9 sets out that the equality schemes must conform to any guidelines as to form or content which are issued by ECNI with the approval of the Secretary of State ('Guidelines'). The ECNI's 2010 guide¹⁰ on s75 also contains information on how to assess a policy's impact on equality of opportunity, namely through screening and systematic analysis in equality impact assessments ('EQIA'). DSD commits to using screening and EQIAs to assess the impacts of its policies on equality in both its 2001 equality scheme¹¹ (currently in force) and its 2011 draft equality scheme (awaiting approval by the ECNI).

The ECNI has released practical guidance on EQIAs.¹² This guidance sets out the steps required to carry out an EQIA and underlines the importance of:

- the consideration of available data and research;
- the use of that information to decide whether there is (likely to be) a differential impact on a relevant group;
- consideration of measures which might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity; and
- taking into account all of the above when making a decision with respect to the proposed policy.

DSD states in its equality scheme that it will carry out EQIAs in accordance with the procedures set out in this ECNI guidance.¹³

This submission will now set out three key areas where DSD has failed to comply with the above requirements in relation to the Welfare Reform Bill, which is therefore not in conformity with equality requirements.

3. Applying s75 to the Proposals for Welfare Reform

We appreciate that DSD endeavoured to carry out a full EQIA on the Welfare Reform Bill. The draft EQIA was released for consultation in September 2011 and the final EQIA was published in April 2012. However, the Equality Coalition maintains that DSD has not fully complied with s75, due to three key deficiencies in the EQIA process.

3.1 Insufficient Consideration of Data and Research

The need for a public authority to consider fully the available data and research when applying s75 is clear from Schedule 9 and its associated guides, and also from case law on the meaning of 'due regard'. DSD did not consider all, or sufficient, data for its 2011/2012 EQIA and so has failed to comply with the equality requirements of s75.

In order for a public authority to have 'due regard' within the meaning of s75, it must consider available data. Otherwise, it would merely be guessing as to what impacts a proposed policy might have on the nine equality groups. It is clear from Schedule 9 that a public authority must 'assess' (not guess) the impacts, and so sufficient data must be required. Furthermore,

10 See <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

11 See http://www.dsdni.gov.uk/dsd_equality_scheme.pdf.

12 See <http://www.equalityni.org/archive/pdf/PracticalGuidanceEQIA0205.pdf>.

13 See para 3.6 of DSD's 2001 equality scheme.

the DSD equality scheme recognises that, without sufficient information, it is not possible to conduct meaningful analysis of the impact of its policies on all of the nine categories.¹⁴

In its practical guidance on EQIAs, the ECNI states that ‘relevant, reliable and up to date information is essential’ to carrying out an EQIA.¹⁵ It specifies the need to ‘[c]ollect and analyse existing quantitative data by relevant equality

category as a minimum base from which to judge outcomes’ and also ‘[u]se qualitative or evaluative research or information gathered by government and bodies such as voluntary, community and trade union organizations.’¹⁶

The caselaw on ‘due regard’ also makes clear that sufficient information is necessary in order to fulfil the equality duty. Several judgments have underlined the need for the statutory equality duty to be carried out in substance and with vigour,¹⁷ which is not possible without recourse to the underlying data. Indeed, not only must sufficient and relevant data be considered, but a public authority could err in not taking the correct approach to the data available, which could lead to an incorrect appreciation of the impacts arising.¹⁸

Several submissions to DSD’s original EQIA, to the DSD Committee and to the Ad Hoc Committee have outlined the deficiencies in evidence used by DSD in its 2011/12 EQIA.¹⁹ We will not duplicate the detail of these submissions but, in overview, the data used was both incomplete and out of date.²⁰ The data did not include information on most of the s75 categories or on all the policy areas covered by the Welfare Reform Bill. It also did not include the data from the Department for Work and Pension’s policy simulation model. Critically, only aspects of this data were added to the final EQIA and none of this data was included in the draft EQIA (which precluded stakeholder comment on likely impacts).²¹

Therefore, DSD did not use all data available in carrying out its EQIA, as required by statute, case law and administrative commitments. Several stakeholders have provided relevant data and evidence of impacts, both in response to the EQIA and since that time, which have not been taken into account by DSD. It is therefore necessary for DSD to reconsider its EQIA and reassess equality impacts of the Welfare Reform Bill, using all available data and research, in order to comply fully with s75 and so be in conformity with equality requirements.

3.2 Insufficient Consideration of Alternative Policies

The need for a public authority to consider alternative policies to better promote equality of opportunity when applying s75 is clear from Schedule 9 and its associated guides, and also from case law on the meaning of ‘due regard’. DSD did not consider alternative policies to better promote equality of opportunity in its 2011/2012 EQIA and so has failed to comply with the equality requirements of s75.

Schedule 9 states that a public authority must publish details of any consideration given to ‘alternative policies which might better achieve the promotion of equality of opportunity.’²² This requirement is repeated in the ECNI Guidelines on s75²³ and in DSD’s equality scheme.²⁴

14 See para 5.2 of DSD’s 2001 equality scheme.

15 ECNI practical guidance on EQIAs 2005, at page 11.

16 As above. See also pages 12 – 21.

17 Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).

18 *R (Kaur and Shah) v London Borough of Ealing* 2008] EWHC 2062 (Admin), paras 45 – 47.

19 See, for example, submissions of Welfare Reform Group, NICEM, Disability Action and Mencap.

20 This also conflicts with Schedule 9’s requirement for public access to information, see para 4(2)(f).

21 This data has still not been published in full, which also conflicts with Schedule 9’s requirement for public access to information, see para 4(2)(f).

22 Para 9(1)(b) Schedule 9.

23 At page 34.

24 At para 6.2.

In addition, the ECNI practical guidance on EQIAs states that '[t]he consideration of mitigating measures and alternative policies is at the heart of the EQIA process. Different options must be developed which reflect different ways of delivering the policy aims.'²⁵

The caselaw also supports the need to consider alternative policies in order to have 'due regard'. In a recent case on the similar statutory equality duty in Great Britain,²⁶ the High Court found that a Council's decision on a social care policy was unlawful as (among other reasons) 'there was a failure in the material prepared for consideration... to address the questions which arose when considering whether the impact... was so serious that an alternative which was not so draconian should be identified and funded to the extent necessary by savings elsewhere.'²⁷

In its 2011/2012 EQIA on the Welfare Reform Bill, DSD did not publish any consideration of alternative policies that could better promote equality of opportunity. It noted some mitigation to adverse impacts in its draft EQIA, but this is not sufficient to better promote equality of opportunity. We recognise that DSD is constrained to some extent by the parity principle, but this constraint is not absolute and should not prevent the full consideration of alternative policies, including regard to impacts on equality and other countervailing factors.

It is therefore necessary for DSD to reconsider its EQIA, including consideration of alternative policies that might better promote equality of opportunity for the nine named groups, in order to comply fully with s75 and so be in conformity with equality requirements.

3.3 Insufficient Account taken of Impacts and Consultation

The need for a public authority to take into account the assessment of equality impacts and consultation in making a decision on policy is clear from Schedule 9 and its associated guides, and also from case law on the meaning of 'due regard'. DSD did not sufficiently take into account the equality impacts and consultation stemming from its 2011/2012 EQIA and so has failed to comply with the equality requirements of s75.

Schedule 9 states that '[i]n making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account the assessment and consultation carried out' in relation to the policy's equality impacts.²⁸ This is repeated in the ECNI Guidelines on s75,²⁹ which also states that '[t]his is an important commitment and failure to comply with it could lead to complaints of failure to comply with a scheme'³⁰ The ECNI practical guidance on EQIAs also makes it clear that 'the public authority shall take into account any EQIA and consultation carried out in relation to the policy' and states that it is 'essential that the public authority fully complies with this commitment.'³¹

The practical guidance on EQIAs clarifies that '[i]t is not sufficient merely to take equality into account; it must be accorded considerable weight. That is, the need to promote equality of opportunity must be given due regard or weight in accordance with Section 75.'³² 'At this point all available information should be combined in a decision or decisions on an existing or proposed policy or policies, together with the rationale for that decision. Decision-making documentation must show how the impact of alternative policies and mitigation, and that the implications for other policies associated with the EQIA were considered.'³³ These

25 At page 29.

26 R (W) v Birmingham City Council [2011] EWHC 1147 (Admin).

27 As above, Mr Justice Walker at para 183.

28 Para 9(2) Schedule 9.

29 At page 34.

30 At page 45.

31 At page 43.

32 At para 6.1, page 43.

33 At para 6.2, page 44.

requirements are echoed in the many judgments that require the equality duty to be carried out 'with vigour and an open mind' in order for 'due regard' to be satisfied.³⁴

Although DSD lists the consultees' responses to the Welfare Reform Bill in an annex to its final EQIA, it has not sufficiently taken into account the impacts or consultation responses received. This is clear, as DSD has not changed any aspects of the policies included in the Welfare Reform Bill from the draft to the final EQIA. This suggests that DSD did not apply s75 'with vigour and an open mind'. Moreover, the final EQIA does not show any additional consideration of alternative policies or mitigation based on the consultees' evidence of impacts in their consultation responses. In addition, the evidence available in April 2012 has now been superseded by more recent research, which requires further consideration by DSD.

Therefore, in order to comply with s75 and so be in conformity with equality requirements, it is necessary for DSD to reconsider its EQIA to take fully into account all available evidence and the assessment of equality impacts and consultation when making a decision on the Welfare Reform Bill.

We understand that the Welfare Reform Bill is, in part, enabling legislation and that DSD intends to apply s75 to the future regulations on specific policies that stem from the bill.³⁵ However, any likely adverse impacts of the Welfare Reform Bill, and any possibilities to better promote equality of opportunity for the nine named groups, must be considered before the passing of the current bill. Several judgments have made clear that the duty must be fulfilled 'before and at the time of the decision.'³⁶

In one case, the High Court quashed a borough council decision as, '[o]nce the [borough] had identified a risk of adverse impact, it was incumbent upon the borough to consider the measures to avoid that impact before fixing on a particular solution. It erred in having recognised the problem whilst merely hoping to assess its extent after it had settled on its criteria.'³⁷ DSD must address the adverse impacts before legislating on the Welfare Reform Bill.

4. Conclusion – Required Action

The Ad Hoc Committee has been established to examine and report on whether the Welfare Reform Bill is in conformity with equality requirements. The Equality Coalition strongly maintains that the current Welfare Reform Bill is not in conformity with equality requirements, as DSD has not complied with s75.

In order for the Welfare Reform Bill to be in conformity with equality requirements, DSD must reconsider its EQIA and reassess the equality impacts of the Welfare Reform Bill, using all available data and research. It must consider mitigation of any adverse impacts found and also alternative policies that could better promote equality of opportunity. When taking its decision in relation to the contents of the Welfare Reform Bill, DSD must take fully into account the assessment of equality impacts and the evidence and consultation responses received from stakeholders.

We recognise that the Assembly is under time pressure to legislate on the Welfare Reform Bill but, given that DSD has not complied with s75, it is possible that further delay could be incurred through a complaint or investigation on these deficiencies. The Ad Hoc Committee cannot apply s75 on DSD's behalf, as it is not designated under s75 and the statutory equality duty is non-delegable.³⁸ **We therefore call on the Ad Hoc Committee to request that DSD reconsiders its EQIA and reassesses the equality impacts of the Welfare Reform Bill, in order to comply with s75 and be in conformity with equality requirements.**

34 Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).

35 We note that DSD only commits to screening some aspects of the derivative regulations and policies (see final EQIA). However, every policy (and regulation) stemming from the Welfare Reform Bill must be screened in order to comply with s75 and its associated ECNI guidance.

36 Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).

37 *Kaur and Shah*, reference above, at para 44.

38 Several High Court cases, confirmed by the Court of Appeal in *Domb* (case reference above).

The Northern Ireland Welfare Reform Group

The Northern Ireland Welfare Reform Group is pleased to respond to the Ad Hoc Committee Call for Evidence on the Welfare Reform Bill.

About the Welfare Reform Group

The Welfare Reform Group is an umbrella group of organisations that campaigns for positive and progressive changes to policy, service provision and legislation for those in receipt of social security while also providing advice and support to other advice giving organisations and disadvantaged persons in their capacity as individual members of the Group.

The Group supports an equality and human rights-based approach to the provision of social security which demonstrates an understanding of and focus on the needs and choices of all in receipt of benefits. In this paper we outline the significant equality and human rights issues likely to be presented by implementation of the draft Bill in Northern Ireland.

This response has been prepared by the following organisations:

- Advice NI
- Carers NI
- Committee on the Administration of Justice
- Employers for Childcare
- Gingerbread NI
- Law Centre NI
- Mencap
- Multiple Sclerosis Society NI
- NIACRO
- Niamh (The Northern Ireland Association for Mental Health)
- NICVA
- Save the Children
- Women's Resource Development Agency

Introduction

The Welfare Reform Group supports a number of the principles behind the Government's package for reform, namely, to simplify the social security system and to support people to move into and progress in work. The latter is consistent with many international human rights instruments which recognise the right to work and the right to an adequate standard of living.

Northern Ireland presents particular circumstances for welfare reform and arrangements to move people into employment. There is considerable evidence of multiple disadvantage and deprivation in Northern Ireland including lower average wages, higher fuel costs, lack of childcare provision, greater incidence of mental health, higher levels of disability and higher trends of economic inactivity. In addition, economic forecasts from a variety of sources all suggest that Northern Ireland will take longer to emerge from the recession than Britain.

The Welfare Reform Group is mindful that legislation passed with detailed scrutiny of its human rights and equality compatibility is more likely to withstand legal scrutiny. Our response is aimed at improving the proposals taking into account the specific circumstances

and needs of Northern Ireland. We believe that the Welfare Reform Bill presents significant human rights implications that require scrutiny by the Committee and further clarity from the Department.

We provide further insight into our thoughts below:

Welfare Rights and International Law

The UK is bound by a number of international human rights treaties which contain provisions relevant to the administration of social security. In addition to the European Convention on Human Rights, others include the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. These treaties do not insist on a specific type of welfare system instead allowing states to retain a “margin of appreciation” concerning the establishment of domestic systems: i.e they have considerable flexibility in completing the design. Nonetheless, these treaties do contain a number of provisions relevant to Committee’s scrutiny of this Bill for observance of human rights and conformity with equality requirements.

Human Rights Act 1998 and European Convention on Human Rights

The European Convention on Human Rights (ECHR) is regarded as a ‘living instrument’¹. The European Court of Human Rights is increasingly considering the protection of socio-economic rights under the ECHR. The UK courts, in interpreting the Human Rights Act 1998, which incorporates the ECHR into UK law, have recognized that certain rights protected under the ECHR may give rise to the protection of socio-economic rights for individuals in the UK.

Whilst the Convention set forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The mere fact that the interpretation may extend into the sphere of social and economic rights should not be a decisive factor against such a decisive interpretation; there is no water-tight division separating the sphere from the field covered by the Convention (Stec v UK 2005 , paragraph 52)

The European Convention on Human Rights sets out a series of individual rights, a number of which may be directly affected by statutory welfare systems. Article 1, Protocol 1 ECHR provides that any interference with or deprivation of established rights to property must strike a “fair balance” between the right of the individual to peaceful enjoyment of their possessions and the public interest. Welfare benefits (both contributory and non-contributory) are considered “possessions” for the purpose of this Article. Any interference or deprivation must therefore be in “in accordance with law”, and be for a legitimate aim and proportionate to that aim.

Therefore the role of the European Court is not to substitute the role of the domestic court but to consider whether the Convention principles have been applied appropriately. It often decides the legality of a provision or restriction by examining:

- Whether the provision or restriction has a legitimate aim?
- Does it correspond to meeting a pressing social need?
- It is necessary and proportionate?

¹ Tyrer v United Kingdom (1979-80) 2 EHRR 1 at para. 31.

Equality Impact Assessment

The quality of the impact assessments conducted by the Department is pivotal for analysing the potentially discriminatory impact of the Welfare Reform Bill when little of the wider detail is available.

The NI Welfare Reform Group has repeatedly expressed concern about the lack of information in the Northern Ireland Equality Impact Assessment (EQIA) about the different section 75 groups.² It makes it difficult, therefore, to provide a full and detailed commentary and assessment of the potential impact in Northern Ireland. For example, we are concerned that the EQIA does not contain sufficient information to monitor the impact on disabled people and carers. The report states that “the Analytical Services Unit will continue to work with DWP to develop a Policy Simulation Model which will better equip them to analyse the impact of policies across various section 75 groups”. The Welfare Reform Group understands that this work has yet to be completed. We are, therefore, concerned that the DSD has not met its duties in relation to monitoring the impact of the proposed reforms on disabled people and putting in place mitigating actions. In addition, the EQIA did not refer to any data from the NISALD³ survey.

With regards to persons with dependants and persons without dependants there was little consideration in the EQIA about the impact on people with caring responsibilities. For example, in relation to the time-limiting of Contributory ESA for claimants in the Work Related Activity Group it states about the proposed changes “that no adverse differential impact will arise as a direct consequence of this measure”. However, if a claimant is to lose Contributory ESA as a result of this measure, the person with caring responsibilities for him or her may be impacted due to the requirement to financially support the claimant if they do not qualify for income-based ESA and lose income as a result. Further consideration needs to be given in all areas of reform to impact on those with a disability and those with caring responsibilities to ensure that mitigating measures are put in place for them and people with disabilities.

In addition, there is a real lack of essential data about the impact of the changes which will inform planning for the implementation of Universal Credit in Northern Ireland, e.g the marginal deductions rates and participation tax rates should be broken down by the household numbers for Universal Credit in Northern Ireland. Figures have been produced for Great Britain and adjusted as changes have been made to the Universal Credit proposals. No figures have been produced to date for Northern Ireland. We recommend that the Committee seeks assurance from the Department that these figures will be produced.

The Lack of Draft Regulations

Parliamentary legislation on social security tends to follow a common pattern, whereby broad policy principles are set out in primary legislation followed by regulations providing the detail of the how these policies will be implemented. This traditional approach to welfare reform can undermine parliamentary scrutiny and therefore the ability to examine human rights and equality compliance.

The Welfare Reform Bill follows this pattern, for example, the power to introduce the size related criteria in the social rented sector is contained within the Bill, however, the level of penalty and the categories for exemptions will be set out in the regulations. Thus effective scrutiny by the Committee will be difficult to achieve as the Bill is not accompanied by draft regulations or a high quality EQIA. Indeed the extent to which the Welfare Reform Bill makes use of regulations was noted by the Joint Committee on Human Rights.⁴

2 Please refer to the Equality Coalition submission for further comment on the EQIA.

3 Northern Ireland Survey of Activity Limitation and Disability, NISRA, 2007

4 Please see <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/23302.htm>

In addition, we are concerned that many of the regulations governing critical parts of the Welfare Reform Bill will proceed through the confirmatory process with limited scrutiny only happening after the regulations have been laid. DWP in Great Britain have only just published the final version of the Universal Credit regulations. Although we do not anticipate that the Northern Ireland measures will depart radically from those presented in Great Britain we cannot comment further until the publication of these regulations.

We recommend that the Committee's scrutiny of human rights and equality compatibility extends to information provided in the secondary legislation and that the Committee calls for the draft regulations to be published without delay.

Monitoring

The limited EQIA and framework of the Bill serves to increase the importance of monitoring procedures to assess the impact on individuals' rights of the measures once in operation. Limited safeguards present only apply to specific parts of the Bill ie. the Department is required to report to the NI Assembly on the operation of the assessment process for Personal Independence Payment.

We also recommend that the Committee presses DSD to publish detailed monitoring plans for post-legislative implementation with particular attention given vulnerable groups. By way of illustration, what claiming arrangements will be made for people with a sensory, physical or learning disability in Northern Ireland? In addition, how will vulnerable groups be supported when facing destitution or other disadvantage.

Employment and Support Allowance

Contributory ESA will be time limited to one year for those in the Work Related Activity Group under the Bill. Currently contributory ESA can be paid until State Pension age. Some claimants will be able to claim income related ESA, however, claimants in the Work Related Activity Group with savings in excess of £16,000 or whose partner is in employment face a significant drop in their incomes. When introduced in GB in April there was no transitional protection, so existing claimants lost their benefit from the date of change. Those most likely to be disproportionately affected by this change will be aged 45. We would recommend figures detailing who will be impacted by this change are produced for Northern Ireland.

This measure may give rise to debate to whether it amounts to an unlawful deprivation of property contrary to Article 1 of Protocol 1 of the ECHR . We would draw the Committee's attention to the case *Kjartan Asmundsson v Iceland*. The Court found that ' as an individual was made to bear an excessive and disproportionate burden which, even having regard to the wide margin of appreciation to be enjoyed by the State in the area of social security cannot be justified by the legitimate community interests relied on by authorities'. Therefore if a claimant is a member of the groups disproportionately affected s/he may have an argument under Article P1, based on the Courts analysis in the Asmundsson.

We are also concerned that the removal of ESA in youth may contravene Article 19 of the UNCRPD which promotes the right to live independently and to be included in the community. Data is not currently held by the DSD in respect of youth cases and the information provided in the EQIA was assessed on the basis of 'Incapacity Benefit ' youth cases. According to these figures 2990 individuals are currently claiming Incapacity Benefit 'youth'. ESA in youth was introduced in October 2008 and the data has not added any of these new claims. The Committee should press the Department on this matter.

In addition, the EQIA stated that:

"Removing the 'youth' provisions will affect young disabled people. The Executive is committed to promoting employment prospects for younger people, with and without health conditions, by investing in employment support, apprenticeships and further education."

However, we have yet to see the detail of how that will be mitigated or how those who lose ESA in youth will be supported. We would urge the Committee to press the Department on this matter.

Personal Independence Payment

Currently DLA claimants have to satisfy a past presence test – they must have spent 26 weeks out of the previous 52 weeks in the UK at the point of claim and throughout an award in order to receive benefit payment. Under the new rules, it is proposed that claimants will have to have spent at least two years in UK out of the last three years before they can access Personal Independence Payment.

We are concerned that it is unclear as to how some groups will be treated for example refugees, EU citizens and returning British nationals. We would welcome further clarification on this matter.

Under occupation of Social Housing

From April 2013, it is intended to introduce size criteria for new and existing working age Housing Benefit claimants living in the social rented sector. The NIHE has projected this measure will affect approximately 26,168 tenants.

Creative solutions to the introduction of the bedroom tax in the public sector need to be found particularly with almost 50% of NIHE'S housing stock having three or more bedrooms. In evidence to the Social Development Committee, a representative of the NIHE stated:

*'If they all presented tomorrow morning, the evidence shows that we would not have the accommodation for them. If all of those people who are underoccupying presented at the front door of the Housing Executive in the morning, could we, within a week or so, move them to suitable accommodation? The answer to that is no, we could not.'*⁵

The Department for Social Development has indicated that it will mitigate the effect of this measure through the use of Discretionary Housing Payments (DHPs). We believe that mitigation for these groups should be through specific amendments to the Bill and in subsequent regulations rather than by discretionary support. We are concerned that DHPs are not an adequate alternative to Housing Benefit entitlement. Unlike Housing Benefit:

- DHPs are discretionary and are not paid as of right.
- They are paid from a limited budget, effectively meaning that if the funding runs out, the claimant loses out
- In addition, DHPs are viewed as short term and claimants are often required to reapply at short intervals or are expected to move house or reduce their rent.

Without substantive and viable alternatives in places, we are concerned that this proposal could impinge on the Article 8 right to Family Life. There are limited exemptions included within the Bill. We recommend that the definition of under-occupancy should be amended to allow claimants to have one spare bedroom where the spare bedroom serves a legitimate purpose such as a family member returning home, or is required for treatment e.g, dialyses and/or storage of large items of equipment - for example hoists, showering equipment. It should also allow for circumstances where there is no alternative accommodation available to move to. In addition, the Department should exempt households with disabled people from the measure, as well as foster families in between foster placements and prisoners who intend to return to the family home.

5 Please see SD Committee 25th October: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/October-2012/Welfare-Reform-Bill-Northern-Ireland-Housing-Executive-Briefing/>

Conditionality and sanctions

The Bill outlines the four types of work requirements that will be imposed on claimants and introduce significantly increased sanctions for claimants who fail to meet the conditionality requirements under Universal Credit. Schedule 1 Paragraph 7 provides that EU workers or jobseekers will always be placed in the 'all work related requirement group' regardless of their circumstances. This is clearly discriminatory and is likely to be unlawful, with little purpose. The Committee should ensure that no such prejudicial arrangements are introduced in Northern Ireland.

Increased conditionality and sanctions may contravene Article 3 of the ECHR which prohibits 'inhuman or degrading treatment'. It places an obligation on the state to ensure that individuals are not exposed to destitution and hardship at a level which amounts to inhuman or degrading treatment.

Under the new regime there is a risk of sanction for an individual person who may have been found fit for work but in practice is not capable of doing so and struggle to look for or maintain work. In addition, where individuals only have five days to show good reason as to why they did not comply with any particular requirement. This deadline may be unrealistic for individuals who are unwell or who have experienced a close family bereavement or who require support to read and understand implementation.

We believe the Committee should consider whether the level of sanctions is appropriate given its impact on the rest of the household including children. Due regard must be given to the impact on dependent children of sanctions applied to parents – especially the most extreme proposal to disallow benefit payments for up to three years. The Department is obliged by Article 3 of the UN Convention on the Rights of the Child to ensure the best interests of children are a primary consideration in all matters affecting children. We believe that the increase is disproportionate and the periods of sanction of 26 weeks, 52 weeks and 3 years are too long. Moreover, this will further contribute to severe child poverty and works against the grain of the Northern Ireland Executive's child poverty strategy and target to reduce severe child poverty.

The NI Welfare Reform Group is concerned that the conditionality and sanctions provision in the Bill may lead to instances of destitution. The Department has stated that the hardship regime will be introduced to protect vulnerable claimants and their families. At present the policy intention is pay 60% of the benefit entitlement and to make hardship payments recoverable. The detail of these safeguards will largely be provided in the regulations proving it difficult to assess whether they will be sufficient to prevent claimants and their families facing destitution. We recommend that the Committee's scrutiny extends to this secondary information.

Benefit Cap

The Bill proposes to introduce a benefit cap to limit the total amount that a claimant can receive linked to the average earnings of £26,000 a year. We are concerned that this is a retrogressive measure that extinguishes existing social security rights for children and disabled people in particular. The data available in England and Wales shows that the majority of households affected by the cap contain one or more children. In comparison, little information is available as to the impact of this measure in Northern Ireland.

Child Poverty

Both the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural have expressed concern at the widespread child poverty in the UK. The Child Poverty Act 2010 was designed to address this inequality by placing legally binding

targets on Executive ministers to end child poverty by 2020. This objective was reiterated in the Programme for Government. In Northern Ireland, 21% of children live in persistent child poverty, which is higher than the GB rate. More than 12%, or approximately 50,000 children, live in severe poverty.⁶ Furthermore, the extent of in-work poverty means that approximately half of children living in relative poverty are in families where one parent is working.

It is against this backdrop that the impact of the Bill's measures on children should be assessed. There is a risk of a disproportionate impact on lone parents if in the administration of conditionality and sanctions that consideration is not given to the lack of jobs with flexible working hours and the lack of good quality, accessible and affordable childcare. We foresee a number of difficulties in introducing legislative powers for this purpose in Northern Ireland when the childcare infrastructure in Northern Ireland required to underpin these proposals is not in place. It is not appropriate to simply transfer these provisions from the Westminster Act to Northern Ireland as the infrastructure to implement the proposals is not available in Northern Ireland. Arguments of parity must take into account the lack of parity of provision of accessible and affordable childcare.

Currently there are 41,003 registered childcare places in Northern Ireland⁷ (DHSSPS, 2012). There are 305,376 children between the ages of 0 -12 (NISRA, 2012). Therefore for every one childcare place that exists there are 7.4 children. However, in addition there are 73,947 children aged between 13 and 15 years of age (NISRA, 2012). Sourcing suitable childcare for this particular age group is extremely difficult for families. Most registered childcare places are not for children above the age of 12.

If the infrastructure to support the introduction of many of the clauses within the Bill is not in place, we would urge the Assembly to work on developing and implementing an effective childcare strategy to enable lone parents and others to take up work. The current consultation document does not generate confidence that a credible strategy will be ready in the near future. Further, with high unemployment the current economic climate will make it difficult for lone parents to secure jobs that allow them to combine their work and family life.

Conclusion

The NI Welfare Reform Group welcomes the opportunity to respond to this call for evidence.

We recommend that the Committee's scrutiny extends to information provided in the secondary legislation as the Bill cannot be divorced from the details contained in the Regulations. We call for the draft regulations to be published as soon as possible. We also recommend that the Committee examines and calls for enhanced procedures to monitor the impact of the Bill once implemented.

We trust you will find our comments helpful. If there is any further way in which we could contribute to this process we would welcome the opportunity to do so.

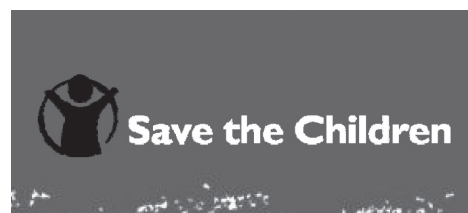
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6 Delivering Change for Children, Save the Children, June 2012

7 This figure only takes into account registered day nursery, childminding and out of school club places.

Save the Children



Submission to the Ad Hoc Committee on Conformity with Equality Requirements: Welfare Reform Bill

We understand that the Ad Hoc Committee on Conformity with Equality Requirements has been established in order to consider only and report only whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights.

Please find several comments from Save the Children in relation to these issues.

Context of Child Poverty in Northern Ireland

The latest figures show that 21% of children in Northern Ireland were living in relative poverty in 2010/11.¹ Due to the extent of in-work poverty, approximately half of children living in relative poverty are in families where one parent is working.

In Northern Ireland, 21% of children live in persistent child poverty, which is more than double the GB rate and is due largely to the legacy of the conflict.² More than 12%, or approximately 50,000 children, live in severe poverty.³

By 2014-2015 it is estimated that spending on benefits across the UK will be £18 billion less than it is now (in cash terms), with the loss to NI benefit recipients more than £600 million per year.⁴ These cuts are happening at the same time as increasing costs in everyday living (for example utility bills are up by £800 [per year??] and the average cost of a shopping basket in NI has risen by 18%⁵ since 2008), potentially pushing greater numbers of children and families into poverty.

Even before the Autumn Statement on 5 December 2012, it was predicted that child poverty will increase to 34% in Northern Ireland by 2020 unless there is progressive intervention.

Analysis of the Autumn Statement finds that families with children will be hit particularly hard by the government's decision to make below-inflation up-ratings of Child Tax Credits and Child Benefit.⁶ According to the Resolution Foundation, households in the poorest ten per cent of the population are set to lose around £150 a year (in 2012-13 prices) in 2015-16 compared with a scenario in which these changes had not been made.

Families with children will be hit particularly hard, reflecting the inclusion of Child Tax Credit and Child Benefit in the decision - single parents stand to lose an average of nearly £330 (in 2012-13 prices), or 1.5 per cent of post-tax income in 2015-16.

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- 1 NISRA (2012) 'Poverty in Northern Ireland: 2010/11', http://www.dsdni.gov.uk/ni_poverty_bulletin_2010-11__release_document_.pdf
 - 2 Monteith, M., Lloyd, K., McKee, P. (2008) 'Persistent Child Poverty in Northern Ireland', Save the Children, ARK and ESCR
 - 3 Save the Children (2012) 'Delivering Change for Children'
 - 4 Tomlinson, M., Kelly, G. (2011) Response to NI's draft budget, Poverty and Social Exclusion in the UK Project, p.1
 - 5 McNeilly, C. (2012) 'Revealed: how weekly grocery bills have soared in four years' www.belfasttelegraph.co.uk/news/local-national/northern-ireland/revealed-how-weekly-grocery-bills-have-soared-in-four-years-16200579.html
 - 6 Whittaker, M. (2012) 'Resolution Foundation analysis of the 2012 Autumn Statement', Resolution Foundation, <http://www.resolutionfoundation.org/publications/resolution-foundation-analysis-2012-autumn-stateme/>
-

Changes to tax and benefit cuts will hit Northern Ireland harder than any other region in the UK apart from London, according to the Institute of Fiscal Studies. This is due to the high numbers of those in receipt of Disability Living Allowance (DLA), including for mental health disorders, and the high number of families with children who will be adversely affected by cuts to social security.⁷

Government Obligations – Child Poverty Act 2010 and Children’s Rights

Each Executive Minister has a statutory obligation to meet the targets set by the Child Poverty Act 2010, reiterated in the Programme for Government 2011-15. The Executive has also agreed the need for an outcomes-based child poverty action plan and an overarching Delivering Social Change framework across all departments.

In addition to UK and NI legislative and policy commitments to eradicate child poverty, the NI Executive is bound by the UN Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under the UNCRC, Ministers have an obligation to ensure that the best interests of the child is a primary consideration in decision-making that will affect their lives. Further, children have the right to an adequate standard of living and the right to social security. This means that each Minister is required to demonstrate how their decisions contribute to ending child poverty, improving outcomes for children and fulfilling their rights.

The UN Committee on Economic, Social and Cultural Rights has written to governments urging the prioritisation of human rights in times of economic crisis. The letter calls on States Parties to:

*avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights... apart from being contrary to their obligations under the Covenant [on economic, social and cultural rights], the denial or infringement of economic, social and cultural rights by States Parties to the Covenant can lead to social insecurity and political instability and have significant negative impacts, in particular, on disadvantaged and marginalized individuals and groups.*⁸

Best Interests of the Child– Housing Element

We argue that the best interests principle, Article 3 of the UNCRC, should be the organising principle for assessing priorities and policies within Welfare Reform proposals.

The Housing Executive has explained that it has more than 26,000 tenancies with the potential to under-occupy either one or two bedrooms, which means that their tenants will have to find approximately £7 to £15 per week out of Universal Credit to cover the shortfall.

There is consensus that Northern Ireland does not have suitable alternative accommodation. This circumstance, compounded by the segregated nature of housing, will make it very difficult for tenants to move, despite the likelihood of increasing debt and arrears.

DSD cites the provision of discretionary housing payments (DHPs) as mitigation. However, under the proposed new Discretionary Support Policy, DHPs will move from housing benefit to merge with the reformed Social Fund. The Social Fund’s crisis loans and community care grants will no longer be treated as ‘social security’ and their reform will result in the development of a new fund, representing a transfer from Annually Managed Expenditure to the block grant.

7 Browne, J. (2010) The Impact of Tax and Benefit Reform to be introduced between 2010/11 and 2013/14 in Northern Ireland, IFS Briefing Note 114, p. 4

8 <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

These funds have provided a much needed source of help for families with no access to other loans or credit. DSD research shows the extent of demand – 2010/11 saw 48,000 applications for Community Care Grants totalling £13.75m and 159,000 applications for Crisis Loans totalling £16.41m. More than half of the awards of Community Care Grants are to lone parents. Discretionary housing payment amounts to approximately £3m a year.

The consultation on the discretionary support policy revealed that the client's solvency should be one of the proposed eligibility criteria. At a time of increasing debt and arrears, it is imperative that the Department

- reviews this criterion;
- ringfences the DHPs for housing support;
- clarifies the amount of payment (and the length of time) and the need for a replacement appeals procedure.
- Furthermore, as part of the Welfare Reform Group we have made the following recommendations:
 - Social housing that is deemed to be under-occupied, but has children living there, should be exempt from a reduction in housing benefit.
 - Households with children should be exempt from moving to cheaper housing until it is clear that suitable properties are available in the thirtieth percentile of rents.
 - Non-resident parents should be exempt from the shared room requirement in relation to housing benefit. They may have informal access arrangements to their children, which raises significant child protection concerns around visits to parents residing in houses in multiple occupation (HMOs).
 - A consequence of the new housing occupancy rules is that parents whose children are in short-term care need to retain spare bedrooms, for any chance of their children being returned.
 - Exemptions/discretionary housing payments for families with a child in short-term care should also be considered in Northern Ireland.

It is important to note that our research is picking up the extent of children's anxiety about their parents' worries.⁹ If debt and arrears place their homes at risk, it is impossible to overstate the impact of leaving behind their home, school and network of friends – on their health, wellbeing, sense of security and education.

Best Interests of the Child – Disability and Housing

There is a higher incidence of disability in NI than anywhere else in the UK, with 21% of adults and 6% of children having a disability here.¹⁰ Research shows that disabled children and children with disabled parents are more likely to be severely poor and more at risk of persistent poverty.¹¹ Furthermore, child poverty rates are underestimated by up to 3% due to the lack of recognition of the cost of disability in the current HBAI survey methodology. The cost of bringing up a disabled child is estimated as being at least three times as much as bringing up a non-disabled child.

Under the current system, families who are on a low income or out of work and who have a child in receipt of Disability Living Allowance (DLA) are entitled to a 'disability addition' worth

9 Whitham, G. (2012) 'Child poverty in 2012: It shouldn't happen here', Save the Children <http://www.savethechildren.org.uk/resources/online-library/child-poverty-2012-it-shouldnt-happen-here>

10 DHSSPS (2012) Physical and Sensory Disability Strategy and Action Plan 2012 – 2015, DHSSPS

11 Monteith, M., Casement, E., Lloyd, K., McKee, P. (2009) Taking a closer look; child poverty and disability, ARK, Family Fund and Save the Children

£53.62 per week. Families with a child in receipt of the high rate care component of DLA also receive a 'top up addition' worth an additional £21 per week. Under the new system, most families will receive an addition worth less than 50% the current rate, although some severely disabled children will avoid this cut. The changes are likely to cost families up to £1366 a year.

Many of these families with a disabled child have adapted properties and need the extra space – they must not be further penalised by the threat of a bedroom tax. In GB it was advised that £30m per year will be added to the discretionary housing benefit for families with a disabled child who have adapted properties and need the extra space.

- We suggest mitigation through amendments to the bill and subsequent regulations rather than by discretionary support.
- This £30m also includes additional funding for foster carers in GB and we suggest similar mitigation through amendments to the bill and regulations.

Best Interests of the Child – Childcare

A key objective of Welfare Reform is to support those who are able to take up or remain in employment, and access to affordable, good quality childcare is an essential element in a parent's decision about work.. Save the Children research shows that many low income mothers are considering leaving work because they can't afford childcare.¹²

It is unclear at this stage how support for childcare costs will be included within Universal Credit. At the moment, families in Northern Ireland are paying 44% of their income for childcare for one child, which is the highest amount in Europe.¹³ Until recently, low-income working parents could claim support for up to 80% of childcare costs through the childcare element of working tax credit. This was cut to 70% from April 2011, resulting in some families losing as much as £1500 a year.

Notwithstanding the recent proposed childcare strategy, Northern Ireland still has no equivalent of the Childcare Act 2006, which includes in GB the duty to secure adequate childcare that allows parents to take up or remain in work and to undertake education or training that assists in obtaining work.

Without an adequate childcare strategy, a statutory duty and comprehensive childcare provision in NI, it is difficult to see how the new system can be effectively implemented here.

Provision for lone parents

Currently, lone parents in Northern Ireland are exempt from certain earlier welfare reforms applied in GB. For example, compared to every fortnight in GB, lone parents in Northern Ireland sign on for work-focused interviews every 13 weeks. The Jobseeker's Allowance (Lone Parents) (Availability for Work) Regulations (Northern Ireland) 2010 provide a guarantee that lone parents with a youngest child of 12 or under who receive a jobseeker's allowance will have the right to restrict their availability for work to their children's school hours. They augment other flexibilities including the ability of lone parents to limit their availability for work to a minimum of 16 hours a week, to refuse a job or leave employment if childcare is not available and the requirement on personal advisers to take the well-being of any child into account when drawing up a jobseeker's agreement.

The Welfare Reform Act 2010 also requires the best interests of the child be taken into account when making a job-seeker's agreement for lone parents.

12 Whitham, G. (2012) 'Ending Child Poverty: Ensuring Universal Credit supports working mums', Save the Children

13 Dennison, R. and Smith, N. (2012) Northern Ireland Childcare Cost Survey 2012, Employers for Childcare

Proposed changes affecting childcare

However, conditionality and sanctions are to be increased under Universal Credit. At the moment claimants in part-time work on tax credits are not expected to seek additional work. But according to GB regulations, it would appear that benefits will be cut from those in work if they do not meet an earnings threshold equal to minimum wage rates for a 35 hour week. They will be expected to earn more from working extra hours, getting better pay or an additional job. This is at a time when hundreds of people are chasing every job and those jobs are likely to be part-time or zero contract hours.

Moreover, this would seem to run counter to last year's extension of childcare support to those working in 'short hours jobs' when the Coalition government announced that Universal Credit will provide childcare funding for parents who are working fewer than 16 hours a week.

On the other hand, modelling work carried out on behalf of Save the Children shows that Universal Credit could have negative impacts on work incentives for many low-income families, especially lone parents working more than 16 hours per week and second earners.¹⁴ A single parent with two children, working full-time on or around the minimum wage, could be as much as £2,500 a year worse off under the new system.¹⁵

We therefore suggest the following:

- The need for clarification about the apparent conflicting provisions and proposals.
- Retention of the 2010 Lone Parent exemptions given this confusion, the lack of progress in childcare provision and the lack of employment opportunities. The new conditionality regime should not be applied to Northern Ireland.
- The Welfare Reform Act 2010 stipulates that the best interests of the child must be taken into account when producing job seeker plans for lone parents. This should be extended into this bill and extended to carers in couple households.
- DSD should cost the option of using the Social Protection Fund to support the shortfall for lone parents and low income parents.

Conclusion

The proposals should be assessed against the obligations under the UNCRC, ICESCR and the Child Poverty Act, including how departmental decisions will contribute to improving outcomes for children and ending child poverty by 2020. These decisions incorporate funding allocations and spending, and we would argue that they must include the Social Protection Fund, the Discretionary Support Policy (including DHPs) and forthcoming decisions on passported benefits and rates rebates.

It is important to note that our research is picking up the extent of children's anxiety about their parents' worries.¹⁶ It reports that 14 per cent of children in poverty say they go without a winter coat, for example, or that 13 per cent have stopped asking their parents for anything at all. If debt and arrears place their homes at risk, it is impossible to overstate the impact of leaving behind their home, school and network of friends – on their health, wellbeing, sense of security and education.

A child rights approach is more important than ever in framing discussions about austerity measures and welfare 'reform'. If the Assembly and Executive are serious about meeting their commitments to develop a more prosperous, equal and shared society, as set out by the Delivering Social Change framework, the Programme for Government and the obligations

14 Whitham, G. (2012) 'Ending Child Poverty: Ensuring Universal Credit supports working mums', Save the Children

15 Whitham, G. (2012) 'Ending Child Poverty: Ensuring Universal Credit supports working mums', Save the Children

16 Whitham, G. (2012) 'Child poverty in 2012: It shouldn't happen here', Save the Children <http://www.savethechildren.org.uk/resources/online-library/child-poverty-2012-it-shouldnt-happen-here>

under the Child Poverty Act and UNCRC, political leaders must focus on those as priorities and ensure that they refrain from entrenching segregation and disadvantage.

December 2012

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Save the Children works in more than 120 countries. We save children's lives.

We fight for their rights. We help them achieve their potential.

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Sinn Fein

The Welfare Reform bill has been identified as the most fundamental change in welfare policy since the inception of the Welfare State. Yet despite universal acknowledgement of its significance the Department of Social Development has failed to meet its obligations both in terms of providing a timely and full human right memorandum and a robust Equality Impact Assessment.

Sinn Fein committee members remind the department that the provision of a detailed human rights memorandum to accompany bills is established best practice. A practice which allows the kind of informed democratic scrutiny of human rights compatibility that renders enacted legislation more robust to withstand judicial challenge.

Sinn Fein members believe the notion that such a memorandum is somehow subject to legal privilege and therefore for the Minister's eyes only, is misleading and disingenuous. Following pressure from Sinn Fein committee members, the Minister released a document to the Ad Hoc Committee described as a memorandum "provided under legal privilege" and urged the members to treat it "in confidence, as Executive colleagues will not have sight of this material". (10/1/13).

Sinn Fein wishes to point out that on two counts the Minister is mistaken. First, an almost word for word version of the memorandum provided by the Minister, appears in the Westminster bill's explanatory notes and has been available for over a year on the Westminster website. Second, the status of that memorandum has already been robustly admonished as inadequate to the task by the British government's own scrutiny committee.

A full human right memorandum is not a general statement of compliance referenced only to Britain but a detailed clause-by-clause consideration undertaken by the department with data-backed reference to specific circumstances within the north of Ireland. Sinn Fein regrets the department failed to meet this obligation.

In its submission the Human Rights Commission cited an example where failure to undertake specific consideration would constitute a breach in obligations. The DWP declared purpose in the transition from DLA to PIP to ensure a reduction of 20% has been presented in relation to the north of Ireland. "However, we have no evidence that the 20% has been calculated taking account of the specific situation of disabled people in Northern Ireland. Until it is disaggregated and individuated to the situation of Northern Ireland, that 20% would appear to be arbitrary and that would constitute an inconsistency with human right obligations." (10/12/12)

We are also disappointed that the department failed to carry out detailed analysis of the bill's compatibility with other obligations under the United Nations Convention on the Rights of the Child, the European Social Charter, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention of the Rights of People with Disabilities, the United Nations Convention on the Eliminations of All Forms of Discrimination against Women and the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

We note that the expectation of compliance with International human rights obligations is progressive where the human condition is further advanced rather than diminished. Sinn Fein believes aspects of the Welfare Reform bill represent a retrogressive retreat from established standards and as such cannot be regarded as either 'reform' or 'reforming'.

In relation to process, Sinn Fein supports the view of the Human Rights Commission and other stakeholders, that as an enabling piece of legislation, largely dependent on regulations to determine Human Rights adherence, "if we do not get a sturdier use of affirmative resolution procedure in the Bill for the purpose of the Assembly's controls of regulations, a serious issue of compliance would certainly arise." (10/12/12)

Sinn Fein committee members shared concerns raised by the Equality Commission at the adequacy of the department's EQIA, in particular the lack of up-to-date and relevant data, the absence of identification of adverse impacts or alternative policies to meet the obligation under Section 75 for mitigation in relation to named groups.

In a letter to the EQ Commission (29/10/12) the Social Development Permanent Secretary, Will Haire admitted that the department's EQIA was "less thorough than we would have liked" and cites that lack of available relevant data. He goes on to admit that "there is not, as yet, any suitable data sources to enable us to assess the impact accurately on the basis of religion or belief, sexual orientation or race" but is content that "it is our view that there should be no differential impact on any of these groups". It is difficult to see how a 'view' devoid of any data to confirm or deny such a view can be regarded as fulfilling the department's obligations.

We reject the notion that such fundamental failings can be explained away with reference to the notion of the EQIA as a 'living document'. An EQIA is part of the way in which legislation is prepared prior to consideration, that preparation was fundamentally flawed and therefore the bill as it stands is fundamentally flawed in relation to meeting equality obligations. It is difficult to see how any subsequent revision of the EQIA will impact post enactment.

Sinn Fein committee members view the EQIA as so flawed that they believe that the department has failed to meet its statutory obligations citing (1) the failure to carry out any impact assessment on 4 of the nine groups in relation to Section 75 (2) the failure to seek and collate data specific to the north of Ireland to enable the carrying out of impact assessments.

Sinn Fein members also note the view of the Human Rights Commission that "equality is not just a matter of section 75. Equality is a matter of ensuring that this bill will not be likely to discriminate across all the grounds of non-discrimination." (10/12/12)

We share the commission's concern that equality assessments have not been undertaken by the department in relation to racial or religious discrimination and repeat their examples with regard of the impact on Travellers and migrant workers.

The notion that EQIA is irrelevant because the 'ultimate test would be in a court of law' ignores the primary obligation on both the department and committee to ensure policy/legislation is EQ and HR compliant. The legislative process seeks to avoid legal challenging by anticipating problems and proactively addressing them.

We are also concerned by the lack of assessment in relation to any cumulative impact of Welfare Reform and call on the department to go beyond the piecemeal analysis of each measure by considering the proposals as a whole, particularly the cumulative impact on specific groups who face a range of welfare changes.

In relation to specific aspects of the bill, we have a number of concerns;

The single household payment as it stands is most likely to result in a transfer from purse to wallet with an adverse impact on women and children, named groups in Section 75. As it stands, if one partner refuses to sign a claimant commitment, all members of the household are denied access to benefit. This is in controvention of Section 75 in its likely adverse impact on women and children and discriminatory in relation to ECHR Article 14, Article 1 protocol 1 which views benefits as possessions. The notion that it is possible to dispossess individuals who have a right to benefit because someone else in their household has refused to comply is incompatible with human rights and equality obligations which are based on individual not household rights.

To be compliant with Human Rights obligations, social policy has to strike a fair balance between the right of the individual and the public interest. Where a policy change is detrimental to the individual, it must be shown to proportionate, and strike a fair balance

between the individual and the public interest. It is difficult to see how the application of the under occupancy rule here would meet that criteria. In the specific circumstances of the north of Ireland, the imposition of an under occupancy penalty will be both detrimental to the individual and detrimental to the public interest because it fails to take account of the legacy of segregation and the profile of our housing stock. The legacy of segregation means that while we may have similar under occupancy rates as parts of Britain, we do not have the same ability to address it. The profile of our housing stock means there is insufficient suitable accommodation which would enable tenants to comply. Therefore it cannot be considered 'proportionate' because it is more likely to result in homelessness rather than the stated aim of relocation.

We share the concern of the Law Centre in relation to the work preparation requirement, clause 16. (4) & (5) (a). This has been removed from the legislation in Britain so why is it still here? We believe a mandatory requirement to undertake treatment or rehabilitation under the threat of losing entitlement to benefit is not compliant with ECHR Article 8 right to respect for private life and physical integrity and UNCRPD Article 3, re treating people with disabilities with respect and dignity.

Sinn Fein members share the concern of the Human Rights Commission in relation to the sanction regime. Opportunity rather discipline is the cornerstone of addressing poverty and worklessness and yet Welfare Reform places a high premium on harsh and mandatory loss of benefit sanctions applicable to a wide range of imposed compliance obligations, particularly for working age claimants and including the chronically sick and mentally ill where they have been classified as fit for preparing for work with support.

The mandatory imposition of sanctions, the amount of benefit lost and the duration of many sanctions runs the risk of destitution being used as a form of punishment or coercion in contravention of Article 3 ECHR. The British government has accepted that destitution may be the outcome of the use of sanctions but has refused to take responsibility on the grounds that it cannot be regarded as 'treatment'. This is unacceptable.

The department has cited access to hardship payments as the means by which any breach of Article 3 can be avoided but the current funding of hardship payments will not meet increased need, access to hardship payments may be restricted and stricter repayment schedules will delay recovery of a family's disposable income.

This may also have implications for the UN Convention on the rights of the child which also includes the right to social security and the right to an adequate living.

Sinn Fein members share concerns regarding the reassessment of the sick and disabled and believe the nature of the reassessment is so flawed that it breaches ECHR, Article 1 protocol 1 because benefits already awarded on the basis of a medical assessment are being removed on the basis of a discredited test. Loss of benefit has to be legitimate and proportionate.

We share the concerns of the Human Rights Commission in relation to increased conditionality and lone parents and accept their view that "the bill as it is currently fashioned in the light of Northern Ireland and its situation is not human rights compliant." (10/12/12)

As it stands the proposed benefit cap, as applied to the north of Ireland discriminates against families with larger than average number of children, and treats the last child significantly different from the first. Under ECHR Article 14 rights must be enjoyed without discrimination.

Members were also concerned with the imposition of an additional loss of benefit sanction following a benefit fraud conviction. Benefit fraud is best dealt with by the criminal justice system. The imposition of additional loss of benefit sanctions on those convicted undermines the basic tenet of everyone being equal before the law because only claimants are subject to this additional punishment. One of the key mechanisms which lead poorer women,

particularly mothers, into serving custodial sentences is the failure to pay a fine. This 'double whammy' makes such eventualities all the more likely.

We also share the concern of the migrant groups with changes that places on claimants who have a right to reside here under EU treaties obligations to meet all work related requirements and denies them access to benefit where there is no, or less work related requirements.

In Britain this has led to particular hardship, resulting in at least one recorded suicide and infanticide, for women from European countries who become pregnant while claiming Jobseekers Allowance. 11 weeks before scheduled birth they are classified as unfit for work and as such are no longer eligible for Jobseekers Allowance and any other pass-ported benefit, mostly Housing Benefit. They do not become available for work until their child is one year old.

However they are barred from claiming any other benefit which doesn't carry an availability-for-work obligation. The impact has been to deny women in the last stage of their pregnancy continuing after the birth to include their child, any access to benefit leading to immediate and sustained destitution and homelessness. This will also impact on European claimants who lose their availability for work status through other criteria, eg illness, injury.

Women's Aid



Federation Northern Ireland

Submission to the Ad Hoc Committee on Conformity with Equality Requirements relating to the Welfare Reform Bill

Women's Aid have a number of concerns regarding how the proposed reforms to the welfare system will impact upon the equality and human rights requirements to which Northern Ireland is subject, specifically pertaining to victims of domestic violence.

Equality Impact of the Welfare Reform Bill - Section 75 of the Northern Ireland Act 1998

Women's Aid is extremely concerned about the adverse impact that the proposed welfare reforms will have on victims of domestic violence. We are particularly concerned that new welfare arrangements may serve to remove the avenues of escape for victims from violent and abusive relationships, and that this may amount to breach of section 75 of the Northern Ireland Act 1998.

As they currently stand, the proposed welfare reforms stand to adversely impact upon victims of domestic violence in a number of ways. Universal Credit arrangements will go to the main earner in household, with the possibility for a limited split payments system in exceptional circumstances. Given that the main earner in a household is most likely to be male, and that victims of domestic violence are most likely female, there is a real risk that women in abusive relationships will be deprived of the degree of financial autonomy needed to leave an abusive relationship. Financial abuse is a recognised form of domestic violence, and the proposed welfare reforms run the risk of compounding this sort of abuse by contriving a situation whereby an abuser is in complete control of all financial income in a household. This could then render a victim unable to escape their abusive situation, either due to a literal lack of cash to exit a house and travel to a safe place, or due to the victim deciding not to leave amid concerns that she would not be able to provide for herself and her children without financial security.

PSNI statistics, statistics from the 24 Domestic Violence Helpline which is open to all women and men affected by domestic violence, and qualitative and quantitative evidence across Northern Ireland and the UK, show that the vast majority of victims of domestic violence are women. Thus, it is women who stand to be disproportionately affected by the welfare reforms in the circumstances outlined above. Such disproportionate detrimental impact on one particular section of society – women – runs contrary to equality obligations under section 75 of the Northern Ireland Act 1998, given that gender is one of the 9 equality groups within the legislation. Women's Aid is not satisfied that, in its present form, sufficient mitigating procedures have been put in place to satisfy the s75 requirement with regards to women in these instances.

As to the proposals of implementing split payments, Women's Aid would point out that in order to qualify for an exceptional circumstance, a victim would have to disclose the domestic violence. This requirement would run contrary to all knowledge about the hidden nature of domestic violence. Many victims go undetected by statutory agencies, and in our experience it takes an average of 35 violent or abusive incidents before she will contact police. Additionally, forced disclosure can in some cases seriously jeopardise the safety, or indeed the life, of a victim.

Human Rights Implications of Welfare Reform Bill

Women's Aid is also hugely concerned that proposed welfare reforms may fail to protect the basic human rights of women who are victims of domestic violence.

Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. If a woman finds herself unable to leave a violent situation on account of government-mandated financial restrictions, her rights under Article 5 may be infringed. In addition, such a situation may contravene the right to life under Article 2 of the European Convention on Human Rights (in the event of a victim being placed in mortal danger) and the right to protection against all forms of violence under the Convention on the Rights of the Child, if there are also children present in the house.

Domestic Violence Statistics

In 2011 – 12, the 24 Hour Domestic Violence Helpline, which is open to all women and men affected by domestic violence, answered a total of 41,633 calls. Of these calls, 66.25% were from women and 1% were from men. The remainder were from statutory and voluntary support organisations or friends and family of victims.

In 2011 – 12, 831 women and 586 children stayed in our refuges across Northern Ireland, and a further 5,572 women accessed community based outreach services such as Floating Support.



Northern Ireland
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Appendix 4

List of Witnesses

Welfare Reform Ad Hoc Committee - List of Witnesses

Name	Business Area	Date of Presentation
Martina Campbell	Department for Social Development	Tue 27.11.12 Tue 11.12.12
Michael Pollock	Department for Social Development	Tue 27.11.12 Tue 11.12.12
Jane Corderoy	Department for Social Development	Tue 27.11.12 Tue 11.12.12
Michael O'Flaherty	Northern Ireland Human Rights Commission	Mon 03.12.12 Mon 14.01.13
David Russell	Northern Ireland Human Rights Commission	Mon 03.12.12 Mon 14.01.13
Colin Caughey	Northern Ireland Human Rights Commission	Mon 03.12.12 Mon 14.01.13
Michael Wardlow	Equality Commission for Northern Ireland	Mon 03.12.12
Evelyn Collins	Equality Commission for Northern Ireland	Mon 03.12.12
Lisa King	Equality Commission for Northern Ireland	Mon 03.12.12
Patrick Yu	Northern Ireland Council for Ethnic Minorities	Tue 04.12.12
Karen McLaughlin	Northern Ireland Council for Ethnic Minorities	Tue 04.12.12
Jenny Ruddy	Mencap	Tue 04.12.12
Karen Hall	Disability Action	Tue 04.12.12
Les Allamby	Law Centre (NI)	Mon 10.12.12



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Appendix 5

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Department for Social Development to Ad Hoc Committee

From: Martina F Campbell (Mrs)
Social Security Policy & Legislation Directorate

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Telephone: 028 90 819197
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Ms Sheila Mawhinney
Clerk to the Ad Hoc Committee
On Conformity with Equality Requirements
Welfare Reform Bill
Room 241
Parliament Buildings
Stormont
Belfast
BT4 3XX

Your ref:

Date: 4 December 2012

Dear Sheila

The Welfare Reform Bill – Outstanding Responses

Thank you for your letter dated 28th November requesting further information following the departmental briefing to the Ad Hoc Committee.

As requested, I enclose at **Appendix 1** a copy of the correspondence between the Department and the Equality Commission for Northern Ireland. I also enclose a copy of the Equality Commission's response to the Department's consultation on the Equality Impact Assessment for information.

The Committee requested further information on the gross weekly median income for Northern Ireland, and how this compares with the gross weekly median income in Great Britain. These details are attached at **Appendix 2** for 2011 and 2012. The results for 2012 were published on 22 November.

I should explain that the Benefit Cap is currently based on the gross median wage for Great Britain in April 2011, which is £501p.w. as compared to £450.60p.w. for Northern Ireland. Clause 95 of the Welfare Reform Bill allows for Regulations to be made specifying the rate of the Benefit Cap. Setting the Benefit Cap at the GB median wage advantages benefit claimants in Northern Ireland.

It is expected that the amount of the Benefit Cap will be set at the April 2011 rate of £500 p.w (£26,000 p.a. net or £35,000 gross approx) for couples or lone parents with dependent children, and £350 p.w for single people (approximately £18,200 p.a.net or £24,500p.a gross). The benefit cap for single adults is approximately 70% of the couples and lone parent household rate and is in line with the Organisation for Economic Co-operation and Development's (OECD) equivalisation factors which adjust incomes to take into account both the size and composition of households.

A copy of the information which is currently available on the NI Direct website is attached at **Appendix 3** for information.

I am waiting for input from colleagues on the additional questions added to the Family Resources Survey, and I will write again whenever I receive this information.

Yours sincerely



Martina F Campbell (Mrs)

Enclosures:

Appendix 1 – copy of correspondence from DSD Permanent Secretary to Chief Executive, Equality Commission for Northern Ireland, dated 29 October 2011;

Copy of response from Chief Executive, Equality Commission to Permanent Secretary, DSD, dated 9 November 2011;

Copy of ECNI response to EQIA consultation.

Appendix 2 – PDF attachment – Extract from Annual Survey of Hours and Earnings (ASHE) 2011 & 2012 for Northern Ireland and Great Britain.

Appendix 3 – Extract on Benefit Cap from NI Direct Website.

Attachment 1

Department for Social Development to Equality Commission for Northern Ireland - 29 October 2012

From: The Permanent Secretary
Mr Will Haire

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Evelyn Collins CBE
Chief Executive
Equality Commission
Equality House
7-9 Shaftesbury Square
BELFAST
BT2 7DP

29 October 2012

Dear Evelyn

The Welfare Reform Bill

I thought that it might be helpful, following our recent meeting, to formally record this Department's, and indeed, Minister's commitment to equality, particularly in the context of the challenges set by the welfare reform agenda, and to explain how we are seeking to ensure effective consideration is given to our equality obligations.

I think that it is particularly useful to take stock of where we are, now that the Bill has been formally introduced, and is in Committee Stage. As you know, historically, social security legislation in NI has tended to be a mirror image of its Westminster counterpart, and of course the obligations of legislation and the funding formula mean that there are significant constraints under which we all operate. Nevertheless the scale of the reform proposals is such that Minister, and the Executive took the view that full scrutiny was essential to ensure that the Welfare Reform Bill reflected local needs and circumstances.

As you are aware, the Equality Impact Assessment was carried out based on information data available at that time. Consequently it was less thorough than we would have liked. However, as I have impressed upon all the stakeholders who commented upon this, it is very much a "living document", and officials are currently reviewing additional data recently received from HMRC. This data from HMRC, in conjunction with the data from the existing DWP Policy Simulation Model will greatly improve the information available and our ability to identify potential adverse impacts. It is our intention to update the EQIA as soon as the analysis is completed.

There is not, as yet, any suitable data sources to enable us to assess the impact accurately on the basis of religion or belief; sexual orientation or race. It is our view that as receipt of benefits is based on entitlement, there should be no differential impact on any of these

groups. However, the Department for Work and Pensions together with our own departmental analysts are continuing to review this position with a view to identifying a suitable data source.

As you are aware, the Bill itself is largely enabling, and the data will be of most significance in relation to the detailed proposals which will be contained in the Regulations. Obviously as each set of Regulations is prepared, the proposals will be screened in or out on differential impact, to assess the need or otherwise for an EQIA of the Regulations.

This Welfare Bill in my view will also be important since it sets out the context for a wide ranging set of developments in related policy areas. For example, colleagues in DEL are developing important initiatives which are highly relevant to helping jobseekers. Likewise our work on Housing Strategy needs to take account of these changes. I look forward to the continuing debate on how such policies can be developed effectively and address the equality challenge.

I trust that this is helpful

Yours sincerely



Will Haire

Equality Commission to Department for Social Development - 9 November 2012

Equality Commission

FOR NORTHERN IRELAND

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www.equalityni.org

Our Ref: EJC/EP

9 November 2012

Mr Will Haire
Permanent Secretary
Department of Social Development
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Belfast BT7 2JB

Dear Will

Re: Welfare Reform Bill

I write to thank you for your letter of 29 October 2012 setting out how the Department is seeking to give effective consideration to your equality obligations, following our recent meeting. It was helpful to receive this prior to giving evidence to the DSD Committee which continues its scrutiny of the Welfare Reform Bill as you know.

As indicated when we met, the Commission agrees with the broad policy aim to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency. We also consider that there is a real need to properly understand, consider and respond appropriately to the potential impacts of the proposed reforms. We understand that the original Equality Impact Assessment was the first part of what will be a lengthy assessment process to determine the impacts of the various elements of the Welfare Reform Bill, that there will be further equality screening and possibly further EQIAs carried out on the detail of some of the reforms and more particularly as the regulations are made.

We will continue to monitor developments with close interest and to be available to you and your colleagues in the Department to advise on the effective application of your equality duties in this regard.

Yours sincerely



Evelyn Collins CBE
Chief Executive

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Attachment 3

Equality Commission for Northern Ireland

Response to the Department for Social Development's consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment

December 2011

1. Introduction

- 1.1 The Equality Commission for Northern Ireland ("the Commission") is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
- 1.2 The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 and the positive disability duties.
- 1.3 Further, the Commission has also been designated to act as an 'independent mechanism' jointly with the Northern Ireland Human Rights Commission, to promote awareness of, and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities with regard to Government's obligations in relation to Northern Ireland.
- 1.4 The Commission welcomes the opportunity to respond to the Department for Social Development's (the Department) public consultation on the Equality Impact Assessment for the Welfare Reform Bill (Northern Ireland) 2011. Our response addresses the following:
 - A consideration of the broad policy aims of the Welfare Reform Bill (Northern Ireland) 2011 (the Bill); and
 - The potential impact of welfare reform in an economic downturn
 - The extent to which the Impact Assessment is carried out in a manner consistent with the principles enshrined in our *Practical Guidance on Equality Impact Assessment*.
- 1.5 Our response is also focused on a number of selected policy issues addressed in the EQIA, where these have identifiable equality implications, in accordance with our priorities. This response therefore also includes consideration of:
 - Universal Credit;
 - Housing Benefit Cap;
 - Lone Parent Conditionality; and
 - Disability Living Allowance Reform

2. Policy aims of the Welfare Reform Bill (Northern Ireland) 2011

- 2.1 While the Commission agrees with the policy aim to '*seek to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency*', we recommend that the Department reconsiders and clarifies the statement that '*by accepting personal responsibility for our individual circumstances, it is considered that each person has*

the ability to improve their situation'.¹ It is recognised and widely evidenced that many barriers to employment exist for groups, including women, older people and people with disabilities. These barriers are often institutional or societal, and without appropriate support, it is incorrect to assume that everyone has the ability to improve their situation. Unfortunately, within this consultation document we are unable to see what additional measures the Northern Ireland Government will put in place to assist these individuals into skilled and well paid employment to ensure that welfare reform does not simply increase their experience of poverty and social exclusion.

- 2.2 The overarching intention “*to promote the fact that work always pays and to incentivise individuals to enter the labour market*” is of merit. We welcome any supportive measures from Government that will have the effect of improving access to employment for traditionally marginalised and excluded groups. However, the Commission is genuinely concerned that many of the proposed measures may have the effect of creating further poverty, particularly for already traditionally marginalised groups in Northern Ireland.

3. The potential impact of welfare reform in an economic downturn

- 3.1 At a United Kingdom level, despite the current economic recession, the number of children in poverty among workless families fell during the period 2008-09, but those from working families rose slightly. Therefore, access to work is not necessarily the sole measure by which poverty can be reduced. The annual report on poverty and social exclusion by Joseph Rowntree Foundation and the New Policy Institute concluded that the Government faced a number of challenges including in-work poverty, the number of children/young adults with few/no qualifications, young adult unemployment, health inequalities, and low income households' lack of access to essential services.²

- 3.2 A key issue arising from the Commission's own research³ suggests that the issue of welfare reform combined with the recession will have a serious impact on those already vulnerable in the labour market; in particular, the long term unemployed, disabled people, lone parents, young unemployed, and older workers. Of significant concern is the emphasis on conditionality and sanctions and benefit cuts as opposed to the need for investment in the support infrastructure needed to assist people to access work, such as affordable and flexible childcare to help lone parents find sustainable employment.⁴ The Department's equality impact assessment consultation paper provides no substantive analysis of the proposals nor does it provide any real consideration of the potential adverse impact.

1 Department for Social Development (2011): Equality Impact Assessment for the Welfare Reform Bill (Northern Ireland) page 16.

2 Parekh, A., MacInnes, T. and Peter Kenway (2010), Poverty and Social Exclusion Report 2010, concluded that despite the current recession, the number of children in poverty in workless families fell in 2008/09, to 1.6m, the lowest since 1984, but those in working families rose slightly to 2.1m, the highest on record the thirteenth annual report in the Monitoring poverty and social exclusion series. See link <http://www.jrf.org.uk/sites/files/jrf/poverty-social-exclusion-2010-summary.pdf>

3 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010): Employment Inequalities in an Economic Downturn (ECNI). The overall aim of this research was to: update understanding of the effect of the economic downturn on the employment status and prospects of relevant groups across the nine equality grounds in Northern Ireland (NI). It was carried out by the Employment Research Institute at Edinburgh Napier University for the Equality Commission Northern Ireland. <http://www.equalityni.org/archive/pdf/EconDownturnSummaryReport.pdf>

4 NI Welfare Reform Group (July 2011): Briefing Paper - Welfare Reform Bill, Second Reading House of Lords, page 4. <http://www.lawcentreni.org/Publications/Policy%20Briefings/WelfareReformGroupHoL.pdf>. Evidence suggests that forcing lone parents of children under 5, the majority of whom are as the consultation paper acknowledges are women, would have an adverse impact on both the parent and the child / and older siblings - limiting educational and training opportunities to enable good quality work opportunities as opposed to a low pay unskilled job, as well address the need for quality child care that meets the 'best interests' of the child. It should also be noted the correlation between low income families and the increased likelihood of child poverty. Save the Children research points out that 21% of children in Northern Ireland live in persistent child poverty which is double the GB percentage rate, and severe child poverty stands at 40,000, almost 10%.

3.3 While recognising and endorsing parity, the consultation document does not consider the changes in the context of Northern Ireland policy and legislation not subject to parity. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation. There is thus no statutory requirement for the provision of childcare in Northern Ireland where it is recognised that the situation on both availability and affordability of childcare is the worst in the UK.⁵ Whilst the proposals indicate that some flexibility can be included for lone parents⁶, it is not clear how this will be determined and how such a discretionary measure will be delivered fairly.

3.4 The Commission wishes to bring the following statistics to the Department's attention in respect to employment, unemployment and economic inactivity in Northern Ireland:

- The seasonally adjusted figures for Northern Ireland show that the economic inactivity rate for people aged between 18-64 currently stands at 26.6 per cent which is 2.3 percentage points lower than the rate 5 years ago which was at an all time high of 28.8 per cent. However, Northern Ireland has the highest economic inactivity rate of all regions in the UK (UK average 23.2 per cent).⁷
- UK-wide research concluded youth unemployment (16-24 year olds) was at 20.0 per cent⁸ in 2010; the highest figure in 18 years. The statistic was slightly higher in Northern Ireland at 20.4 per cent youth unemployment⁹. Our own research concludes that the Welfare Reform proposals are likely to impact on single people, the greatest group largely composed of young people.¹⁰
- Prior to the current recession disabled people were twice as likely to be unemployed as non-disabled people¹¹ - this statistic is unlikely to change in the current economic climate. Over 184,500 people in Northern Ireland currently receive Disability Living Allowance (DLA), representing 10.3 per cent of working age population in Northern Ireland - approximately twice the level in GB¹². Furthermore, disabled people have a tendency to be over-represented in entry level jobs and under-represented in higher level occupations which is evidence that employment in itself is not a quality indicator of a reasonable level of income.¹³
- While the unemployment rate in Northern Ireland is lower at present than the UK average, our own research indicates that continuing redundancies in the public sector will have a significant impact on women who make up the greater number of employees in the public sector. Most economists agree that the economy is overly dependent on the public sector and that redundancies in this area are set to continue for some time. As a result, Northern Ireland is likely to experience the highest level of unemployment throughout the UK. There is also a growing consensus among leading economists that Northern Ireland will take much longer to come out of the current economic recession because of its over reliance on the public sector in comparison with all other regions in the UK.

5 Employers for Childcare Charitable Group (2011): Northern Ireland Childcare Cost Survey 2011 <http://www.new.killercontent.net/media/EmployersForChildcare/Website%20Version%20-%20Childcare%20Cost%20Survey%202011.pdf>

6 Department for Social Development (2011), op cit., page 59 paragraph 1 and page 60 paragraph 1.

7 Department of Finance and Personnel (2011) Labour Force Survey 2011 1st Quarter http://www.detini.gov.uk/lfs_quarterly_supplement_-_april_-_june_2011__with_logo_.pdf

8 Parekh, A., MacInnes, T. and Peter Kenway (2010) op cit.

9 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010) op cit., page 39.

10 Ibid page 97

11 ECNI (2007): Statement on Key Inequalities, page 12. [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)

12 Department for Social Development (August 2010): Disability Living Allowance Statistics – Summary of Statistics http://www.dsdni.gov.uk/dla_publication_august_10.xls

13 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010) op cit., page 62.

- The proportion of lone parents in employment in Northern Ireland is well below the average for the United Kingdom, with female lone parents at the highest risk of poverty. Only one in seven lone parents in Northern Ireland are currently working. This is a smaller proportion of lone parents than for any other region within the United Kingdom.¹⁴
- Welfare Reform proposals will also place significant demands on other people with dependents. Parents with one or more children will be obliged to seek and find employment, requiring them to access high quality affordable childcare. However, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation and, therefore, there is no statutory obligation on the part of local or public authorities to provide high quality affordable childcare. Broadly, the consultation paper does not fully recognise the often complex and individual needs of children and/or the flexibility required by all parents, including those on low incomes and in receipt of benefits, both to work and to raise a family.¹⁵
- The Commission is also concerned that the Welfare Reform proposals are likely to undermine the UK Government's commitment to its international obligations, with respect to the impact of these reforms on children (arising from the conditionality requirement on lone parents) and disabled people. Specifically Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities (e.g. Article 19 Independent Living) and the United Nations Convention on the Rights of the Child (Article 3) which requires government to consider the 'best interests' of the child in all actions that impact on children.
- Also, statistics show older people currently in receipt of welfare support are unlikely to find it easy to return to the job market. The emphasis on finding employment for younger workers may detract from government's efforts to find suitable employment for those other benefit recipients under pension age.¹⁶

4. Comments on the Equality Impact Assessment process

4.1 First of all we wish to point out that (in Chapter 1 of the EQIA) the text of Section 75 has not been quoted correctly.

4.2 Section 75 (1) requires that public authorities, when carrying out their functions relating to Northern Ireland, have **due** regard to the need to promote equality of opportunity between the listed groups.

The term "due regard" was intended to be, and is, stronger than regard. Every public authority is required by the statute to take these specific matters properly into account and to give them the required weight when carrying out its functions relating to Northern Ireland.

4.3 Section 75 (2) requires that a public authority shall have regard to the **desirability** of promoting good relations.

14 Equality Scheme for Office of the First Minister and deputy First Minister (draft) (2011), Para 1.10, page 67. http://www.ofmdfmi.gov.uk/ofmdfm_equality_scheme_sept_2011.pdf

15 Northern Ireland Welfare Reform Group (2011): Joint Briefing Paper– Welfare Reform Bill 2nd Reading House of Lords, page 6. The Briefing also noted that between 2002-2009 the overall number of daycare places in Northern Ireland fell by 6% and further added that the decrease of the Childcare element of the Working Tax Credit from 80-70% from April 2011 was also having an adverse impact on low income family households. <http://www.lawcentreni.org/Publications/Policy%20Briefings/WelfareReformGroupHoL.pdf>

16 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010) op cit., page 44. The research also notes that older people are likely to face discrimination from employers when trying to return to work after redundancy and that there was also evidence of a lack of flexible working conditions for older people compared to other age groups. It is likely there will be a higher percentage of older unemployed people as the ongoing redundancies in the Northern Ireland public sector take effect and this presents particular challenges for government, for while older people are valued while they are in work after redundancy or loss of occupation statistics show a lower rate of return to employment for the above reasons (page 43).

General

- 4.4 The Commission acknowledges that the structure of the consultation document follows the 5 steps of the 7 steps process for Equality Impact Assessments as detailed in the Commission's *Practical Guidance on Equality Impact Assessments*. This process, however, is not an end in itself and we have considerable concerns regarding the way in which some of the steps have been completed.
- 4.5 The aim of an equality impact assessment to identify any potential adverse impacts and take steps to address these. Therefore, the consideration of mitigating measures and alternative policies is at the heart of the EQIA process as it is the outcomes from an **enhanced** policy that are of primary concern. Unless different options can be developed for delivering the policy aims, options which have a less adverse effect on or which better promote equality of opportunity for the relevant equality category, an equality impact assessment remains a 'box-ticking' exercise.
- 4.6 The Commission is aware that the prevailing view of parity is that it applies both to the rate of benefits and the conditions for receipt of benefits.
- However, the legislation does not require social security parity, but does signal the *desirability of providing coordinated systems* of social security.¹⁷ Social security remains a transferred matter with separate primary and secondary legislation with its own separate administrative arrangements.
- 4.7 The Committee for Social Development was advised by DSD that "[u]nder the Northern Ireland Act 1998 and the principle of parity [...] we will bring forward a **Northern Ireland-specific** Welfare Reform Bill in 2012 [emphasis added]. That will be the enabling legislation, which will then need to be followed by detailed regulations on a number of the points in it."¹⁸ We do not see however, how the subsequent proposals contained in the consultation document are Northern Ireland-specific.
- 4.8 We would also query why there are no proposals contained in the document for a replacement scheme for the Social Fund or possible arrangements for the Northern Ireland equivalent of the Council Tax Benefit (by way of parity with GB arrangements), despite the fact that the Westminster Welfare Reform Bill proposes to remove this discretionary fund from the ambit of social security.
- 4.9 The Commission appreciates that, due to the financial implications of breaking parity and other reasons,¹⁹ there is limited scope for Northern Ireland to depart significantly from the current Westminster proposals. However, it is the Commission's firm view that wherever "breathing space"²⁰ between the two systems can be developed, this should be done. Furthermore, it should be done on the basis of a thorough and comprehensive equality impact assessment.
- 4.10 Therefore, the Commission considers it crucial that the Department is absolutely clear about the extent to which the policy options presented in the EQIA can still be altered/amended in light of the outcomes of the EQIA and what the possible alternative policy options are. Clearly setting out the available policy options in the EQIA would ensure a more effective focus by consultees on those issues where a positive difference can still be made.

17 Law Centre (NI). Committee for Social Development (2011): Parity – Legislation – Social Security Parity – a Note for the Social Development Assembly Committee from the Law Centre (NI).

18 Heather Cousins, DSD quoted from Committee for Social Development Official Report (Hansard) Welfare Reform Bill: Social Security Agency, 10 November 2011.

19 As outlined in Department of Social Development (2011): Committee for Social Development 'Parity – Legislation; Understanding "Parity" – Departmental Briefing Paper.

20 Law Centre (NI) op cit.

- 4.11 The Commission notes the Minister's comments that "[i]t is difficult to be clear about the precise impact at this stage. Any precise measurement will be very difficult until we are further down the track and have seen more detail on the precise changes being made"²¹ The Commission's guidance Section 75 of the Northern Ireland Act 1998- *A Guide for Public Authorities (ECNI: 2010)* advises that "For more detailed strategies on policies that are to be oput in place, through a series of stages, a public authority should then consider screening at various stages during implementation" (page 52).

Consideration of available data and research

- 4.12 In order to determine how the proposed policies will impact on people on the ground, it is essential to gather and consider a wide range of qualitative and quantitative data. Given that the current welfare reform will have major impacts for the people of Northern Ireland [a recent report by the Institute of Fiscal Studies found that Northern Ireland as one of the poorest regions of the UK will inevitably be hardest hit from the welfare cuts²²] the data considered by the Department is extremely limited.

- 4.13 We have already highlighted some additional data sources [see above at 3.4]. But there are many more that should be considered, in particular data specific to issues of poverty and deprivation. Existing quantitative data constitutes only a minimum base from which to judge the impacts and outcomes of a policy and the Commission is particularly concerned that qualitative data is completely absent from the current document.

We would query why the wealth of qualitative information provided by sectoral groups since the Welfare Reform Bill and its implications for NI were first debated well over a year ago have not been considered in the EQIA.

- 4.14 We are also concerned that the Department has not taken any steps to address the existing data gaps it has identified in relation to religious belief, political opinion, racial background and sexual orientation. It is not acceptable for an EQIA to merely record that no data are available.²³

Furthermore, in the absence of any data no comments can be made on potential effects. It is incorrect to simply assume that "social security benefits are paid to individuals on the basis of entitlement and conditions **which are in no way affected by affiliation to any of these 75 categories.**" [page 23 of consultation document; emphasis added. Indeed, previous analyses suggest that characteristics like religious belief, political opinion, racial background or sexual orientation can put individuals at higher risk of exclusion and poverty²⁴ which in turn could impact on an individual's need for support through social security benefits.

Assessment of impacts

- 4.15 While the Commission appreciates that assessing the impacts of a policy can be particularly challenging, we wish to emphasise again that a proper analysis of the impacts of the proposed policy is at the core of any EQIA, the purpose of which is to identify any potential negative impacts and take steps to address these. The Commission is therefore particularly concerned with the minimalist approach taken by the Department to this part of the EQIA.

21 Minister for Social Development , Nelson McCausland, during NI Assembly Debate on 15 November 2011; <http://www.theyworkforyou.com/ni/?id=2011-11-15.3.25>

22 James Browne, The Impact of Tax and Benefit Reform to be introduced between 2010/11 and 2013/14 in Northern Ireland , Institute of Fiscal Studies Briefing Note 114, p 5, available at <http://www.ifs.org.uk/bns/bn114.pdf>

23 ECNI (2005): Practical Guidance on Equality Impact Assessment, paragraph 2.9, page 14.

24 See, for example OFMDFM (2006): Lifetime Opportunities, p. 81; and: http://www.stonewall.org.uk/what_we_do/research_and_policy/2880.asp

4.16 The Minister himself has admitted that “[t]here will, undoubtedly, be a major impact”,²⁵ yet the Department’s equality impact assessment consultation paper provides no substantive analysis of the impact of the proposals or any real consideration of the potential adverse impact.

4.17 In fact, in some instances, no assessment is made at all.²⁶

Instead, the Department relies heavily on percentage figures and statistical information, often simply focussing on whether or not a particular group is more or less likely to be affected. But while establishing a differential impact is a starting point, the focus of the EQIA should in the first place be on potential **adverse** impacts. Figures alone do not provide any information on the nature of the effect nor do they provide reasons or explanations for difference.

4.18 The document, for example, states that “As there is a higher number of single male claimants, any change to Housing Benefit can reasonably be expected to have a greater impact on male claimants.”²⁷ But no information is provided as to what this may actually mean for the affected group. But, as we highlight further down in our response (see below at 5.4) claimants, for example, who are the non-primary carer (in most cases a father) who has separated / divorced from their partner / spouse will be unable to exercise their right of access to their family as a result of moving to single room accommodation – in other words, a parent will not be able to accommodate their children overnight.

4.19 Similarly, the fact that certain changes will apply irrespective of a particular characteristic does not mean that therefore the impact will be neutral for this group. Such characteristics could, directly or indirectly, either exacerbate negative effects on the individual or, in some cases, they may have a positive effect. This is highlighted in the contradiction contained in the assessment of the impacts of the time-limiting of contributory employment and support allowance at 7.4, page 43. On the one hand the document states with respect to the Marital Status category that it is not envisaged that the proposed changes present any inequitable treatment on the grounds of marital status yet on the other hand, as noted in the paragraph above with respect to the age category, it is assumed that older recipients are likely to have e.g. a working partner and thus will not be left without income.

4.20 The assessments also fail to consider the cumulative effect the different proposals could have on individual groups. For example, the combined effect of the benefit cap and housing policies could be significantly adverse for those affected, particularly for families with children but this has not been assessed.

4.21 Similarly, Disability Living Allowance, which is a passport to other benefits, including Carers Allowance, is considered in this consultation. While we know that Disability Living Allowance claimants are comprised of approximately equal numbers of males and females, there are significantly more women than men claiming Carers Allowance. Again, the impact of this has not been assessed.

4.22 As was pointed out to the Committee for Social Development²⁸, the welfare reform agenda has seen an increasing interdependency between social security and areas which are the responsibility of other Departments. This has been particularly apparent in areas which fall to the Department for Work and Pensions in GB but which fall to several Departments in Northern Ireland, for example, work-focused interviews (DEL), health and safety at work (DETI) etc. It was also highlighted that increasingly, there are interdependencies with a number of other areas, for example, health and affordable child care.

25 Minister for Social Development, Nelson McCausland, during NI Assembly Debate on 15 November 2011; <http://www.theyworkforyou.com/ni/?id=2011-11-15.3.25>

26 Department for Social Development (2011), op cit., for example, page 38: Persons with /without dependants; page 58: Lone Parent Conditionality and persons with/without a disability.

27 Ibid. page 34.

28 Department of Social Development (2011), op. cit.

- 4.23 However, there is little concrete evidence in this impact assessment of Departments “currently working together to address issues arising from further proposals for welfare reform”.²⁹

Mitigating measures/ alternative policies

- 4.24 As we have already pointed out above, the consideration of mitigating measures and alternative policies is at the heart of any EQIA process. Where negative impacts are identified, a course (or courses) of action should be considered in order to moderate or lessen any such impacts.
- 4.25 The Commission is therefore extremely concerned about the high number of assumptions, expectations and vague possibilities which are put forward as mitigating measures, without any evidence to support these.³⁰
- 4.26 Furthermore, on a couple of occasions the document states that the Department is currently considering what mitigating measures might be necessary or available³¹ without providing any detail on what these might look like.

No detail is provided on how the social protection fund and other mechanisms could be utilised to ensure that the already vulnerable will not be further disadvantaged and marginalized by these proposals

Formal consultation

- 4.27 The Commission appreciates that the consultation document is available in a number of alternative formats. We are concerned, though, that the Department has restricted responses to those made in writing or by email and that no provision seems to have been made for face-to-face engagement with consultees, in particular those who may find it difficult or daunting to provide their views in a written document.
- 4.28 The Department will be aware that as part of the process of considering the potential impact of the Welfare Reform policies there is a requirement in accordance with equality scheme commitments for the Department to consult directly with affected groups and provide evidence of the contribution in the development of these proposed measures.

What effort has the Department made to ensure maximum access of those equality groups affected by the proposals, such as disabled people, children and young people or carers?

- 4.29 As regards the list of consultees, we would note the following:
- the list still includes Economic Research Institute for Northern Ireland (abolished) and the Civic Forum (suspended)
 - it includes neither the Older Persons Commissioner or the Older Persons Advocate
 - MLAs are not included
 - only women in greater Belfast area seem to be included
 - the Presbyterian Church does not seem to be included

5. Policy Issues

- 5.1 The Commission strongly disagrees with the Department’s view that “many provisions proposed, e.g. increased conditionality, are not considered as having a direct equality impact

29 Ibid.

30 Department of Social Development (2011) op. cit., for example on page 35: “the change could act as a stimulus [...]”; page 43: assumption that older recipients “will generally either have a working partner or capital over £ 16,000” ; pages 46 and page 59: support to continue to move towards work assumes that jobs are readily available; page 58 : “there is a possibility that younger lone parents are likely to have more recent experience of the labour market” ; page 60: “ it is envisaged that flexibilities and operational easements in place will ensure that no one will be penalised [...]”.

31 Department of Social Development (2011),op. cit., for example pages 28, 29.

on benefit customers and merely facilitate the establishment of the legislative framework under which a number of the proposals [...] will be introduced.” [p 23 of consultation document]

- 5.2 Below are our comments on selected aspects of the proposed reform and the impacts they may have.

Universal Credit

- 5.3 The Commission welcomes the aim of the reform to simplify the benefits system. However, we are concerned that the equality impact assessment has not identified the negative impact on women. Paying the new Universal Credit to the main earner following joint claim and joint assessment will, in many instances, leave women without income. Payment of benefit to women in their ‘caring for dependents role’ was an important social security reform introduced in the 1970’s. It was considered necessary to allow certain benefits, including Child Benefit, to be paid to women, recognising that women more readily spend on children and the household essentials. We expect the Department to consider this matter.
- 5.4 This position is made more serious given the cuts in Child Benefit and in the childcare element of Working Tax Credit already planned.
- 5.5 We are concerned that no consideration appears to be given to weekly payments of Universal Credit where that is preferred. Weekly payments would be a no or low cost provision that would assist those families on the least income.³²

Housing Benefit Cap – Social Housing Rented Sector

- 5.6 From the 1st of April 2013, it is intended to introduce size criteria for new and existing working age claimants on housing benefit for those in the social housing rented sector will replicate the size criteria that apply to claimants in the private rented sector. Under this measure, claimants will have their housing benefit reduced on the basis of ‘under-occupancy’ of tenancy in line with the private sector. While we agree in principle that under occupancy within the social housing sector should be addressed, the Commission is deeply concerned that this measure will have a serious impact on a range of equality groups. This measure may force claimants, of working age, to leave their homes if they no longer can justify the need for the rooms available in their property. Hence, someone at 59 years old, who may or may not have adaptations to their home as a result of their own circumstances, will receive reduced housing benefit or will have to seek alternative one bedroom accommodation if they have no dependents in their home. The Commission understands that several potential negative impacts may arise from this measure and raises a number of key issues:
- Claimants who are the non-primary carer (in most cases a father) who has separated / divorced from their partner / spouse will be unable to exercise their right of access to their family as a result of moving to single room accommodation – in other words, a parent will not be able to accommodate their children overnight.
 - Similarly, a disabled person who does not necessarily require personal support on a continuing basis will be unable to obtain overnight support during short periods when they do need assistance.
 - Potentially, claimants would have to move from their local community, regardless of their longevity of tenancy, causing undue stress.
 - The consultation paper acknowledges that there is very limited mobility in the social rented sector. Therefore, a tenants’ ability to move may be severely restricted. Restricted mobility is particularly relevant to Northern Ireland as social housing is often segregated on the basis of community background. There is a risk of placing all social housing tenants in financial hardship, as the tenants maybe unable to move because of the

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<http://www.wrda.net/Documents/The%20NI%20Economy%20%20Women%20on%20the%20Edge%20Report.pdf>

de-facto lack of available alternative but still be subject to a reduction in their housing benefit.

- 5.7 The Commission recommends that the Department ensures that housing benefit assessments of disabled people, with non-residential carers, fully takes into account the needs of disabled people, particularly when the effects of a disability may change within a time period. Similarly, assessments of parents separated from their children should also take into account that these claimants will be required to accommodate their children in their home to allow them full access to their offspring.

Lone Parent Conditionality

- 5.8 Childcare is an essential feature in the eradication of child poverty, the removal of barriers to and in employment, achieving equal pay and protecting against poverty in later life. Despite this the UK, and Northern Ireland, failed to meet the Barcelona childcare targets.³³ Recent research³⁴ across the UK found that parents in Britain spend almost a third of their income on childcare – more than anywhere else in the world. Research to be published at the end of last month³⁵ will show that Northern Ireland remains the most expensive part of the UK to secure childcare. The UK study³⁶ pointed to the paucity of policy in Northern Ireland and the historical underinvestment – early years spend in 2007-2008 amounted to £630 per child in Northern Ireland compared with around £2,000 in Great Britain.
- 5.9 Broadly, the welfare reform measures developed at Westminster are predicated on the statutory obligation in Great Britain, under the Childcare Act 2006, to deliver good quality childcare and a more effective pattern of provision. This will therefore require the Minister for Social Development to allow an element of discretion, if it considers that appropriate affordable childcare is not available. In Northern Ireland, £12m³⁷ has been allocated over the current Budget period³⁸ to address the childcare need through a Childcare Strategy, currently being developed by the Office of the First and deputy First Minister. However, at the time of making response to this consultation, the Childcare Strategy had not been published to enable anyone to determine if the strategy can deliver accessible, appropriate and affordable childcare to all children in Northern Ireland.
- 5.10 The lone parent conditionality provision requires that lone parents be available for work when their child reaches the age of 5 years. However, this conditionality assumes that there is an affordable and appropriate childcare infrastructure in place in Northern Ireland available to the individual claimant – looking at the evidence above, this is currently not the case. The Department should urgently address this matter through liaison with OFMdfM to ensure that all lone parents can access appropriate and affordable childcare to enable access to, and continued employment.
- 5.11 The lone parent conditionality provision may also restrict a claimant's ability to seek education and training opportunities as lone parents will be required to claim Jobseeker's Allowance or Employment and Support Allowance. This approach may deny lone parents the opportunity to seek appropriate education or training to enable them into gain skilled, higher paid, employment to enable them to reach a reasonable level of income; to fulfill the rights of the child, and of the parent, to raise a child through an adequate standard of living and level of social protection. It should also be added that while there is a statutory legal obligation on public authorities in Great Britain to consider the welfare of the child no such obligation exists for public authorities in Northern Ireland.

33 European Commission (2008): Childcare services in the EU EUROPA - Press Releases - Childcare services in the EU

34 Save the Children (September 2011): Making Work Pay – The Childcare Trap.

35 Employers for Childcare Charitable Group (2011), op cit.

36 Save the Children (September 2011) op cit..

37 This is £3m in each of the four years of the budget , compared with, for instance, £30m pa in Wales

38 Northern Ireland Executive: Budget 2011-15. http://www.northernireland.gov.uk/revised_budget_-_website_version.pdf

5.12 The lone parent conditionality provision may undermine, or be counter to, the plan within the Northern Ireland Executive's Economic Strategy³⁹ to "improve the skills and employability of the entire workforce so that people can progress up the skills ladder, thereby delivering higher productivity and increased social inclusion". The lone parent conditionality provision may deny lone parents the additional training as outlined within the strategy's 'key rebalancing measure' to "delivery of 210,000 qualifications at Levels 2, 3, 4 and above by 2015, through Further Education, Higher Education, Essential Skills and Training". The Commission strongly advises the Department to consult with the Department of Enterprise, Trade and Investment in regards to how the lone parent conditionality provision may affect the objectives outlined within the economic strategy. Similarly, the Department should seek advice from the Department of Employment and Learning on this issue.

Disability Benefit Reform

5.13 The Commission has previously made a number of public policy interventions on the issue of welfare reform as it may impact on disabled people, including our submission to the Department on the Independent Review of the Work Capacity Assessment. The Commission, jointly with the Northern Ireland Human Rights Commission, in our collective role as the Independent Mechanism for Northern Ireland to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), has also highlighted our concerns on this issue to the Joint Committee on Human Rights, Parliamentary Inquiry on the implementation of the right of disabled people to independent living as guaranteed by Article 19 of UNCRPD.

5.14 In summary, the Commission has a number of concerns in this area:

- The higher qualification criteria for the Disability Living Allowance (DLA) equivalent Personal Independence Payment (PIP);
- The assessment process and the very high percentage rate of successful appeals for those refused Disability Living Allowance; and,
- We note there will only be two components under Personal Independence Payment (PIP) in relation to daily living. We believe that people who are currently in receipt of the old DLA care component will lose out given the strict and objective criteria laid out in the proposed new test which determines whether or not a person receives support under PIP

6. Conclusion

6.1 The Commission has advised policy makers of the critical importance of assessing the equality implications of their budget decisions and of ensuring that the most vulnerable people in our society are not affected to an unfair extent by reductions in public expenditure.⁴⁰ This applies equally to the current Welfare Reform.

6.2 Section 75 is a continuous duty and this EQIA should not be considered as a one-off exercise. Throughout the process of reforming the welfare system in Northern Ireland, which includes subsequent benefit specific reforms requiring further legislation to enact, every effort must be made to ensure that decisions are based on the needs of people, that the vulnerable are protected and that equality of opportunity is promoted.

The Department is under an obligation to continuously consider the potential impact of its current and future proposals on affected groups, to seek and carefully consider input from consultees to gain a better understanding of the issues relating to equality of outcomes and to address potentially adverse impacts.

39 Northern Ireland Executive(2011): Economic Strategy: Priorities for sustainable growth and prosperity. Building a better future http://www.detini.gov.uk/economic_strategy__web_.pdf

40 See for example the Equality Commission's Response to draft Budget 2011-2015, February 2011.

- 6.3 We are also concerned that there is no account taken within the consultation paper of the wider agenda in relation to pensions. Nor does the paper consider the implications of the proposed reform for other government strategies like Lifetime Opportunities or the Child Poverty Strategy.
- 6.4 Finally we would like to highlight the following studies which may be important in informing the way forward:
- The Forthcoming J Rowntree Foundation study: Monitoring Poverty and Social Exclusion in Northern Ireland, to be published in Spring 2012⁴¹
 - The Social Security Advisory Committee's guiding principles for the design of passported benefits in relation to the universal credit, report to be published in January 2012.⁴²
- 6.5 This response is made without prejudice to any consideration or determination which the Commission might make in performance of its statutory function to investigate individual complaints under Schedule 9 of the 1998 or conduct any other investigation under that Schedule.

41 <http://www.jrf.org.uk/work/workarea/monitoring-poverty-and-social-exclusion>

42 <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111005-wms0001.htm>

Extract from ASHE Survey Median Wages 2011-2012



Labour Market

Statistics Bulletin

NORTHERN IRELAND ANNUAL SURVEY of HOURS and EARNINGS APRIL 2011

Published 23/11/11

The Annual Survey of Hours and Earnings provides a wide range of information on hourly, weekly and annual earnings of employees in Northern Ireland at April 2011. Headline data from the survey show that:

- In April 2011 median gross weekly earnings for full-time employees in NI (public and private) was £450.6, an increase of 3.0% over the year. This rate of growth was higher than in the UK (0.4%). Median earnings in the UK was £500.7 in April 2011. This narrowed the NI/UK full-time pay gap to 90.0% of the UK figure compared to 87.7% a year earlier.
- Part-time NI employees experienced 1.7% growth in their gross weekly earnings (£151.6) at April 2011, compared to 0.2% growth in UK earnings (£154.0 per week).
- The estimated median gross weekly earnings for all (i.e. both full- and part-time) employees in NI at April 2011 was £360.0, up 1.5% from £354.7 in 2010, while the UK experienced zero growth over the year. Northern Ireland earnings for all employees was 89.1% of the UK figure (£403.9) at April 2011.
- Median gross hourly earnings excluding overtime in NI for all employees were £9.96 compared to £11.15 in the UK at April 2011. Median hourly earnings excluding overtime grew by 2.7% in NI, (compared to 0.7% growth in the UK).
- Median full-time private sector gross weekly earnings (£394.2) grew by 3.5% over the year in NI compared to 0.8% growth in the UK. This represented a narrowing of the NI/UK private sector pay gap, from 80.6% to 82.8%. The pay gap in 2011 was similar to that reported in 2007 (82.7%).
- Growth in median full-time weekly earnings in NI's public sector (3.9%) was higher than in the UK's (0.3%). Median full-time weekly earnings in the public sector in NI (£557.9) were 41.5% higher than the private sector (£394.2). This was more marked than in the UK, where full-time earnings were 16.7% higher in the public than the private sector.
- There has been a narrowing of the gender pay gap for all employees in NI. Female median hourly earnings excluding overtime were some 91.9% of male earnings (compared to 91.2% a year earlier).
- The median gross annual earnings for full-time employees in NI grew by 3.5% to £23,185 in 2011, compared to 1.4% growth in the UK (to £26,244).
- The Quarterly Employment Survey indicated that employee jobs in Northern Ireland fell by 1.3% between March 2010 and March 2011.

The ASHE estimates are based on a sample and are therefore subject to an associated level of variability.





Labour Market

Statistics Bulletin

NORTHERN IRELAND ANNUAL SURVEY of HOURS and EARNINGS APRIL 2012

Published 22/11/12

The Annual Survey of Hours and Earnings provides a wide range of information on hourly, weekly and annual earnings of employees in Northern Ireland at April 2012. Headline data from the survey show that:

- In April 2012 median gross weekly earnings for full-time employees in NI (public and private) was £459.5, an increase of 3.3% over the year. This rate of growth was higher than in the UK (1.5%). Median earnings in the UK were £505.9 in April 2012. This narrowed the NI/UK full-time pay gap to 90.8% of the UK figure compared to 89.3% a year earlier.
- Part-time NI employees experienced a 1.2% contraction in their gross weekly earnings (£148.7) at April 2012, compared to 1.3% growth in UK earnings (£155.0 per week).
- The estimated median gross weekly earnings for all (i.e. both full- and part-time) employees in NI at April 2012 was £360.2, up 1.6% from £354.5 in 2011, while the UK experienced 1.3% growth over the year. Northern Ireland earnings for all employees was 88.9% of the UK figure (£405.0) at April 2012.
- Median gross hourly earnings excluding overtime in NI for all employees were £10.01 compared to £11.21 in the UK at April 2012. Median hourly earnings excluding overtime grew by 1.7% in NI, (compared to 1.2% growth in the UK). Since the series began in 1997, the NI figure has grown by 57.6% while the UK figure has grown by 60.1%.
- Median full-time private sector gross weekly earnings (£397.7) grew by 2.0% over the year in NI compared to 1.5% growth in the UK. This represented a narrowing of the NI/UK private sector pay gap, from 82.6% to 83.0%. Full-time private sector gross weekly earnings have grown by 61.7% since 1997.
- Growth in median full-time weekly earnings in NI's public sector (3.9%) was higher than in the UK (1.6%). Full-time public sector gross weekly earnings have grown by 60.7% since 1997. Median full-time weekly earnings in the public sector in NI (£576.3) were 44.9% higher than the private sector (£397.7). This was more marked than in the UK, where full-time earnings were 17.8% higher in the public than the private sector.
- There has been a widening of the gender pay gap for all employees in NI. Female median hourly earnings excluding overtime were some 90.3% of male earnings (compared to 91.2% a year earlier and 77.6% in 1997).
- The median gross annual earnings for full-time employees in NI grew by 4.2% to £24,011 in 2012, compared to 1.4% growth in the UK (to £26,462).

The ASHE estimates are based on a sample and are therefore subject to an associated level of variability.





Office for
National Statistics

Statistical Bulletin

2011 Annual Survey of Hours and Earnings (SOC 2000)



Coverage: UK

Date: 23 November 2011

Geographical Areas: Country, European (NUTS), GB, Local Authority and County, Parliamentary
Constituency, Region, UK and GB

Theme: Labour Market

Key Findings

- In April 2011 median gross weekly earnings for full-time employees were £501, up 0.4 per cent from £499 in 2010
- For men, full-time earnings were £539, up 0.2 per cent, compared with £445 for women, up 1.4 per cent
- Median gross weekly earnings for all employees were £404, the same as in 2010
- Median gross annual earnings for full-time employees (including those whose pay was affected by absence) were £26,200, an increase of 1.4 per cent from 2010
- Median gross weekly earnings for full-time employees were highest in London at £651 and lowest in Northern Ireland at £451
- Between 2010 and 2011 the hourly earnings, excluding overtime, for full-time employees of the bottom decile grew by 0.1 per cent to £7.01 per hour, compared with growth of 1.8 per cent in the top decile to £26.75 per hour

Summary

The Annual Survey of Hours and Earnings (ASHE) is based on a 1 per cent sample of employee jobs. This is drawn from HM Revenue and Customs Pay As You Earn (PAYE) records. ASHE collects information on the levels, distribution and make-up of earnings and hours paid. Results are produced for various industrial, occupational and geographic breakdowns, as well as by public and

2011 Annual Survey of Hours and Earnings (SOC 2000) | 23 November 2011

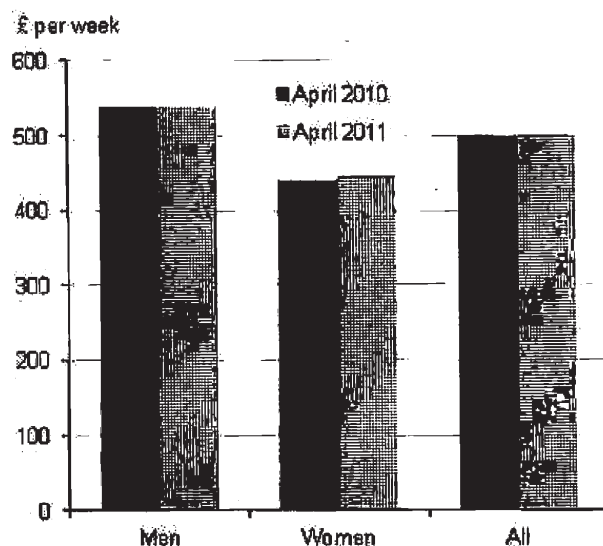
private sectors and age groups. This bulletin contains provisional results from the 2011 survey and revised results from the 2010 survey.

Weekly earnings

Median gross weekly earnings for full-time employees were £501, up 0.4 per cent from £499 in 2010.

Men's median full-time weekly earnings increased by 0.2 per cent to £539 in the year to April 2011, compared with growth of 1.4 per cent for women to £445.

Median full-time gross weekly earnings



Notes:

1. Employees on adult rates, pay unaffected by absence

Download chart

XLS [XLS format](#)
(21.5 Kb)

Part-time median weekly earnings were £154, up by 0.2 per cent. For women, part-time median weekly earnings were £158, compared with £143 for men.

The median gross weekly earnings for all employee jobs, regardless of whether the employee was full-time or part-time, were £404, the same as in 2010.

2012 Annual Survey of Hours and Earnings



Coverage: UK

Date: 22 November 2012

Geographical Areas: Country, European (NUTS), Local Authority and County, Parliamentary Constituency, Region, UK and GB

Theme: Labour Market

Key points

- In April 2012 median gross weekly earnings for full-time employees were £506, up 1.5% from £498 in 2011.
- For men, full-time earnings were £546, up 1.4%, compared with £449 for women, up 1.9%.
- The gender pay gap (i.e. the difference between men's and women's earnings as a percentage of men's earnings) based on median gross hourly earnings (excluding overtime) for full-time employees decreased to 9.6% from 10.5% in 2011.
- For the year ending 5 April 2012 median gross annual earnings for full-time employees (who had been in the same job for at least 12 months, including those whose pay was affected by absence) were £26,500, an increase of 1.4% from the previous year.
- Between 2011 and 2012 the gross hourly earnings (excluding overtime) for full-time employees in the bottom decile increased by 2.3% to £7.16 per hour. This compared with a fall of 0.2% in the top decile to £26.56 per hour.
- In April 2012 median gross weekly earnings for full-time employees were highest in London, at £653, and lowest in Wales, at £453.

Summary

The Annual Survey of Hours and Earnings (ASHE) is based on a 1% sample of employee jobs. This is drawn from HM Revenue and Customs Pay As You Earn (PAYE) records. ASHE collects information on the levels, distribution and make-up of earnings and hours paid. Results are produced for various industrial, occupational and geographic breakdowns, as well as by public and private sectors and age groups. This bulletin contains provisional estimates from the 2012 survey

and revised estimates from the 2011 survey. Unless otherwise stated, all figures in this bulletin relate to employees on adult rates whose earnings for the survey pay period were not affected by absence.

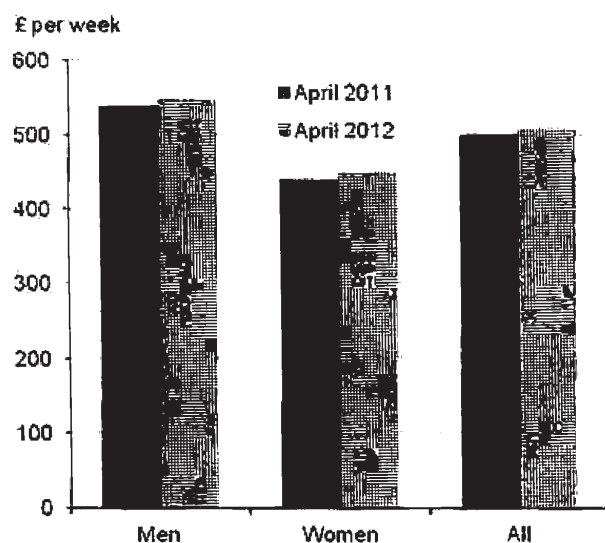
We are interested in your views about our data and publication. Please take time to complete a [short survey](#) before 10 January 2013.

Weekly earnings

In April 2012 median gross weekly earnings for full-time employees were £506, up 1.5% from £498 in 2011.

Men's median full-time weekly earnings increased by 1.4% to £546 between 2011 and 2012, compared with an increase of 1.9% for women to £449.

Figure 1: Median full-time gross weekly earnings by sex; UK, April 2011 and 2012



Source: Annual Survey of Hours and Earnings (ASHE) - Office for National Statistics

Notes:

1. Employees on adult rates, pay unaffected by absence.
2. Full-time defined as employees working more than 30 paid hours per week (or 25 or more for the teaching professions).
3. 2011 data are revised, 2012 data are provisional.

Attachment 5

Extract from NI Direct Website: <http://www.nidirect.gov.uk/benefit-cap>

Benefit cap

It is proposed that a benefit cap will be introduced from April 2013. This will limit the amount of benefit people aged 16 to 64 can get. This means you should not get more in benefit payments than you would if you were earning an average wage. This is law in England, Scotland and Wales but not law in Northern Ireland yet.

Benefit cap - what it is

The benefit cap will apply to people aged 16 to 64, also known as 'working age'.

The cap means that households where no one is in work should not get more in benefits than the average wage paid to people in work. This is after tax and National Insurance has been taken off.

A household means you, your partner if you have one and any children you are responsible for and who live with you.

What's included in the benefit cap

When added together the benefit cap will limit the total income you can get from the following benefits:

- Bereavement Allowance
- Carer's Allowance
- Child Benefit
- Child Tax Credit
- Employment and Support Allowance (except where it is paid with the support component)
- Guardian's Allowance
- Housing Benefit
- Incapacity Benefit
- Income Support
- Jobseeker's Allowance
- Maternity Allowance
- Severe Disablement Allowance
- Widowed Parent's Allowance
- Widowed Mothers Allowance
- Widows Pension
- Widows Pension Age-Related

How much is the benefit cap

The actual amount of the benefit cap won't be set until later this year (2012) in England, Scotland and Wales. The amount of the benefit cap will probably be the same in Northern

Ireland, but this is not certain until the law is changed. In England, Scotland and Wales the amount of the benefit cap is expected to be:

A maximum of £350 a week if you're a single person and either:

- you have no children
- the children you have responsibility for don't live with you

A maximum of £500 a week if you're either:

- a couple, with or without dependent children
- a lone parent with dependent children

The cap will not apply if you qualify for Working Tax Credit or get any of the following benefits:

- Disability Living Allowance
- Personal Independence Payment (from April 2013)
- Attendance Allowance
- Industrial Injuries Benefits
- Employment and Support Allowance, if paid with the support component
- War Widow's or War Widower's Pension

The cap will be applied through deductions from Housing Benefit payments.

The current understanding is that Households who are not getting housing benefit as of April 2013 will not have the cap applied.

Why is the benefit cap being introduced?

The benefit cap will make sure that households getting benefits will not normally get more in benefit than the average working household receives in pay.

The benefit cap will encourage people to look for work and help to promote fairness between those in work and those getting benefits.

What help will be available

Support and advice will be given to help you through these changes if they affect you.

Ends

Department for Social Development to Ad Hoc Committee - 10 December 2012

From: Martina F Campbell (Mrs)
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Ms Sheila Mawhinney
Clerk to the Ad Hoc Committee
On Conformity with Equality Requirements
Welfare Reform Bill
Room 241
Parliament Buildings
Stormont
Belfast
BT4 3XX

Your ref: SM/Ad Hoc 03/12

Date: 10th December 2012

Dear Sheila

The Welfare Reform Bill – Outstanding Responses

Thank you for your letter dated 5th December requesting further information for the Ad Hoc Committee.

As I explained we are aware of the data limitations of the original Equality Impact Assessment and in an effort to improve the quality of the impact assessment, colleagues within the Departmental Analytical Services Unit secured access to the Department for Work Pension's Policy Simulation Model (PSM).

The PSM is a static micro simulation model which encapsulates the tax and benefits system, and population, of the United Kingdom. It is based on survey data for 2008/09 Family Resources Survey (FRS) from both the GB and NI Family Resources Survey, which is up rated to simulate the current year, together with a few years into the future.

Data from the 2009/10 FRS will be available to our analysts after Christmas, and an updated Universal Credit module for the PSM will be available in January 2013. Once the Analysts have had an opportunity to consider this additional data, we will be in a position to update the Equality Impact Assessment.

We are not in a position to provide you with a timeline for the completion of this work at this stage, but it is unlikely that this work will be completed until early in the New Year.

As regards a detailed Human Rights assessment, I can confirm that a Memorandum on the Compatibility of the Welfare Reform Bill with the European Convention on Human Rights (the ECHR Memo) has been completed. I should also advise that before a Bill can be introduced to the Assembly the Minister must sign a statement of Legislative Competence confirming the Bill's compatibility with Convention rights and Community Law, as required under section 9 of the Northern Ireland Act 1998.

The ECHR Memo is an internal document which contains legal opinion, and forms part of the assessment of whether the Bill is within the legislative competence of the Assembly. As such, the Department is not prepared to waive the legal professional privilege attaching to the ECHR Memo and I regret therefore we are unable to release it to the Committee.

I am sorry that I cannot be more helpful at this stage.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Martina F Campbell', with a stylized flourish at the end.

Martina F Campbell (Mrs)

Department of Finance and Personnel to Ad Hoc Committee - 18 December 2012

Assembly Section

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Ms Sheila Mawhinney
Clerk
Committee for Finance and Personnel
Room 241
Parliament Buildings
Stormont

Our Ref –OCQ20/11-15
18 December 2012

Dear Sheila,

I refer to your letter of 7 December which has been forwarded to me by the Finance and Personnel Committee.

I would firstly like to clarify two points:-

- (i) In the Northern Ireland context, the reference to HMT Green Book equates to Northern Ireland Guide to Expenditure Appraisal and Evaluation (NIGEAE) which is the standard against which public sector business proposals are assessed in value for money terms.
- (ii) The Welfare Reform Bill refers to legislation and as such is not subject to appraisal guidelines, however, the associated implementation would normally be subject to evaluation to determine the best option for delivery.

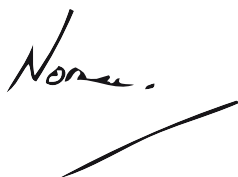
The parity arrangements attached to Welfare Reform effectively remove the available options for delivery in Northern Ireland. The policy analysis and evaluation of Welfare Reform will have been considered in the UK context by HMT and while there is a supporting programme of strategic and operational business cases for local deployment, the purpose is to support project management and the focus is primarily on the cost and affordability of delivery.

In the event that consideration is given to breaking parity, this decision would then be subject to full evaluation in line with NIGEAE.

I understand the DSD Committee have also been considering this issue.

I am copying this letter to the Finance and Personnel Committee for information.

Yours sincerely,



Norman Irwin

Department for Social Development to Ad Hoc Committee - 4 January 2013

From: Martina F Campbell (Mrs)
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Ms Sheila Mawhinney
Clerk to the Ad Hoc Committee
On Conformity with Equality Requirements
Welfare Reform Bill
Room 241
Parliament Buildings
Stormont
Belfast
BT4 3XX

Your ref:

Date: 4th January 2013

Dear Sheila

Welfare Reform Bill – further clarification

Thank you for your letter dated 12th December requesting further information for the Ad Hoc Committee.

We will forward a summary of the existing Memorandum on the Compatibility of the Welfare Reform Bill with the European Convention on Human Rights (the ECHR Memo) as soon as we receive clearance from Departmental Solicitors' Office.

As regards the guidance on Habitual Residence, I should explain that currently this issue is covered within the Decision Makers' Guidance and the Immigration and Income - Related Benefits Handbook. The provisions regarding habitual residence and right to reside are not changing under Universal Credit in any meaningful way and the Guidance, once drafted, will therefore broadly reflect existing guidance.

The Department has already agreed to provide the Social Development Committee with a copy of the Decision Makers' Guidance as soon as it is available.

As I explained at the Committee, the timetable for the Regulations is still in draft form and is attached at Appendix A, It is important to emphasise that this timetable is for illustrative purposes only and has not been discussed (in its latest form) with the Chair of the Social Development Committee nor has it been approved by Minister, therefore we would ask that this is shared with the Committee on an 'in confidence' basis. The timings are also dependent upon when the Welfare Reform Bill completes its Final Stage.

In relation to guidance in support of the Welfare Reform Bill and Regulations, I am unable to confirm when this guidance will be available as it is dependent on the Bill & regulations being drafted and made.

Finally, as regards the Regulations in relation to how they are applied to Ethnic Minorities, I am unclear as to what specifically the Committee is asking. We have not yet drafted the Regulations for here. In any event, the Regulations do not have any specific application to Ethnic Minorities – social security benefit is payable provided the entitlement conditions are satisfied, irrespective of the ethnic group to which a person belongs.

However, if the Committee is referring to the proposed Regulations under Schedule 1, Paragraph 7 (clause 31) of the Welfare Reform Bill, in relation to how these might apply to migrant workers, as explained above, the Regulations are not yet drafted for here but I attach at Appendix B an extract of Regulation 92 of the GB Universal Credit Regulations 2013 which gives effect to Clause 31 (Schedule 1, Para 7). These Regulations were laid in draft on 10th December 2012 and are available on the Department for Work and Pensions website at: - . <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-act-2012/welfare-reform-regulations/>

I should explain that the intention is that this provision will apply to EEA nationals who are seeking work or who have retained worker status due to involuntary unemployment and are seeking employment (we do not intend to exercise the power in relation to EEA nationals who are employed or self-employed, only to those who are required to seek employment to continue to retain their worker status.) This reflects the current position whereby a person who has retained worker status and is claiming income support as a lone parent must prove to the Department that she/he is seeking employment in the UK and has a genuine chance of being engaged.

Our regulations will enable us to ensure that an EEA national who is seeking work or who has retained worker status due to involuntary unemployment is in fact searching /available for work and continue to satisfy the “right to reside” test. If someone in the aforementioned circumstances does not continue to seek employment they will no longer satisfy the right to reside test and entitlement to benefit would cease. Without such regulations, an EEA national who benefits from the easements from conditionality in clauses 19-21 of the Bill, could claim Universal Credit as a jobseeker without being subject to any conditionality requirements. In effect this would be a loophole enabling “inactive” claimants with young children etc to claim Universal Credit without us having any way of checking whether they are in fact looking for/ available for work.

It is important to point out that we only intend to exercise the power to enable us to check whether an EEA claimant continues to enjoy a “right to reside” as a workseeker or person with retained worker status - without the power to verify whether a claimant is seeking work we would be unable to verify whether they continue to have a right to reside under EU law. It is reasonable therefore for the State to only pay income-related benefit to those who are habitually resident in Northern Ireland and have a legal right to reside here.

I hope that this has clarified the position for the Committee.

Yours sincerely



Martina F Campbell (Mrs)

Attachments:-

Appendix A – Draft Timetable for regulations (PDF file attached separately)

Appendix B – Extract from GB Universal Credit Regulations 2013 & extract from Immigration (European Economic Area) Regulations 2006

Appendix B

Extract from GB Universal Credit Regulations 2013

Claimants subject to all work-related requirements - EEA jobseekers

92.—(1) A claimant who is—

- (a) a person mentioned in regulation 6(1)(a) of the EEA Regulations;
 - (b) a person who is treated as a worker for the purposes of regulation 6(1)(b) of the EEA Regulations by reason of satisfying the conditions set out in regulation 6(2)(b) of those Regulations; or
 - (c) a person who has a right to reside by virtue of article 45 of the Treaty on the Functioning of the European Union (in a case where the person is seeking work in the United Kingdom, Channel Islands, Isle of Man or the Republic of Ireland), and who would otherwise fall within section 19, 20 or 21 of the Act, is to be treated as not falling within any of those sections.
- (2) A claimant who is a family member of person mentioned in paragraph (1)(a) or (c) and who would otherwise fall within section 19, 20 or 21 of the Act, is to be treated as not falling within any of those sections.
- (3) In this regulation “family member” has the same meaning as in regulation 7(1)(a), (b) or (c) of the EEA Regulations.

Please note:

“EEA Regulations” means the Immigration (European Economic Area) Regulations 2006(b);
[relevant extract attached]

Extract from the Immigration (European Economic Area) Regulations 2006

<http://www.legislation.gov.uk/uksi/2006/1003/regulation/6/made>

“Qualified person”

6.—(1) In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.

(2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—

- (a) he is temporarily unable to work as the result of an illness or accident;
- (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and—
 - (i) he was employed for one year or more before becoming unemployed;
 - (ii) he has been unemployed for no more than six months; or
 - (iii) he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;
- (c) he is involuntarily unemployed and has embarked on vocational training; or

(d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

(3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.

(4) For the purpose of paragraph (1)(a), “jobseeker” means a person who enters the United Kingdom in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged.

Family member

7.—(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—

(a) his spouse or his civil partner;

(b) direct descendants of his, his spouse or his civil partner who are—

(i) under 21; or

(ii) dependants of his, his spouse or his civil partner;

(c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;

(d) a person who is to be treated as the family member of that other person under paragraph (3).

(2) A person shall not be treated under paragraph (1)(b) or (c) as the family member of a student residing in the United Kingdom after the period of three months beginning on the date on which the student is admitted to the United Kingdom unless—

(a) in the case of paragraph (b), the person is the dependent child of the student or of his spouse or civil partner; or

(b) the student also falls within one of the other categories of qualified persons mentioned in regulation 6(1).

(3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

(4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under paragraph (3) if either the EEA family permit was issued under regulation 12(2), the registration certificate was issued under regulation 16(5) or the residence card was issued under regulation 17(4).

Examiner of Statutory Rules to Ad Hoc Committee - 9 January 2013

From: Nabney, Gordon
Sent: 09 January 2013 15:13
To: O'Hare, Mark
Cc: Mawhinney, Sheila; Magee, Andrienne
Subject: RE: Ad Hoc Committee on the Conformity with Equality Requirements, Welfare Reform Bill

Mark

Thank you for your email earlier today.

Generally, subject to negative resolution is the most common category.

In social security, child support and pensions the practice has developed for reasons of parity of timing that draft affirmative at Westminster becomes confirmatory procedure in Northern Ireland legislation.

So I would tend to regard it with the similar considerations as draft affirmative when considering delegated powers in social security, child support and pensions legislation.

In general some matters stand out for greater scrutiny than negative resolution procedure affords: for example, extensive amendments in subordinate legislation and anything to do with the creation or increases of offences and penalties.

Regards

Gordon

From: O'Hare, Mark
Sent: 09 January 2013 11:37
To: Nabney, Gordon
Cc: Mawhinney, Sheila; Magee, Andrienne
Subject: Ad Hoc Committee on the Conformity with Equality Requirements, Welfare Reform Bill

Hi Gordon,

At a recent meeting of the Ad Hoc Committee that is looking as to whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights, Members questioned the procedures applicable to the Subordinate Legislation that will flow out of the Bill.

The Committee are looking for definitive detail as to what forms of control the Assembly has in relation to subordinate Legislation, including how many forms there are and a brief definition of each, including under what circumstance each form would be used.

Would it be possible for you to provide some clarity around these points that could be put before the Committee for its information.

Thanks,

Mark.

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Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill
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Examiner of Statutory Rules and Draft Statutory Rules Assembly Procedures

Statutory Rules and Draft Statutory Rules: Assembly Procedures Briefing Paper by the Examiner of Statutory Rules 5 September 2002

Assembly procedures — introduction

1. Statutory rules may be subject to various Assembly procedures, or to none, according to the provision of primary (or “parent”) legislation under which they are made. The parent legislation determines the procedure (if any) to which a statutory rule is subject.
2. Some statutory rules are subject to no Assembly procedure at all and are not subject to laying before the Assembly, for example commencement orders bringing all or part of an Act into operation on an appointed day. A few statutory rules are subject to laying before the Assembly but are not subject to any Assembly procedure. But most statutory rules made by Northern Ireland departments are, under their parent legislation, subject to Assembly procedures. Some statutory rules are subject to a requirement in their parent legislation that they must be laid in draft for approval (draft statutory rules): see particularly paragraphs 3(d), 5 and 6 to 8 below.

Assembly procedures outlined

3. There are essentially four distinct kinds of Assembly procedure to which a statutory rule can be subject in accordance with its parent legislation, namely—
 - (a) **subject to negative resolution** (whereby the statutory rule is made by the department, laid before the Assembly and may be prayed against (motion for its annulment moved by Committee Chairperson or any Member) within the statutory period (10 days on which the Assembly has sat or 30 days, whichever is the longer — section 41(6) of the Interpretation Act (Northern Ireland) 1954));

[**Note:** this is by far the most common Assembly procedure to which statutory rules are subject in accordance with their parent legislation.]

- (b) **confirmatory procedure** (whereby the statutory rule is made by the department and laid before the Assembly but must, if it is not to cease to have effect, be approved by resolution of the Assembly (motion moved by the Minister), usually under Northern Ireland parent legislation before the expiration of 6 months from the day on which the parent legislation came into operation);

[**Note:** this procedure is most commonly used for some social security statutory rules and for some statutory rules made under employment legislation.]

- (c) **subject to affirmative resolution** (whereby the **statutory rule is made by the department but cannot come into operation until it has been affirmed by resolution of the Assembly** (motion moved by the Minister) — section 41(4) of the Interpretation Act (Northern Ireland) 1954); and
- (d) **draft statutory rule subject to approval** (whereby the **draft statutory rule is laid before the Assembly for approval by resolution of the Assembly** (motion moved by the Minister) and is **subsequently made by the department**).

[Note: this procedure, common at Westminster as the affirmative procedure, seems to be becoming more common in Acts of the Assembly — as witnessed by its use in current Assembly Bills]

Draft statutory rule procedure distinguished

4. In the case of three of the four Assembly procedures mentioned in paragraph 3 — subject to negative resolution, confirmatory procedure and subject to affirmative resolution — the statutory rule is made by the department, registered (numbered) and laid, *and any Assembly procedure takes place **subsequently**.*
5. In the case of the fourth procedure mentioned in paragraph 3 — laying of draft statutory rule for approval by resolution of the Assembly — the *draft* statutory rule is laid and *the Assembly procedure (motion for approval) takes place **before** the statutory rule is made* by the department. (Once the draft statutory is approved by resolution of the Assembly, that concludes the Assembly procedure in it and it is not laid again after its making.)
6. Subject to affirmative resolution and laying in draft for approval by resolution of the Assembly are both *affirmative* procedures in that there must be a resolution of the Assembly affirming or approving the statutory rule before it can have effect. But they are plainly distinguishable procedures.
7. A statutory rule which is, in accordance with its parent legislation, “subject to affirmative resolution” [section 41(4) of the Interpretation Act (Northern Ireland) 1954] is *made but cannot come into operation until affirmed by resolution of the Assembly.*
8. A draft statutory rule (that is, a statutory rule which subject to a requirement in its parent legislation that it must be approved in draft by resolution of the Assembly before it is made) means exactly what it says — *it cannot be made before it is approved in draft by resolution of the Assembly.* (Once approved it is made by the department and registered (numbered) as a statutory rule.)

Correspondence from DSD Minister to Ad Hoc Committee - 10 January 2013



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**Social
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Mr Trevor Lunn MLA
Chairperson
Ad Hoc Committee on Conformity with Equality Requirements,
Welfare Reform Bill
Room 241
Parliament Buildings
Stormont
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Our ref: SUB/26/2013

10 January 2013

Dear Trevor

AD-HOC COMMITTEE ON EQUALITY AND HUMAN RIGHTS ISSUES - WELFARE REFORM BILL

Your letter to Martina Campbell dated 12 December 2012 refers.

As my officials have explained during evidence sessions with the Committee, The Human Rights' Memorandum is a document provided under legal privilege. Advice from Departmental Solicitors is that, as such, the Memorandum should not be circulated.

However, in order to assist in and facilitate your deliberations in these matters my officials have provided some additional clarification on Human Rights' issues as referenced in the Financial and Explanatory Memorandum attaching to the Bill. This is now enclosed at **Appendix I** for your consideration. I would ask that this be treated as "In Confidence" as Executive colleagues will not have had sight of this material.

I hope the information is helpful and I look forward to reading your report.

Yours sincerely

Nelson McCausland

**NELSON McCAUSLAND MLA
Minister for Social Development**



Department for Social Development to Ad Hoc Committee - 11 January 2013

From: Martina F Campbell (Mrs)
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Ms Sheila Mawhinney
Clerk to the Ad Hoc Committee
On Conformity with Equality Requirements
Welfare Reform Bill
Room 241
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BT4 3XX

Your ref: SM/Ad Hoc 20/01

Date: 11th January 2013

Dear Sheila

Welfare Reform Bill – under occupancy provisions

Thank you for your letter of 9 January on the Ad Hoc Committee's request for information about under occupancy and how income provided from taking in a lodger would affect a claimant's benefit.

At present any income from a lodger is taken into account and deducted pound for pound apart from the first £20. When Universal Credit is introduced all income received from lodgers will be **fully disregarded**.

Under the current arrangements, Housing Benefit claimants living in the social rented sector generally have no restrictions placed on the size of accommodation they occupy. Under proposals in the Welfare Reform Bill, it is intended to introduce size criteria for new and existing Housing Benefit claimants living in the social rented sector. The size criteria will replicate the size criteria that current applies to Housing Benefit claimants in the private rented sector.

In summary, the size criteria will allow one bedroom for each person or couple living as part of the household, with the following exceptions:

- a child aged 15 or under would be expected to share with one other child of the same gender; and
- a child aged 9 or under would be expected to share with one other child aged 9 or under, regardless of gender.

A bedroom for a non-resident carer will also be permitted in determining the size criteria where they provide overnight care for the claimant or their partner.

The size criteria will apply to households that are under occupying accommodation, regardless of the level of rent charged and will reduce the eligible rent by a percentage. The reduction

rates will be 14% where under occupation is one bedroom and 25% where under occupation is two or more bedrooms.

Current estimates from NIHE suggest that around 26,168 of working age tenants will be affected by the under-occupation rule. These figures illustrate that 18,850 under occupy by one bedroom and 7,318 under occupy by 2 bedrooms or more. Based on average NIHE rent of £58.76 (2012/13) affected tenants will see deductions in Housing Benefit of approximately £8.25 (one bedroom) or £14.70 (two or more bedrooms) per week depending on the level of under occupation.

Figures for Housing Associations show there are 14,757 working age Housing Association tenants in receipt of Housing Benefit. Due to a number of issues around data matching, it has not been possible to assess the levels of under-occupation in all cases. However, it is currently estimated that the total number of working age Housing Association tenants affected by the changes will be around 6262. Of that number 5046 would be under-occupying by one bedroom and 1216 by two or more bedrooms. Based on a mean weekly Housing association rental of £81.69 (2010/11), affected tenants will see an average deduction of £11.44 (one bedroom) and £20.42 (2 bedrooms).

The total annual reduction in housing benefit for both NIHE & Housing Associations caused by the application of the size criteria is estimated at £17,331,120.

Finally, under Universal Credit lodgers will not be counted as occupying a room and the size criteria reduction will apply, but any income from lodgers will be fully disregarded and will not impact on the amount of the claimant's Universal Credit award.

I hope that this has clarified the position for the Committee.

Yours sincerely



Martina F Campbell (Mrs)

Welfare Reform Group to Ad Hoc Committee - 11 January 2013

From: Georgina Ryan-White [Georgina.Ryan-White@lawcentreni.org]

To: +Comm AdHoc Welfare Reform Public Email

Cc:

Subject: RE: Call for Evidence

Hi Mark

Apologies for the delay

We have two recommendations in mind for the Ad Hoc Committee:

- 1) In Great Britain, DWP have developed a Universal Credit Evaluation Framework which has set up an advisory group to monitor the impacts and outcomes of Universal Credit (please see attached). We believe that DSD should set up an Northern Ireland equivalent framework and advisory group that would involve broader monitoring to include Universal Credit and the other changes contained within the Welfare Reform Bill. The Department should commit to look at Section 75, and beyond, to identify what data collection is currently needed so that they are prepared for future monitoring i.e filling in the data gaps.

We believe this framework should also include a qualitative evaluation strategy involving robust engagement with claimants and the voluntary sector.

- 2) In Great Britain, we understand DWP is developing a support framework (with funding allocated) for people who are at risk from the welfare reform changes i.e those at risk from digital exclusion and other elements of the welfare reform, etc. Although the document is very high level at present it aims to examine what Local Authorities' and the third sector can do to assist these vulnerable groups.

We recommend that DSD adopts a similar framework. It should set up a group to look at these vulnerable groups who are most at risk and examine how NI public bodies and the voluntary sector can assist them i.e homeless persons, those with a disability or particular mental health problem etc.

Just for information, in our response to the Social Development Committee we made more specific social security recommendations :

We suggest the following outcomes, based on the points raised in our response, should be monitored and subject to statutory scrutiny by the Committee for Social Development under the Welfare Reform Bill.

- The impact of increased sanctions on jobseekers, including whether this had a positive effect on employability and whether sanctions lead to increased demand for charitable support.
- The impact of Universal Credit on claimants with disabilities or illness who are fit for work. Analysis of the regulations suggest that these claimants will be worse off under Universal Credit although it is difficult to estimate the scale of this loss of support.
- The impact of Universal Credit on child poverty levels given the commitment in the Child Poverty Act to end child poverty by 2020

- The direct and indirect consequences of the implementation of welfare reform, in recognition of the significant impact on the working age population and the knock on impact within other sectors creating increased 'displaced expenditure'.
- The performance of the medical given its central role in the implementation of PIP and the knock on consequences of below par performance.

If we can be of any additional assistance, please don't hesitate to contact me.

Kind regards

Georgina

Universal Credit Evaluation Framework

Universal Credit Evaluation Framework

December 2012

DWP Department for
Work and Pensions

Universal Credit evaluation framework

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Universal Credit evaluation framework

Foreword

Universal Credit represents a significant shift in the State's approach to delivering welfare. A policy and delivery change as large as Universal Credit requires a significant programme of monitoring, research, evaluation and analysis, both to enable us to report on the extent to which it has achieved its aims, but also to understand how we can improve on the design and delivery. This presents a range of significant analytical challenges, and the Department for Work and Pensions is keen to engage with as broad a range of stakeholders as possible, to ensure that such a programme of analysis builds on the wealth of evidence available within the external policy and research community.

This evaluation framework is the first step in the development of the full evaluation programme of Universal Credit. It sets out the Department's broad intentions for the evaluation, highlights the key aims and objectives and considers possible analytical approaches to areas including the development of a theory of change, impact measurement and the use of existing data sources and evidence bases to add to a long term, comprehensive narrative for Universal Credit.

The framework also outlines the Department's early thoughts on developing a 'test and learn' framework within DWP. With provisions within the Welfare Reform Act providing the opportunity to test aspects of the Universal Credit offer, DWP is looking to incorporate a series of small scale policy and delivery experiments within the broader programme of evaluation.

The intention behind the publication of the evaluation framework is to encourage interested parties to engage with the evaluation programme; to provide comments and thoughts on suggested approaches and to consider ways in which external research and expertise could add to and develop the full programme of evaluation and analysis of Universal Credit.

The Department for Work and Pensions would welcome any comments or suggestions that you may have on this evaluation framework. Please email UNIVERSALCREDIT.EVALUATIONTEAM@DWP.GSI.GOV.UK



Trevor Huddleston, Chief Analyst

Universal Credit evaluation framework

Summary

This high level evaluation framework provides an overview of plans for evaluating the introduction, implementation, delivery and impact of Universal Credit. The document will develop and we will publish updates to reflect new issues and offer a more detailed discussion of methodologies.

Universal Credit will be an integrated, income-related, working age benefit providing households with a basic allowance topped up by additional components to recognise the needs of families with children, housing costs, disability and health conditions that limit work, and caring responsibilities. It will be available both in and out of work and will replace Working Tax Credits, Child Tax Credits, Housing Benefit, Income Support, income-based JSA and income-related Employment and Support Allowances. In the first instance, Universal Credit will be delivered by DWP.

Universal Credit therefore comprises a fundamental change to the way in which people engage with the benefit system and access in-work financial support. Its design, implementation and delivery will span a number of years, with a Pathfinder to start in April 2013, followed by national rollout from October 2013.

The evaluation has multiple audiences and must therefore seek to address diverse evidence needs. It will need to provide operational information for those leading on delivery; offer strategic evidence and insight for future policy development and provide a sound evidence base with which to inform the wider programme of welfare reform. Therefore, the evaluation will need to reflect and complement both the immediate need for feedback and evidence on implementation issues as well as address the long timescale and complexity of the policy.

Broadly, the evaluation will comprise a number of inter-related components undertaken internally or commissioned externally, including ongoing monitoring, evaluation and analysis; early implementation and delivery studies; a fuller evaluation of implementation and delivery and ongoing analysis of outcomes and impacts.

The evaluation will be steered by an inter-departmental group of analysts and policy makers. In addition, an advisory group of external evaluation experts has been formed. This Group's main role is to provide expertise and independent advice and challenge to the analytical team in relation to the development of the evaluation approach.

1.0 Introduction

This evaluation framework outlines DWP's plans for developing the Universal Credit evidence base which will inform the ongoing development of Universal Credit policy. It highlights the key strategic and policy intentions and provides an outline of how we will measure and evaluate impacts and effectiveness over the longer term.

The evaluation is structured around a series of inter-related themes which will seek to explore the extent to which Universal Credit has realised the benefits set out in the White Paper¹ and the subsequent Impact Assessments². The evaluation will draw on existing information sources as far as possible. If no suitable data source exists, the Department will consider commissioning quantitative and/or qualitative new research of individuals, staff and stakeholders including employers. This will be reviewed on a case by case basis to ensure value for money for the taxpayer.

This evaluation sits within a wider programme of analysis on Welfare Reform. Whilst not directly addressing related areas of the Welfare Reform Act 2012, the evaluation will need to be aware of closely related areas of policy that may impact on evidence, these include PIP/DLA changes, the Benefit Cap; direct payments of housing benefit, changes to Council Tax, Social Fund and Crisis Loans and under-occupancy of social housing.

A series of thematic synthesis reports will be produced throughout the lifetime of the evaluation, as well as policy briefing papers which will inform the ongoing development of Universal Credit. Full evaluation reports will also be produced. These will all be publicly available via the DWP website.

1.1 Policy background

Universal Credit is a major feature of the Welfare Reform Act. It aims to simplify the current benefits system to make work pay. Universal Credit is an integrated, income-related, working age credit providing households with a basic allowance topped up by additional components to recognise the needs of families with children, housing costs, disability and health conditions that limit work, and caring responsibilities. It will be available both in and out of work and will replace Working Tax Credits, Child Tax Credits, Housing Benefit, Income Support, income-based JSA and income-related Employment and Support Allowances.

Overall financial work incentives will be increased, meaning that the marginal deduction rates for working will be reduced while the personal and social benefits of working will remain. In return, there will be stronger conditionality³ requirements to

¹ <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf>

² [Impact assessments and equality impact assessments - DWP](#)

³ As well as placing conditions on the receipt of some benefits, there is an intention, under Universal Credit, to place obligations on those already in work and in receipt of work related Universal Credit, to seek to increase their hours.

Universal Credit evaluation framework

seek and increase work. Moreover increasing hours worked should always mean an increase in financial return and an ongoing incentive to increase hours worked.

As an integrated in and out of work credit, Universal Credit removes the previous distinction between in and out of work benefits, so anxiety on the part of the customer on moving around the wider benefit system is reduced, there will be no re-application involved, and there will be no administrative barrier to the customer entering employment.

1.2 Policy aims

The aim of Universal Credit is to tackle the problems of poor work incentives and complexity within the current system of benefits and tax credits. The overarching aims are to:

- Encourage more people into work and to make even small amounts of work pay and be seen to pay;
- Smooth the transition into work by offering a single benefit that removes the distinction between being in and out of work;
- Offer a simpler support, with one system replacing multiple systems, therefore reducing administration costs and the propensity for fraud and error, and
- Tackle poverty both through increased take-up since the system will be simpler and from increased reward from employment for the customer.

1.3 Timetable for roll-out

Universal Credit will be implemented in a controlled way between October 2013 and October 2017, with a Pathfinder phase in the Greater Manchester and Cheshire region from April 2013.

1.4 Testing and experimentation

Officials within the department are leading on developing a framework for testing social policy and administration across the business. In order to encourage a 'test and learn mindset', we are looking to develop a suite of small-scale experiments to test elements of policy provision, including aspects of the Universal Credit offer.

The testing framework will set out how testing and experimentation could be built into the policy development process, the practicalities of how it can be run, how it would fit with current and future delivery models and how the external community can be engaged to suggest and develop possible approaches and options. Where appropriate small scale testing and experimentation will be carried out as part of the UC evaluation programme.

Possible areas for small scale experimentation *might* include:

- Assessing different forms of "in-work conditionality";

Universal Credit evaluation framework

- Testing out in-work retention support;
- Testing out different approaches to the UC 'payslip', to measure the impact that different levels of payment information have on claimant behaviours⁴.
- Testing out different forms of communications to promote, for example, increased take up or channel shift

Some possible experimentation options would require a pilot scheme under the Welfare Reform Act 2012. Subject to Parliament giving approval to affirmative pilot scheme regulations in each case, the powers in section 41 of that Act allow us to trial more policy options which could improve simplification, behavioural and work impacts.

⁴ To date, there has not been consistent work undertaken by DWP on the degree to which the presentation of financial information impacts on claimant behaviours. We have observed the reactions of claimants to receipt of a 'better off calculation' and undertaken short post 'Better off in Work Calculations' interviews to gauge their immediate reactions, and have also gathered information on clients' spending practices but we have not systematically tested the impact of varying the provision of detailed benefit payment information.

Universal Credit evaluation framework

2.0 Evaluation Approach

2.1 Evaluation aims and objectives

The evaluation of Universal Credit has to address the immediate need for feedback and evidence on implementation issues as well as a longer-term need for a broader evidence base on welfare reform. The key evaluation aims are to:

- provide timely, business-led operational information and analysis which aids implementation and delivery;
- develop a longer term and grounded body of evidence which will enable us to;
 - develop a comprehensive theory of change of Universal Credit as a whole;
 - assess the impact of Universal Credit against the policy aims;
 - identify any unintended consequences;
 - develop strong links with the external research community to encourage the active sharing and dissemination of Universal Credit related evidence;
 - build on the ex-ante programme of analysis already being undertaken and used to inform the published Impact Assessments and
 - provide space within the evaluation to foster a test and learn mindset, to encourage small scale testing of aspects of Universal Credit.

The scale of Universal Credit and the broader range of stakeholders necessitate a broad, multi-dimensional approach to its evaluation. Whilst the core focus relates primarily to measuring the extent to which Universal Credit meets its high level policy aims, the evaluation also needs to cover broader themes of changes in labour market behaviour, changes in beliefs and expectations surrounding employment and the welfare system and wider effects on, for example, employers and Local Authorities.

To do this, the evaluation will look at a broad range of factors from service delivery (e.g. better processes, increased benefit take-up, ease of use) through to specific outcomes for Universal Credit recipients, such as movement off out of work benefits, movements into, or increases in employment or reductions in unemployment. It will involve a number of inter-related components which will add, incrementally, to the development of a comprehensive evidence base on Universal Credit. Over time, it will enable the evaluation to build up a picture of destinations, outcomes, income, household changes and changes in attitudes and perceptions. We will, where possible, undertake specific sub-group analysis, looking at, for example, differential experiences of groups such as low income households, couples, lone parents, long term unemployed, disabled and minority ethnic groups. The externally commissioned work will explore both quantitatively and qualitatively, aspects

Universal Credit evaluation framework

including customer views and experiences, delivery issues and stakeholder perspectives.

The Universal Credit evaluation will involve the commissioning of new pieces of work as well as ensuring as far as possible that Universal Credit issues are addressed in surveys such as Family Resources Survey, Labour Force Survey, Understanding Society and British Social Attitudes Survey.

Drawing on lessons learned from previous large-scale evaluation programmes, the evaluation approach for Universal Credit will reflect changing needs for information, as well as changing information sources, maximising internal evidence bases such as DWP Insight and performance management information as well as commissioning external evaluation and analysis.

2.2 Theory of Change

It is proposed that a theory of change approach is utilised as the framework for this evaluation. Theory of change starts with the assumption that a policy or programme operates in a political, social, changeable context, and the people involved in delivering the policy and the people who take part in the policy are subject to variable choices and a variable capacity to act. This combination is sometimes referred to as the context + mechanism = outcomes.

Applying theory of change to an evaluation involves unpacking and identifying the underpinning theories of the policy with those that designed and constructed the policy. Findings are generally used to shape and fine-tune a policy, rather than give a definitive answer to whether a policy works or not. Using a theory of change, the evaluators aim not only to find out if a policy works or not, rather what works, for whom and in what circumstances. This is particularly important in Universal Credit, where policy makers are interested in changes in behaviours and attitudes as well as how the various elements of Universal Credit interact and drive such changes in behaviour.

Early work has already been undertaken on developing a theory of change for Universal Credit. Official documents, including the green and white papers, Impact Assessment and policy briefings have been reviewed to identify the key policy aims for Universal Credit. These key aims have then been discussed in a number of key stakeholder meetings with audiences including senior officials and analysts. Outputs from these meetings include a developing list of evaluation questions and the gradual articulation of the key Universal Credit theories of change.

2.3 Evaluation themes

The evaluation programme will be structured around five key themes:

- Delivery and implementation;
- Attitudes and behaviours;
- Impacts and impact measurement;

Universal Credit evaluation framework

- Testing and experimentation, and
- Cost-benefit analysis.

Through work with stakeholders, the evaluation team has developed a set of key evaluation questions which will be grouped under the five evaluation themes and answered using a number of approaches including analysis of internal and external existing administrative datasets; bespoke qualitative and quantitative studies, key stakeholder and third party case studies, implementation and live running reviews and small-scale testing and experimentation.

The first proposed theme of the evaluation, **delivery and implementation**, will provide evidence on the process of delivering Universal Credit, covering themes from the customer, staff and stakeholder experience to channel usage and shift. This part of the evaluation will be mainly qualitative in nature, involving face to face interviews with staff, claimants, senior stakeholders (both internal and external to DWP) and employers.

The process evaluation will comprise part of a continuous programme of analysis, providing rapid evidence and information on the rollout of Universal Credit. Using this iterative approach, the evaluation will provide timely evidence, inform future decision making and help shape the ongoing development of Universal Credit.

This strand of the evaluation will help unpack issues that may arise in analysis undertaken as part of the impact assessment to be undertaken later in the evaluation programme. Process evaluation evidence will start to add context to performance-related data and the process strand will adapt to meet emerging evidence needs.

Analysts are currently exploring options for and the feasibility of a Universal Credit Panel Study. This would provide the evaluation with a longitudinal picture of claimants' experiences of Universal Credit, any changes in attitudes and perceptions towards work and welfare, changes in income, hours worked and claiming behaviours. Linked with the administrative data, a panel study would provide a valuable source of information on outcomes and experiences. It would also provide useful data for a later impact study.

The second theme of the evaluation, looking at **changing attitudes and behaviours**, will seek to address some of the central aims of Universal Credit, by examining changes in perceptions and beliefs towards work and welfare receipt. The key themes of this part of the evaluation will include; changes in labour market behaviour, changes to individual and household behaviours, including household decision making about areas including work, budgeting, caring responsibilities. Stakeholders and other third parties will also be included in this part of the evaluation. This part of the evaluation will be both qualitative and quantitative in nature drawing on in-depth interviews and case studies. It will also draw on existing attitudes evidence including the British Social Attitudes Survey and will look to explore links with other surveys including Understanding Society and various cohort studies. The potential DWP Panel Study would also add value to this part of the evaluation.

Universal Credit evaluation framework

This second theme will also look at **outcomes in the short, medium and longer term**. Outcomes will include changes in income, composition of household income, changes in employment tenure, hours and wages and changes in household composition.

The third theme will comprise **impact measurement**. Key to determining the overall success of Universal Credit will be measuring the employment and benefit impacts and from this determining the value for money and social return of the programme. The extent to which we are able to estimate impacts will depend on how Universal Credit is rolled out and whether this gives enough random variation in policy coverage. Any impact measurement will necessarily take place over a long timescale, principally because of the time it takes to reach steady-state impacts.

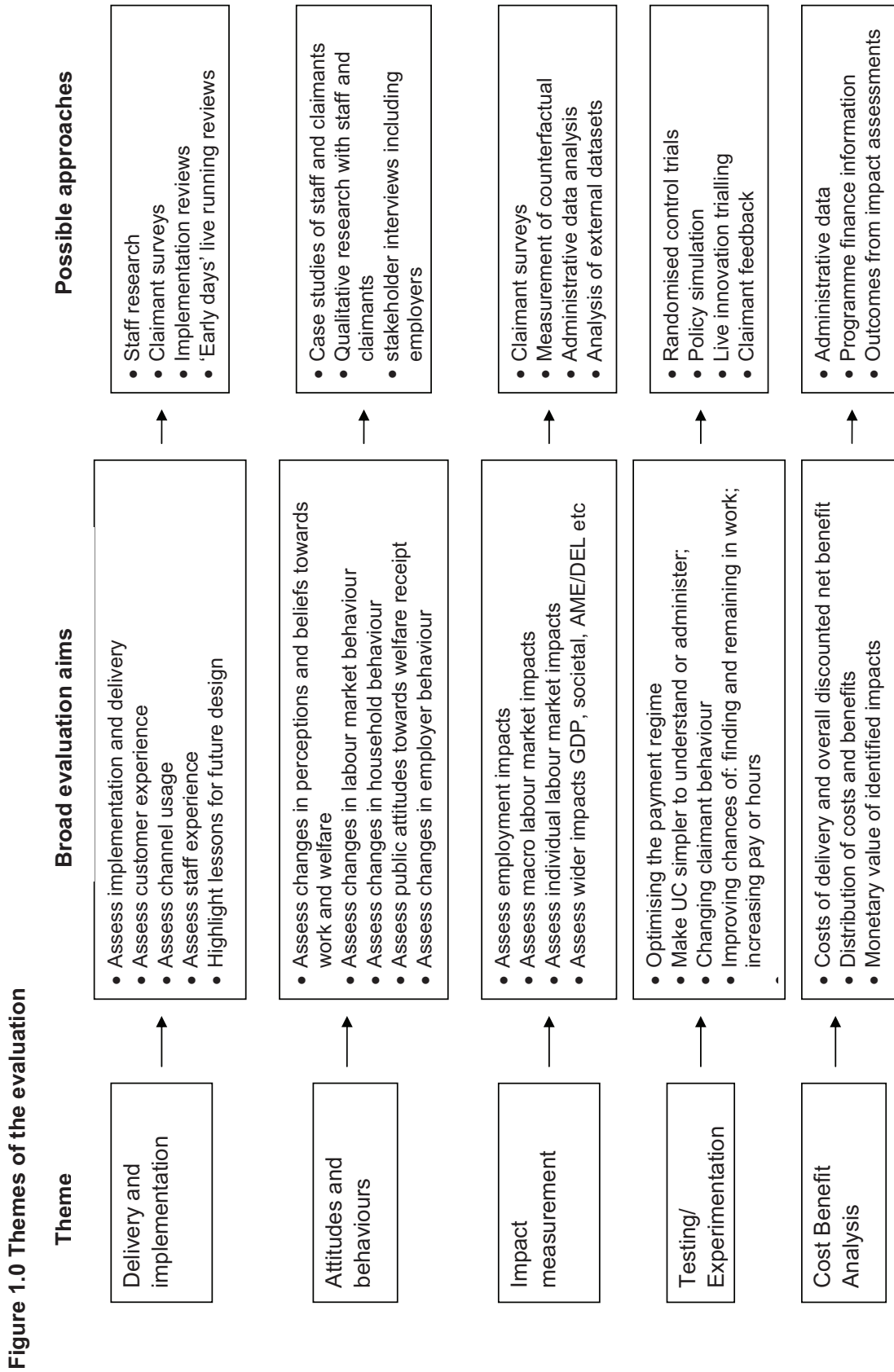
The planned roll-out of Universal Credit raises a number of challenges in how to identify its employment and benefit impact, as it is necessary to compare outcomes of claimants who have been migrated to Universal Credit, with a control group of similar customers remaining on legacy benefits and tax credits. There are a number of possible approaches that could be utilised.

We will explore the scope to exploit the planned migration strategies to compare some of the variations across areas as Universal Credit roll-out progresses at different stages in different districts. We could consider comparing those migrating onto Universal Credit with similar claimants who are just outside the scope of Universal Credit, such as those approaching the end of contributions based JSA, or those just above the tax credit threshold. We could use a difference in difference approach where we compare the change in outcomes for a control (or comparison) group drawn from a similar population but remaining outside the scope of Universal Credit to the change in outcomes for Universal Credit claimants.

The large number of people affected by Universal Credit means that it could have a significant impact on the labour market and consequently on the macro-economy. For example, if Universal Credit significantly boosts labour supply it should put downward pressure on wage growth, which could stimulate investment, growth and equilibrium employment. The evaluation of impacts should therefore explore the scope for measuring macro-economic impacts in the longer-term.

The fourth theme, **testing and experimentation** has been outlined previously in this document in section 1.4 and will be more fully developed in later versions of the evaluation strategy.

The fifth theme, **cost-benefit analysis** will provide policy makers across government with an understanding of the cost benefit of the changes implemented under Universal Credit. It will explore the following areas, amongst others; How much does Universal Cost to deliver? When do the different benefits and costs occur and what is the difference between the short-run and the long-run steady state costs and benefits? How are the benefits and costs distributed between different groups? What is the monetary value of the various impacts identified under other evaluation themes? What is the overall net value of Universal Credit?



2.5 Data sources

In order to report against wider indicators and provide earlier intelligence on outcomes, we will consider using descriptive analysis of outcomes from sources including benefits and HMRC data as well as survey data of claimants. These descriptive statistics will not provide a robust measure of the impact of Universal Credit, but could be presented alongside the context of the wider labour market to provide earlier intelligence as to possible outcome measures. Possible sources include:

- Understanding Society;
- the Labour Force Survey/Annual Population Survey;
- the HMRC Panel Study of Tax Credit Recipients;
- the Millennium Cohort Study and other birth cohort studies;
- Family Resources Survey and,
- the Wealth and Assets Survey.

Work is underway on the development of the management information requirement for Universal Credit. We anticipate making full use of administrative data, including data on UC itself, other benefits, employment data and possibly other sources, including where possible, and subject to informed consent, linking to survey records.

Universal Credit evaluation framework

3.0 Governance

The evaluation strategy will be steered by an inter-departmental group of analysts and policy makers. In addition, an advisory group of external evaluation experts has been formed. This Group's main role is to provide expertise and independent advice and challenge to the analytical team in relation to the development of the evaluation approach.

Expert Group Membership

Professor Richard Blundell	University College London/Institute for Fiscal Studies
Professor Elaine Kempson	University of Bristol
Mr Paul Lanser	HMRC
Professor Helen Margetts	University of Oxford
Professor Steve Pudney	University of Essex
Dr Jim Riccio	MDRC, New York
Rebecca Riley	National Institute of Economic and Social Research
Professor Roy Sainsbury	Social Policy Research Unit, University of York
Professor Robert Walker	University of Oxford




Universal Credit evaluation framework

4.0. Timetable and reporting

We will start the commissioning process for the evaluation in Spring 2013. We are planning for the evaluation to be commissioned in stages with the first of these comprising feasibility and scoping studies. Once complete, we will publish our research reports as part of the DWP Research series. A detailed timetable for reporting on individual studies will be developed as we work through the commissioning process.

We will also publish official statistics on Universal Credit claimants and outcomes as soon as the data is collected and meets the required standards of the UK Statistics Authority's Code of Practice. A consultation document will invite views on the publication of and access to official statistics on Universal Credit and other welfare reform changes. We will publish an indicative timetable for data publication after that consultation.

Correspondence from Equality Commission to Ad Hoc Committee - 7 January 2013

From: Louise Conlon [LConlon@equalityni.org] [Move to Folder](#) Sent: Mon 07/01/2013 12:19
To: '+Comm AdHoc Welfare Reform Public Email; 'Sheila.Mawinney@niassembly.gov.uk'
Cc:
Subject: Letter from the Equality Commission to Dept of Social Development
Attachments:  DSD re Welfare Reform EQIA_24.7.12.pdf (295 KB);  DSD welfare reform_301012.pdf (703 KB);
 ECNI letter to DSD_8.6.12.pdf (393 KB)

Dear Sheila

You should have already received the attached copies of the correspondence between the Equality Commission and DSD in relation to welfare reform which you requested but just in case please see attached.

Kind regards

Louise Conlon

Manager, Secretariat
Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Direct line: 028 90 890 860

Department for Social Development to Equality Commission - 29 October 2012

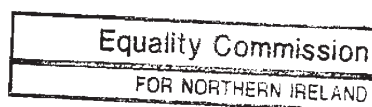


From: The Permanent Secretary
Mr Will Haire

Lighthouse Building
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Ormeau Road
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BT7 2JB

Telephone: 028 90 829002
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E-mail: perm.sec@dndni.gov.uk

Evelyn Collins CBE
Chief Executive
Equality Commission
Equality House
7-9 Shaftesbury Square
BELFAST
BT2 7DP



30 OCT 2012

29 October 2012

Dear Evelyn

THE WELFARE REFORM BILL

I thought that it might be helpful, following our recent meeting, to formally record this Department's, and indeed, Minister's commitment to equality, particularly in the context of the challenges set by the welfare reform agenda, and to explain how we are seeking to ensure effective consideration is given to our equality obligations.

I think that it is particularly useful to take stock of where we are, now that the Bill has been formally introduced, and is in Committee Stage. As you know, historically, social security legislation in NI has tended to be a mirror image of its Westminster counterpart, and of course the obligations of legislation and the funding formula mean that there are significant constraints under which we all operate. Nevertheless the scale of the reform proposals is such that Minister, and the Executive took the view that full scrutiny was essential to ensure that the Welfare Reform Bill reflected local needs and circumstances.

As you are aware, the Equality Impact Assessment was carried out based on information data available at that time. Consequently it was less thorough than we would have liked. However, as I have impressed upon all the stakeholders who commented upon this, it is very much a "living document", and officials are currently reviewing

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Together, tackling disadvantage, building communities

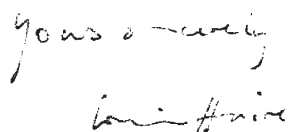
additional data recently received from HMRC. This data from HMRC, in conjunction with the data from the existing DWP Policy Simulation Model will greatly improve the information available and our ability to identify potential adverse impacts. It is our intention to update the EQIA as soon as the analysis is completed.

There is not, as yet, any suitable data sources to enable us to assess the impact accurately on the basis of religion or belief; sexual orientation or race. It is our view that as receipt of benefits is based on entitlement, there should be no differential impact on any of these groups. However, the Department for Work and Pensions together with our own departmental analysts are continuing to review this position with a view to identifying a suitable data source.

As you are aware, the Bill itself is largely enabling, and the data will be of most significance in relation to the detailed proposals which will be contained in the Regulations. Obviously as each set of Regulations is prepared, the proposals will be screened in or out on differential impact, to assess the need or otherwise for an EQIA of the Regulations.

This Welfare Bill in my view will also be important since it sets out the context for a wide ranging set of developments in related policy areas. For example, colleagues in DEL are developing important initiatives which are highly relevant to helping jobseekers. Likewise our work on Housing Strategy needs to take account of these changes. I look forward to the continuing debate on how such policies can be developed effectively and address the equality challenge.

I trust that this is helpful



The image shows a handwritten signature in cursive script. The signature appears to read "Yours sincerely" on the first line and "Will Haire" on the second line.

WILL HAIRE

Department for Social Development to Equality Commission - 23 July 2012



From: The Permanent Secretary
Mr Will Haire

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JB

Telephone: 028 90 829002
Facsimile: 028 90 829560
E-mail: perm.sec@dsdni.gov.uk

Ms Evelyn Collins
Chief Executive
Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP



Dear Evelyn

Thank you for your letter of 8 June 2012 regarding the Department's consultation of the Equality Impact Assessment of the Welfare Reform Bill.

The Equality Impact Assessment is the first part of what will be a lengthy assessment process to determine the impact of the various elements of the Welfare Reform Bill 2012. It should be stressed that there will be further Equality screening and possibly further EQIA's carried out on the detail of some of the reforms, as the Bill proceeds through passage, and, more particularly as the Regulations are being made.

However, my officials in Policy and Legislation Division would be happy to meet with you to discuss any specific concerns you and you colleagues might have regarding the Bill. If your office contacts Mary McCullough [02890 819973] she will arrange a suitable time and date.

Yours sincerely
Will Haire

WILL HAIRE



Together, tackling disadvantage, building communities

Equality Commission to Department for Social Development - 8 June 2012

Equality Commission

FOR NORTHERN IRELAND

Equality House
7-9 Shaftesbury Square
Belfast BT2 7DP

www.equalityni.org

8 June 2012

Mr Will Haire
Permanent Secretary
Department for Social Development
2nd Floor, Lighthouse Building
1 Cromac Place, Gasworks Business Park
Ormeau Road
Belfast BT7 2JB

Dear Will

As you know, we responded to the Department's consultation on its Equality Impact Assessment of the Welfare Reform Bill (Northern Ireland) 2011 late last year. We spoke briefly about some of the concerns we had about the EQIA just before the Commission gave evidence to the Social Development Committee on the matter in March 2012.

There were a number of areas where we anticipated that the final EQIA would address what we saw as deficiencies in the equality impact assessment that had been undertaken. We have now reviewed the final EQIA report which the Department published last month and a number of our concerns remain.

I consider it would be useful to meet at this stage to discuss these concerns and also to understand more clearly the proposals/timescales for the welfare reform legislation in Northern Ireland. I trust you are agreeable to this and I have asked my office to follow up this letter shortly to see if the appropriate arrangements can be made and look forward to meeting you soon.

Yours sincerely



Evelyn Collins CBE
Chief Executive

☎ Direct line: 028 90 500 622 (PA)
☎ Textphone: 028 90 500 589
✉ E mail: ecollins@equalityni.org



Chief Commissioner: Michael Wardlow

INVESTOR IN PEOPLE

Chief Executive: Evelyn Collins CBE

Westminster Joint Committee on Human Rights Report on the Welfare Reform Bill



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Welfare Reform Bill

**Twenty-first Report of Session
2010–12**

Drawing special attention to:

Welfare Reform Bill

HL Paper 233
HC 1704



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Welfare Reform Bill

**Twenty-first Report of Session
2010–12**

*Report, together with formal minutes and
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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), John Turner (Lords Clerk), Murray Hunt (Legal Adviser), Lisa Wrobel (Senior Committee Assistant), Michelle Owens (Committee Assistant), Anna Browning (Committee Assistant), Greta Piacquadio (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. Oral evidence is published online at <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/publications/>. References to written evidence are indicated by the page number as in 'Ev 12'.

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Summary

The Welfare Reform Bill was introduced in the House of Commons on 16 February 2011 and was brought from the House of Commons to the House of Lords on 16 June 2011. The Bill completed its Committee stage in the House of Lords on 28 November and its Report stage is scheduled for 12 December. In this Report we consider the significant human rights issues raised by the Bill.

The Government's principal objective in this Bill is to support people to move into and progress in work, while still supporting those in greatest need. We commend this objective, which is consistent with many international human rights instruments which recognise the right to work and the right to an adequate standard of living. We therefore welcome the Bill as a potentially human rights enhancing measure. This Report assesses whether the means for achieving the Government's objective are compatible with the requirements of human rights law.

Human rights memoranda, impact assessments and monitoring

We regret the fact the Bill was not accompanied by a full human rights memorandum. We remind departments of the examples of best practice by those departments which have provided us with detailed human rights memoranda accompanying Government Bills. The provision of such information to Parliament strengthens the principle of subsidiarity: as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

We call on the Government to improve its capacity to conduct equality impact assessments. We reiterate our previous recommendation that, where the Government's view on compatibility relies on safeguards to be provided in secondary legislation, draft Regulations should be published together with the Bill. We call upon the Government better to monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally.

The international human rights context

We are disappointed by the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP. We have commended a number of human rights memoranda from departments in the past which have done precisely that and we remind departments of this Committee's expectation in this respect.

Destitution

Imposing conditionality requirements on benefits is not precluded by human rights law. However, we believe there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR, if the individual concerned was genuinely incapable of work. We therefore urge the Government to give careful consideration to this risk, take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to this issue and carefully monitor the impact of the sanctions regime on people with particular

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characteristics.

Discrimination

We are concerned that some of the proposals, such as those relating to employment support allowance and housing benefit, may be implemented in a way which could lead to a discriminatory impact and which does not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised. We consider that changes to welfare support designed to meet the right to social security and the right to an adequate standard of living should be supported by evidence and closely monitored after implementation.

With regard to the housing benefit cap, the disproportionate impact of current proposals on larger households is said by the Government to be justified because it promotes fairness with similar-sized households which are just outside entitlement to benefit. This is undoubtedly a legitimate aim. An alternative approach to increasing fairness is to compare like with like—that is to calculate the level of the cap based on earnings of families with children, rather than all households. We ask the Government whether they have carried out an assessment of these approaches with a view to comparing their proportionality. We are also particularly concerned about the possible disparate impact on some disabled people and we recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the benefit cap and from the provisions concerning under-occupation of social housing.

Retrogression

We recognise that the availability of resources is of central relevance to the extent of the UK's obligations under the UN human rights treaties. However, the duty of progressive realisation in UN human rights treaties entails a strong presumption against retrogressive measures affecting the right to social security and to an adequate standard of living. We have analysed several areas where such retrogression is proposed in the Bill.

We are not satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of Personal Independence Payments on the right of disabled people to independent living. We believe that the Bill should be amended to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants which would make it less likely that the Bill will lead to incompatibilities with the UK's obligations under the UN Convention on the Rights of Disabled People. We further recommend a trial period for the new assessment process and a report to Parliament on the implementation of the new testing system, to ensure that the impact of the new assessment process is fully assessed and analysed in light of its operation in practice.

We welcome the Government's avowed intention of improving ministerial accountability for the eradication of child poverty. However, any proposed changes to the current legal framework which has the potential to diminish ministerial accountability to Parliament for the reduction of child poverty requires the most careful scrutiny and we recommend that the Bill be amended to require the Secretary of State to make a statement to Parliament responding to the annual report of the Social Mobility and Child Poverty Commission and that the Government commit to providing an opportunity for Parliament to debate the

Commission's report and the Minister's statement in response.

Other issues

We are reassured by responses from the Government to concerns we had over information-sharing provisions in the Bill and with regard to certain powers to deal with benefit claimants thought to be abusing drugs or alcohol. However, on the issue of contracting out, legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of 'public authority', putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA

Government Bills

Bills drawn to the special attention of each House

1 Welfare Reform Bill

Date introduced to first House	16 February 2011
Date introduced to second House	16 June 2011
Current Bill Number	HL Bill 114
Previous Reports	None

Background

1.1 The Welfare Reform Bill was introduced in the House of Commons on 16 February 2011 and was brought from the House of Commons to the House of Lords on 16 June 2011. The Parliamentary Under-Secretary of State and Minister for Welfare Reform, Lord Freud, has certified that, in his view, the Bill is compatible with Convention rights. The Bill completed its Committee stage in the House of Lords on 28 November and its Report stage is scheduled for 12 December.

1.2 The Committee wrote to the Secretary of State on 20 July 2011 asking for further information on a number of specific issues raised by the Bill.¹ The Secretary of State replied by letter dated 26 September 2011.² We publish this exchange of correspondence with this Report. We also received submissions about the human rights compatibility of the Bill from Carers UK, Scope and Mr. A. Fisher. All submissions received are published on our website,³ and where relevant to the issues we consider to be significant, we refer to them below.

The purposes and effect of the Bill

1.3 The purpose of the Bill is to implement the Government's proposals for fundamental reform of the welfare system. The Government's aims, broadly speaking, are to improve work incentives, to simplify the benefits system, and to make it less costly to administer. The most relevant parts of the Bill, from a human rights perspective, are summarised below.

1.4 In short, Part 1 of the Bill introduces a new benefit, "Universal Credit", which will be payable to people who are unemployed and to people in low-paid work, and will replace Income Support, income-based Job Seeker's Allowance, income-related Employment Support Allowance (ESA), Housing Benefit, Child Tax Credit and Working Tax Credit. A feature of Universal Credit is the proposed "taper" approach to the withdrawal of benefits for those in work: it aims to smooth the transition into work by reducing the support a person receives at a consistent rate as their earnings increase. Claimants may be required to meet certain responsibilities, with the potential for the reduction of benefits if they fail to

1 Letter dated 20 July 2011 from the Chair to the Secretary of State.

2 Letter dated 26 September 2011, and accompanying written evidence, from the Secretary of State to the Chair.

3 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/leg-scr-2010-11/welfare-reform-act/>

meet those requirements and, ultimately, the withdrawal of benefits for periods of up to three years.

1.5 Part 2 of the Bill makes changes to the provision of ESA more broadly, including the introduction of a “time-limit” on the contributory element of ESA payments. Part 3 transfers responsibility for Social Fund Crisis Loans and Community Care Grants to local authorities and devolved administrations in England and Wales. It also introduces limits on housing benefits, including limiting access to over-occupied housing for social housing tenants.

1.6 Part 4 of the Bill replaces Disability Living Allowance (DLA) with a Personal Independence Payment (PIP). This Part of the Bill sets out the framework for the new benefit. The detailed design is to be provided for in secondary legislation. The Government has also stated that it intends to reduce the budget for DLA by 20% overall. Part 5 of the Bill introduces a cap on the amount of benefits a person or a couple are allowed to claim.

1.7 Part 6 amends the Child Poverty Act 2010 by removing the Secretary of State’s obligation to report annually to Parliament on progress towards the statutory targets and replacing it with a duty on the new Social Mobility and Child Poverty Commission to make such annual reports.

1.8 The Government’s principal objective in this Bill is to support people to move into and progress in work, while still supporting those in greatest need.⁴ **We commend the Government’s aim to support more people, and in particular people who might otherwise be disadvantaged in the employment market, into work as the most effective route out of poverty. This aim is consistent with many international human rights instruments which recognise the right to work⁵ and the right to an adequate standard of living.⁶ We therefore welcome the Bill as a potentially human rights enhancing measure.** It is our task, however, to scrutinise the means by which the Government proposes to achieve these goals for compatibility with human rights law, including the UK’s obligations under various international human rights treaties to which the UK is a party, and that is what this Report seeks to do. The most relevant human rights standards are identified below.

Information provided by the Government

Explanatory Notes/human rights memoranda

1.9 In a number of legislative scrutiny Reports this session, we have commended the practice of departments which have provided us with a detailed human rights memorandum either on or shortly after a Bill’s publication, setting out a detailed analysis of the Bill’s human rights implications and a very full explanation of the Government’s view that the Bill is compatible with human rights law.⁷ Such human rights memoranda facilitate proper scrutiny for human rights compatibility by this Committee and help to

⁴ See, for example, the Department of Work and Pensions White Paper, 21st Century Welfare (July 2010).

⁵ See, for example, International Covenant on Economic, Social and Cultural Rights, Article 6.

⁶ See e.g. UN Convention on the Rights of the Child, Article 27; International Covenant on Economic, Social and Cultural Rights, Article 11.

⁷ See, for example, our scrutiny reports on the Terrorist Asset Freezing Bill, the Protection of Freedoms Bill, the Armed Forces Bill and the Education Bill.

ensure that parliamentary debate about the human rights implications of Government Bills is properly informed. As such, they represent important steps by the Government to strengthen the principle of subsidiarity, by encouraging a greater role for Parliament in the scrutiny of laws for human rights compatibility, as increasingly recommended by international bodies and agreements, including the Interlaken Declaration and Action Plan agreed by the 47 members of the Council of Europe in February 2010.

1.10 The Department of Work and Pensions did not provide us with such a human rights memorandum in relation to this Bill. It was encouraged to do so, but declined. The Explanatory Notes contain a section on the European Convention on Human Rights,⁸ but the analysis contained therein is disappointingly lacking in detail. It analyses the human rights implications of the Bill as a whole according to the ECHR rights affected, rather than clause by clause. This means that the analysis is at a much higher level of generality than in the ECHR memoranda based upon clause-by-clause analysis which is undertaken for the Government's Parliamentary Business and Legislation Committee, on which other human rights memoranda we have received have been based. The Explanatory Notes are replete with assertions that a particular measure which interferes with a right is "proportionate" due to "safeguards", often without specifying what those safeguards are or, where they will be provided in regulations, precisely what those safeguards are intended to be. There is little reference to evidence to substantiate the Government's views assertions about justification and proportionality, and there is hardly any consideration of or reference to relevant case-law.

1.11 We remind departments of the examples of best practice by those departments which have provided us with detailed human rights memoranda accompanying Government Bills. This is not merely a matter of preference by this Committee. The principle of subsidiarity, which the Government rightly seeks to strengthen during its Chairmanship of the Council of Europe, requires the Government and Parliament to fulfil their responsibility for implementing human rights in the national legal system. The provision of detailed human rights memoranda to Parliament is an important means of demonstrating the Government's fulfilment of that responsibility. It also facilitates Parliament in fulfilling its responsibility in that regard. We also remind the Government that, as the case-law of the European Court of Human Rights clearly shows,⁹ laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

1.12 In the absence of a detailed human rights memorandum, we asked the Secretary of State a number of detailed questions in correspondence.

Adequacy of the impact assessments

1.13 The quality of the impact assessments conducted within Government becomes increasingly important for the purposes of analysing potential discriminatory impacts when little wider detail is available. Concern has been expressed about the thoroughness and coverage of the impact assessments carried out by the Government. Carers UK, for

⁸ HL Bill 75—EN paras 740–767.

⁹ See, for example, the recent decision of the Grand Chamber in *S.H. v Austria*, Application no. 57813/00 (3 November 2011).

example, have pointed out that the impact assessments make no mention of the impact of some of the changes on carers, even where this impact will be very significant, in particular in the case of the proposed reforms to DLA. Equality Impact Assessments were not published by the Government until the Bill was in Committee in the Commons, and, while equality impact assessments have now been published for distinct parts of the Bill, these do not attempt to assess the cumulative impacts of multiple provisions in the Bill on particular groups with protected characteristics. This is of concern, since individuals will experience these changes cumulatively, and their impact needs to be understood in this way. For example, a disabled person may find that they lose their lower rate DLA, and therefore become subject to a cap on their housing benefit such that they cannot afford to remain in their home. Moving may disrupt informal patterns of care and support at the same time as they have increased reliance on these supports.

1.14 Whilst accepting that such assessments of cumulative impact would be analytically complex and challenging, they nevertheless should be feasible. For example, a recent report by the Institute of Fiscal Studies assessed the impact on child poverty of the Government's changes to personal taxes and state benefits.¹⁰ It concludes that, while considered in isolation, Universal Credit should reduce relative poverty significantly (by 450,000 children), this reduction is more than offset by other changes, with a predicted increase in absolute child poverty by 200,000 in 2015–16 and 300,000 in 2020–21.

1.15 We call on the Government to improve its capacity to conduct equality impact assessments, in particular to go beyond piecemeal analysis of each measure by assessing the proposed provisions as a whole, including their cumulative impact on individuals and groups, from an equality perspective.

The lack of draft regulations

1.16 The degree of risk to human rights standards posed by the operation of changes to the welfare systems will depend to a considerable extent upon the detail of how a particular scheme is administered. The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny. The Welfare Reform Bill follows this traditional pattern. Human rights scrutiny is made more difficult if the Bill is not accompanied by draft regulations, clear statements on the policy intention of the Government, and high quality impact assessments.¹¹ While certain regulations will be subject to affirmative resolution on their first introduction, even this procedure presents only a limited opportunity for Parliamentary scrutiny. Moreover, it is only in relation to regulations which are subject to the affirmative resolution procedure that a statement on their compatibility with the ECHR will be included in the Explanatory Memorandum.

1.17 For the reasons we set out below we have concerns that the proposals may be implemented in a way which could lead to a risk of incompatibility with Convention rights. We reiterate our previous recommendation that, where the Government's view on compatibility relies on safeguards to be provided in secondary legislation, we recommend that draft Regulations are published together with the Bill. At the very

¹⁰ Institute of Fiscal Studies Child and Working Age Poverty 2010–2020 October 2011

¹¹ See, for example, the concerns expressed in the evidence of Scope.

least, the Government should describe in the explanatory material accompanying the Bill the nature of the safeguards it proposes to provide.

The need for monitoring mechanisms

1.18 The limitations on the scope of the impact assessments and the framework nature of much of the Bill increase the importance of monitoring mechanisms to assess the measures' impact on individual rights once the measures are in force. There are some safeguards in this respect in the Bill, but these are relatively few and limited to distinct aspects of the Bill. For example, the Bill proposes that the Government should report to Parliament on the operation of the assessment process for the Personal Independence Payment.

1.19 The Government says that detailed evaluation plans for post-implementation are still being developed. Administrative datasets will be used to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. However, this data will provide robust material only for age and gender not, as a rule, for other protected groups. This will impede the ability to effectively monitor whether there are adverse consequences for the human rights of particular vulnerable groups. **We call upon the Government better to monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally, with particular attention to the risks of destitution, discrimination and retrogression highlighted below.**

Relevant human rights standards

Our approach

1.20 Our remit is to consider "matters relating to human rights in the UK." Since its inception in 2000 this Committee has always interpreted "human rights" to include all the human rights treaties to which the UK is a party. The UK has agreed to be bound by a number of international human rights treaties containing provisions which are relevant to the design and operation of its system of welfare benefits. In addition to the European Convention on Human Rights, these include the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. Nothing in any of these treaties prescribes a particular welfare system. Individual states retain a wide "margin of appreciation" in respect of the establishment of domestic welfare systems: that is to say, they have some considerable leeway in deciding how they should be designed. Nevertheless, the treaties which bind the UK in international law do contain a number of provisions relevant to Parliament's scrutiny of this Bill for human rights compatibility.

The legal status of the relevant standards

1.21 Before considering the specific provisions of those treaties which are relevant, we think it is important to point out the different nature of the legal obligations imposed on

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the State by the European Convention on Human Rights on the one hand, and by human rights treaties such as the ICESCR¹² and the UNCRC on the other.

1.22 All human rights treaties impose legal obligations, but the precise nature of those obligations differs. ECHR rights are the archetypal legally enforceable rights, fully justiciable by courts and capable of protection by legal remedies. Rights such as the right to social security and the right to an adequate standard of living, on the other hand, are subject to progressive realisation and, as such, are less susceptible of judicial enforcement. **In our view, in any parliamentary democracy it is the democratic branches of the State, that is, the Government and Parliament, which should have primary responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority.**

1.23 It follows, from this difference in the nature of the legal obligations imposed by the ECHR and by other human rights treaties, that political accountability for compliance with the UK's human rights commitments under the UN human rights treaties is in practice even more important than legal accountability. Parliament therefore has a key role to play in scrutinising legislation to secure compliance with the positive obligations and minimum standards to which the UK has committed itself in those treaties.

The European Convention on Human Rights

1.24 The European Convention on Human Rights (ECHR) sets out a series of individual rights, a number of which may be directly affected by statutory welfare systems. Article 1, Protocol 1 ECHR provides that any interference with or deprivation of established rights to property must strike a “fair balance” between the right of the individual to peaceful enjoyment of their possessions and the public interest. As the Government accepts,¹³ welfare benefits are considered “possessions” for the purpose of this Article,¹⁴ and any interference or deprivation must therefore be “in accordance with law”, and be for a legitimate aim and proportionate to that aim.¹⁵

1.25 The Government also correctly acknowledges that questions as to social security entitlement will be “within the ambit” of Article 1 Protocol 1 ECHR,¹⁶ and therefore the ECHR guarantee (in Article 14) that Convention rights must be enjoyed “without discrimination” is also relevant.¹⁷

1.26 Two additional ECHR rights are of potential relevance in the context of this Bill as discussed below: the positive obligation on the state to ensure that individuals are not exposed to destitution and hardship at a level which will amount to inhuman or degrading

12 Our predecessor Committee explained the legal status of the ICESCR in their report on the Covenant, see Twenty-first Report of 2003–04, *The International Covenant on Economic Social and Cultural Rights*, HL Paper 183, HC 1188, paras 16–17.

13 EN para. 743.

14 *Stec and others v UK*, App. No. 65731/01, Judgment dated 12 April 2006; *Zeman v Austria*, App No 23960/02 Judgment dated 29 June 2006

15 In order to be “in accordance with law” measures must have a basis in domestic law and be sufficiently precise to allow people to foresee the consequences of their actions.

16 EN para. 747.

17 Article 14 ECHR

treatment (Article 3 ECHR) or endanger their right to respect for private or family life (Article 8 ECHR).¹⁸

The UN human rights treaties: ICESCR, the UNCRC and the UNCRPD

1.27 The right to social security and the right to an adequate standard of living are both widely recognised in international human rights standards to which the UK has bound itself by international treaty. These are derived from the recognition in the Universal Declaration of Human Rights of the right to “security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹⁹ That Declaration was itself inspired by President Roosevelt’s “Four Freedoms” in his 1941 State of the Union address to Congress, including “freedom from want” and “freedom from fear”.

1.28 The UK is a party to the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantees amongst other things the right to an adequate standard of living and to social security. Article 11 ICESCR makes clear that circumstances where an individual is permitted to become destitute would be in breach of the right to an adequate standard of living, which includes ‘adequate food, clothing and housing [...] and the continuous improvement of living conditions’.²⁰ The UN Convention on the Rights of the Child similarly provides, in Article 27, for recognition by States of the right of every child to an adequate standard of living.

1.29 The right to social security has been subsequently incorporated in a range of international human rights treaties by which the UK has agreed to be bound, including the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)); the Convention on the Elimination of All Forms of Discrimination against Women (Articles 11 and 14); the UN Convention on the Rights of Persons with Disabilities (Article 28); and the UN Convention on the Rights of the Child (Article 26). The UN Convention on the Rights of Persons with Disabilities also requires the State to take progressive measures to promote the right of disabled people to live independently in the community and to refrain from retrogressive measures which undermine this right (Articles 4, 19 UNCRPD).

1.30 In its recent General Comment on the scope of the right to social security, the UN Committee on Economic and Social Rights explained:

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights.²¹

To demonstrate compliance with their general and specific obligations, States parties must show that they have taken the necessary steps towards the realisation

18 See the House of Lords decision in *Limbuela*, [2005] UKHL 66.

19 Universal Declaration of Human Rights, Article 22.

20 See also Article 9, which protects the right to social security.

21 General Comment No 19, The Right to Social Security, 4 February 2008, E/C.12/GC/19, para 1. The Committee on Economic Social and Cultural Rights is the relevant Treaty Monitoring Body for this treaty. The purpose of these General Comments is to provide clear guidance to States and others as to the Committee’s approach to the interpretation of key issues in the ICESCR.

of the right to social security within their maximum resources, and have guaranteed that the right is enjoyed without discrimination and equally by men and women[...]

Violations include, for example, the adoption of deliberately retrogressive measures incompatible with the core obligations [...] the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security; [...] active denial of the rights of women or particular individuals or groups.

Violations through acts of omission can occur when the State party fails to take sufficient and appropriate action to realise the right to social security. In the context of social security, examples of such violations include the failure to take appropriate steps towards the full realisation of everyone's right to social security; the failure to enforce relevant laws or put into effect policies designed to implement the right to social security [...] The Covenant is clear that, although States are free to secure its minimum obligations through a variety of means, any failure to meet the minimum standards envisaged will be in violation of the international standards which the United Kingdom has accepted. The Government has recently stressed that it considers that the principle means of securing these rights in domestic law should be through legislation enacted by a democratically accountable Parliament.²² In our view, in ratifying the Covenant, the UK has made a commitment, binding in international law, to abide by the terms of the Covenant. This requires government, Parliament and the courts to make efforts to ensure the fullest possible compliance with the terms of the ICESCR.²³

1.31 The rights to social security and an adequate standard of living which are recognised in these treaties are subject to the principle of progressive realisation within available resources: States must take deliberate, concrete and targeted steps towards their realisation "to the maximum extent of their available resources."

1.32 The availability of resources is therefore of central relevance to the extent of the UK's obligations under the UN human rights treaties. However, the duty of progressive realisation entails a strong presumption against retrogressive measures. In its General Comment on the scope of the ICESCR right to an adequate standard of living and to social security, the UN Committee on Economic Social and Cultural Rights explained:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the

²² Cm 7577, *Rights and Responsibilities: developing our constitutional framework*, Mar 2009, paras 3.52–3.53.

²³ Twenty-first Report of 2003–04, *The International Covenant on Economic Social and Cultural Rights*, HL Paper 183, HC 1188, para 17.

measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.²⁴

1.33 These same principles apply to the other international rights treaties to which the UK is a signatory.

The scope of the Government's human rights analysis

1.34 One of the questions we asked the Secretary of State in correspondence was whether the Government has conducted any analysis of the proposals in the Bill for their compatibility with the UK's obligations under other internationally binding human rights treaties. As this Report explains below, a number of such treaties contain obligations which are clearly relevant to scrutiny of this Bill, including the UN Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the UN Convention on the Rights of Persons with Disabilities. The Government's response to the Committee's letter says "The Government does not consider that the proposals raise any particular issues in respect of these wider obligations such as to merit a detailed analysis." No such analysis has therefore been provided.

1.35 We are disappointed by the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP. The legal effect of these human rights obligations in the UK is different in kind from the legal effect of Convention rights, which are given effect in our national legal system under the Human Rights Act, but they are nevertheless binding obligations in international law and the Government should be able to demonstrate that they have considered the compatibility of legislative proposals with those obligations. We have commended a number of human rights memoranda from departments in the past which have done precisely that.²⁵ We remind departments of this Committee's expectation in this respect, which is explicitly referred to in the Cabinet Office Guide to Legislative Procedure.

1.36 We also remind the Government of the "clear commitment" given by the Minister of State for Education, Sarah Teather, to the House of Commons on 6 December 2010, "that the Government will give due consideration to the UNCRC articles when making new policy and legislation", and, in so doing, will always consider the recommendations of the UN Committee on the Rights of the Child.²⁶

24 General Comment No 19, The Right to Social Security, (2008), paragraph 42.

25 See, for example, legislative scrutiny reports on the Child Poverty Bill and the Education Bill, commending the departments in question for the detailed analysis of the Bill's compatibility with the provisions on the UN Convention on the Rights of the Child.

26 Written Ministerial Statement on the Children's Commissioner Review, HC Deb 6 Dec 2010 col 7WS.

Significant human rights issues

(1) Destitution

1.37 Article 3 ECHR, which prohibits “inhuman or degrading treatment”, places States under a positive obligation to ensure that individuals are not exposed to destitution and hardship at a level which amounts to inhuman or degrading treatment. The provisions of the Bill which may give particular rise to concerns in this respect are those which allow for sanctions reducing benefits for failure to comply with work-related requirements. We do not consider that making benefits conditional on compliance with work-related requirements is in breach of the prohibition on servitude and forced labour in Article 4 of the ECHR.²⁷

1.38 There are two issues in identifying a risk of breaching Article 3. Firstly, whether an individual’s situation is of the necessary gravity to constitute inhuman or degrading treatment; and, secondly, whether the state, through a positive act (such as introducing a provision which restricts the availability of benefits) or omission can be held responsible for that situation.

1.39 The leading domestic judgement on this issue, *Limbuella*, relates to asylum seekers barred from claiming benefit or working. We are not aware of any European Court of Human Rights cases in relation to conditionality of welfare benefits.²⁸

1.40 In the context of the exclusion of a person from welfare support, the standard of ‘inhuman and degrading’ is a very high threshold. It is a complex test which must take all relevant factors into account—including the entire package of restrictions and deprivations, and the vulnerability of the individual, for example whether they are elderly or in ill health.²⁹ The issue is judged by the standards of modern British society: therefore, for example, the suffering of a homeless woman, defenceless against the risks of the streets at night, might “very soon reach the minimum degree of severity required.”³⁰

1.41 The Government considers that there is no incompatibility with Article 3 because the reduction of a universal credit award where a claimant has failed to comply with mandatory work-related requirements does not amount to “treatment,” since claimants or potential claimants have the opportunity to avoid severe consequence by working, thus breaking the chain of State responsibility for the consequences.

1.42 Conditionality itself is clearly not a breach of Article 3 ECHR. However, where there is no ban on working but someone is “obviously unemployable” this situation may give rise to a claim of ‘treatment’ by the State such as to constitute a breach of Article 3.³¹ There is a risk, for example, that some disabled people who are adjudged to be capable of work may in practice not be able to do so. For example, whilst the Bill states that people will not face sanctions for not complying with their action plan to ready them for work if they have good reason not to do so, and they alert the authorities to their circumstances within five

²⁷ As submitted in written evidence to us by Mr. A. Fisher.

²⁸ Conditionality refers to conditions placed on benefits subject to sanctions. Sanctions include reductions in sums of benefit received.

²⁹ *Limbuella*

³⁰ *Limbuella* Para. 78

³¹ *Limbuella* Para. 91

working days, such a deadline may be unrealistic for people who are unwell. The Bill also states that any activity a claimant will be asked to undertake must be reasonable, taking into account the person's circumstances. There are concerns that in practice those administering the benefit will not have the tools necessary to assess effectively enough an individual's circumstances to know when a particular activity is appropriate or not. Further concerns have been raised that sanctions for leaving a job voluntarily may unfairly penalise some people who leave work because they judge it to be damaging to their mental health. If work-related requirements place an onerous burden on individuals who are not able to meet them as a result of their mental or physical disabilities, or which may exacerbate their health difficulties, they may lead to an increased risk of a breach of that individual's right to respect for their Article 3 rights.

1.43 In addition, the Government cites the hardship regime which will be introduced to protect vulnerable claimants and their families. However, these safeguards are largely to be provided in secondary legislation, which makes it difficult to assess whether they will be adequate to prevent claimants and their families falling into destitution.

1.44 For particular groups other means of support will be available where necessary to ensure compliance with Article 3. For example, section 95 of the Immigration and Asylum Act 1999 makes provision in some circumstances for asylum seekers. However, alternative welfare provision will not always be available.

1.45 The ECHR does not preclude individual member states from setting conditionality requirements in respect of work. However, there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR if the individual concerned was genuinely incapable of work. The absence of more detail about the proposed system of hardship payments, and the lack of publicly available statistics on the number of applications for hardship support under existing regimes, means that we are not in a position to assess the degree of risk. We urge the Government to give careful consideration to this risk, to take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to this issue and carefully monitor the impact of the sanctions regime on people with particular characteristics.

(2) Discrimination

1.46 Article 14 of the ECHR will be violated where there is discrimination in the enjoyment of a right which falls within the ambit of another Convention Article. This Bill's provisions fall within the ambit of a number of Convention Articles: Article 1, Protocol 1 ECHR, Article 3 and Article 8.³² Discrimination in this context goes beyond unjustified disparate treatment. We are not in a position to assess the degree of that risk in the absence of publicly available statistics on the number of applications for hardship support under existing regimes, and more detail about the proposed system of hardship payments.

1.47 The equality impact assessments of the Bill's provisions are limited in some respects because of lack of detail on some provisions. However, they do make plain that some

³² An issue can fall within the ambit of right, even where at right is not itself breached. Thus, the Explanatory Notes acknowledge that questions as to social security entitlement will be within the ambit for the purposes of Article 14, although they maintain that Article 1 Protocol 1 is not breached by the Bill's provisions.

provisions will have a disproportionate impact on protected classes, including women, disabled people, certain ethnic minority groups and children in larger families or single parent families.³³ In respect of each instance of disproportionate impact, a justification is provided. We wrote to the Minister questioning the possibility of the risk of discrimination in respect of changes to Employment Support Allowance (ESA); the introduction of a Household Benefit Cap and housing benefit restrictions.

1.48 For the reasons set out below, we remain concerned that these proposals may be implemented in a way which could lead to a discriminatory impact and may not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised. We consider that changes to welfare support designed to meet the right to social security and the right to an adequate standard of living should be supported by evidence. We recommend that the changes should be closely monitored to understand the implications of the proposals for individual rights, including the right to respect for an adequate standard of living, and the right to enjoyment of those rights without discrimination.

Employment Support Allowance

1.49 There are two forms of Employment and Support Allowance (ESA): contributory ESA, for those with a sufficient National Insurance contribution record; and income-related ESA, which is means-tested. Claimants who satisfy the Work Capability Assessment for ESA may be placed in either the “Support Group”, if they are deemed to have a “limited capability for work-related activity”, or in the “Work Related Activity Group”.

1.50 Currently, contributory ESA can be paid until State Pension age. The Bill would reduce this to 12 months. Some claimants will be able to claim income-related ESA, but this will be reduced if they have a working partner or capital over £16,000. Only 60% of people losing their contributory ESA will be wholly or partially compensated for this loss by income-related ESA.³⁴ The rationale for the change is to produce a simpler and fairer benefits system, targeting support at those who are most in need.

1.51 This provision will particularly affect disabled people because ESA is directly targeted at people with health conditions that limit their ability to work. This provision is said to be justified on the basis that time-limiting is only being introduced for people who it is anticipated will be able to return to work in the future with help and support. There is also predicted a higher average loss in household net income for women than for men, and it is thought probable that older people may be more likely to be affected, especially those who may find it difficult to get back into work due to their age. These impacts are said to be mitigated by increased support for these groups in accessing work.

1.52 The Minister has acknowledged that the decision to introduce a time limit has not been taken on the basis of any evidence which shows that twelve months is a reasonable time frame in which to expect people with a health condition or disability to have recovered, where appropriate, or found employment.³⁵ Moreover, there are considerable

33 DWP *Welfare Reform Bill Impact Assessments*

34 Time limiting contributory Employment and Support Allowance to one year for those in the work-related activity group, Equality impact assessment October 2011

35 Hansard, House of Commons, Welfare Reform Bill Committee, 3 May 2011, column 650

concerns about the operation of the tests assigning claimants to the work related group. **This may call into question the objective justification for the disparate impact, and at the very least suggests the need for close scrutiny to ensure that Article 14 is not breached.**

Household Benefit Cap

1.53 A cap will be introduced on the total amount of benefit that working-age people can receive so that households on out of work benefits will no longer receive more in benefit than the average weekly wage earned by working households. On average households affected by the cap will lose around £93 a week. Around 35% will lose more than £100 per week.³⁶

1.54 The Minister states that the reason for having a cap is to balance the interests of benefit claimants with the interests of taxpayers, and that the effect of the cap is proportionate, taking into account: (1) the amount of the cap and the fact it will be based on average household earnings; (2) the fact that claimants will be notified of the cap and given time to adjust their spending to accommodate their new levels of benefit; and (3) the fact the cap will affect relatively few households and that those affected will already have a substantial income from benefits.

1.55 At the same time, the Government acknowledges that it is difficult to predict accurately what will happen to the affected households, as it depends on households' behavioural responses and on the availability of accommodation.³⁷ **We believe that close monitoring of the impact of this change is essential, in order to ensure that it is proportionate, and to take mitigating action if necessary.**

1.56 The cap will particularly affect large families with several children, who might also live in larger family homes and so be entitled to high levels of Housing Benefit, or households in high rent areas receiving large Housing Benefit payments.³⁸ Over 80% of households who are likely to be affected by the cap will consist of 3 or more children, while fewer than 10% of households likely to be affected by the cap will consist of no children at all.

1.57 Because a large proportion of those affected by the benefit cap are likely to be large families, households from cultural backgrounds with a high prevalence of large families will be affected most. It is estimated that approximately 30% of the households that are likely to be affected by the cap will contain somebody who is from an ethnic minority. (Ethnic minorities form less than 20% of the overall benefit population.)

1.58 It is anticipated that 60% of those who have their benefit reduced by the cap will be single females, who comprise around 40% of the overall benefit population. Most of the single women affected are likely to be lone parents. The Children's Society has conducted an analysis which suggests that children will be disproportionately affected by the benefits cap.³⁹ The potential impact in terms of increased poverty for children is considered below.

36 Household Benefit Cap Equality Impact Assessment October 2011

37 Household Benefit Cap Equality Impact Assessment October 2011 para. 13

38 Household Benefit Cap Equality Impact Assessment October 2011

39 Children's Society, A briefing from the Children's Society: the distributional impact of the benefit cap 2011

1.59 **The disproportionate impact on larger households is said to be justified because it promotes fairness with similar-sized households which are just outside entitlement to benefit.⁴⁰ This is undoubtedly a legitimate aim. There is no Strasbourg case law on this specific issue. An alternative approach to increasing fairness is to compare like with like—that is to calculate the level of the cap based on earnings of families with children, rather than all households. We ask the Government whether they have carried out an assessment of these approaches with a view to comparing their proportionality.**

1.60 We have particular concerns about the potential impact on disabled people. Approximately half of the households that are likely to be capped contain somebody who is disabled, reflecting their proportion in the overall benefit population. All households which include a member entitled to DLA will be exempt from the cap.

1.61 The Government assert that not everyone defined as disabled has additional financial needs, and that where disabled claimants are adversely affected by the change (because they are not in receipt of DLA, and hence not exempt from the cap) they can avoid the impact of the cap if they start working sufficient hours to receive Working Tax Credit. **However, we are concerned that some disabled people who do not get DLA (especially with the tightened criteria of the new PIP regime) may be forced to move, and will face disparate impact in terms of extensive disruption regarding adaptations and caring/support networks. We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the cap.**

Under occupation of social housing

1.62 From 1 April 2013 it is intended to introduce size criteria for new and existing working-age Housing Benefit claimants living in the social rented sector. The policy objective is said to be the reduction in the cost of Housing Benefit in order to tackle the budget deficit.

1.63 Black and minority ethnic claimants are less likely to be affected by the measure than white claimants.⁴¹ However, for the smaller number of black and minority ethnic households which are affected, average losses are larger. This is partially due to a higher proportion of black and minority ethnic claimants living in London where rents are higher than other parts of the country.

1.64 The proportion of disabled claimants affected by the measure is higher than for non-disabled claimants.⁴² The National Housing Federation estimates that about 108,000 tenants in social rented properties adapted specifically for their needs are likely to be affected by the introduction of the size criteria to restrict housing benefit.⁴³ If such tenants were forced to move into properties unsuited to their needs this might risk breaching their Article 8 rights to respect for private or family life⁴⁴ as well as being potentially discriminatory.

40 Explanatory Notes

41 Because a higher proportion of black and minority ethnic claimants having children living with them, and a tendency to have larger families, this means that under the size criteria, larger properties are appropriate for the claimant.

42 Housing Benefit: Size Criteria for People Renting in the Social Rented Sector Equality Impact Assessment October 2011

43 Written evidence submitted by the National Housing Federation to the Public Bill Committee 2011

44 *R v Enfield LBC (ex parte Bernard)* [2002] E.W.H.C. 2282.

1.65 The Government has indicated that it is prepared to look at exemptions for individuals who are disabled, where their homes have been subject to extensive adaptations.⁴⁵ However, this would not address the disruption to patterns of caring and support networks which can be vital.

1.66 We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions.

(3) Retrogression

1.67 As explained above, there is a strong presumption in the UN human rights treaties against retrogressive measures affecting the right to social security and to an adequate standard of living.

1.68 During this inquiry into the right to independent living for disabled people we have received evidence about specific concerns regarding potentially unjustified retrogression in relation to the UK's obligations under the UNCRDP, particularly Article 19 regarding independent living. These concerns particularly focus on the replacement of DLA with PIP.

1.69 DLA has a mobility component and a care component. The mobility component—for help with walking difficulties—is paid at two different levels. The care component—for help with personal care needs—is paid at three levels. DLA cannot be paid until a person has needed help for three months, and the person must be expected to need help for a further six months. It is proposed to change this qualifying period to six months. There are concerns that this could leave disabled people without support at a critical time, creating further risks to health.

1.70 The Government's view is that the proposal to replace DLA with PIPs is compliant with the UK's obligations under the UNCRDP. It says that PIP is intended to target resources on the people that need it most, taking into account the whole range of services available to, and balancing the various needs of, disabled people. It believes that the changes are justifiable, in terms of supporting those most affected by disability and introducing a fairer, more consistent and evidence-based, assessment system to identify such individuals.

1.71 However, the proposed 20% reduction in the overall budget for PIP means that funds are not merely being refocused on the most needy, but are being significantly reduced. There is considerable uncertainty about how this reduction will be achieved. Increasing the qualifying period for the benefit, and removing mobility element from those in residential care, will only achieve a proportion of the cost reduction required. Reduction in benefit rates and tighter eligibility criteria are likely to be needed to achieve savings of this magnitude. There is therefore a significant lack of clarity about how the Bill's provisions will be implemented. **In light of this uncertainty, and taking into account the discussion above of potential discrimination in relation to disabled people, we are not satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of PIPs on the right of disabled people to independent living.**

45 PCB 3 May 2011 cc685-716

1.72 We had particular concerns regarding the proposal to remove the mobility element of PIP for those in residential care. The Government emphasised that this did not arise from economic necessity but from a concern to eliminate overlaps in provision,⁴⁶ and pledged to institute an internal review on this issue. In its written evidence to us, Scope pointed out the lack of any evidence base for this proposal. Lord Low's Review found no evidence of overlap in the support offered by the mobility component of DLA and that offered by local authorities and providers, all of which play a distinct part in meeting disabled people's mobility needs.⁴⁷

1.73 In light of the findings of the Low Review and its own internal review, the Government now accepts that there was insufficient evidence of overlaps in funding provision to justify the withdrawal of the mobility component. On 1 December the Government announced that the mobility component of disability living allowance will not be removed from people living in residential care homes and that the mobility component of PIP will also be payable to people in residential care homes provided they satisfy the entitlement conditions.⁴⁸ **We welcome the Government's willingness to listen to concerns raised about the proposal to withdraw the mobility component of PIP from residential care home residents, including in particular its impact on the right of disabled people to independent living, and its decision to table an amendment to the Bill to remove this provision.**

1.74 A new assessment process to be used to determine eligibility for PIPs is still being developed. The Minister states that it is intended to be fairer than the assessment process for DLA, taking a more holistic account of the impact of disability. **We welcome this intention, which is in keeping with the Government's avowed commitment to the "social model" of disability (as opposed to the outdated "medical model"). This approach recognises that the obstacles to disabled people's inclusion in society are not their physical condition but the environmental, social and attitudinal barriers to their full participation. The UNCRDP is entirely premised on this social model of disability.**

1.75 The proposed assessment process for eligibility for PIPs, however, has been criticised for failing to give effect to the Government's stated intention that the assessment process for PIPs takes a more holistic account of the impact of disability, because the test for eligibility provided for in the Bill is essentially a medical one. **We believe that amending the Bill to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants would make it less likely that that the Bill will lead to incompatibilities with the UK's obligations under the UNCRDP. We further recommend a trial period for the new assessment process and a report to Parliament on the implementation of the new testing system, to ensure that the impact of the new assessment process is fully assessed and analysed in light of its operation in practice.**

1.76 In relation to the UNCRC, the chief concern is that progress in addressing child poverty will be undermined, and may indeed be reversed. Article 27 requires states to recognize the right of every child to a standard of living adequate for the child's physical,

46 HC Deb 9 March 2011 c924

47 Independence Choice and Control, DLA and personal mobility in state funded residential care, The Low Review November 2011

48 HL Deb 1 Dec 2011 col WS21.

mental, spiritual, moral and social development. Whilst parents and carers have the primary responsibility to secure this, states also have responsibility to take appropriate measures to assist them. Both the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights have expressed concern that child poverty remains widespread in the UK, and called on the Government to intensify its efforts to combat it.⁴⁹ The Child Poverty Act 2010 was explicitly linked to the aim of progress towards the realisation of children's rights under international law.

1.77 It is against this background that the impact of the Bill's measures on children must be assessed. A recent report by the Institute of Fiscal Studies forecasts that, while considered in isolation, Universal Credit should reduce relative poverty significantly (by 450,000 children), this reduction is more than offset by the poverty-increasing impact of the Government's other changes to personal taxes and state benefits.⁵⁰ It predicts an increase in absolute child poverty by 200,000 in 2015–16 and 300,000 in 2020–21. The report identifies the most important reform in increasing poverty as the change to the Local Housing Allowance, which from April 2013 will be indexed in line with the consumer price index measure of inflation, rather than one derived from the retail price index.

1.78 Some provisions in the Bill will disadvantage particular groups of children who are already more likely to be in poverty. The provisions with regard to a household benefits cap are more likely to impact on those in large families, as discussed above.

1.79 Concerns regarding the sanctions regime in relation to breaches of Article 3 ECHR are discussed above. There is a particular risk of disproportionate impact on lone parents if those administering sanctions fail to take account of the poor availability of jobs with flexible working hours and affordable childcare. (This is exacerbated by the shift of lone parents with children under 7 but over 5 from Income Support to Job Seekers Allowance). **A report from the Department of Work and Pensions, prior to the Bill's introduction of tighter conditionality sanctions, identified the need further to consider the impact of the JSA conditionality regime on lone parents and the effect of any loss of benefit on them and their children.⁵¹ We endorse this recommendation for detailed research and monitoring of the impact conditionality regime on lone parents.**

1.80 Payment of Universal Credit to only one member in a household will reduce the financial autonomy of women.⁵² A Joseph Rowntree Foundation study demonstrated the continued importance of paying benefits for children to the caring parent and the continued significance of the intra-household distribution of benefits.⁵³ There is a high risk that women have little or no access to money, and will struggle to pay the bills or feed their children. The Secretary of State has said that he understood these and that "there should be

49 Committee on the Rights of the Child (Forty-ninth Session), Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4 (20 October 2008) Concluding Observations of the Committee on Economic, Social and Cultural Rights on the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (22 May 2009)

50 Child and Working Age Poverty 2010–2020 Institute of Fiscal Studies October 2011

51 Department for Work and Pensions (Jo Casebourne et al), Lone Parent Obligations: destinations of lone parents after Income Support eligibility ends, Research Report 710, 2010

52 Similar concerns have been expressed regarding the impact on disabled members of households and the potential to undermine the independence of disabled people.

53 Distribution of income within families receiving benefits, Jackie Goode, Claire Callender and Ruth Lister 1998

scope within the system to make alterations, where a change is required on specific payments".⁵⁴

1.81 We are also concerned that the abolition of the Discretionary Social Fund, and its replacement with locally-based and designed discretionary provision, may have a negative impact on families who are most in need. The Fund is a national provision, and acts as a safety net for benefit recipients who face exceptional essential expenditure which they cannot meet. The rationale is to create a more responsive, better targeted and relevant service.⁵⁵ Local authorities are expected to devise their own schemes for emergency support. The Government does not expect local authorities to manage loan schemes. This will effectively abolish the provision of crisis loans. There is a risk that this will drive more people to use high-cost lenders. The Government confirmed intention not to ring-fence funding or to impose any new duty on local authorities to provide assistance.⁵⁶ In the current economic climate, it is highly likely that some or all of the funds may be diverted into other local priorities, and a crucial financial safety net would disappear.

1.82 We are concerned that the cumulative impact of the Bill's provisions may lead to retrogression which is not justified by the factors set out in the General Comments of the UN Committees. We recommend that the Government consider what safeguards can be introduced to minimize this risk. For example, the Bill could be amended to allow payments intended for children to be labelled as such and be paid to the main carer.

Child poverty

1.83 The Bill amends the Child Poverty Act 2010 which imposes a duty on the Secretary of State to meet the child poverty targets set out in the Act by 2020. The Act contains a number of detailed mechanisms designed to ensure that the Secretary of State is assisted in the performance of his duty by an expert advisory Commission on Child Poverty and is accountable to Parliament for the Government's performance of the statutory duty to ensure that the child poverty targets are met. The Bill amends those mechanisms in a number of ways.

1.84 Most significantly, the Secretary of State's duty to produce annual progress reports to Parliament is repealed by the Bill.⁵⁷ Instead, the new Social Mobility and Child Poverty Commission, which will replace the Child Poverty Commission established by the 2010 Act, is required to publish annual reports assessing the progress made towards improving social mobility and reducing child poverty in the UK.⁵⁸ The Minister is required to lay these reports before Parliament.⁵⁹ The Bill also removes the obligation on the Secretary of State to request advice from the Commission and to have regard to that advice when developing the UK Child Poverty Strategy.⁶⁰

54 Work and Pensions Committee's oral evidence session on 9 February

55 Social Fund localisation Impact Assessment, p1

56 Government response to the DWP call for evidence on Local support to replace Community Care Grants and Crisis Loans for living expenses in England was published on 23 June 2011.

57 Clause 140, Schedule 13, para. 8(2), repealing s. 14 of the Child Poverty Act 2010.

58 New s. 8B(1) Child Poverty Act 2010, as inserted by Schedule 13, Part 1, para. 2 of the Bill.

59 New s. 8B(5) Child Poverty Act 2010, as inserted by Schedule 13, Part 1, para. 2 of the Bill.

60 Schedule 13, Part 2, para. 6, repealing sections 10(1)–(3) Child Poverty Act 2010.

1.85 The Government says that the aim of these changes to the Child Poverty Act 2010 is to “improve the accountability of Government in relation to eradicating child poverty, thus helping to meet UK obligations under the International Covenant on Economic and Social Rights, and the UN Convention on the Rights of the Child.”⁶¹ The new Commission will provide independent expert scrutiny of the Government’s strategy for meeting the 2020 targets, and the removal of its advisory functions, the Government argues, will also improve ministerial accountability.⁶²

1.86 We welcome the Government’s avowed intention of improving ministerial accountability for the eradication of child poverty. Improving political accountability for progress towards the eradication of child poverty is in keeping with our view that in a parliamentary democracy it is the democratic branches of the state that should have primary responsibility for economic and social policy.

1.87 We are concerned, however, that the changes to the mechanisms of accountability in the Child Poverty Act 2010 may have the opposite effect to that which is intended, by reducing ministerial accountability to Parliament. We are particularly concerned by the removal of the requirement for the Secretary of State to provide an annual report to Parliament detailing progress towards the child poverty targets and towards implementing both the UK and devolved child poverty strategies. We acknowledge that Parliament will still be provided with annual reports assessing the progress made towards reducing child poverty in the UK, from the Social Mobility and Child Poverty Commission, but we are concerned that such reports to Parliament from independent commissions do not provide the same opportunity for holding a minister to account as a report to Parliament from the minister. In practice, such reports by expert bodies often do not lead to any questions being asked of the relevant Minister or any debate in Parliament.

1.88 Any change to the legal framework which has the potential to diminish ministerial accountability to Parliament for the reduction of child poverty requires the most careful scrutiny, particularly at a time when there is growing evidence that child poverty will in fact increase in the coming years and that the targets set by the 2010 Act are therefore increasingly unlikely to be met. We therefore recommend that the Bill be amended to require the Secretary of State to respond to the Commission’s annual report to Parliament by way of a statement, and that the Government commit to providing an opportunity for Parliament to debate the Commission’s report and the Minister’s statement in response.

Other human rights issues

(1) Contracting out

1.89 In relation to the functions which the Bill allows the Secretary of State to contract out, the Minister has indicated the Government’s view that these are functions of a public nature. In a case where it is alleged that a contractor has acted contrary to the Human Rights Act, the Bill requires claims to be brought against the Secretary of State. **The previous Committee expressed concern that, where contractors are providing services**

61 Letter from the Minister, xxx, at para. 93.

62 Ibid., para. 94.

which amount to a public function for the purposes of the HRA 1998, individuals should be able to exercise remedies against them directly, as Parliament intended.

1.90 We have reported on a number of occasions on the scope of the Human Rights Act 1998 and the circumstances in which private sector entities, performing a public function, will be subject to the duty to act in a Convention-compatible way.⁶³ **Legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA.**

(2) Conditionality and drug and alcohol addiction

1.91 The Bill provides for the repeal of certain provisions of the Welfare Reform Act 2009, which created powers to compel certain actions in relation to welfare claimants thought to be abusing drugs or alcohol. The predecessor Committee expressed significant concerns that these powers could lead to a disproportionate interference with the right to respect for private life and physical integrity (as protected by Article 8 ECHR), and were likely to deter individuals from seeking treatment for drug or alcohol addiction or drive drug and alcohol addicted people further into poverty.

1.92 The Minister informed the Committee that there are no current plans to use these mechanisms to mandate claimants to undertake drug testing or treatment. We very much welcome this assurance.

(3) Information sharing

1.93 The Bill introduces various measures designed to simplify the sharing of information in relation to taxation and the administration of welfare benefits. The sharing of personal information provided by a person for one purpose (for example, medical information necessary to perform an assessment of their eligibility for benefits or information about education and work history or income, savings or capital) for another purpose engages the right to respect for personal information protected by Article 8 ECHR. The provisions in the Bill are very broad and would allow any information gathered by HMRC in connection with its functions to be shared with the Secretary of State—or any contractor working for the Secretary of State—for the purposes of their functions (or vice versa). Information can then be transmitted to third parties, but only with the consent of the body who initially held the information (i.e. the Secretary of State or HMRC).

1.94 The Minister clarified that the criminal offence of unauthorised disclosure of information in section 123 of the Social Security Administration Act will continue to apply. Strict data-sharing protocols and access controls are already in place in relation to data-sharing between the Departments under existing provisions. Memoranda of understanding and contracts are reviewed periodically and include full details of how any data must be stored and disposed of. The Department retains the right to test all aspects of data security

⁶³ See Ninth Report of Session 2006–07, *Meaning of Public Authority under the Human Rights Act*, HL Paper 77/HC 410, Seventh Report of Session 2007–08, *Meaning of Public Authority under the Human Rights Act*, HL Paper 39/HC 382.

and handling in order to secure compliance with both the Data Protection Act 1998 and the ECHR. These include a memorandum of understanding to which all local authorities must sign up. The Information Commissioner's Office comments have been fully taken into account. **We welcome these assurances regarding the operation of the information-sharing regime.**

Conclusions and recommendations

The purposes and effect of the Bill

1. We commend the Government's aim to support more people, and in particular people who might otherwise be disadvantaged in the employment market, into work as the most effective route out of poverty. This aim is consistent with many international human rights instruments which recognise the right to work and the right to an adequate standard of living. We therefore welcome the Bill as a potentially human rights enhancing measure. (Paragraph 1.8)

Information provided by the Government

2. We remind departments of the examples of best practice by those departments which have provided us with detailed human rights memoranda accompanying Government Bills. This is not merely a matter of preference by this Committee. The principle of subsidiarity, which the Government rightly seeks to strengthen during its Chairmanship of the Council of Europe, requires the Government and Parliament to fulfil their responsibility for implementing human rights in the national legal system. The provision of detailed human rights memoranda to Parliament is an important means of demonstrating the Government's fulfilment of that responsibility. It also facilitates Parliament in fulfilling its responsibility in that regard. We also remind the Government that, as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny. (Paragraph 1.11)
3. We call on the Government to improve its capacity to conduct equality impact assessments, in particular to go beyond piecemeal analysis of each measure by assessing the proposed provisions as a whole, including their cumulative impact on individuals and groups, from an equality perspective. (Paragraph 1.15)
4. For the reasons we set out below we have concerns that the proposals may be implemented in a way which could lead to a risk of incompatibility with Convention rights. We reiterate our previous recommendation that, where the Government's view on compatibility relies on safeguards to be provided in secondary legislation, we recommend that draft Regulations are published together with the Bill. At the very least, the Government should describe in the explanatory material accompanying the Bill the nature of the safeguards it proposes to provide. (Paragraph 1.17)
5. We call upon the Government better to monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally, with particular attention to the risks of destitution, discrimination and retrogression highlighted below. (Paragraph 1.19)

Relevant human rights standards

6. In our view, in any parliamentary democracy it is the democratic branches of the State, that is, the Government and Parliament, which should have primary responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority. (Paragraph 1.22)
7. We are disappointed by the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP. The legal effect of these human rights obligations in the UK is different in kind from the legal effect of Convention rights, which are given effect in our national legal system under the Human Rights Act, but they are nevertheless binding obligations in international law and the Government should be able to demonstrate that they have considered the compatibility of legislative proposals with those obligations. We have commended a number of human rights memoranda from departments in the past which have done precisely that. (Paragraph 1.35)
8. We remind departments of this Committee's expectation in this respect, which is explicitly referred to in the Cabinet Office Guide to Legislative Procedure. (Paragraph 1.35)
9. We also remind the Government of the "clear commitment" given by the Minister of State for Education, Sarah Teather, to the House of Commons on 6 December 2010, "that the Government will give due consideration to the UNCRC articles when making new policy and legislation", and, in so doing, will always consider the recommendations of the UN Committee on the Rights of the Child. (Paragraph 1.36)

Significant human rights issues

10. The ECHR does not preclude individual member states from setting conditionality requirements in respect of work. However, there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR if the individual concerned was genuinely incapable of work. The absence of more detail about the proposed system of hardship payments, and the lack of publicly available statistics on the number of applications for hardship support under existing regimes, means that we are not in a position to assess the degree of risk. We urge the Government to give careful consideration to this risk, to take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to this issue and carefully monitor the impact of the sanctions regime on people with particular characteristics. (Paragraph 1.45)
11. For the reasons set out below, we remain concerned that these proposals may be implemented in a way which could lead to a discriminatory impact and may not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised. We consider that changes to welfare support designed to meet the right to social security and the right to an adequate standard of living should be supported by evidence. We recommend

that the changes should be closely monitored to understand the implications of the proposals for individual rights, including the right to respect for an adequate standard of living, and the right to enjoyment of those rights without discrimination. (Paragraph 1.48)

12. This may call into question the objective justification for the disparate impact, and at the very least suggests the need for close scrutiny to ensure that Article 14 is not breached. (Paragraph 1.52)
13. We believe that close monitoring of the impact of this change is essential, in order to ensure that it is proportionate, and to take mitigating action if necessary. (Paragraph 1.55)
14. The disproportionate impact on larger households is said to be justified because it promotes fairness with similar-sized households which are just outside entitlement to benefit. This is undoubtedly a legitimate aim. There is no Strasbourg case law on this specific issue. An alternative approach to increasing fairness is to compare like with like—that is to calculate the level of the cap based on earnings of families with children, rather than all households. We ask the Government whether they have carried out an assessment of these approaches with a view to comparing their proportionality. (Paragraph 1.59)
15. However, we are concerned that some disabled people who do not get DLA (especially with the tightened criteria of the new PIP regime) may be forced to move, and will face disparate impact in terms of extensive disruption regarding adaptations and caring/support networks. We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the cap. (Paragraph 1.61)
16. We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions. (Paragraph 1.66)
17. In light of this uncertainty, and taking into account the discussion above of potential discrimination in relation to disabled people, we are not satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of PIPs on the right of disabled people to independent living. (Paragraph 1.71)
18. We welcome the Government's willingness to listen to concerns raised about the proposal to withdraw the mobility component of PIP from residential care home residents, including in particular its impact on the right of disabled people to independent living, and its decision to table an amendment to the Bill to remove this provision. (Paragraph 1.73)
19. We welcome this intention, which is in keeping with the Government's avowed commitment to the "social model" of disability (as opposed to the outdated "medical model"). This approach recognises that the obstacles to disabled people's inclusion in society are not their physical condition but the environmental, social and attitudinal barriers to their full participation. The UNCRDP is entirely premised on this social model of disability. (Paragraph 1.74)

20. We believe that amending the Bill to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants would make it less likely that that the Bill will lead to incompatibilities with the UK's obligations under the UNCRDP. We further recommend a trial period for the new assessment process and a report to Parliament on the implementation of the new testing system, to ensure that the impact of the new assessment process is fully assessed and analysed in light of its operation in practice. (Paragraph 1.75)
21. A report from the Department of Work and Pensions, prior to the Bill's introduction of tighter conditionality sanctions, identified the need further to consider the impact of the JSA conditionality regime on lone parents and the effect of any loss of benefit on them and their children. We endorse this recommendation for detailed research and monitoring of the impact conditionality regime on lone parents. (Paragraph 1.79)
22. We are concerned that the cumulative impact of the Bill's provisions may lead to retrogression which is not justified by the factors set out in the General Comments of the UN Committees. We recommend that the Government consider what safeguards can be introduced to minimize this risk. For example, the Bill could be amended to allow payments intended for children to be labelled as such and be paid to the main carer. (Paragraph 1.82)

Other human rights issues

23. The previous Committee expressed concern that, where contractors are providing services which amount to a public function for the purposes of the HRA 1998, individuals should be able to exercise remedies against them directly, as Parliament intended. (Paragraph 1.89)
24. Legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA. (Paragraph 1.90)
25. The Minister informed the Committee that there are no current plans to use these mechanisms to mandate claimants to undertake drug testing or treatment. We very much welcome this assurance. (Paragraph 1.92)
26. We welcome these assurances regarding the operation of the information-sharing regime. (Paragraph 1.94)

Formal Minutes

Tuesday 6 December 2011

Members present:

Dr Hywel Francis MP, in the Chair

Baroness Berridge

Mr Dominic Raab

Lord Bowness

Lord Dubs

Lord Morris of Handsworth

Draft Report, *Legislative Scrutiny: Welfare Reform Bill*, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.94 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twenty-first Report of the Committee to each House.

Ordered, That the Chair make the Report to the House of Commons and that Lord Bowness make the Report to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

Written evidence reported and ordered to be published on 11 October and 6 December was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 13 December at 2.00 pm]

Declaration of Lords Interests

No members present declared interests relevant to this Report.

A full list of members' interests can be found in the Register of Lords' Interests:
<http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm>

34 Legislative Scrutiny: Welfare Reform Bill

List of written evidence

- 1 Letter to the Chair, from Mr A Fisher, 17 October 2010 p 35
- 2 Letter from the Chair, to Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 20 July 2011 p 36
- 3 Letter to the Chair, from Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 26 September 2011 p 45

Written Evidence

1. Letter to the Chair, from Mr A. Fisher, of 17 October 2010

I am writing to you with a concern I have over the current proposals within the 2010 Welfare Bill; namely that the Coalition government are looking to encompass an element of a United States style 'Welfare to Work' programme and its likely impact upon Human Rights.

In particular I am very concerned that should an individual find themselves without work for an extended period (through no fault of their own other than economic conditions outside their control) and claiming one of current main benefits i.e. Job Seekers Allowance and/or Housing Benefits, they will be forced to undertake community type activities in order to continue to receive benefits.

As I am sure you are aware Article 4 (ii)—Servitude of the European Convention on Human Rights (ECHR) protects European citizens from the effects of Forced Labour; namely where people are forced to work against their will by the threat of destitution, detention, violence or other extreme hardship to themselves or their family. Clearly to make a so-called 'work for your dole' programme effective there has to be an element of compulsion. Therefore if an individual refuses to participate and the Department of Work & Pensions (DWP) threatens to reduce or stop any or all parts of their benefits; then the DWP has broken ECHR legislation. The simple threat of stopping benefits for not participating in the programme would in my understanding be enough to have invalidated Article 4 (ii).

There are a number of exemptions to Article 4 (ii) namely, during a state of emergency, work enacted in lieu of a custodial sentence, military conscription and work, which is part of normal civic duty. The Coalition government may try and claim that any such programme would sit within the final of the four exemptions. However no 'reasonable person' could argue that this is the case, given you do not see the elderly or teenagers scrubbing graffiti off town centre buildings up and down the land. Alternatively perhaps the government intends to change the law to criminalize the unemployed, by making it a criminal offence to be out of work!

My concern is that rather than putting in place significant programmes of retraining or re-skilling of the long-term jobless, it will be seen as politically expedient and cheaper to just leave them in a suspended state of permanent 'feudal serfdom' to the British tax payers. Any such 'work for your dole' programme clearly has to be voluntary and not compulsory. Any Welfare Act moving forward which forces the unemployed to undertake community type, street cleaning, tidying of parks and or graffiti removal for a period of say 30–40 hrs per week in return for their JSA or Housing Benefit would be illegal under not only the minimum wage legislation, but more significantly Article 4 (ii) of the ECHR.

17 October 2010

2. Letter from the Chair, to Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 20 July 2011

The Joint Committee on Human Rights is scrutinising the Welfare Reform Bill for its compatibility with the UK's human rights obligations. We are grateful to your officials for agreeing to meet with us earlier in the year to discuss the work of the Committee and its likely approach to the Bill. A number of issues which arise in connection with our work on this Bill are also relevant to our ongoing inquiry on the right of independent living for disabled people.

We would be grateful if you could provide us with some further information on the Government's views on the compatibility of the Bill's proposals with the human rights obligations of the UK.

a) Explanatory Notes

The Committee has encouraged Government Departments to produce freestanding human rights memoranda dealing with the compatibility of legislative proposals with the wider human rights obligations of the UK, outside the ECHR and highlighting any measures which the Government considers may enhance the protection of human rights in practice.

1. I would be grateful if you could explain whether the Government has conducted any analysis of the proposals in the Bill for their compatibility with international human rights law, including, in particular, the obligations of the UK under a) the International Covenant on Economic, Social and Cultural Rights; and b) the UN Convention on the Rights of Persons with Disabilities.

2. I would be grateful if you could provide us with a copy of that analysis.

On a number of previous occasions, our predecessor Committee explained that Explanatory Notes which are very broadly based make it difficult for us to understand the Government's reasoning which supports the Minister's statement of compatibility under Section 19 HRA 1998. While we welcome the broad statement of the Government's position in the Explanatory Notes accompanying the Bill, we would be grateful if you could provide us with some more detailed explanations of the analysis provided.

3. Please provide a further explanation of the Government's view that statutory changes to conditions of entitlement to statutory benefits do not engage Article 1, Protocol 1 ECHR.

4. The Government considers that, if Article 1, Protocol 1 ECHR is engaged, the measures in the Bill are proportionate to the legitimate aim of securing the economic well-being of the country. The Explanatory Notes do not provide a full analysis of the Government's views on these measures, but refer to "relevant" considerations. We would be grateful for a fuller explanation of the Government's view on the

compatibility of these proposals with Article 1, Protocol 1 ECHR (see paragraphs 694—695).

b) Delegated Powers and draft Regulations

Our predecessor Committee recommended on a number of occasions that where safeguards proposed in a Bill are designed to secure the protection of individual rights, those safeguards should be set out in the Bill or at the least produced in draft Regulations at the time the Bill is passed, to allow for full parliamentary scrutiny of the human rights impact of particular provisions. For example, in the Explanatory Notes accompanying the Bill, the Government explains that the ability to make exceptions to the benefits cap will be relevant to the issue of the proportionality of that measure. This issue has been a prominent feature of parliamentary debate, particularly in connection with the issue of whether the cap could operate to increase homelessness or whether the cap could have a discriminatory impact on particular households, including disabled people.

5. I would be grateful if you could explain whether the Government intends to make any draft Regulations available during the debate on the Bill.

6. If not, please explain how Parliament will have a full opportunity to consider the human rights impact of these proposals without full information on the relevant safeguards proposed. Specifically, please explain how Parliamentarians might raise human rights concerns about particular measures, when the draft Regulations will not be subject to line-by-line consideration.

During Report Stage in the House of Commons, the House considered a number of amendments which would have required certain provisions of the Bill to be subject to affirmative rather than negative procedure, including some of the detailed arrangements for the operation of Universal Credit and the Personal Independence Payment. In debate, the Minister indicated that the Government was still considering this issue. We note that the Delegated Powers and Regulatory Reform Committee expressed concerns that significant parts of this Bill will currently be determined in Regulations subject to the negative procedure, including the scope of requirements which the Secretary of State may impose on individual claimants and the operation of the hardship arrangements which will apply in relation to sanctions imposed.¹ In the past, our predecessor Committees have expressed concern where detail and safeguards which are relevant to the human rights impact of welfare reform measures are included in delegated legislation subject only to the negative procedure.²

7. I would be grateful if you could, as a courtesy, provide me with a copy of the Government's response to the Seventeenth Report of the Delegated Powers and Regulatory Reform Committee as soon as it is available.

¹ <http://www.publications.parliament.uk/pa/d201012/ldselect/lddelreg/182/18202.htm>

² <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/78/7804.htm#a3>(See for example, paragraph 1.21).

c) Equality and impact assessments

We have seen the number of detailed equality impact statements which have been produced by the Department in relation to specific proposals in the Bill. We note that in the introductory memoranda to the Impact Assessments, the Government explains that the impact assessments have been designed to take into account changes to the public sector equality duty in the Equality Act 2010. We note that these impact assessments were not available until after the Bill had had its second reading in the House of Commons.

The EHRC and a number of NGOs have been critical about the scope of the impact assessments produced. For example, the EHRC has raised concerns about the lack of a cumulative impact assessment of the proposals in the Bill on groups bearing each or multiple of the protected characteristics in the Equality Act 2010. They have published their legal advice on the impacts of the Bill. This is an issue which has also been raised in evidence in our independent living inquiry.

8. Please explain why the equality impact assessments produced were not available in time for the introduction of the Bill.

9. Did the Government consult with the EHRC during the preparation of the equality impact assessments accompanying the Bill? If not, has the Government met with the EHRC to discuss their concerns about the scope of the equality impact assessments?

10. Please provide us with the Government's response to the concerns raised by the EHRC that the equality impact assessments prepared do not meet the public sector equality duty in the Equality Act 2010.

11. In light of the number of policy factors yet to be determined in the Bill (see above), is the Government satisfied that these equality impact assessments provide a full picture of the likely impact of the proposals in the Bill?

12. Has the Government conducted an assessment of the likely cumulative impacts of the proposals in the Bill? (Please provide the Government's response to the concern raised during debates in the House of Commons, that, without a cumulative assessment of the impact of the policies in the Bill on people who share protected characteristics (particularly women and disabled people), Parliament will not necessarily have a full picture of whether the Bill will operate in a discriminatory manner.)

13. Please confirm whether human rights memoranda and/or equality impact assessments will be produced to accompany regulations made under the Bill, in particular with regard to any regulations connected to eligibility for benefits, conditionality and the imposition of sanctions and the operation of hardship payments.

d) Monitoring implementation of the proposals in the Bill

Our predecessor Committee, in its Report on the Welfare Reform Bill 2009, noted that while the proposed reforms to welfare could operate in a manner which was compatible with human rights standards, a lot would depend on how the scheme was operated in

practice, including how the detail of the scheme was set in further regulations. That Committee called on the Government to keep the scheme under review, including monitoring how the scheme engaged the human rights of claimants. The Bill already provides for the Secretary of State to report to Parliament on the operation of the assessment process to be introduced in connection with the Personal Independence Payment. During Report Stage in the House of Commons, the Minister for Disabled People, Maria Miller MP, indicated that the Government was still considering how best to monitor the impact of other measures in the Bill, including the impact of housing benefit reforms:

We want to ensure proper and accurate monitoring of the impact of the introduction of our policies. Indeed, we have put that in place for the work capability assessment and our reform of DLA. (HC Deb 13 June 2011, Col 600)

14. I would be grateful if the Government could outline the measures which it proposes to take to monitor the impact of the proposals in the Bill after they are implemented, including discriminatory impact on people and groups of people with the characteristics protected by the Equality Act 2010.

Clause 59 repeals provisions relating to drug dependence introduced in the Welfare Reform Act 2009. The predecessor JCHR criticised these provisions during the passage of the Act, expressing particular concern that requiring claimants to undergo treatment or testing could interfere with their right to respect for private life (Article 8 ECHR).

15. Please confirm that conditionality either in a claimant commitment or in a work-related or work preparation requirement will not extend to a requirement on claimants to undertake drugs testing or treatment (similar to the provision envisaged in Section 11, Welfare Reform Act 2009).

e) Contracting out

A number of clauses in the Bill provide powers for the Secretary of State to delegate power to implement the measures in the Bill to “authorised persons”. It is unclear from the drafting in the Bill whether the Government intends “authorised persons” will be performing public functions for the purposes of the HRA 1998. On the one hand, the provisions in the Bill make clear that authorised persons’ acts or omissions should be treated as if they were performed or omitted by the Secretary of State. On the other hand, the Bill exempts anything done for the “purposes of so much of any contract between the authorised person and the Secretary of State as relates to the exercise of the function.”

16. In relation to each of the clauses in the Bill which provide for the Secretary of State to contract out certain of his functions in relation to welfare reform, please explain whether the Government considers the authorised person will be performing a “public function” for the purposes of Section 6 of the Human Rights Act 1998?

17. If not, please explain against which public body an individual who wished to rely on the Human Rights Act 1998 could claim.

f) An adequate standard of living, destitution and poverty

The Explanatory Notes accompanying the Bill express the Government's categorical view that none of the provisions in the Bill will create a risk that any claimant will fall into destitution or poverty which meets the standard identified by the House of Lords in *Limbuella* that engages the right to be free from inhuman and degrading treatment (Article 3) ECHR. Principally, the Government explains that:

- a. the most severe sanctions will not apply to claimants who face significant barriers to work;
- b. there will be a hardship regime in place to protect vulnerable claimants and their families;
- c. "[i]n relation to the proposal to introduce an entitlement to work for certain benefits, "other means of support will be available where necessary to ensure compliance with Article 3"; and
- d. in relation to the closure of the social fund and other discretionary forms of assistance (such as community care grants and crisis loans), these will be replaced by local authority measures.

Much of the detail of the impact of these proposals will be determined in secondary legislation, including, importantly the operation of proposed hardship safeguards.

18. I would be grateful if you could provide a fuller explanation of the information provided by the Government on the likely compliance with Article 3 ECHR of the proposals in the Bill, including fuller information on the safeguards outlined in the Explanatory Notes (see Explanatory Notes, para 705). In particular:

- a. please explain the Government's view that the imposition of a sanction leading to a reduction in benefit will not be "treatment" for the purposes of Article 3 ECHR;
- b. please provide further information on how the proposed hardship regime will operate;
- c. please explain what "other means of support will be available where necessary to ensure compliance with Article 3"; and
- d. please explain how the Government's understanding of these measures and the power to make payments on account has informed the Government's understanding of the likely compatibility of the operation of these measures with Article 3 ECHR. (We understand that the measures which are intended to replace discretionary social fund payments are not yet settled.)

19. In light of the relevance of the operation of the hardship regimes proposed in the Bill for the impact of the Bill in practice on the rights of individual claimants, I would be grateful if the Government could provide us with further information on the operation of the existing hardship regime which operates in connection with sanctions

associated with other benefits. In particular, I would be grateful if you could provide us with annual statistics on the number of applications made for support under the hardship regime (and the overall number of cases where sanctions have been imposed); and how many of those applications have been successful.

g) Universal Credit

A number of specific questions were raised in the House of Commons about the operation of Universal Credit in order to better ascertain whether there is a risk that these provisions will operate in a way which may lead to discrimination. These included:

- a. whether the proposal to time-limit contributory elements of Employment Support Allowance (and the equivalent Universal Credit) may have a discriminatory impact on disabled people and women when calculation of eligibility for means-tested elements of the allowance may depend on the income of a family carer or a primary earner;
- b. whether the calculation of eligibility for Employment Support Allowance (and the equivalent Universal Credit) by reference to household income will have a discriminatory effect on disabled people and particularly on disabled women;
- c. whether the absence of information on the availability of support for childcare creates a risk that it is impossible to assess whether the provisions in the Bill might operate in a manner which has a discriminatory impact on low-income working families and particularly women in low-income working families;
- d. whether the proposed cap on housing benefit (and the housing element of Universal Credit) will have a discriminatory impact on disabled people;
- e. whether the proposed cap on Universal Credit may have a discriminatory impact on disabled people;
- f. whether the imposition of either of these caps is likely to lead to an increased likelihood of homelessness and whether appropriate safeguards are in place to protect vulnerable people from destitution; and
- g. whether the proposal to pay Universal Credit directly to one person per household has the potential to undermine the independence of disabled people.

The Government has provided detailed policy responses to each of these concerns during debates. We have asked more detailed questions about the impact assessments conducted by the Government in this correspondence. **We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the Universal Credit to have a discriminatory impact on people or groups with protected characteristics (including women and disabled people).**

h) Personal Independence Payments

A number of issues have been raised during debate in the House of Commons and in written evidence to our inquiry on the right of independent living for disabled people about the removal of Disability Living Allowance (DLA) and the operation of the Personal Independence Payment. These include:

- a. what steps has the Government taken to involve disabled people and disabled peoples' organisations in the development of its proposals for PIP, as required by Article 4 of the UN Convention on the Rights of Persons with Disabilities;
- b. whether the proposal to remove the mobility element of PIP (currently DLA) for disabled people in residential care will undermine the ability of the UK to meet its obligations under the UN Convention on the Rights of People with Disabilities (Clause 83);
- c. how will support for carers be determined after the implementation of the PIP;
- d. whether the application of regular assessments of eligibility for PIP will be applied in a way which interferes with the right of disabled people to respect for private life and personal integrity; (A number of concerns have been raised about the impact of regular assessment on the health of disabled people when considered in connection with the costs associated with regular assessment of those with long-term or permanent impairments.)
- e. how disabled children will secure support to ensure that they can secure their rights under the UN Convention on the Rights of Persons with Disabilities (children will not receive PIP); and
- f. whether the proposed change to the qualifying period (which will require disabled people to illustrate that they have been affected by a disability for 6 months and are expected to continue to be disabled by that impairment for a further six months) could leave disabled people without support, create further risks to health and undermine the ability of the UK to meet its obligations under the UN Convention on the Rights of Persons with Disabilities.

The Government has provided detailed policy responses to each of these concerns during debates. We have asked more detailed questions about the impact assessments conducted by the Government in this correspondence. **We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the PIP to have an adverse impact on disabled people. In particular, could you set out the Government's response to criticism that certain aspects of PIP could have a retrogressive impact on the rights of disabled people which could be inconsistent with the UK's obligations under the UN Convention on the Rights of Persons with Disabilities.**

i) The right to a fair hearing (Article 6 ECHR)

In the Explanatory Notes accompanying the Bill, the Government explains that “there will (as now) be a right to appeal against any decision to apply a benefit sanction as a consequence of a failure to meet a work-related or connected requirement (Explanatory Notes, paragraph 708).

20. I would be grateful if you would confirm that the imposition of any sanction under Bill will be subject to appeal. If so, please explain why Clauses 126, 27, 46, 49 and 54 need not be amended to provide that the relevant Regulations should provide for an appeal to the first tier tribunal in connection with the imposition of any sanction associated with Universal Credit, Employment Support Allowance or Job Seeker’s Allowance.

21. I would be grateful if you could provide us with annual statistics on the number of sanctions decisions subject to appeal, including the number of appeals which are successful and the number of appeals which are rejected.

Clause 100 is designed to reinstate a rule which existed prior to the abolition of the specialist social security appeal tribunal. This would allow the Secretary of State to change or “supercede” a decision of the tribunal in limited circumstances. The Explanatory Notes explain that this change would be to take into account changes of circumstance and could be beneficial or detrimental to the claimant. The Explanatory Notes explain why the Government considers that this proposal is compatible with Article 1, Protocol 1 ECHR. They do not however address the application of Article 6 ECHR. Article 6 ECHR and the right to a hearing by an independent and impartial tribunal applies to the decisions taken in connection with eligibility for benefits. Article 6 ECHR generally requires a determination by the relevant tribunal to be final and not subject to administrative revision in order to satisfy the requirement for a fair hearing.

22. Please provide a fuller explanation of the Government’s view that the provisions in Clause 100 which reinstate the power of the Secretary of State in connection with the supersession of tribunal decisions is compatible with Article 6 ECHR.

i) The right to respect for private life (Article 8 ECHR): Information sharing

Clauses 123–128 of the Bill introduce various measures designed to simplify the sharing of information in relation to taxation and the administration of welfare benefits. The sharing of personal information provided by a person for one purpose (for example, medical information necessary to perform an assessment of their eligibility for benefits or information about education and work history or income, savings or capital) for another purpose engages the right to respect for personal information protected by Article 8 ECHR.

The Government expresses its view that these provisions “will be exercised compatibly with Article 8”. Where Article 8 is engaged the Government considers that the provisions will operate proportionately to the legitimate aim of safeguarding the economic well-being

of the country and the protection of health. The Explanatory Notes provide no explanation of the Government's reasons for this view.³

23. Please provide a more detailed explanation of the Government's view that the proposed information sharing gateways in Clauses 123–128 of the Bill will operate in a manner which is compatible with Article 8 ECHR. In particular, please provide details of any relevant safeguards which will be in place to ensure that the information shared between public authorities and private contractors will be handled in a manner which is compatible with the Data Protection Act 1998 and Article 8 ECHR.

24. Has the Government consulted with the Information Commissioner about the scope of the information sharing gateways proposed in Clauses 123–128 of the Bill?

k) Child Poverty: The Social Mobility and Child Poverty Commission

Our predecessor Committee welcomed the introduction of the Child Poverty Act 2010 as a positive measure designed to help meet the UK's obligations to secure an adequate standard of living for children. Clause 135 makes provision for the creation of a Social Mobility and Child Poverty Commission and was introduced as a Government amendment during House of Commons Committee Stage.

25. We would be grateful if the Government could provide an explanation of how it considers the Social Mobility and Child Poverty Commission will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

26. Please also explain how the other changes in the Bill to the Child Poverty Act 2010—including the removal of the duty on the Secretary of State to report to Parliament—will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

l) Reservations to the UN Convention on the Rights of Persons with Disabilities: Capacity and Benefits Nominees

On ratifying the UN Convention on the Rights of Persons with Disabilities, the UK entered a number of reservations. A number of these were criticised by the predecessor JCHR. However, the predecessor JCHR accepted that a reservation on ratification was necessary in connection with Article 13 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (Access to Justice) in connection with a deficiency in the law, which failed to provide an opportunity for review in connection with the appointment and conduct of benefits appointees. At the time, the then Government reassured the JCHR that it intended to resolve this inconsistency and remove the reservation. The JCHR welcomed this undertaking and regretted the delay at that time (two Welfare Reform Bills had been considered during the process of ratification).

In the draft Report to the UN on the Convention, the Government explains:

³ EN, paras 715–717.

The Government has therefore been developing a proportionate system of review to address this issue. Disabled people have been involved in the design and pilot. Design work will be completed in July 2011. Once the system is introduced consideration will be given to removing this reservation (see paragraph 79).

27. I would be grateful if you could provide us with an update on the Government's position on the UK reservation to Article 13 UNCRPD. In particular:

- a. please provide further information on the progress of the design and piloting of the proposed system of review;**
- b. if "design work" is due to be completed in 2011, please provide a target timetable for legislating to introduce a review mechanism which is compatible with Article 13 CRPD;**
- c. in the light of this timetable, is there any prospect that these reforms may be introduced as late amendments to the Welfare Reform Bill?**
- d. if not, can the Government explain why the timescale for design of the relevant procedures have been so lengthy as to preclude their introduction in this Welfare Reform Bill?**
- e. After the introduction of legislation on this issue, does the Government intend to remove the UK reservation to Article 13 UNCRPD? If not, please provide an explanation.**

We would be grateful for a response by 5 September 2011, in order to allow the Committee to consider its views in advance of the Bill's Committee Stage in the House of Lords. I would also be grateful if you could provide me with a Word version of your response to aid with publication.

20 July 2011

3. Letter to the Chair, from Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 26 September 2011

Thank you for your letter dated 20 July 2011 requesting further explanation of the Government's view that the proposals in the Bill are compatible with the UK's human rights obligations. The attached paper sets out the Government's response to the Committee's questions.

I would like to thank the Committee for agreeing to extend the proposed deadline for reply.

26 September 2011

Response to Welfare Reform Bill letter, 20 July 2011

(Q 1) I would be grateful if you could explain whether the Government has conducted any analysis of the proposals in the Bill for their compatibility with international human rights law, including, in particular, the obligations of the UK under a) the International Covenant on Economic, Social and Cultural Rights; and b) the UN Convention on the Rights of Persons with Disabilities.

(Q 2) I would be grateful if you could provide us with a copy of that analysis.

1. The Government has conducted a full analysis of the proposals in the Bill for their compatibility with our obligations under the European Convention on Human Rights (this is summarised in the explanatory notes). It is also content that the proposals in the Bill are compatible with our wider international human rights obligations, insofar as these are relevant, including the International Covenant on Economic Social and Cultural Rights and the UN Convention on the Rights of Persons with Disabilities. The Government is committed to protecting the rights of disabled people, and the report that will be submitted to the United Nations on the implementation of the Convention later this year will set out the steps being taken. The Government does not consider that the proposals raise any particular issues in respect of these wider obligations such as to merit a detailed analysis.

(Q 3) Please provide a further explanation of the Government's view that statutory changes to conditions of entitlement to statutory benefits do not engage Article 1, Protocol 1 ECHR.

(Q 4) The Government considers that, if Article 1 Protocol 1 ECHR is engaged, the measures in the Bill are proportionate to the legitimate aim of securing the economic well-being of the country. The Explanatory Notes do not provide a full analysis of the Government's views on these measures, but refer to "relevant considerations. We would be grateful for a fuller explanation of the Government's view on the compatibility of these proposals with Article 1 Protocol 1 (see paragraphs 694–695 of the Explanatory Notes).

2. Article 1 Protocol 1 does not confer a right to receive social security benefit, nor does it guarantee a right to a particular amount of benefit (*Steck & Others v UK*, application number 65731/01 and 65900/01). The Government therefore considers that there will be no interference with Article 1 Protocol 1 where the State changes the conditions of entitlement to a benefit or introduces a new benefit. However, the Government has also considered the justifications for and proportionality of the relevant measures.

Entitlement to universal credit

3. The Government considers that in cases where a person applies for universal credit, but does not meet one or more of the entitlement conditions and is therefore not entitled to universal credit, no issue can arise under Article 1 Protocol 1 because the person does not have any property right.

4. Equally, the Government considers that in cases where a person (1) applies for universal credit; (2) meets the conditions of entitlement and is therefore awarded the benefit; (3)

subsequently no longer meets one or more of the conditions and is therefore disentitled, the person no longer has any property right and there is therefore no possession for the purposes of Article 1 Protocol 1. Where a person has met the conditions of entitlement and is awarded benefit, the possession in the benefit for the purposes of Article 1 Protocol 1 must be limited to the right to the benefit for as long as the statutory conditions of entitlement are met.

5. The changes are in any event justifiable. A re-design of the benefits and tax credits systems which aims to create greater incentives to work and earn money, and allows income to be subject to a more generous taper which will mean that a claimant will keep more of their benefits despite working and earning money, clearly meets a legitimate aim.

6. Any change to an existing claimant's amount of benefit will be a proportionate measure. Universal credit has been designed to provide an appropriate structure of support for people with no or low incomes both in and out of work. The central aim is to smooth the transition into work by reducing the support a person received at a consistent rate as their earnings increase.

7. The provisions in clause 37 and Schedule 6¹ are sufficient to ensure that the Department for Work and Pensions can design transitional protection for existing claimants in a way which allows for sufficient notice to be given to claimants of any change, particularly significant change. This measure will help to ensure that the impact of any changes in benefit levels on particular individuals is proportionate.

Condition relating to entitlement to work

8. Clauses 60–62 amend the Jobseekers Act 1995, the Welfare Reform Act 2007 and the Social Security Contributions and Benefits Act 1992. They make provision for 'entitlement to work' to be introduced as a condition of entitlement for claimants of contributory employment and support allowance (ESA (C)), contributions based jobseekers allowance (JSA (C)), maternity allowance and statutory payments.

9. These amendments make provision such that claimants will be required to have an entitlement to work as a condition of entitlement to these benefits and statutory payments. For benefits, this requirement must be met at the point of claim. It will not operate to remove benefit that is already in payment.

10. This proposal will operate to ensure that those who may have been working illegally are not entitled to benefits or payments based on their illegal employment and the National Insurance contributions that may have been paid by them in that employment. The amendment is made only to legislation which applies to non means tested benefits and payments which are accessed by virtue of the person actually being in work, or having recently worked.

11. Section 115 of the Immigration and Asylum Act 1999 makes provision for access to means tested benefits to be limited in relation to those who have no right to be in or work in Great Britain. This takes effect by way of regulations which are specific to each of the

¹ References to clauses in the Welfare Reform Bill are to version HL Bill 75, as brought from the Commons. We note that references to the Bill in the Committee's letter are to the earlier version, Bill 197.

means tested benefits. There is currently no equivalent provision which relates to non means tested benefits or payments, or benefits based on National Insurance contributions, on the premise that those with no entitlement to work will not have been working. However, the Government is aware that those with no entitlement to work are able to access such benefits or payments as there is no legislative bar on them doing so. This proposal seeks to address this lacuna.

Period of entitlement to contributory employment and support allowance

12. Clause 51 amends the Welfare Reform Act 2007 to restrict entitlement to ESA(C) to 365 days for those in the work-related activity group. The clause details how the 365 days are calculated with reference to the period over which entitlement has arisen. It further makes provision for claimants to re-qualify for further periods of entitlement if they meet the conditions of entitlement in the future. This reform does not apply to those in the most disabled of the ESA claimant group; the support group. Any claimant who loses entitlement to ESA(C) as a consequence of this provision will be able to access income-related ESA, and in due course, universal credit, if they meet the applicable means tests.

13. The effect of the provision in question will be to put ESA(C) on a similar footing to JSA(C), where entitlement is limited to six months, and will be consistent with the approach taken to other contribution based benefits and statutory payments administered by the Department for Work and Pensions, all of which are time-limited.

14. The legislation will make provision for the calculation of the year's limit and this will be applied to all claimants (both new and existing), with the exception of those in the support group whose needs are such that it is appropriate that the State continue to provide support indefinitely. Claimants will be made aware of the detail of the proposals at the earliest appropriate time and will accordingly have time to adapt and prepare themselves for the forthcoming change in position.

15. Further, the change supports the Government's aim of engaging claimants in the process of recovery and return to work, ensuring that those who need the support of the State receive it, and those who need less support are helped to move towards and prepare for a return to the workplace. Time limiting ESA(C) will encourage claimants to make use of the back to work support that is offered to them, so as to increase their chances of finding appropriate work.

16. The measure is also justified given the significant cost to the public purse of paying ESA(C). The practical effect of the proposal to time limit will be limited to people who have capital or income above a certain level, such that they will not be able to access means tested benefits. At the expiry of entitlement to ESA(C) claimants can continue to receive income-related ESA if appropriate in their circumstances, providing that they also satisfy the means test. This enables the Government to direct public funds at those most in need of them.

Condition relating to youth

17. Clause 52 makes amendments to the Welfare Reform Act 2007 in relation to ESA claimed on the grounds of youth ('ESA(Y)'). The existing provisions allow for a person

under 20, or in certain circumstances, 25, to be able to access ESA without meeting the National Insurance conditions, or the means test, and allows them to remain on the benefit indefinitely.

18. This clause provides for there to be no new claims to ESA(Y) after the commencement of these provisions. Further, existing awards for claimants in the work-related activity group will be time limited by virtue of clause 51 which is dealt with above. Existing claimants in the support group will continue to be entitled to ESA(Y).

19. It is justifiable to treat young people the same as older claimants. Young people will be able to access ESA(C) on the basis of their own NI contributions if available, and if not will be able to access income-related ESA should they meet the means test. This ensures that the public purse continues to support those with limited funds who are less able to help themselves.

Entitlement of lone parents

20. Income support is the main income-replacement benefit for lone parents. Before November 2008, lone parents with a youngest child up to the age of 16 could claim income support as a lone parent. Since then, this threshold age has been reduced first to 12, then to 10 and, on 25 October 2010, to 7.

21. The Government announced in the budget that income support would no longer be available to lone parents with a child of 5 or over.

22. Clause 57 will amend section 3(1) of the Welfare Reform Act 2009 so that, when it is brought into force, any regulations setting out the prescribed categories of person who are entitled to income support must include lone parents with a child under the age of 5. This will enable existing regulations to be amended so that lone parents with a child of 5 or 6 are no longer entitled to income support solely on grounds of being a lone parent.

23. Most lone parents are expected to claim JSA once the threshold age for the end of entitlement to income support reduces to 5 and will be required to meet JSA conditionality—which means that they will be expected to be available for and actively seeking employment, and otherwise comply with requirements imposed on them in relation to their JSA award.

24. The Government considers that it is reasonable to expect claimants to be available for and actively seeking work once their child is in full-time education, in return for financial support. Further, the change is expected to lead to greater employment of lone parents which will have a positive effect on child poverty. The change is proportionate to that aim. In particular, there is a wide range of flexibilities and support available to lone parents claiming JSA to help ensure that any requirements imposed on them are not disproportionate and will take account of the lone parent's role as the main carer for their child.

Personal independence payment

25. The Bill makes provision for the introduction of a new benefit, to be known as personal independence payment (“PIP”). This benefit will in due course replace disability living allowance. The new benefit is to be a non-taxable, non-contributory benefit, designed to contribute towards the additional costs associated with long-term disability and be focused on those with the highest need.

26. It is intended to be a dynamic benefit, taking account of changes in individual circumstances and the impact of disabilities to a greater degree than is presently possible within the disability living allowance structure. The benefit will better reflect 21st century attitudes towards disability and developments in equality legislation. It is justifiable for this kind of support to be focused on those individuals who are most affected by their impairment. The assessment process will ensure that these individuals are identified in a fair, transparent, consistent and evidence-based manner. Claimants will also be given clear notice of the timetable for the introduction of PIP and the eventual cessation of disability living allowance.

27. The changes are justifiable, in terms of supporting those most affected by disability, and introducing a fairer, more consistent and evidence-based assessment system to identify such individuals.

Benefit cap

28. Clauses 93 and 94 allow for a cap on the total amount of benefit received from the State (from central Government and local authorities). There is a power to provide for exceptions from such a cap. The intention is to use this power to exempt households where a member of the household is working above a certain level, has a disability and is entitled to disability living allowance, PIP or constant attendance allowance, or is a war widow or widower.

29. The reason for having a cap is to balance the interests of benefit claimants with the interests of taxpayers. The Government believes that the effect of the cap is proportionate, taking into account: (1) the amount of the cap and the fact it will be based on average household earnings; (2) the fact that claimants will be notified of the cap and given time to adjust their spending to accommodate their new levels of benefit; and (3) the fact the cap will affect relatively few households and that those affected will already have a substantial income from benefits.

Recovery of benefit payments

30. The amendments to the Social Security Administration Act 1992 made by clause 102 allow for the recovery of any amount of universal credit, JSA and ESA that has been paid in excess of entitlement and prescribe the methods by which those overpayments may be recovered. The prescribed methods of recovery in each case are by offsetting against, or deduction from, other benefits, by court action or by deduction from earnings.

31. The Government considers that the strengthened measures it is putting in place for recovery of excess payments are justified and proportionate. In the present time of constrained public finances it is essential to ensure recovery of overpaid benefits in all appropriate circumstances. It is important also to preserve the appearance of fairness so

that the public can see that limited public funds are being focused on those who have a proper legal entitlement to those monies.

32. In order to identify proportionately and transparently the cases where it is appropriate to pursue recovery in such cases, the Department for Work and Pensions plans to issue a code of practice which will set out the principles it will apply in deciding when to seek recovery. This will enable proper account to be given to the circumstances of the debtor, and the nature and reasons for the overpayment.

(Q 5) I would be grateful if you could explain whether the Government intends to make any draft Regulations available during the debate on the Bill.

(Q 6) If not, please explain how Parliament will have a full opportunity to consider the human rights impact of these proposals without full information on the relevant safeguards proposed. Specifically, please explain how Parliamentarians might raise human rights concerns about particular measures, when the draft Regulations will not be subject to line-by-line consideration.

33. Illustrative draft regulations will be provided in relation to some parts of the Bill during the Lords Committee stage. In all areas, we will provide notes on how regulation-making powers will be used, as we did during the Commons stages of the Bill.

34. Regulations subject to the affirmative procedure must be laid before Parliament in draft, and are subject to debate and approval by Parliament. Regulations subject to the negative procedure may be prayed against by any Member of Parliament and a debate must then be tabled. Parliamentarians will be able to raise any human rights concerns during such debates.

(Q 7) I would be grateful if you could, as a courtesy, provide me with a copy of the Government's response to the Seventeenth Report of the Delegated Powers and Regulatory Reform Committee as soon it is available.

35. The response is attached.

(Q 8) Please explain why the equality impact assessments produced were not available in time for the introduction of the Bill.

36. There is no formal requirement to publish equality impact assessments for a particular stage in the legislative process. They were published after introduction in order to ensure that they were as up-to-date as possible in advance of the Commons Committee stage, the first point of the parliamentary process where a Bill is subject to detailed scrutiny.

(Q 9) Did the Government consult with the EHRC during the preparation of the equality impact assessments accompanying the Bill? If not, has the Government met with the EHRC to discuss their concerns about the scope of the equality impact assessments?

37. Officials from the Department for Work and Pensions met with the EHRC on 5th July 2011 to discuss various concerns and questions relating to the Welfare Reform Bill equality impact assessments.

38. The Welfare Reform Bill equality impact assessments were based on the Department for Work and Pensions' equality impact assessment tool which is designed to help to ensure that the needs of people with protected characteristics are taken into account when changing, developing or implementing a policy or service. This tool has been discussed with EHRC and informed by EHRC guidance.

(Q 10) Please provide us with the Government's response to the concerns raised by the EHRC that the equality impact assessments prepared do not meet the public sector equality duty in the Equality Act 2010.

39. There has been no formal written response to concerns raised by the EHRC. However, the EHRC's concerns were discussed at the meeting with officials on 5th July and the issues discharged. Specific concerns that were raised are addressed in questions 12 and 13 below.

(Q 11) In light of the number of policy factors yet to be determined in the Bill (see above), is the Government satisfied that these equality impact assessments provide a full picture of the likely impact of the proposals in the Bill?

40. Yes. Equality impact assessments are part of an ongoing, iterative process. The Department for Work and Pensions will update the assessments with the equality related analysis that informs the continuing development of the policies and how they are implemented. Once these policies are implemented the Department will continue to monitor their impact and review decisions accordingly.

(Q 12) Has the Government conducted an assessment of the likely cumulative impacts of the proposals in the Bill? (Please provide the Government's response to the concern raised during debates in the House of Commons that, without a cumulative assessment of the impact of the policies in the Bill on people who share protected characteristics (particularly women and disabled people), Parliament will not necessarily have a full picture of whether the Bill will operate in a discriminatory manner.)

41. The proposals in the Bill impact on a wide variety of groups in different ways. A single overall cumulative equality impact assessment has not been produced, for the reasons as set out in paragraphs 3 to 5 of the impact assessment cover note (<http://www.dwp.gov.uk/docs/wr2011-ia-cover-note.pdf>):

1) The scale of policy change provided for by the Welfare Reform Bill is significant, and is planned to take place over an extended period, beginning in 2011–12 with changes to lone parent obligations, and ending in 2017–18 with the completion of the transition to universal credit. Therefore the impacts build-up over a substantial period of time, and at a different rate for the various measures. To provide a single summary accurately taking account of the different timings would be analytically complex and extremely challenging. To simplify would risk providing a set of misleading impacts.

2) Moreover the changes to social security benefits and tax credits contained in the Bill take place in a wider context of fiscal change. The impact assessments therefore do not account for wider changes that would impact on households over the period, for example, the aim to increase income tax personal allowances to £10,000.

3) Collectively these factors substantially limit the extent to which a cumulative impact assessment would provide an accurate analysis of the impacts of the Bill as a whole. Moreover, an amalgamated assessment is likely to obscure the impacts of individual policies rather than aid the understanding of those considering the Welfare Reform Bill in Parliament and the wider public.

(Q 13) Please confirm whether the human rights memoranda and/ or equality impact assessments will be produced to accompany regulations made under the Bill, in particular with regard to any regulations connected to eligibility for benefits, conditionality and the imposition of sanctions and the operation of hardship payments.

42. It is envisaged that further equality impact assessments will be prepared during the implementation of the Welfare Reform Bill, including in relation to benefit eligibility, conditionality, sanctions and hardship payments. For Lords Committee, we will update equality impact assessments where there have been significant policy announcements made since the original assessments were published.

43. There is no requirement to produce a human rights memorandum to accompany regulations. Where regulations are subject to the affirmative resolution procedure, a statement on their compatibility with the ECHR will be included in the Explanatory Memorandum to the regulations.

(Q 14) I would be grateful if the Government could outline the measures which it proposes to take to monitor the impact of the proposals in the Bill after they are implemented, including discriminatory impact on people and groups of people with the characteristics protected by the Equality Act 2010.

44. The detailed evaluation plans for post-implementation are still being developed, however the Department for Work and Pensions is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups. Specifically (as set out in the “monitoring and evaluation” sections of the equality impact assessments—<http://www.dwp.gov.uk/policy/welfare%2Dreform/legislation%2Dand%2Dkey%2Ddocuments/welfare%2Dreform%2Dbill%2D2011/impact%2Dassessments%2Dand%2Dequality/>):

1) The Department will use administrative datasets to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups.

2) The Department will use survey data (for example the Family Resources Survey and Labour Force Survey) to assess trends in the incomes of the protected groups and in the employment outcomes.

3) The Department will use qualitative research and feedback from stakeholder groups to assess whether there are unintended consequences for the protected groups, and whether the policy is resulting in adverse consequences for particular groups.

4) The Department will utilise feedback from Departmental employee networks and internal management information. For example we will monitor the level of appeals and complaints in order to assess the broader impact of the policy.

5) The Department will draw on broader Departmental research where appropriate, as well as any research commissioned specifically as part of the evaluation of the measure.

(Q 15) Please confirm that conditionality either in a claimant commitment or in a work-related or work preparation requirement will not extend to a requirement on claimants to undertake drugs testing or treatment (similar to the provisions envisaged in section 11, Welfare Reform Act 2009).

45. The Government can confirm that there are no current plans to use these mechanisms to mandate claimants to undertake drug testing or treatment. Section 11 of the Welfare Reform Act 2009 is being repealed by the Bill (see clause 59). We will keep under review alternative approaches which might encourage claimants to address addiction. Any proposals that are taken forward will be compatible with the ECHR, in particular with Article 8.

(Q 16) In relation to each of the clauses in the Bill which provide for the Secretary of State to contract out certain of his functions in relation to welfare reform, please explain whether the Government considers the authorised person will be performing a “public function” for the purposes of section 6 of the Human Rights Act 1998?

(Q 17) If not, please explain against which public body an individual who wished to rely on the Human Rights Act 1998 could claim.

46. Clause 29 allows for the Secretary of State to contract out his functions under clauses 13 to 25 (clause 49 inserts new section 6L into the Jobseekers Act 1995 and clause 56 inserts new section 11K into the Welfare Reform Act 2007. These new sections mirror clause 29, which relates to universal credit, and apply to JSA and ESA, respectively, as contributory benefits once universal credit is introduced). Clauses 13 to 25 relate to the claimant commitment (that claimants must accept as a condition of entitlement to universal credit under clause 4(1)(e)), and the work-related requirements that may be imposed on claimants as part of the conditionality regime. Clause 29(4) makes it clear that anything done, or not done, by the contractor in carrying out the Secretary of State’s functions is to be treated as done, or not done, by the Secretary of State, save for anything that concerns the actual contract between the Secretary of State and the contractor to carry out the function or in relation to criminal proceedings against the contractor.

47. The Government’s view is that the functions under clauses 13–25 are of a public nature. This applies whether they are exercised by the Secretary of State or by another person authorised under clause 29. In a case where it is alleged that a contractor has acted contrary to the Human Rights Act, a person may bring a claim against the Secretary of State.

(Q 18) I would be grateful if you could provide a fuller explanation of the information provided by the Government on the likely compliance with Article 3 ECHR of the proposals in the Bill, including fuller information on the safeguards outlined in the Explanatory notes (see Explanatory Notes para 705). In particular:

a. please explain the Government's view that the imposition of a sanction leading to a reduction in benefit will not be "treatment" for the purposes of Article 3 ECHR;

48. The Department considers that the reduction of a universal credit award where a claimant has failed to comply with mandatory requirements does not amount to "treatment". In the case of *Secretary of State for the Home Department v Limbuela, Tesema and Adam* [2004] EWCA Civ540 the House of Lords stressed that the Article does not oblige a State to provide any minimum standard of social support for those in need: it does not require the State to provide a home or a minimum level of financial assistance to all within its care.

49. The conditions which were recognised in *Limbuela* as capable of giving rise to 'treatment' do not arise in the context of benefit sanctions. A sanction will only apply where: (1) claimants have clearly had explained and set out for them the reasonable requirements that they must meet, and that underpin their entitlement to receive benefit; (2) the consequences of failing to meet the requirements are made absolutely clear to claimants; (3) there is no legal restriction on claimants' ability to seek work and therefore support themselves; (4) a sanction is as a result of a claimant's own voluntary actions and only imposed where a claimant has no good reason for failing to comply with a requirement.

b. please provide further information on how the proposed hardship regime will operate;

50. We are currently reviewing the system of hardship payments, including options to ensure that any hardship regime does not undermine the deterrent effect of sanctions.

c. please explain what "other means of support will be available where necessary to ensure compliance with Article 3";

51. The explanatory notes to the Bill state: "*In relation to the proposal to introduce a condition of entitlement to work for certain benefits [clauses 60–62], other means of support will be available where necessary to ensure compliance with Article 3*". Support may be available under section 95 of the Immigration and Asylum Act 1999 if the person makes a claim for asylum and would otherwise be destitute, and also under section 4 of the 1999 Act for failed asylum seekers who are destitute and face recognised barriers to return to their home country. Alternatively, if a claim for asylum has not been made then limited support may be available from Local Authorities, by virtue of section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989.

d. please explain how the Government's understanding of these measures and the power to make payments on account has informed the Government's understanding of the likely compatibility of the operation of these measures with Article 3 ECHR. (We understand that the measures are intended to replace discretionary social fund payments are not yet settled).

52. The Government does not consider that powers to make payments on account will be directly relevant to claimants who are subject to a sanction or to those who are not entitled to benefits because they do not have an entitlement to work in the UK.

53. Payments on account are currently made by virtue of regulations made under powers in section 5(1)(r) of the Social Security Administration Act 1992. They are made on a discretionary basis in cases where a claim for benefit cannot be made or determined immediately; where a claim has been made and it is impracticable for the claim to be determined immediately; or where an award has been made but it cannot be paid immediately.

54. Clause 98 of the Bill substitutes a new section 5(1)(r) into the Social Security Administration Act. The substituted section 5(1)(r) provides expanded powers to make payments on account. The intention is to use these powers to provide for advances of benefit in two ways: (1) short term advances which will replace both interim payments made currently (see paragraph 53 above) and crisis loans for benefit alignment purposes; and (2) budgeting advances which will replace budgeting loans for universal credit claimants. Budgeting loans and crisis loans are part of the discretionary social fund, and will cease to exist once section 138(1)(b) of the Social Security Contributions and Benefits Act 1992 is repealed in respect of such loans by clause 69(1) of the Bill.

55. Short term advances may be made where a claimant is receiving benefit, but has difficulties with budgeting between payments because of a change to their award amount, or where a claimant's first pay day has not yet been reached. The purpose of budgeting advances will be to help towards meeting expenses that are difficult to budget for out of normal benefit income, or for which the claimant has been unable to save, or to deal with fluctuations in expenditure throughout the year.

(Q 19) In light of the relevance of the operation of the hardship regimes proposed in the Bill for the impact of the Bill in practice on the rights of individual claimants, I would be grateful if the Government could provide us with further information on the operation of the existing hardship regime which operates in connection with sanctions associated with other benefits. In particular, I would be grateful if you could provide us with annual statistics on the number of applications made for support under the hardship regime (and the overall number of case where sanctions have been imposed); and how many of those applications have been successful.

56. Under current income-based JSA rules (set out in the Jobseekers Regulations 1996, Part IX), claimants can receive hardship payments (effectively a reduced payment of income-based JSA) if they are subject to a sanction for failing to meet labour market related conditions, and they meet certain criteria (e.g. that they would suffer hardship if payments were not made).

57. Certain claimants, often referred to as "vulnerable" can receive hardship payments from the date that the sanction applies, but all other claimants can only receive hardship payments from the 15th day of the sanction.

58. Currently, single claimants who are sanctioned are not paid any JSA (their personal amount plus any premiums, in combination; this is known as their applicable amount). Hardship payments are a claimant's applicable amount minus 40% of their personal amount (or 20% in cases where a claimant, or a member of their family, is pregnant or seriously ill).

59. In a joint JSA claim, when one member is sanctioned, payment of the JSA award is reduced to an amount equivalent to a single person's personal amount plus any premiums. If eligible for hardship the joint claim can receive full rate of benefit minus 40/20% of the applicable single person's personal amount.

60. The same provisions apply for those on JSA who are sanctioned as a result of benefit fraud, except in the case of a joint claim. In a joint claim case, where one of the joint claimants is not involved in the fraud and is not subject to a sanction for breaching conditionality requirements, JSA remains payable but only to that person and at a single person rate. Alternatively if the couple is in hardship, joint-claim JSA hardship payments may be paid. Where both of the joint claimants were involved in the fraud or one committed benefit fraud and the other breached JSA conditionality requirements, if the couple is in hardship, joint claim JSA hardship payments may be paid.

61. Where a person receiving an income-related benefit other than JSA is sanctioned as a result of benefit fraud, the existing system provides for benefit to remain in payment but reduced by an amount equivalent to 20% or 40% of the single person's applicable amount, depending on the person's circumstances.

62. There are no publicly available statistics on the number of applications for hardship support.

(g) We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the Universal Credit to have a discriminatory impact on people or groups with protected characteristics (including women and disabled people).

63. The equality impact assessments for universal credit, the household benefit cap and other measures in the Bill looked at the potential for adverse impacts on individuals with protected characteristics. The Government will take account of additional points that have been raised as equality impact assessments are updated. However, the Government believes that the changes it is proposing are compatible with its human rights related obligations.

64. The combination of higher disregards and a lower taper in universal credit should provide families with more flexibility to balance work and caring responsibilities. universal credit will also provide greater stability of income and consistency of support, and so will significantly reduce the risks associated with moving into work. These changes will be of benefit to both women and men.

65. Universal credit will significantly change the pattern of entitlements to benefit, with women and families with children more likely to see increases in their benefit income than single males. This will particularly benefit the poorest households, who will receive the vast majority of the gains from universal credit. A package of transitional protection will ensure that there will be no cash losers as a direct result of the move to universal credit, where circumstances remain the same.

66. Under universal credit, work-focussed support will be tailored to the needs of the individual to help them find suitable work and ensure that they are not excluded from the

labour market. As a result of our current reforms, we are offering employment support to more lone parents, who are predominately female, and aim to promote more equality of opportunity between men and women in accessing labour market opportunities and helping with a move back into the labour market. Helping lone parents move into work means that they are able to enjoy the wider advantages that come from working that are experienced by the rest of the working population. This could also help them and their families to move out of poverty.

67. Disabled people should also gain as a result of improved work incentives and smoother transitions into work. For example, the single taper and higher disregards for households with a disabled adult should support disabled people to work a few hours (especially those with fluctuating capacity to work, for example, because of mental health problems).

(h) We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the PIP to have an adverse impact on disabled people. In particular, could you set out the Government's response to criticism that certain aspects of PIP could have a retrogressive impact on the rights of disabled people which could be inconsistent with the UK's obligations under the UN Convention on the Rights of Persons with Disabilities.

68. PIP is intended to target resources on the people that need it most, taking into account the whole range of services available to, and balancing the various needs of, disabled people. In doing so, the Government believes that the changes are compliant with the UK's obligations under the Convention.

69. The new assessment for PIP, which the Government is currently developing, is intended to be fairer than that of disability living allowance, taking more holistic account of the impact of disability. It will do this by considering a range of activities and not basing entitlement on meeting single criteria, as in disability living allowance. In doing so the Government wants to ensure that it considers all impairment types equally, unlike disability living allowance which often fails to take full account of the impact of mental, cognitive and sensory impairments. For example, the assessment will consider an individual's ability to communicate, ensuring we better assess the effect of impairments of hearing, speech and language comprehension. Meanwhile, entitlement to the mobility component will be based not only on physical ability to get around but will also consider an individual's ability to plan and follow a journey.

(Q 20) I would be grateful if you would confirm that the imposition of any sanction under the Bill will be subject to appeal. If so, please explain why clauses 126, 27, 46, 49 and 54 need not be amended to provide that the relevant Regulations should provide for an appeal to the first tier tribunal in connection with the imposition of any sanction associated with Universal Credit, Employment Support Allowance or Jobseeker's Allowance.

70. Claimants will have a right of appeal to the First-tier Tribunal against a decision to reduce their benefit award amount in accordance with a sanction.

71. Clauses 26, 27, 46 and 54 (which include provision about the imposition of sanctions under JSA, universal credit and JSA and ESA as contributory benefits following the introduction of universal credit), do not need to include provision about appeal rights because sections 8 to 12 of Social Security Act 1998 set out the appeals structure, and already apply to JSA and ESA, and will, by virtue of amendments made in the Bill, also apply to universal credit.

72. Section 8 of the Social Security Act 1998 makes general provision for decisions by the Secretary of State on a claim. Paragraph (1)(a) provides that it shall be for the Secretary of State to decide any claim for a relevant benefit (which includes JSA and ESA). Paragraph 45 of Schedule 2 to the Bill amends section 8 of the Social Security Act 1998 to add universal credit to the list of relevant benefits. Sections 9 and 10 allow for the revision and supersession of decisions made under section 8, in accordance with regulations. Section 12 provides for appeals against decisions made by the Secretary of State under sections 8 and 10. Section 12(1)(a) of the Social Security Act 1998 provides that any decision of the Secretary of State made under section 8 or 10 which is made on a claim for, or an award of a relevant benefit, and does not fall within Schedule 2 (decisions against which no appeal lies) is appealable to the First-tier Tribunal. A decision to reduce an award in accordance with the provisions contained in clauses 26, 27, 46 and 54 will be a supersession decision made under section 10 on an award of a relevant benefit, and will therefore be appealable.

(Q 21) I would be grateful if you could provide us with annual statistics on the number of sanctions decisions subject to appeal, including the number of appeals which are successful and the number of appeals which are rejected.

73. In 2010–11 there were 594,500 conditionality-related JSA sanctions and 164,700 JSA disallowances (where claimants had failed to meet the conditions of entitlement of actively seeking and being available for work; had failed to attend an interview or had failed to agree their jobseeker's agreement), and 15,780 appeals against such JSA sanction and disallowance decisions.

74. The Secretary of State's original decision was upheld in approximately 87% of cases. It is important to note that when a decision is overturned, it does not necessarily mean that the original decision was incorrect based on the available evidence at the time it was made. There are many factors that can affect the outcome of an appeal, for example, a common reason for a decision being overturned is additional evidence being provided that was not available to the original decision maker.

75. If a claimant on income support because they are a lone parent, or on ESA and in the work-related activity group fails to attend or participate in a mandatory work-focused interview without good cause, a sanction is applied. In 2010–11, there were 9,280 sanctions applied in relation to ESA claimants, and 76,400 sanctions applied to lone parents on income support. Data on appeals against ESA and income support sanctions and data on the number of sanctions applied to income support claimants outside the lone parent regime is not publicly available.

(Q 22) Please provide a fuller explanation of the Government's view that the provisions in clause 100 which reinstate the power of the Secretary of State in connection with the supersession of tribunal decisions is compatible with Article 6 ECHR.

76. The effect of clause 100 is to re-instate references that existed before 2008 to ensure that the legislation concerning supercessions is consistent. Currently, the legislation makes provision for a decision maker to supercede decisions of the First-tier Tribunal or the Upper Tribunal, but (as the result of a drafting error in the Transfer of Tribunal Functions Order 2008 made under the Tribunals, Courts and Enforcement Act 2007) makes no reference to decisions made by the appeal bodies that were abolished in 2008.

77. Taking social security cases as the example, a “superseding” decision made under section 10 of the Social Security Act 1998 (decisions superseding earlier decisions) would itself carry appeal rights in accordance with the provisions of section 12 of that Act (appeal to the First-tier Tribunal). This, therefore, ensures that the powers in section 10, including as they would be amended by clause 100, can be exercised compatibly with ECHR Article 6.

78. Similar provision for appeals is made in relation to housing benefit and council tax supercession decisions (see paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 and in the case of child support (see section 20 of Child Support Act 1991).

(Q 23) Please provide a more detailed explanation of the Government’s view that the proposed information sharing gateways in clauses 123–128² of the Bill will operate in a manner which is compatible with Article 8 ECHR. In particular, please provide details of any relevant safeguards which will be in place to ensure that the information shared between public authorities and private contractors will be handled in a manner which is compatible with the Data Protection Act 1998 and Article 8 ECHR.

Clause 124

79. The measures set out in Clause 124 will consolidate and simplify a number of existing gateways between HMRC and the Department for Work and Pensions. Relevant repeals are set out in Part 13 of Schedule 14 to the Bill. The criminal offence of unauthorised disclosure of information in section 123 of the Social Security Administration Act will continue to apply.

80. To strengthen existing protections for shared information, the new gateway in clause 124 will be permissive and will replace certain mandatory gateways. As a result, both Departments will have to assess the risk and necessity of any requests to share information and any onward disclosure of shared information will have to be authorised by the originating Department.

81. Strict data sharing protocols and access controls are already in place in relation to data-sharing between the Departments under existing provisions. These have been drawn up having regard to the need to comply with data protection requirements and human rights law. Work is already in hand to develop these, and where necessary strengthen them, so as to operate effectively in relation to universal credit and the new gateway. The relevant privacy impact assessments will also be updated, where necessary.

² Clauses 123 to 128 in the version of the Bill as amended in Public Bill Committee (Bill 197), are now numbered as clauses 124–129 in the House of Lords version (HL Bill 75).

82. Both Departments routinely share information with third parties who provide services to them under contract. The provisions contained in clause 124 will extend to those service providers but the permission of the originating Department must first be obtained to any information-sharing with them. Contracts will be put in place to state that service providers are acting on behalf of Department for Work and Pensions and/or the Commissioners of HMRC. As such the service providers are effectively carrying out Departmental functions and are required to take on the same responsibilities of those Departments. This, therefore, means that the statutory duty of confidentiality and the criminal sanction also attaches to any information that is shared with them. In order to achieve the assurance that both Departments require under this gateway (clause 124) the contracts will also contain full details of how any data must be stored and disposed of and other specific requirements with which the service provider must comply in order to secure compliance with both the Data Protection Act 1998 and the ECHR.

83. To provide practical assurance that information will be safeguarded, a memorandum of understanding will be drawn up and signed by all relevant parties. This will detail: (1) the information to be shared; (2) how it may be used; (3) how it will be stored; (4) retention periods and secure disposal or decommissioning procedure, and provide for controlled access to the data. The memorandum of understanding will also state whether any onward disclosure is to be permitted and, if so, for what purpose and with whom, and the security arrangements and standards required for the process. Service providers will be expected to have similar clauses in contracts with any private contractors who provide a service to them or exercise functions on their behalf.

84. Memoranda of understanding and contracts are reviewed periodically in collaboration with service providers and the Department retains the right to test all aspects of data security and handling carried out on the part of service providers during the course of the contract. This may include provision of assurance certificates, providing up-to-date documentation at regular periods to show that standards are being maintained and personal inspection or audit of the data security arrangements.

Clauses 125 to 128

85. The information gateways provided for in clauses 125 and 126 are required in order to make it easier for individuals to receive certain welfare services or help with housing costs. Currently individuals have to provide detailed financial information to different parts of government each time they apply for a benefit or service. Normally such information can only be shared where the person has consented. Having a legal gateway allowing such data to be reused for a number of different beneficial purposes will ensure the individual can access certain benefits and services more easily. The majority of individuals affected will be people who are disabled, elderly or vulnerable and they often find the application process for benefits and services more difficult than other claimants.

86. The measures in clause 127 provide that any person who misuses data that is shared under clause 126 will be guilty of an offence, and the measures in clause 128 are supplementary provisions that apply to clauses 125 and 126.

87. The Department for Work and Pensions already has an established process in relation to setting up new data sharing arrangements. A detailed implementation plan will be

designed and agreed with local authorities before any data sharing under these provisions takes place. We will test these where appropriate, in order to identify the precise amount of data that needs to be shared, and the method by which it will be transferred. Detailed guidance will be provided to staff who will be implementing the new provisions. This will include advice relating to safeguards, retention and storage, onward disclosure etc. A privacy impact assessment will be produced, setting out the proposed arrangements. The requirements of the Data Protection Act 1998 will be adhered to, for example, a privacy notice will be produced to ensure that when individuals supply their data in the first instance they will be advised that if they subsequently apply for one of the other prescribed benefits or services their data may be re-used for that new purpose.

88. Information is already routinely shared between the Department for Work and Pensions and local authorities in relation to the administration of housing and council tax benefit. A number of measures are in place in order to ensure data is safeguarded. These include a memorandum of understanding which all local authorities must sign up to; access to data being given only to accredited staff; regular checks to make sure staff only access data in accordance with the memorandum of understanding; and secure electronic networks for the transfer of data. The Department for Work and Pensions intends to apply such measures to any new data sharing arrangements under the provisions in clauses 125-126.

89. Local authorities are expected to ensure that they have similar protections in contracts with any private contractors that are providing service to them or exercising functions on their behalf. In any supply or use of information under any of these provisions, a public authority has to act compatibly with Convention rights and in accordance with the requirements of the Data Protection Act 1998, in particular, compliance with the first and third Data Protection Principles.

90. There is at present no policy intent for the Department for Work and Pensions to disclose data to private contractors under clauses 125 and 126. However, should a situation arise in the future where this is required, data will only be supplied where there is a contract in place setting out the minimum security requirement that the contractor must adhere to with respect to data provided by the Department. For example, this will include ensuring that their staff receive training on data protection issues, are made aware of the criminal offence provisions which relate to the data sharing and to ensure that there is restricted access to data supplied by the Department.

(Q 24) Has the Government consulted with the Information Commissioner about the scope of the information sharing gateways proposed in clauses 123–128 of the Bill?

91. The Department for Work and Pensions consults with the Information Commissioner on data protection matters and, in establishing protocols to protect personal information, has had regard to all relevant guidance from him.

92. The Department for Work and Pensions holds regular meetings with the Information Commissioner's Office to discuss data sharing issues in relation to the use of social security information. These meetings provide an opportunity to review our security measures on a regular basis. In addition, the Information Commissioner's Office was invited to comment specifically on these measures and clauses, as part of a consultation exercise earlier in the

year. They did respond and their comments have been fully taken into account. Further discussions will take place with the Information Commissioner's Office once the Department for Work and Pensions has developed more detailed plans for implementing the new measures.

(Q 25) We would be grateful if the Government could provide an explanation of how it considers the Social Mobility and Child Poverty Commission will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

93. The new Social Mobility and Child Poverty Commission will have an extended remit which will include social mobility as well as child poverty. The Commission will produce independent annual reports assessing progress towards reducing child poverty and increasing social mobility, and towards meeting the child poverty targets and implementing the UK's child poverty strategies. The Commission will provide independent expert scrutiny of the strategy which the Government has developed to meet the 2020 target set out in the Child Poverty Act 2010. This will improve the accountability of Government in relation to eradicating child poverty, thus helping to meet UK obligations under the International Covenant on Economic and Social Rights, and the UN Convention on Rights of the Child.

(Q 26) Please also explain how the other changes in the Bill to the Child Poverty Act 2010—including the removal of the duty on the Secretary of State to report to Parliament—will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

94. The duty to report is now an obligation of the Commission, rather than the relevant Secretary of State, to provide independent expert scrutiny of the child poverty strategy. The three key changes to the Child Poverty Act 2010 are:

- 1) The expansion of the remit of the Commission, so that it can consider social mobility and the root causes of poverty;
- 2) Moving the requirement to produce an annual progress report from the Secretary of State to the Commission, therefore improving ministerial accountability; and
- 3) The removal of the Commission's advisory functions, therefore improving ministerial accountability.

95. These three changes will ensure there is a better framework in place for driving action towards the 2020 targets, and will create a more effective Commission that can assist the Government in its goal of reducing child poverty.

(Q 27) I would be grateful if you could provide us with an update on the Government's position on the UK reservation to Article 13 UNCRPD. In particular:

b. please provide further information on the progress of the design and piloting of the proposed system of review;

c. if “design work” is due to be completed in 2011, please provide a target timetable for legislating to introduce a review mechanism which is compatible with Article 13 CRPD;

d. in the light of this timetable, is there any prospect that these reforms may be introduced as late amendments to the Welfare Reform Bill?

e. if not, can the Government explain why the timescale for design of the relevant procedures have been so lengthy as to preclude their introduction in this Welfare Reform Bill?

f. After the introduction of legislation on this issue, does the Government intend to remove the UK reservation to Article 13 UNCRPD? If not, please provide an explanation.

96. The UK Government ratified the UN Convention on the Rights of Persons with Disabilities on 8 June 2009 and the Convention came into effect on 8 July 2009.

97. On ratification the UK entered a reservation in relation to paragraph 4 of Article 12 (Equal Recognition Before the Law) (not Article 13 as referred to in the Committee's letter).

98. Article 12.4 reads as follows:

States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

99. The UK's reservation to this provision states:

The United Kingdom's arrangements, whereby the Secretary of State may appoint a person to exercise rights in relation to social security claims and payments on behalf of an individual who is for the time being unable to act, are not at present subject to the safeguard of regular review, as required by Article 12.4 of the Convention and the UK reserves the right to apply those arrangements. The UK is therefore working towards a proportionate system of review.

100. A reservation was necessary because no review process was in place in relation to benefit appointeeships under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968).

101. Work to design and test a suitable review process has been taken forward by the Pension and Disability Carers Service. There was initial consultation with representatives of Equality 2025 (a non-departmental public body whose members have a disability, and which offers strategic advice to Ministers and senior Government officials on issues affecting disabled people) and a small stakeholder group which included representatives from Age UK and local government social care, and with members of the PDCA Advisory Forum (which comprises 22 organisations representing a broad range of claimants including pensioners, disabled claimants of all ages, and carers).

102. An equality impact assessment for the proposed review process was published in September 2011 and can be viewed at:

<http://www.dwp.gov.uk/publications/impact%2Dassessments/equality%2Dimpact%2Dassessments/2011/>

103. A business test was undertaken from October 2010 to January 2011. This was designed to test the effectiveness and efficiency of different communication methods as well as providing a review of the existing appointee arrangements in the individual cases selected. The results showed that the most appropriate review method was postal.

104. The postal review method involves sending a form to the appointee which first reminds them of their responsibilities as an appointee e.g. that they must always act in the best interests of the benefit customer, must tell the Department for Work and Pensions if the claimant becomes capable of managing their own affairs, report any changes in the claimant's circumstances, pay care home fees, not take a fee from the benefit for acting as an appointee; it then asks specific questions about the claimant's capabilities; finally, it asks the appointee to sign a declaration that he has met and will continue to meet his responsibilities. A failure to reply or to answer in a way which raises concerns may result in the appointment being revoked.

105. The postal method reflects the requirement to introduce a proportionate system of review. In developing the review system we have been mindful of balancing the need for the system to be as robust as possible but without being too onerous for the customer or the Department.

106. For claimants, we want a system that offers adequate safeguards but avoids being overly intrusive. The Department is keen to avoid damaging the implicit covenant of trust that is established by the Secretary of State's approval of an appointeeship. This is particularly important where it is a parent/child relationship. A heavy-handed approach could actually result in existing appointees choosing to relinquish their appointments, or could deter new appointees from coming forward.

107. The proportionate approach ensures that the system is deliverable. There are currently around 725,000 appointees—and this number is growing—and so this necessitates a light-touch approach, with appropriate follow up activity as required.

108. The Department recognise that within these constraints it cannot develop a system that will eliminate all potential for financial abuse. The approach has therefore been to ensure that the role and responsibility of appointees is made as clear as it could be; and that

the new review system acts as a deterrent to them acting otherwise by letting them know that at some point in time we would review that role.

109. The Department for Work and Pensions plans to begin to introduce the review process from this autumn. However, the review process is subject to a final strategic confirmatory decision by the Department. This decision will not be made until November and we will write to the Committee again at that stage to confirm the latest situation as regards introduction of the new process.

110. The new review process does not require legislation because regulation 33(2)(a) of the Claims and Payments Regulations (SI 1987/1968) already contains an unlimited discretion for the Secretary of State to revoke a person's appointment as an appointee. No changes to regulations are required, still less any new provision in the Welfare Reform Bill.

111. The Government is satisfied that what is being put in place meets the requirements of Article 12.4 and accordingly will remove the reservation once the new review process is fully operational.

26 September 2011

List of Reports from the Committee during the current Parliament

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704



Northern Ireland
Assembly

Appendix 6

Written Submissions to Social Development Committee

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Disability Action



Briefing Paper for Social Development Committee – Welfare Reform Bill Call for Evidence

October 2012

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Briefing Paper for Social Development Committee

October 2012

Welfare Reform Bill – Committee Stage Response

About Us

- 1 Disability Action is a pioneering Northern Ireland charity working with and for people with disabilities. We work with our members to provide information, training, transport awareness programmes and representation for people regardless of their disability; whether that is physical, mental, sensory, hidden or learning disability.
- 2 21% of adults and 6% of children living in private households in Northern Ireland have a disability and the incidence is one of the highest in the United Kingdom.
- 3 As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community. In pursuit of our aims we serve 45,000 people each year.
- 4 Our network of services is provided via our Headquarters in Belfast and in three regional offices in Carrickfergus, Derry and Dungannon.
- 5 Disability Action welcomes the opportunity to respond to the Social Development Committee Call for Evidence. As requested we have provided a Clause by Clause response.
- 6 Disability Action's Information and Advice team have dealt with over 12,927 queries from disabled people, their families, carers and professionals in the last year.

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

- 7 On 1 March 2012, the Joint Committee on Human Rights, published its findings and recommendations of its parliamentary inquiry. Of relevance to this briefing, the JCHR found that:
 - reforms to benefits and services risk leaving disabled people without the support they need to live independently;
 - restrictions in ...eligibility criteria for social care support, the replacement of the Disability Living Allowance with Personal Independence Payment, ... and changes to housing benefit risk interacting in a particularly harmful way for disabled people;
 - the Government had not conducted an assessment of the cumulative impact of current reforms on disabled people

It stated that the Committee "Received evidence that impact assessments of current reforms were not adequately carried out, and did not take into account the likely cumulative impact of reforms on disabled people. We therefore argue that the Government should publish a unified assessment of the likely cumulative impact of the proposals on independent living".

The crucial point the Committee considered was the implementation of the Right of Disabled People to Independent Living. The Government has legal obligations under Article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Article 19 requires states to take effective and appropriate measures that will facilitate full enjoyment by disabled people of key rights to independent living and their full inclusion and participation in the community.

Disability and Welfare Reform

- 8 Disability Action would highlight the following key statistics in relation to disability and welfare reform.

- Approximately 117,000 people will be impacted by changes to DLA/PIP (DSD)
- Estimated 207,000 carers in Northern Ireland. Despite contributing an estimated £4.4 billion to the NI economy with unpaid care they provide, the vast majority are worse off financially as a result of becoming carers. (Carers NI)
- As it currently stands the weekly income of a disabled person who relies solely on benefits is approximately “£200 below the amount required to live an acceptable and equitable quality of life”. (Low Incomes Tax Reform Group)
- Disabled people’s day-to-day living costs – for basic items such as mobility aids, care and transport – are 25% higher than those of a non-disabled person. (Papworth Trust)
- Statistics show that just over 10% of NI population is in receipt of DLA. In the last decade the proportion of working age population in receipt of DLA has risen from 8% to 9% and it is twice the rate of GB. Research evidence would suggest that ‘part of the explanation for higher reciprocity of DLA in Northern Ireland lies in the worse levels of ill health. (Disability Living Allowance Recipients in NI – Poverty)
- Disabled people are twice as likely to live in poverty as other citizens and are more likely to be hit first, hardest and longest by the current recession. (Disability Alliance The Coalition)
- For disabled people there has been a decline in the number of work placements available and increased insecurity for those in work. (Equality Commission – Employment Inequalities in the Economic Downturn, July 2010)
- Employers are twice as likely to offer a non-disabled candidate an interview as an equally qualified disabled candidate. (Leonard Cheshire Disability, Discrimination Doesn’t Work, 2006)
- 12% of children living with a disabled adult are in severe poverty compared to 8% of those children who aren’t living with a disabled adult. (Save the Children, Severe Child Poverty in Northern Ireland, 2011)
- Three in five disabled children were poor under the Consensual Poverty Measure (OFMDFM Child and Family Poverty, 2006)
- 38% of parents/guardians of children with disabilities under the age of 15 stated that benefits were their only source of income (NISALD, 2009)
- Disabled people who are in employment are more likely to be in low skill, low paid jobs earning less than non-disabled people. (Disability Poverty in the UK – Leonard Cheshire Disability.

Clause by Clause Response

9 Universal Credit

9.1 Entitlement and Awards

9.1.2 Clause 4

The regulations must take into account the definition of ‘receiving education’ to ensure that it offers an understanding that people with a disability may have missed part of their education or be receiving education later in life due to their disability.

9.1.3 Clause 6

Regulations must ensure that if the time-limiting of those who receive Contributory ESA and are in the Work Related Activity Group is to be applied then no waiting time should be applied.

9.1.4 Clause 10

Under the new benefit there will be a 'disability addition' and a 'higher addition' for disabled children. Children who are in receipt of higher rate DLA (Care component) will get the 'higher addition', which will be paid at a similar level as now. However, those children who are currently receiving the lower level of support through the 'disability element' (because they receive low or middle rate DLA care component) will now receive the new 'disability addition' which will be worth only £27 instead of the current £54.

The NICCY report¹ found that "Large families where there is a severely disabled child are at risk of being affected by the benefit cap and this could potentially impact on the lives of 6,500 children in Northern Ireland".

In Northern Ireland we have the additional impact in relation to childcare costs and the availability of childcare for children with disabilities. Without the existence of a child care strategy which specifically considers the needs of disabled children and their parents then mitigating measures will need to be considered.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Provide additional support to provide for the extra cost of childcare for families with disabled children,
- and, at the very least extend the protection for additional financial support for children who receive the mid-rate care component of DLA.

9.1.5 Clause 11

The EQIA² states that "the impact of the measure on households containing a disabled claimant or partner suggests that a higher proportion of households containing a disabled person would be more likely to be affected by the introduction of the size criteria".

It further states that "households containing a disabled adult and with a non-residential carer will be assessed as having a reasonable requirement for an additional room. This will have the effect of reducing the number of disabled claimants affected by the measure".

The mitigating measure only takes into account the need for an overnight carer and does not take into account the extra space that may be needed for aids and equipment, medical equipment or to provide therapies in the home.

It also does not take into account other factors in living in a particular area, for example, being close to family or friends that provide support, accessing community service, transport and being part of the community. The provision of accessible housing options may already significantly reduce the choice a disabled person has over where to live. By implementing the housing criteria as it currently stands disabled people may not have the opportunity to live independently in their own community.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Ensure that in the case of disabled person or families with a disabled child(ren) that where an adaptation is in place, additional space is needed for treatment or equipment or services are only available in a specific area that they will not be required to move and will not have their benefit reduced.

1 A child's rights impact assessment of the impact of welfare reform on children in Northern Ireland, April 2012, G Horgan and M Monteith (NICCY)

2 Welfare Reform Bill (Northern Ireland) 2011 Completed Equality Impact Assessment, April 2012, Department for Social Development

9.1.6 Clause 12

Severe Disability Premium (SDP) is presently available to adults who either live on their own, with another disabled adult or only with dependant children. It is intended to help with the additional costs of living alone as a disabled person without someone to assist them.

The removal of SDP under UC is a key concern. Extra support for disabled adults is built into the Universal Credit differently to the current system of premiums and tax credits. In some instances the loss of the SDP will lead to some people being less well off under the Universal Credit.

It is estimated that the reduction for some people will be up to £58 per week and even the most disabled adults will lose £28 a week.

The EQIA states that the additional cost of disability is accounted for through DLA/PIP. However, PIP/DLA does not take into consideration whether the person is living alone or with support. SDP has assisted many disabled people to live independently.

This clause also needs to consider how the circumstances of parents of a disabled child will be taken into consideration. There is little detail in the Bill and further clarification is required in this area.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- SDP should be retained in full. If this is not possible then consideration must be given as to how the legislation and regulations can ensure that no-one is worse off due to this change.
- Ensure that the circumstances of parents of disabled children are taken into consideration and in particular access to childcare.

9.2 Claimant Responsibilities

Under UC, the work related requirement will be extended, where appropriate and dependent on the particular circumstances of the individual claimant. For example, people with regular and substantive caring responsibilities, limited capability for work and work-related activity will not have any work related conditions placed upon them. All claimants will be required to accept a 'claimant commitment'.

However, the draft regulations don't appear to recognise that disabled people can themselves be carers. For example, under Universal Credit claimants will only be able to receive either the LCW/LCWRA element or the carer element which is overly restrictive. This means that claimants will have to choose between their disability and their caring responsibility to establish their eligibility for UC.

9.2.1 Clause 14

At present clause 14 does not recognise the individuals' role in developing the claimant commitment. Disability Action, through the services we deliver, is aware of the many barriers disabled people face in accessing the workplace. Disabled people are the experts in their own conditions and lives and therefore there should be amendment to the clause to recognise this.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Adding an additional line in the clause that states that the Claimant Commitment shall be drawn up in partnership with the claimant and take into account their individual circumstances.

- An agreement of support and a minimum guarantee agreement must be in place to ensure that the person receives the required level of support.

9.2.2 Clause 15

There is little detail in the regulation as to how disabled people will be supported in relation to clause 15. The regulations must ensure that disabled people are given the appropriate support to ensure that these measures are accessible.

9.2.3 Clause 16

In relation to section 5 it is clear that the WRB does not take any account of the physical and attitudinal barriers which disabled people face in gaining and retaining employment.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Adding an additional line in the clause that states that the work preparation requirement will take into account the barriers which a disabled person may have in accessing the workplace such as location, number of hours and flexible working requirements.

9.2.4 Clause 17

This clause does not take any account of the physical and attitudinal barriers which disabled people face in gaining and retaining employment.

For example, section 3 (C) states, creating and maintaining an online profile. This takes no account of the fact that disabled people are less likely to have access to the internet than a non-disabled person and that disabled people face barriers in accessing websites due to accessibility issues.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Adding an additional line in the clause that states that the work search requirement will take into account the barriers which a disabled person may have in accessing the workplace.

9.2.5 Clause 18

Clause 18 may be of particular issue for those people who are finding they are not entitled to ESA but still have a level of disability or ill health that impact on them being able to be available for work. If they apply for JSA presently they have to be available for work but if they have been turned down for ESA applying for JSA is their only option. Disability Action, through our advice work are already aware of cases where people have been found 'fit to work' but when they turn up to apply for JSA they are being told by Job Centre staff that as they are not 'available for work' they are not entitled to apply for JSA.

Disabled people are also less likely to have qualifications, work experience and work history and these factors need to be taken into consideration.

Disability support in Universal Credit should be provided to working disabled people who are found to be fully 'fit for work' but are at significant disadvantage in the workplace as a result of an impairment of health condition. Loss of in work financial support for many disabled people could severely affect their ability to move into and retain a job.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Ensure that the situation of a person found fit to work through the Departments work capability assessment but who still have a disability or health condition is provided with the appropriate support.

9.2.6 Clause 19

There is little detail of how conditionality will work in practice and we await further details on the regulations to better understand how it will impact on people with disabilities.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Ensure that conditionality requirements are clearly set out for carers and disabled people and that individual circumstances are considered at all times.

9.2.7 Clauses 20, 21, 22, 23

The regulations must ensure that disabled people are given the appropriate support to ensure that these measures are accessible.

9.2.8 Clause 26

The sanctions outlined in Clause 26 require further detail that will be available under regulation. Disability Action is concerned as to how the term 'with good reason' is to be interpreted in the regulations. For example, if someone has a disability or ill health and cannot attend a work placement will this be taken as 'good reason' and what will be the evidential requirement.

9.2.9 Clause 30

Disability Action has concerns about delegation and contracting out and how the Department will ensure that contractors will have the specific skills and experience to work with disabled people in gaining and retaining employment. Disability Action has concerns over the payment by output related funding model for contractors and the negative impact that this can have on disabled people. This has been demonstrated through the experiences of disabled people in the work programme in England.

Part 2 – Working Age Benefits

10 Job Seekers Allowance

10.1 Clause 45

It is clear that the WRB does not take any account of the physical and attitudinal barriers which disabled people face in gaining and retaining employment.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Adding an additional line in the clause that states that the claimant contract will take into account the individuals requirements and ensure that the persons has access to the appropriate support to enable them to comply with the claimant commitment.

11 Employment and Support Allowance

11.1 Clause 52

The Welfare Reform Bill will make changes to ESA. For people who are in the Work Related Activity Group (WRAG) for Contributory ESA then there will be a 365 day time limit on claiming for this group. This will come into affect straight away. So if people in this group have already received this benefit for 365 days then they will lose this benefit and will have to apply for other benefits.

The time limiting of Contributory ESA for those in the Work Related Activity Group will have significant impact, particularly because the time limiting is effective straight away. There is

little evidence to show what support has been given to those on the WRAG group in the time period and how effective support has been in people gaining and retaining employment. Evidence needs to be provided to demonstrate that effective support will be available for those people in the WRAG group.

The average loss in net income for Contributory ESA cases subject to time-limiting is £30.50 per week for men and £32 per week for women³.

It is expected that 53% of those losing their contributory ESA will be wholly or partially compensated by income-related ESA⁴.

The mitigating measures proposed by the Department in its EQIA⁵ are:

- Individuals with low or no other income may apply for income-related ESA. This will in effect act as a safety net to support those who have no means for supporting themselves.
- In addition individuals who do not qualify for income-related ESA will still be able to access the support offered by the Work Programme to help them continue to move towards work.

The proposal move towards alignment with contributory JSA but with a longer 'time-limit' to recognise some disability-related barriers to work.

Currently there is no 'Work Programme' in Northern Ireland. The Steps 2 Success Programme is currently out for consultation by DEL. Furthermore, the Steps to Work evaluation found that "Consultation findings suggest that not all Employment Service Advisors are using the more flexible and tailored support needed by those with significant barriers to employment". The report notes that less than one third (31%) of respondents with a disability indicated that they had been asked about their additional needs. It further states that the issue of having a disability is important as "results from the StW Leavers' Survey suggest that those with a disability are less likely to be in employment than those without a disability (14% compared to 26%)".

Under the current proposals the only option available to those receiving Contributory ESA in the WRAG after the 365 day time limit will be to apply for Income Based ESA or JSA. If the case is that JSA is to be applied for then when that person presents to apply for JSA and the details of their health condition or disability are made known that they are deemed not available for work and therefore not entitled to apply for JSA. This will lead to many people being in a situation where they cannot apply for with ESA or JSA (or the equivalent under Universal Credit).

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Remove the time-limiting of Contributory ESA for those in the WRAG Group
- Exclude the time spent on the assessment phase (should time-limiting go ahead)
- The Executive must demonstrate that those who receive contributory ESA and are in the WCAG group have been given effective support to move into work. Evidence must be provided on how many people having gained and sustained employment in the WRAG before any change is made to the legislation.
- For the 47% that will not be eligible for income-related ESA then additional supports must be made available to ensure that these people are not pushed further into poverty by these measures (should time-limiting go ahead). This includes making provision to ensure

3 Welfare Reform Bill (Northern Ireland) 2011, Completed Equality Impact Assessment, April 2012, Department for Social Development, (Page 66)

4 Ibid

5 Welfare Reform Bill (Northern Ireland) 2011, EQIA, (Page 68)

that claimants are not in limbo between ESA and JSA or their equivalent under Universal Credit.

11.2 Clause 54

Disability Action is concerned that Contributory ESA Youth will also no longer be available under the legislation.

The EQIA states “Removing the youth provisions will affect young disabled people. The Executive is committed to promoting employment prospects for younger people, with and without health conditions, by investing in employment support, apprentices and further education.”

However, there is little detail about the provisions that are being made or the number of people that will be impact by this change. It may result in a person no longer having access to their own income and being financially dependent on someone else.

The removal of this benefit will have an impact on those young people leaving care and we would ask that the Department gives further information on what provisions are being made to mitigate the impact.

11.3 Clauses 55, 56, 57, 58

It is clear that the WRB does not take any account of the physical and attitudinal barriers which disabled people face in gaining and retaining employment.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Adding an additional line in the clause that states that the claimant commitment will take into account the individuals requirements and ensure that the persons have access to the appropriate support to enable them to comply with the commitments.
- Ensure that the work placement element will have a specific need for the person to be supported and the placement effectively monitored to ensure the person is receiving the appropriate support.

12 Income Support

12.1 Clause 60

Please see previous comments in relation to the claimant commitment (9.2)

13 Other Benefit Changes

13.1 Clause 69

Please see comments in section 9.5 (Clause 11)

13.2 Clauses 70 – 73

Social Fund Reform

The Department for Social Development recently consulted on a new Discretionary Support Policy for Northern Ireland.

The EQIA on the Welfare Reform Bill states that “figures for disability are not available from the social fund data scans”. However, given the nature of Community Care Grants a significant proportion will be people with disabilities, their families and carers.

Until such time as the new discretionary support policy is made available for consultation we have no further comment. A copy of Disability Action's response to the high level policy consultation is available by contacting us or from our website.

14 Personal Independence Payment (PIP)

14.1 The Bill lacks specific detail on PIP with much of the detail being left to regulations. Disability Action has already provided a briefing for the Committee in relation to the detailed design of PIP and has responded to a number of consultations in relation to how PIP will work including the descriptors and thresholds. We would seek confirmation that all the subsequent regulations are fully scrutinised before the Bill is passed into law.

Disability Action has a number of key concerns in relation to the introduction of PIP

- Lack of modelling to ascertain how many people will be affected by the changes in Northern Ireland.
- The proposed descriptors and thresholds for PIP have not yet been finalised and it is our understanding that the final versions will be available in November. Disability Action highlighted our key concerns in a response to the initial consultation (available on request).
- The face-to-face assessment will cause considerable stress to disabled people, their families and carers.
- "Life-time" or "indefinite" awards will no longer be available, even for those with progressive conditions. There may be 5-10 year awards but review periods will be set.
- Linking rules: these are rules which currently allow people who have come off DLA to reclaim the benefit within 2 years if they need it again, without having to 'requalify.' The Government plans to limit this to one year for PIP. Inevitably this will hit people with fluctuating conditions, for example, mental health conditions or multiple sclerosis, who might have reduced symptoms for twelve months but then need DLA again and have to go through the needlessly bureaucratic and stressful process of making a whole new claim.
- Motability: Under PIP, families will lose the right to retain Motability vehicles if they spend 28 days or more as a hospital in-patient in any 365 day period. This fails to recognise just how families depend on these vehicles, often as their only vehicle in the family, and just how often many disabled people with complex needs have to stay in hospital. Losing their Motability vehicle could be devastating for families.
- Neither the knock-on impact on carers' finances or the likely increase in caring responsibilities has been assessed in the existing impact assessments.
- Carers currently depend on the person they look after receiving DLA to be eligible for receipt of Carers Allowance. Therefore the loss of PIP/DLA will directly impact on carers' income. As disabled people become less able to stay independent because of a loss of income from DLA/PIP they will require more support from family members, increasing the pressure on carers with risks to their health, social inclusion and ability to juggle work and care.
- For families already struggling to make ends meet, often in debt and where caring is already taking a serious toll on their health there is the real risk that the loss of disability benefits could push them to breaking point, and making caring financially and physically impossible.

14.2 Clause 76

Under the proposed residential test DWP has proposed that after 4 weeks abroad PIP entitlement would end, with the exception of when a person is receiving medical treatment,

when it would be extended to 26 weeks. Currently under DLA a person can be absent for up to 26 weeks.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Ensure that the impact of those who have family commitments, work or study across the border.

14.3 Clauses 77, 78, 79

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Ensure that the descriptors and thresholds are amended to reflect the true context in which people with disabilities live. Activities must be located in the context and environmental (both physical and attitudinal) in which the individual with a disability exists.

14.4 Clause 80

Under the regulations for DLA the person must satisfy the conditions with periods of three months before and six months afterwards. Under new proposals for PIP the person must satisfy the conditions for PIP three months before the date of the entitlement and nine months afterwards.

The rules which currently allow people who have come off DLA to reclaim the benefit within 2 years if they need it again, without having to 'requalify.' The Government plans to limit this to one year for PIP. This is dealt with in regulations.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- To what exists currently under DLA and leave the period at six months afterwards.
- Retain the current time limit of 2 years that exists with DLA.

14.5 Clause 87

Disability Action is concerned that the stress experienced by disabled people in having to undergo medical assessments and process will be further exasperated by the PIP procedure. In particular we are concerned that those with life long conditions that are unlikely to improve will have to be continually re-assessed.

The experiences for the WCA for ESA has demonstrated the problems with implementing this type of assessment, in particular the provision of additional information being provided to support a persons claim being taken into account by decision makers.

Disability Action would ask that the Committee considers amendments to the clause and/or the regulations to:

- Allow for people to avoid unnecessary face-to-face assessments when sufficient written evidence exists and ensure that people are not financially penalised when sourcing additional medical evidence.
- Ensure that people with long-term conditions that are unlikely to improve are not subjected to unnecessary re-assessment or re-assessment which is too frequent.
- Ensure that ongoing medical assessments do not have a detrimental effect on a person's health and mental well being.

14.6 Clause 88

The time-frame for producing the first independent report is too short and should be reduced to one year. The clause or regulations should also ensure that the methodology for the

independent report includes ensuring that disabled people are involved in the design and implementation of the research and report.

14.7 Other

Disability Action would further ask that the Committee presses the Department to:

- Publish policy simulation modelling results and clearly state mitigating actions where the impact on disabled people and carers is required.
- Ensure that customer journey must be based on a rights based approach and ensure that people are given the support that they require to complete the process including, where necessary advocacy and advice from external organisations.
- Put in place protections for those people who may not meet the criteria for PIP and their carers in relation to poverty and social exclusion.

15 Social Security: General

Benefit Cap

15.1 Clauses 95 and 96

Disability Action is concerned that there is little detail on the number of people that will be affected by the benefit cap and if disabled people or families where there is a disabled child(ren) will be disproportionately affected.

It has been stated that the impact of the benefit cap can be mitigated by people moving into employment. However, as we have already highlighted disabled people and families where there is a disabled child(ren) experience numerous barriers in accessing employment.

Disability Action would ask that further information is published by the Department on the number of people likely to be impacted by the cap and that is broken down by section 75 categories.

Appeals

15.2 Clause 101

Disability Action supports a number people successfully at appeal stage in relation to a number of benefits. This stage of the process is key to ensuring that disabled people have a right to access justice in relation to decisions which have been made in relation to benefits.

The addition of the initial stage of 'applications for revision' need to be further considered. The purpose of the additional stage is to resolve disputes internally before going to appeal. We are concerned that this will lead to a reduction in the number of appeals and that disabled people will have less access to justice where the decision is erroneous.

Disability Action is also concerned that the additional stage will leave people with no income or a severely reduced income and that there needs to be consideration given to how urgent cases can move straight to appeal.

Finally we would ask that consideration is given to the time limits applied for both 'application of revision' and further appeal to ensure that they are fair and that they are dealt with in a timely manner.

Recovery of Overpayment

Disability Action is concerned that if appropriate provision is not made to ensure that all the process for application are accessible to people with disabilities and that they are provided with the appropriate support to ensure that the application is correct.

16.3 Clauses 103 and 104

Disability Action is concerned that the application of this clause also would seem to allow overpayment to be reclaimed when it has been the Department at fault.

Disability Action would ask that further consideration is given as to which circumstances in which the recovery of an overpayment will not be made and what guidance will be available.

16.4 Clauses 109 – 111

The provisions in these clauses allow for a benefit payment to be introduced even where no overpayment has resulted and that the penalty will be £350 or 50% of the overpayment whichever is greater up to a maximum of £2000. Where no overpayment has arisen the benefit penalty will be £350.

Disability Action does not believe that the penalty of £350 is too high, particularly where there is no overpayment. The penalty for overpayment is also increasing and we do not feel that the increase is justifiable. Disability Action would recommend not introducing these charges.

Miscellaneous

17 Clause 70

Disability Action would ask that the Committee seek further information on the impact of those people in receipt of rate relief. It is our understanding that the rate relief scheme is going to be removed from the housing benefit scheme from 1 April 2013 and at present there is no indication of what will replace it. It is not clear how the scheme will relate to UC.

Other Considerations

18 Getting the Support Right for Employment

In Northern Ireland there has been a move away from Disablement Employment Advisors (DEA) to the generic Employment Support Advisor (ESA). This has resulted in a restricted service to people with disabilities. Whilst disabled people should be free to choose to access mainstream services, some people with significant disabilities benefited from support from specialist DEA's who had a role in advocacy and direct engagement with employers. Disability Action believes that the DEA role should be re-established in line with practice in GB. This would go some way to ensuring equitable inclusion for people with disabilities in any new employment programme.

19 Digital Inclusion

The matter of IT and process for application are dealt with in regulations and some areas of the Bill. Disability Action would like to make specific comment on the requirement for UC to be applied and managed using an online system.

A report⁶ in 2011 found that internet use is linked to various socio-economic and demographic characteristics, such as age, disability and location. Groups of adults who were

more likely to have never used the Internet included people over 65, people who have been widowed and people with a disability.

There were 4.20 million disabled adults, almost half of all those who had never used the Internet. This represented 35.9 per cent of those who had a disability. Of those adults who reported no disability, 11.9 per cent of adults had never used the Internet.

The region where people were least likely to have used the Internet was Northern Ireland, where 28.6 per cent had never done so.

Whilst we are aware that the Department is considering other methods of application we would ask that the Committee seeks further information on how disabled people are going to be protected to ensure that they are not further disadvantaged by the Governments 'digital by default' position.

20 Getting the Message Right

20.1 Mind your Language

As organisations working for and with disabled people, their families and carers we are only too aware of the effect of 'the scrounger' message is having. Disabled people, families and carers already face negative attitudes on a daily basis. There is evidence that the language being used to gain public support for these welfare reforms is adding the stigma people face in their lives.

It is therefore essential that everyone when talking about welfare reform remembers that they have a social responsibility to ensure that they are not adding to the negative perceptions of disabled people. Public authorities are reminded of their duties under the DDO to promote positive attitudes to disability.

20.2 Communicating the Changes

It is essential that people are made aware of the significant changes that will impact on their lives. It is imperative that communication strategies are developed and resourced to ensure that everyone is made aware of the changes that will impact them. All communication strategies must ensure that they are accessible to people with disabilities. For example, provision must be made to communicate using Easy Read, audio, Braille and large print.

Conclusion

- 21 Disability Action would like to thank the Committee for the opportunity to provide evidence in relation to this important Bill and can provide further information on any element of this briefing if required.
- 22 This Bill will have a significant detrimental impact on the lives of disabled people and families with disabilities in Northern Ireland. We would ask that the Committee considers our amendments and advocates for the rights of disabled people to live independently in their own community.

Equality Commission for Northern Ireland (December 2011)



Response to the Department for Social Development's consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment

December 2011

1. Introduction

- 1.1 The Equality Commission for Northern Ireland ("the Commission") is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
- 1.2 The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 and the positive disability duties.
- 1.3 Further, the Commission has also been designated to act as an 'independent mechanism' jointly with the Northern Ireland Human Rights Commission, to promote awareness of, and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities with regard to Government's obligations in relation to Northern Ireland.
- 1.4 The Commission welcomes the opportunity to respond to the Department for Social Development's (the Department) public consultation on the Equality Impact Assessment for the Welfare Reform Bill (Northern Ireland) 2011. Our response addresses the following:
- A consideration of the broad policy aims of the Welfare Reform Bill (Northern Ireland) 2011 (the Bill); and
 - The potential impact of welfare reform in an economic downturn
 - The extent to which the Impact Assessment is carried out in a manner consistent with the principles enshrined in our Practical Guidance on Equality Impact Assessment.
- 1.5 Our response is also focused on a number of selected policy issues addressed in the EQIA, where these have identifiable equality implications, in accordance with our priorities. This response therefore also includes consideration of:
- Universal Credit;
 - Housing Benefit Cap;
 - Lone Parent Conditionality; and
 - Disability Living Allowance Reform

2. Policy aims of the Welfare Reform Bill (Northern Ireland) 2011

- 2.1 While the Commission agrees with the policy aim to '*seek to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency*', we recommend that the Department reconsiders and clarifies the statement that '*by accepting*

personal responsibility for our individual circumstances, it is considered that each person has the ability to improve their situation'.¹ It is recognised and widely evidenced that many barriers to employment exist for groups, including women, older people and people with disabilities. These barriers are often institutional or societal, and without appropriate support, it is incorrect to assume that everyone has the ability to improve their situation. Unfortunately, within this consultation document we are unable to see what additional measures the Northern Ireland Government will put in place to assist these individuals into skilled and well paid employment to ensure that welfare reform does not simply increase their experience of poverty and social exclusion.

- 2.2 The overarching intention “to promote the fact that work always pays and to incentivise individuals to enter the labour market” is of merit. We welcome any supportive measures from Government that will have the effect of improving access to employment for traditionally marginalised and excluded groups. However, the Commission is genuinely concerned that many of the proposed measures may have the effect of creating further poverty, particularly for already traditionally marginalised groups in Northern Ireland.

3. The potential impact of welfare reform in an economic downturn

- 3.1 At a United Kingdom level, despite the current economic recession, the number of children in poverty among workless families fell during the period 2008-09, but those from working families rose slightly. Therefore, access to work is not necessarily the sole measure by which poverty can be reduced. The annual report on poverty and social exclusion by Joseph Rowntree Foundation and the New Policy Institute concluded that the Government faced a number of challenges including in-work poverty, the number of children/young adults with few/no qualifications, young adult unemployment, health inequalities, and low income households' lack of access to essential services².

- 3.2 A key issue arising from the Commission's own research³ suggests that the issue of welfare reform combined with the recession will have a serious impact on those already vulnerable in the labour market; in particular, the long term unemployed, disabled people, lone parents, young unemployed, and older workers. Of significant concern is the emphasis on conditionality and sanctions and benefit cuts as opposed to the need for investment in the support infrastructure needed to assist people to access work, such as affordable and flexible childcare to help lone parents find sustainable employment⁴. The Department's equality impact assessment consultation paper provides no substantive analysis of the proposals nor does it provide any real consideration of the potential adverse impact.

1 Department for Social Development (2011): Equality Impact Assessment for the Welfare Reform Bill (Northern Ireland) page 16.

2 Parekh, A., MacInnes, T. and Peter Kenway (2010), Poverty and Social Exclusion Report 2010, concluded that despite the current recession, the number of children in poverty in workless families fell in 2008/09, to 1.6m, the lowest since 1984, but those in working families rose slightly to 2.1m, the highest on record the thirteenth annual report in the Monitoring poverty and social exclusion series. See link <http://www.jrf.org.uk/sites/files/jrf/poverty-social-exclusion-2010-summary.pdf>

3 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010): Employment Inequalities in an Economic Downturn (ECNI). The overall aim of this research was to: update understanding of the effect of the economic downturn on the employment status and prospects of relevant groups across the nine equality grounds in Northern Ireland (NI). It was carried out by the Employment Research Institute at Edinburgh Napier University for the Equality Commission Northern Ireland. <http://www.equalityni.org/archive/pdf/EconDownturnSummaryReport.pdf>

4 NI Welfare Reform Group (July 2011): Briefing Paper - Welfare Reform Bill, Second Reading House of Lords, page 4. <http://www.lawcentreni.org/Publications/Policy%20Briefings/WelfareReformGroupHoL.pdf>. Evidence suggests that forcing lone parents of children under 5, the majority of whom are as the consultation paper acknowledges are women, would have an adverse impact on both the parent and the child / and older siblings - limiting educational and training opportunities to enable good quality work opportunities as opposed to a low pay unskilled job, as well address the need for quality child care that meets the 'best interests' of the child. It should also be noted the correlation between low income families and the increased likelihood of child poverty. Save the Children research points out that 21% of children in Northern Ireland live in persistent child poverty which is double the GB percentage rate, and severe child poverty stands at 40,000, almost 10%.

3.3 While recognising and endorsing parity, the consultation document does not consider the changes in the context of Northern Ireland policy and legislation not subject to parity. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation. There is thus no statutory requirement for the provision of childcare in Northern Ireland where it is recognised that the situation on both availability and affordability of childcare is the worst in the UK⁵. Whilst the proposals indicate that some flexibility can be included for lone parents⁶, it is not clear how this will be determined and how such a discretionary measure will be delivered fairly.

3.4 The Commission wishes to bring the following statistics to the Department's attention in respect to employment, unemployment and economic inactivity in Northern Ireland:

- The seasonally adjusted figures for Northern Ireland show that the economic inactivity rate for people aged between 18-64 currently stands at 26.6 per cent which is 2.3 percentage points lower than the rate 5 years ago which was at an all time high of 28.8 per cent. However, Northern Ireland has the highest economic inactivity rate of all regions in the UK (UK average 23.2 per cent)⁷.
- UK-wide research concluded youth unemployment (16-24 year olds) was at 20.0 per cent⁸ in 2010; the highest figure in 18 years. The statistic was slightly higher in Northern Ireland at 20.4 per cent youth unemployment⁹. Our own research concludes that the Welfare Reform proposals are likely to impact on single people, the greatest group largely composed of young people¹⁰.
- Prior to the current recession disabled people were twice as likely to be unemployed as non-disabled people¹¹ - this statistic is unlikely to change in the current economic climate. Over 184,500 people in Northern Ireland currently receive Disability Living Allowance (DLA), representing 10.3 per cent of working age population in Northern Ireland - approximately twice the level in GB¹². Furthermore, disabled people have a tendency to be over-represented in entry level jobs and under-represented in higher level occupations which is evidence that employment in itself is not a quality indicator of a reasonable level of income¹³.
- While the unemployment rate in Northern Ireland is lower at present than the UK average, our own research indicates that continuing redundancies in the public sector will have a significant impact on women who make up the greater number of employees in the public sector. Most economists agree that the economy is overly dependent on the public sector and that redundancies in this area are set to continue for some time. As a result, Northern Ireland is likely to experience the highest level of unemployment throughout the UK. There is also a growing consensus among leading economists that Northern Ireland will take much longer to come out of the current economic recession because of its over reliance on the public sector in comparison with all other regions in the UK.

5 Employers for Childcare Charitable Group (2011): Northern Ireland Childcare Cost Survey 2011 <http://www.new.killercontent.net/media/EmployersForChildcare/Website%20Version%20-%20Childcare%20Cost%20Survey%202011.pdf>

6 Department for Social Development (2011), op cit., page 59 paragraph 1 and page 60 paragraph 1.

7 Department of Finance and Personnel (2011) Labour Force Survey 2011 1st Quarter http://www.detini.gov.uk/lfs_quarterly_supplement_-_april_-_june_2011__with_logo_.pdf

8 Parekh, A., MacInnes, T. and Peter Kenway (2010) op cit.

9 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010) op cit., page 39.

10 Ibid page 97

11 ECNI (2007): Statement on Key Inequalities, page 12. [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)

12 Department for Social Development (August 2010): Disability Living Allowance Statistics – Summary of Statistics http://www.dsdni.gov.uk/dla_publication_august_10.xls

13 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010) op cit., page 62.

- The proportion of lone parents in employment in Northern Ireland is well below the average for the United Kingdom, with female lone parents at the highest risk of poverty. Only one in seven lone parents in Northern Ireland are currently working. This is a smaller proportion of lone parents than for any other region within the United Kingdom¹⁴.
- Welfare Reform proposals will also place significant demands on other people with dependents. Parents with one or more children will be obliged to seek and find employment, requiring them to access high quality affordable childcare. However, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation and, therefore, there is no statutory obligation on the part of local or public authorities to provide high quality affordable childcare. Broadly, the consultation paper does not fully recognise the often complex and individual needs of children and/or the flexibility required by all parents, including those on low incomes and in receipt of benefits, both to work and to raise a family¹⁵.
- The Commission is also concerned that the Welfare Reform proposals are likely to undermine the UK Government's commitment to its international obligations, with respect to the impact of these reforms on children (arising from the conditionality requirement on lone parents) and disabled people. Specifically Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities (e.g. Article 19 Independent Living) and the United Nations Convention on the Rights of the Child (Article 3) which requires government to consider the 'best interests' of the child in all actions that impact on children.
- Also, statistics show older people currently in receipt of welfare support are unlikely to find it easy to return to the job market. The emphasis on finding employment for younger workers may detract from government's efforts to find suitable employment for those other benefit recipients under pension age¹⁶.

4. Comments on the Equality Impact Assessment process

4.1 First of all we wish to point out that (in Chapter 1 of the EQIA) the text of Section 75 has not been quoted correctly.

4.2 Section 75 (1) requires that public authorities, when carrying out their functions relating to Northern Ireland, have due regard to the need to promote equality of opportunity between the listed groups.

The term "due regard" was intended to be, and is, stronger than regard. Every public authority is required by the statute to take these specific matters properly into account and to give them the required weight when carrying out its functions relating to Northern Ireland.

4.3 Section 75 (2) requires that a public authority shall have regard to the desirability of promoting good relations.

14 Equality Scheme for Office of the First Minister and deputy First Minister (draft) (2011), Para 1.10, page 67. http://www.ofmdfmi.gov.uk/ofmdfm_equality_scheme_sept_2011.pdf

15 Northern Ireland Welfare Reform Group (2011): Joint Briefing Paper– Welfare Reform Bill 2nd Reading House of Lords, page 6. The Briefing also noted that between 2002-2009 the overall number of daycare places in Northern Ireland fell by 6% and further added that the decrease of the Childcare element of the Working Tax Credit from 80-70% from April 2011 was also having an adverse impact on low income family households. <http://www.lawcentreni.org/Publications/Policy%20Briefings/WelfareReformGroupHoL.pdf>

16 McQuaid, R., Hollywood, E. and Canduela, J. (July 2010) op cit., page 44. The research also notes that older people are likely to face discrimination from employers when trying to return to work after redundancy and that there was also evidence of a lack of flexible working conditions for older people compared to other age groups. It is likely there will be a higher percentage of older unemployed people as the ongoing redundancies in the Northern Ireland public sector take effect and this presents particular challenges for government, for while older people are valued while they are in work after redundancy or loss of occupation statistics show a lower rate of return to employment for the above reasons (page 43).

General

- 4.4 The Commission acknowledges that the structure of the consultation document follows the 5 steps of the 7 steps process for Equality Impact Assessments as detailed in the Commission's *Practical Guidance on Equality Impact Assessments*. This process, however, is not an end in itself and we have considerable concerns regarding the way in which some of the steps have been completed.
- 4.5 The aim of an equality impact assessment to identify any potential adverse impacts and take steps to address these. Therefore, the consideration of mitigating measures and alternative policies is at the heart of the EQIA process as it is the outcomes from an enhanced policy that are of primary concern. Unless different options can be developed for delivering the policy aims, options which have a less adverse effect on or which better promote equality of opportunity for the relevant equality category, an equality impact assessment remains a 'box-ticking' exercise.
- 4.6 The Commission is aware that the prevailing view of parity is that it applies both to the rate of benefits and the conditions for receipt of benefits. However, the legislation does not *require* social security parity, but does signal the *desirability of providing coordinated systems* of social security.¹⁷ Social security remains a transferred matter with separate primary and secondary legislation with its own separate administrative arrangements.
- 4.7 The Committee for Social Development was advised by DSD that "[u]nder the Northern Ireland Act 1998 and the principle of parity [...] we will bring forward a **Northern Ireland-specific** Welfare Reform Bill in 2012 [emphasis added]. That will be the enabling legislation, which will then need to be followed by detailed regulations on a number of the points in it."¹⁸ We do not see however, how the subsequent proposals contained in the consultation document are Northern Ireland-specific.
- 4.8 We would also query why there are no proposals contained in the document for a replacement scheme for the Social Fund or possible arrangements for the Northern Ireland equivalent of the Council Tax Benefit (by way of parity with GB arrangements), despite the fact that the Westminster Welfare Reform Bill proposes to remove this discretionary fund from the ambit of social security.
- 4.9 The Commission appreciates that, due to the financial implications of breaking parity and other reasons,¹⁹ there is limited scope for Northern Ireland to depart significantly from the current Westminster proposals. However, it is the Commission's firm view that wherever "breathing space"²⁰ between the two systems can be developed, this should be done. Furthermore, it should be done on the basis of a thorough and comprehensive equality impact assessment.
- 4.10 Therefore, the Commission considers it crucial that the Department is absolutely clear about the extent to which the policy options presented in the EQIA can still be altered/amended in light of the outcomes of the EQIA and what the possible alternative policy options are. Clearly setting out the available policy options in the EQIA would ensure a more effective focus by consultees on those issues where a positive difference can still be made.
- 4.11 The Commission notes the Minister's comments that "[i]t is difficult to be clear about the precise impact at this stage. Any precise measurement will be very difficult until we are

17 Law Centre (NI). Committee for Social Development (2011): Parity – Legislation – Social Security Parity – a Note for the Social Development Assembly Committee from the Law Centre (NI).

18 Heather Cousins, DSD quoted from Committee for Social Development Official Report (Hansard) Welfare Reform Bill: Social Security Agency, 10 November 2011.

19 As outlined in Department of Social Development (2011): Committee for Social Development 'Parity – Legislation; Understanding "Parity" – Departmental Briefing Paper.

20 Law Centre (NI) op cit.

further down the track and have seen more detail on the precise changes being made”²¹
 The Commission’s guidance Section 75 of the Northern Ireland Act 1998- A Guide for Public Authorities (ECNI: 2010) advises that “For more detailed strategies on policies that are to be put in place, through a series of stages, a public authority should then consider screening at various stages during implementation” (page 52).

Consideration of available data and research

- 4.12 In order to determine how the proposed policies will impact on people on the ground, it is essential to gather and consider a wide range of qualitative and quantitative data. Given that the current welfare reform will have major impacts for the people of Northern Ireland [a recent report by the Institute of Fiscal Studies found that Northern Ireland as one of the poorest regions of the UK will inevitably be hardest hit from the welfare cuts²²] the data considered by the Department is extremely limited.
- 4.13 We have already highlighted some additional data sources [see above at 3.4]. But there are many more that should be considered, in particular data specific to issues of poverty and deprivation. Existing quantitative data constitutes only a minimum base from which to judge the impacts and outcomes of a policy and the Commission is particularly concerned that qualitative data is completely absent from the current document. We would query why the wealth of qualitative information provided by sectoral groups since the Welfare Reform Bill and its implications for NI were first debated well over a year ago have not been considered in the EQIA.
- 4.14 We are also concerned that the Department has not taken any steps to address the existing data gaps it has identified in relation to religious belief, political opinion, racial background and sexual orientation. It is not acceptable for an EQIA to merely record that no data are available²³. Furthermore, in the absence of any data no comments can be made on potential effects. It is incorrect to simply assume that “social security benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these 75 categories.” [page 23 of consultation document; emphasis added. Indeed, previous analyses suggest that characteristics like religious belief, political opinion, racial background or sexual orientation can put individuals at higher risk of exclusion and poverty²⁴ which in turn could impact on an individual’s need for support through social security benefits.

Assessment of impacts

- 4.15 While the Commission appreciates that assessing the impacts of a policy can be particularly challenging, we wish to emphasise again that a proper analysis of the impacts of the proposed policy is at the core of any EQIA, the purpose of which is to identify any potential negative impacts and take steps to address these. The Commission is therefore particularly concerned with the minimalist approach taken by the Department to this part of the EQIA.
- 4.16 The Minister himself has admitted that “[t]here will, undoubtedly, be a major impact”²⁵ yet the Department’s equality impact assessment consultation paper provides no substantive analysis of the impact of the proposals or any real consideration of the potential adverse impact.

21 Minister for Social Development , Nelson McCausland, during NI Assembly Debate on 15 November 2011; <http://www.theyworkforyou.com/ni/?id=2011-11-15.3.25>

22 James Browne, The Impact of Tax and Benefit Reform to be introduced between 2010/11 and 2013/14 in Northern Ireland , Institute of Fiscal Studies Briefing Note 114, p 5, available at <http://www.ifs.org.uk/bns/bn114.pdf>

23 ECNI (2005): Practical Guidance on Equality Impact Assessment, paragraph 2.9, page 14.

24 See, for example OFMDFM (2006): Lifetime Opportunities, p. 81; and: http://www.stonewall.org.uk/what_we_do/research_and_policy/2880.asp

25 Minister for Social Development, Nelson McCausland, during NI Assembly Debate on 15 November 2011; <http://www.theyworkforyou.com/ni/?id=2011-11-15.3.25>

- 4.17 In fact, in some instances, no assessment is made at all.²⁶ Instead, the Department relies heavily on percentage figures and statistical information, often simply focussing on whether or not a particular group is more or less likely to be affected. But while establishing a differential impact is a starting point, the focus of the EQIA should in the first place be on potential adverse impacts. Figures alone do not provide any information on the nature of the effect nor do they provide reasons or explanations for difference.
- 4.18 The document, for example, states that “As there is a higher number of single male claimants, any change to Housing Benefit can reasonably be expected to have a greater impact on male claimants.”²⁷ But no information is provided as to what this may actually mean for the affected group. But, as we highlight further down in our response (see below at 5.4) claimants, for example, who are the non-primary carer (in most cases a father) who has separated / divorced from their partner / spouse will be unable to exercise their right of access to their family as a result of moving to single room accommodation – in other words, a parent will not be able to accommodate their children overnight.
- 4.19 Similarly, the fact that certain changes will apply irrespective of a particular characteristic does not mean that therefore the impact will be neutral for this group. Such characteristics could, directly or indirectly, either exacerbate negative effects on the individual or, in some cases, they may have a positive effect. This is highlighted in the contradiction contained in the assessment of the impacts of the time-limiting of contributory employment and support allowance at 7.4, page 43. On the one hand the document states with respect to the Marital Status category that it is not envisaged that the proposed changes present any inequitable treatment on the grounds of marital status yet on the other hand, as noted in the paragraph above with respect to the age category, it is assumed that older recipients are likely to have e.g. a working partner and thus will not be left without income.
- 4.20 The assessments also fail to consider the cumulative effect the different proposals could have on individual groups. For example, the combined effect of the benefit cap and housing policies could be significantly adverse for those affected, particularly for families with children but this has not been assessed.
- 4.21 Similarly, Disability Living Allowance, which is a passport to other benefits, including Carers Allowance, is considered in this consultation. While we know that Disability Living Allowance claimants are comprised of approximately equal numbers of males and females, there are significantly more women than men claiming Carers Allowance. Again, the impact of this has not been assessed.
- 4.22 As was pointed out to the Committee for Social Development²⁸, the welfare reform agenda has seen an increasing interdependency between social security and areas which are the responsibility of other Departments. This has been particularly apparent in areas which fall to the Department for Work and Pensions in GB but which fall to several Departments in Northern Ireland, for example, work-focused interviews (DEL), health and safety at work (DETI) etc. It was also highlighted that increasingly, there are interdependencies with a number of other areas, for example, health and affordable child care.
- 4.23 However, there is little concrete evidence in this impact assessment of Departments “currently working together to address issues arising from further proposals for welfare reform”.²⁹

26 Department for Social Development (2011), op cit., for example, page 38: Persons with /without dependants; page 58: Lone Parent Conditionality and persons with/without a disability.

27 Ibid. page 34.

28 Department of Social Development (2011), op. cit.

29 Ibid.

Mitigating measures/ alternative policies

- 4.24 As we have already pointed out above, the consideration of mitigating measures and alternative policies is at the heart of any EQIA process. Where negative impacts are identified, a course (or courses) of action should be considered in order to moderate or lessen any such impacts.
- 4.25 The Commission is therefore extremely concerned about the high number of assumptions, expectations and vague possibilities which are put forward as mitigating measures, without any evidence to support these.³⁰
- 4.26 Furthermore, on a couple of occasions the document states that the Department is currently considering what mitigating measures might be necessary or available³¹ without providing any detail on what these might look like.

No detail is provided on how the social protection fund and other mechanisms could be utilised to ensure that the already vulnerable will not be further disadvantaged and marginalized by these proposals

Formal consultation

- 4.27 The Commission appreciates that the consultation document is available in a number of alternative formats. We are concerned, though, that the Department has restricted responses to those made in writing or by email and that no provision seems to have been made for face-to-face engagement with consultees, in particular those who may find it difficult or daunting to provide their views in a written document.
- 4.28 The Department will be aware that as part of the process of considering the potential impact of the Welfare Reform policies there is a requirement in accordance with equality scheme commitments for the Department to consult directly with affected groups and provide evidence of the contribution in the development of these proposed measures.

What effort has the Department made to ensure maximum access of those equality groups affected by the proposals, such as disabled people, children and young people or carers?

- 4.29 As regards the list of consultees, we would note the following:
- the list still includes Economic Research Institute for Northern Ireland (abolished) and the Civic Forum (suspended)
 - it includes neither the Older Persons Commissioner or the Older Persons Advocate
 - MLAs are not included
 - only women in greater Belfast area seem to be included
 - the Presbyterian Church does not seem to be included

5. Policy Issues

- 5.1 The Commission strongly disagrees with the Department's view that "many provisions proposed, e.g. increased conditionality, are not considered as having a direct equality impact on benefit customers and merely facilitate the establishment of the legislative framework under which a number of the proposals [...] will be introduced." [p 23 of consultation document]

30 Department of Social Development (2011) op. cit., for example on page 35: "the change could act as a stimulus [...]; page 43: assumption that older recipients "will generally either have a working partner or capital over £ 16,000"; pages 46 and page 59: support to continue to move towards work assumes that jobs are readily available; page 58 : "there is a possibility that younger lone parents are likely to have more recent experience of the labour market" ; page 60: " it is envisaged that flexibilities and operational easements in place will ensure that no one will be penalised [...]".

31 Department of Social Development (2011),op. cit., for example pages 28, 29.

5.2 Below are our comments on selected aspects of the proposed reform and the impacts they may have.

Universal Credit

5.3 The Commission welcomes the aim of the reform to simplify the benefits system. However, we are concerned that the equality impact assessment has not identified the negative impact on women. Paying the new Universal Credit to the main earner following joint claim and joint assessment will, in many instances, leave women without income. Payment of benefit to women in their 'caring for dependents role' was an important social security reform introduced in the 1970's. It was considered necessary to allow certain benefits, including Child Benefit, to be paid to women, recognising that women more readily spend on children and the household essentials. We expect the Department to consider this matter.

5.4 This position is made more serious given the cuts in Child Benefit and in the childcare element of Working Tax Credit already planned.

5.5 We are concerned that no consideration appears to be given to weekly payments of Universal Credit where that is preferred. Weekly payments would be a no or low cost provision that would assist those families on the least income³².

Housing Benefit Cap – Social Housing Rented Sector

5.6 From the 1st of April 2013, it is intended to introduce size criteria for new and existing working age claimants on housing benefit for those in the social housing rented sector will replicate the size criteria that apply to claimants in the private rented sector. Under this measure, claimants will have their housing benefit reduced on the basis of 'under-occupancy' of tenancy in line with the private sector. While we agree in principle that under occupancy within the social housing sector should be addressed, the Commission is deeply concerned that this measure will have a serious impact on a range of equality groups. This measure may force claimants, of working age, to leave their homes if they no longer can justify the need for the rooms available in their property. Hence, someone at 59 years old, who may or may not have adaptations to their home as a result of their own circumstances, will receive reduced housing benefit or will have to seek alternative one bedroom accommodation if they have no dependents in their home. The Commission understands that several potential negative impacts may arise from this measure and raises a number of key issues:

- Claimants who are the non-primary carer (in most cases a father) who has separated / divorced from their partner / spouse will be unable to exercise their right of access to their family as a result of moving to single room accommodation – in other words, a parent will not be able to accommodate their children overnight.
- Similarly, a disabled person who does not necessarily require personal support on a continuing basis will be unable to obtain overnight support during short periods when they do need assistance.
- Potentially, claimants would have to move from their local community, regardless of their longevity of tenancy, causing undue stress.
- The consultation paper acknowledges that there is very limited mobility in the social rented sector. Therefore, a tenants' ability to move may be severely restricted. Restricted mobility is particularly relevant to Northern Ireland as social housing is often segregated on the basis of community background. There is a risk of placing all social housing tenants in financial hardship, as the tenants maybe unable to move because of the de-facto lack of available alternative but still be subject to a reduction in their housing benefit.

32 <http://www.wrda.net/Documents/The%20NI%20Economy%20%20Women%20on%20the%20Edge%20Report.pdf>

- 5.7 The Commission recommends that the Department ensures that housing benefit assessments of disabled people, with non-residential carers, fully takes into account the needs of disabled people, particularly when the effects of a disability may change within a time period. Similarly, assessments of parents separated from their children should also take into account that these claimants will be required to accommodate their children in their home to allow them full access to their offspring.

Lone Parent Conditionality

- 5.8 Childcare is an essential feature in the eradication of child poverty, the removal of barriers to and in employment, achieving equal pay and protecting against poverty in later life. Despite this the UK, and Northern Ireland, failed to meet the Barcelona childcare targets³³. Recent research³⁴ across the UK found that parents in Britain spend almost a third of their income on childcare – more than anywhere else in the world. Research to be published at the end of last month³⁵ will show that Northern Ireland remains the most expensive part of the UK to secure childcare. The UK study³⁶ pointed to the paucity of policy in Northern Ireland and the historical underinvestment – early years spend in 2007-2008 amounted to £630 per child in Northern Ireland compared with around £2,000 in Great Britain.
- 5.9 Broadly, the welfare reform measures developed at Westminster are predicated on the statutory obligation in Great Britain, under the Childcare Act 2006, to deliver good quality childcare and a more effective pattern of provision. This will therefore require the Minister for Social Development to allow an element of discretion, if it considers that appropriate affordable childcare is not available. In Northern Ireland, £12m³⁷ has been allocated over the current Budget period³⁸ to address the childcare need through a Childcare Strategy, currently being developed by the Office of the First and deputy First Minister. However, at the time of making response to this consultation, the Childcare Strategy had not been published to enable anyone to determine if the strategy can deliver accessible, appropriate and affordable childcare to all children in Northern Ireland.
- 5.10 The lone parent conditionality provision requires that lone parents be available for work when their child reaches the age of 5 years. However, this conditionality assumes that there is an affordable and appropriate childcare infrastructure in place in Northern Ireland available to the individual claimant – looking at the evidence above, this is currently not the case. The Department should urgently address this matter through liaison with OFMDFM to ensure that all lone parents can access appropriate and affordable childcare to enable access to, and continued employment.
- 5.11 The lone parent conditionality provision may also restrict a claimant's ability to seek education and training opportunities as lone parents will be required to claim Jobseeker's Allowance or Employment and Support Allowance. This approach may deny lone parents the opportunity to seek appropriate education or training to enable them to gain skilled, higher paid, employment to enable them to reach a reasonable level of income; to fulfill the rights of the child, and of the parent, to raise a child through an adequate standard of living and level of social protection. It should also be added that while there is a statutory legal obligation on public authorities in Great Britain to consider the welfare of the child no such obligation exists for public authorities in Northern Ireland.

33 European Commission (2008): Childcare services in the EU EUROPA - Press Releases - Childcare services in the EU

34 Save the Children (September 2011): Making Work Pay – The Childcare Trap.

35 Employers for Childcare Charitable Group (2011), op cit.

36 Save the Children (September 2011) op cit..

37 This is £3m in each of the four years of the budget , compared with, for instance, £30m pa in Wales

38 Northern Ireland Executive: Budget 2011-15. http://www.northernireland.gov.uk/revise_d_budget_-_website_version.pdf

5.12 The lone parent conditionality provision may undermine, or be counter to, the plan within the Northern Ireland Executive's Economic Strategy³⁹ to "improve the skills and employability of the entire workforce so that people can progress up the skills ladder, thereby delivering higher productivity and increased social inclusion". The lone parent conditionality provision may deny lone parents the additional training as outlined within the strategy's 'key rebalancing measure' to "delivery of 210,000 qualifications at Levels 2, 3, 4 and above by 2015, through Further Education, Higher Education, Essential Skills and Training". The Commission strongly advises the Department to consult with the Department of Enterprise, Trade and Investment in regards to how the lone parent conditionality provision may affect the objectives outlined within the economic strategy. Similarly, the Department should seek advice from the Department of Employment and Learning on this issue.

Disability Benefit Reform

5.13 The Commission has previously made a number of public policy interventions on the issue of welfare reform as it may impact on disabled people, including our submission to the Department on the Independent Review of the Work Capacity Assessment. The Commission, jointly with the Northern Ireland Human Rights Commission, in our collective role as the Independent Mechanism for Northern Ireland to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), has also highlighted our concerns on this issue to the Joint Committee on Human Rights, Parliamentary Inquiry on the implementation of the right of disabled people to independent living as guaranteed by Article 19 of UNCRPD.

5.14 In summary, the Commission has a number of concerns in this area:

- The higher qualification criteria for the Disability Living Allowance (DLA) equivalent Personal Independence Payment (PIP);
- The assessment process and the very high percentage rate of successful appeals for those refused Disability Living Allowance; and,
- We note there will only be two components under Personal Independence Payment (PIP) in relation to daily living. We believe that people who are currently in receipt of the old DLA care component will lose out given the strict and objective criteria laid out in the proposed new test which determines whether or not a person receives support under PIP.

6. Conclusion

6.1 The Commission has advised policy makers of the critical importance of assessing the equality implications of their budget decisions and of ensuring that the most vulnerable people in our society are not affected to an unfair extent by reductions in public expenditure.⁴⁰ This applies equally to the current Welfare Reform.

6.2 Section 75 is a continuous duty and this EQIA should not be considered as a one-off exercise. Throughout the process of reforming the welfare system in Northern Ireland, which includes subsequent benefit specific reforms requiring further legislation to enact, every effort must be made to ensure that decisions are based on the needs of people, that the vulnerable are protected and that equality of opportunity is promoted. The Department is under an obligation to continuously consider the potential impact of its current and future proposals on affected groups, to seek and carefully consider input from consultees to gain a better understanding of the issues relating to equality of outcomes and to address potentially adverse impacts.

39 Northern Ireland Executive(2011): Economic Strategy: Priorities for sustainable growth and prosperity. Building a better future http://www.detini.gov.uk/economic_strategy__web_.pdf

40 See for example the Equality Commission's Response to draft Budget 2011-2015, February 2011.

- 6.3 We are also concerned that there is no account taken within the consultation paper of the wider agenda in relation to pensions. Nor does the paper consider the implications of the proposed reform for other government strategies like Lifetime Opportunities or the Child Poverty Strategy.
- 6.4 Finally we would like to highlight the following studies which may be important in informing the way forward:
- The Forthcoming J Rowntree Foundation study: Monitoring Poverty and Social Exclusion in Northern Ireland, to be published in Spring 2012⁴¹
 - The Social Security Advisory Committee's guiding principles for the design of passported benefits in relation to the universal credit, report to be published in January 2012.⁴²
- 6.5 This response is made without prejudice to any consideration or determination which the Commission might make in performance of its statutory function to investigate individual complaints under Schedule 9 of the 1998 or conduct any other investigation under that Schedule.

41 <http://www.jrf.org.uk/work/workarea/monitoring-poverty-and-social-exclusion>

42 <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111005-wms0001.htm>

Equality Commission for Northern Ireland (March 2012)



Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment

Briefing for Committee for Social Development (8th March 2012)

1. While the Commission agrees with the policy aim to ‘seek to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency’¹ we consider that there is a need to properly understand, consider and respond appropriately to the impacts of welfare reform.
2. The Commission has advised policy makers of not only the requirement², but also the critical importance of assessing the potential equality (and good relations) implications of policy proposals.
3. The Commission is concerned that many of the proposed measures may have the effect of creating further poverty, particularly for already traditionally marginalized groups in Northern Ireland. However, the subject of the consultation was the Equality Impact Assessment, rather than the substantive policy proposals.
4. In its response to the Department, the Commission provided comments in the following areas:
 - A consideration of the broad policy aims of the Welfare Reform Bill (Northern Ireland) 2011, particularly given the potential impact of welfare reform in an economic downturn; and
 - The extent to which the Impact Assessment is carried out in a manner consistent with the principles enshrined in our Practical Guidance on Equality Impact Assessment.
5. In broad terms, our response to the DSD consultation on the Equality Impact Assessment of the Welfare Reform Bill (Northern Ireland) 2011 set out that:
 - The Department’s equality impact assessment consultation paper provides no substantive analysis of the proposals nor does it provide any real consideration of the potential adverse impacts.
 - While recognising and endorsing parity, the consultation document does not consider the changes in the context of Northern Ireland policy and proposals not subject to parity.

Equality Impact Assessment

6. The Commission considers that the Department’s equality impact assessment consultation paper provided no substantive analysis of the proposals nor did it provide any real consideration of the potential adverse impact.

1 Response to the Department for Social Development’s consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment;

2 Schedule 9 of the Northern Ireland Act 1998, paragraph 4 (2) (b) “assessing and consulting on the impact of policies adopted or proposed to be adopted”

7. With regards to the way in which the EQIA was conducted, while the document follows the five steps as recommended in the Commissions guidance, we have considerable concerns about how some of the steps have been completed:
- in order to determine how the proposed policies will impact on people on the ground, it is essential to gather and consider a wide range of qualitative and quantitative data. Given that the current welfare reform will have major impacts for people in Northern Ireland³ the data considered by the Department is extremely limited.
 - while the Commission appreciates that assessing the impacts of a policy can be challenging at this strategic level, we wish to emphasise that a proper analysis of the impacts of the proposed policy is at the core of any EQIA, the purpose of which is to identify any potential negative impacts and take steps to address these. The Commission is therefore particularly concerned with the minimalist approach taken by the Department to this part of the EQIA. In some places, there is no assessment at all.
 - the Commission noted with concern the high number of assumptions, expectations and vague possibilities which are put forward as mitigating measures, without any evidence to support these.⁴
 - the Commission considers it crucial that the Department is absolutely clear about the extent to which the policy options presented in the EQIA can still be altered/amended in light of the outcomes of the EQIA and what the possible alternative policy options are;
 - the Commission also commented on the accessibility of the consultation exercise, as it appeared that responses were invited in written formats only.

Policy Considerations- Welfare Reform

8. Although the consultation was an Equality Impact Assessment, with no associated consultation on the whole policy framework as it applies in Northern Ireland, the Commission made some additional points about the reform proposals.
9. We disagreed with the Department's view that "many provisions proposed, e.g. increased conditionality, are not considered as having a direct equality impact on benefit customers and merely facilitate the establishment of the legislative framework under which a number of the proposals [...] will be introduced." [p 23 of consultation document]. By way of example:
- **Universal Credit:** We are concerned that the EQIA did not identify the negative impact on women. The payment of the new Universal Credit to the main earner following joint claim and joint assessment will, in many instances, leave women without income. Payment of benefit to women in their 'caring for dependents role' was an important social security reform introduced in the 1970s, recognising that women more readily spend on children and household essentials. We expect the Department to consider this matter.
 - **Lone Person Conditionality:** The lone parent conditionality provision requires that lone parents be available for work when their child reaches the age of 5 years. The Commission is concerned that the lone parent conditionality, and the lack of appropriate, accessible

3 A report by the Institute of Fiscal Studies considered that Northern Ireland, as one of the poorest regions of the UK, will inevitably be hardest hit from the welfare cuts. Browne, J.(2010) The Impact of Tax and Benefit Reform to be introduced between 2010/11 and 2013/14 in Northern Ireland , Institute of Fiscal Studies Briefing Note 114, p 5, available at <http://www.ifs.org.uk/bns/bn114.pdf>

4 for example on page 35: "the change could act as a stimulus [...]"; page 43: assumption that older recipients "will generally either have a working partner or capital over £ 16,000"; pages 46 and page 59: support to continue to move towards work assumes that jobs are readily available; page 58 : "there is a possibility that younger lone parents are likely to have more recent experience of the labour market" ; page 60: " it is envisaged that flexibilities and operational easements in place will ensure that no one will be penalised [...]".

and affordable childcare in Northern Ireland, may restrict⁵ a claimant's ability to seek education and training opportunities and may undermine, or be counter to, the plan within the Northern Ireland Executive's Economic Strategy to "improve the skills and employability of the entire workforce so that people can progress up the skills ladder, thereby delivering higher productivity and increased social inclusion".

- **Housing Benefit Cap:** We agree in principle that under occupancy within the social housing sector should be addressed. However, the Commission recommends that the Department ensures that housing benefit assessments of disabled persons and separated parents, including those in others but similar situations, fully takes into account the needs (and rights) of these groups. Furthermore, the Commission is concerned in regard to a tenant's ability to move may be severely restricted, due to the segregation of social housing in Northern Ireland. Therefore, the tenant may be placed in financial hardship because of a reduction in benefits due to under occupancy.
- **Disability Benefit Reform:** In wider responses⁶ we have raised concerns regarding the higher qualification criteria for the Disability Living Allowance⁷ (DLA) equivalent Personal Independence Payment (PIP); that the experiences faced by disabled people through the implementation of the ATOS assessment scheme for ESA and DLA (and the subsequent very high percentage rate of successful appeals for those refused DLA) is not replicated for the implementation of PIP; that people currently in receipt of the DLA care component may lose out under Personal Independence Payment (PIP).

10. Further, while recognising and endorsing parity, the DSD EQIA consultation document does not consider the changes in the context of Northern Ireland policy and legislation not subject to parity. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation. There is thus no statutory requirement for the provision of childcare in Northern Ireland where it is asserted that the situation on both availability and affordability of childcare is the worst in the UK⁸.

Conclusion

11. While the Equality Commission welcomes efforts 'to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency'⁹ we are concerned that many of the proposed measures may have the effect of creating further poverty, particularly for already traditionally marginalised groups in Northern Ireland.

5 Evidence suggests that forcing lone parents of children under 5, the majority of whom are as the consultation paper acknowledges are women, would have an adverse impact on both the parent and the child / and older siblings - limiting educational and training opportunities to enable good quality work opportunities as opposed to a low pay unskilled job, as well address the need for quality child care that meets the 'best interests' of the child. [NI Welfare Reform Group (July 2011): Briefing Paper - Welfare Reform Bill, Second Reading House of Lords, page 4]. It should also be noted the correlation between low income families and the increased likelihood of child poverty. Save the Children research points out that 21% of children in Northern Ireland live in persistent child poverty which is double the GB percentage rate, and severe child poverty stands at 40,000, almost 10%.

6 Independent Review of the Work Capacity Assessment (Professor Harrington) and ECNI (2011); Evidence to the Joint Committee on Human Rights (JCHR): Inquiry into the implementation of the right of disabled people to independent living as guaranteed by Article 19, UN Convention on the Rights of Persons with Disabilities

7 The proportion of working age people in receipt of DLA in Northern Ireland is approximately twice the level in Great Britain - 10.3 per cent of the Northern Ireland population (http://www.dsdni.gov.uk/dla_publication_august_10.xls). Reform of the DLA system therefore could result in many thousands of disabled people in Northern Ireland losing entitlement to this benefit or receiving reduced support – with potential impact on personal mobility; independent life in the community and adequate standards of living.

8 Employers for Childcare Charitable Group (2011): Northern Ireland Childcare Cost Survey 2011

9 Response to the Department for Social Development's consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment;

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12. On 1 March 2012, the Joint Committee on Human Rights, published its findings and recommendations of its parliamentary inquiry. Of relevance to this briefing, the JCHR found that:
- reforms to benefits and services risk leaving disabled people without the support they need to live independently;
 - restrictions in... eligibility criteria for social care support, the replacement of the Disability Living Allowance with Personal Independence Payment,... and changes to housing benefit risk interacting in a particularly harmful way for disabled people;
 - the Government had not conducted an assessment of the cumulative impact of current reforms on disabled people.
13. We consider that there is a need to properly understand, consider and respond appropriately to the individual and cumulative impacts of welfare reform. We consider that, effectively conducted, an Equality Impact Assessment should aid DSD to anticipate and address whether the most vulnerable people in our society will be affected to an unfair extent by the welfare reform proposals.

Annex 1: The Equality Commission for Northern Ireland

14. The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
15. The Commission’s remit also includes overseeing the statutory duties equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations, as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).
16. The Commission, along with the NIHRC, has also been designated as the ‘independent mechanism’ in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).

Equality Commission for Northern Ireland (October 2012)

Equality Commission

FOR NORTHERN IRELAND

Welfare Reform Bill (Northern Ireland)(as Introduced)

Briefing for Committee for Social Development (30th October 2012)

BRIEF

1. The Equality Commission for Northern Ireland (Commission) made a response to the Department for Social Development (Department) consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment in December 2011¹. Furthermore, the Commission provided evidence to the Committee for Social Development (Committee) on 8th March 2012².
2. In doing so, we advised both the Department and the Committee not only about the requirement³, but also the critical importance, of assessing the potential equality implications of its policy proposals. In this regard, we wish to remind the Committee that the Commission considered that the Department's 2011 equality impact assessment consultation paper:
 - provided no substantive analysis of the proposals nor did it provide any real consideration of the potential adverse impact; and
 - while recognising and endorsing parity, it did not consider the changes in the context of Northern Ireland policy and proposals not subject to parity.
3. The Commission expects that a range of the mitigating actions and alternative options should be addressed during the passage of the Bill in the Assembly. The implementation of the resultant Act will be subject to the commitments to screen and equality impact assess individual policies, and decisions, as they arise in accordance with the Department's Equality Scheme. The Committee may bring matters to the attention of the Department to assist it in the monitoring of its policies for adverse impact, to ensure that adverse impacts over time can be identified and mitigating measures put in place.
4. The Commission has previously raised concerns regarding the policy proposals within the Welfare Reform Bill and associated regulations, regarding some aspects of the Universal Credit, the Lone Parent Conditionality, the Housing Benefit Cap and Disability Benefit Reform. This briefing provides additional and targeted consideration of the provisions within the Bill, and related regulations, that may impact upon equality groups.
5. It is important for the Committee to note that, even at this stage, there are opportunities to amend the Bill without undermining the parity principle. In

¹ Response to the Department for Social Development's consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment.

² Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment. Briefing for Committee for Social Development (8th March 2012).

³ Schedule 9 of the Northern Ireland Act 1998, paragraph 4 (2) (b) "assessing and consulting on the impact of policies adopted or proposed to be adopted"

effect parity means maintaining a single system of social security, but not necessarily one that has the exact same regulations and operational procedures. In this regard, the Minister for Social Development has already demonstrated this potential, through his statement to the Northern Ireland Assembly, 22 October 2012, by negotiation with Lord Freud, that he has secured changes to allow: the housing cost element of Universal Credit to be paid direct to landlords rather than the customer; the payment of Universal Credit to be split between two parties in the household; and the payment of Universal Credit on a twice monthly basis. The Commission welcomes these changes along with the delay in the implementation of Universal Credit until April 2014. The Commission considers that other mitigating measures should be put in place to address outstanding adverse equality impacts stemming from the Bill. In respect to specific clauses within the Bill, the Committee may wish to:

Payment to the Primary Carer

- consider that the entire payment of Universal Credit should be made to the primary carer, usually the mother of children, rather than to be split between two parties within the household. (Clause 7)

Standard Disability Premium

- consider whether the removal of the direct link between receipt of the 'Standard Disability Premium' addition to Income Support for those in receipt of Disability Living Allowance under Personal Independent Payments will result in loss of income for claimants at either the enhanced or standard rate. The Committee could ask the Department why the 'Standard Disability Premium' addition to Income Support is not considered within this clause under the extra elements to the standard allowance within Universal Credit. (Clause 12)

Passport Benefits

- seek clarification regarding access to, and entitlement of, passport benefits taking account of changes to the benefit system as well as other wider benefits such as the operation of the Blue Badge Scheme etc.

Online Systems & Accessibility

- seek assurances from the Department that the development of the online system for Universal Credit will contain a range of safeguards against any immediate adverse impact on claimants where information relating to claimant's entitlements is wrongly calculated or recorded outside the control of the claimant. The Committee should ask the Department what action has already been taken or being taken in this regard.

Claimant Commitment

- seek clarification from the Department regarding the requirement for a claimant or "both members of a couple" to enter into a claimant commitment as part qualification criteria for Universal Credit. (Clause 14)

Lone Parent Conditionality

- determine what measures are in place to provide support to parents with young children to meet the conditionality requirements of entitlement for Universal Credit / Income Support, and for those parents belonging to the

Employment Support Allowance work-related activity group. (Clauses 13 to 18, 21 to 27 and Clauses 58 and 59)

Pension Credit Entitlement for Couples

- seek clarification as to whether a claimant reaching the qualifying age for Pension Credit will be subject to the conditions and sanctions associated with entitlements of Universal Credit until their partner reaches the qualifying age requirement for Pension Credit. The Committee could also seek assurances that this clause will not result in the loss of income for couples where one partner has not yet reached the qualifying age for Pension Credit. (Clause 32, Schedule 2)

Work Capacity Assessment

- determine what measures will be taken for the implementation of Work Capability Assessments for work-related activity, under the Universal Credit, taking into account the failings of the similar assessment process for the transition from Incapacity Benefit to the new Employment Support Allowance, to ensure that fair, appropriate and individualised assessment processes and practices are put in place in Northern Ireland. (Clause 38)

Pilot Projects for Implementation of Universal Credit

- determine what measures are in place to assess the effectiveness of the implementation of Universal Credit, including proper consideration of any adverse equality impacts, for example, what independent review and monitoring frameworks are in place to assess the outcome and impact of the implementation of Universal Credit. (Clause 42)

Penalties

- ask the Department to outline what steps have been taken to ensure that disabled people / older people are not unduly penalised for failing to meet the requirements of entitlement for Job Seekers Allowance by taking account of claimant's individual circumstances. (Clause 47)

Housing Benefit and Under-Occupancy

- whether assessments for Housing Benefit will fully take into account the needs (and rights) of tenants who are disabled, or who are separated from their partners and require additional rooms to respectively accommodate their carers and children. Furthermore, whether assessments for Housing Benefit will fully take into account of the tenants' ability to move to new accommodation considering the separate nature of social housing in Northern Ireland. The committee may wish clarification that tenants under these circumstances will not be placed under financial hardship. (Clause 69)

6. Finally, under Clause 33, the Department has the power, by regulations, to make such consequential, supplementary, incidental or transitional provision in relation to any provision of Part 1, Universal Credit, of the Bill, as the Department considers appropriate. These regulations may amend, repeal or revoke any statutory provision (whenever passed or made). The Commission recommends that the Committee regularly keeps under review the implementation and operation of Universal Credit in Northern Ireland, cognisant of developments in Great Britain, and where necessary takes action to ensure its operation is reflective of the unique circumstances in Northern Ireland, with

particular regard to its impact upon equality groups under Section 75 of the Northern Ireland Act 1998.

7. The considerations we ask the Committee to address are further outlined within Annex 1; the Equality Commission for Northern Ireland's remit is outlined in Annex 2.

ANNEX 1

Introduction

8. The Committee is asked to note that the Commission's evidence is not concerned generally with the particular wording of the clauses in the Bill. Rather, the Commission addresses the detrimental and adverse impacts of the subject specific clauses identified within the Bill in relation to the promotion of equality of opportunity. Many of the clauses within the Bill are bound by regulations which detail the intended and actual effect of these clauses. In this regard, the Commission is not aware of the Department's considerations. For example, the outcome of two recent public consultations on the Personal Independence Payments. Therefore, our evidence is presented to highlight our overarching concerns with the Bill, recommending amendments where appropriate to lessen adverse impact on the relevant Section 75 equality groups.

PART 1 UNIVERSAL CREDIT, CHAPTER 1 ENTITLEMENTS AND AWARDS

'Awards' – Clause 7 – Basis of awards

9. **The Committee may wish to consider that the entire payment of Universal Credit should be made to the primary carer, usually the mother of children, rather than to be split between two parties within the household.**
10. We remain concerned that the Bill does not identify the negative impact on women with respect to the payment of Universal Credit. The payment of the new Universal Credit to the main earner following joint claim and joint assessment will, in many instances, leave women without income. Payment of benefit to women in their 'caring for dependents role' was an important social security reform introduced in the 1970s, recognising that women more readily spend on children and household essentials. We expected the Department to consider this matter further and include a qualifying clause to that effect in the Bill.

'Elements of an award' - Clause 12 - Other Particular needs or Circumstances

11. **The Committee should consider whether the removal of the direct link between receipt of the 'Standard Disability Premium' addition to Income Support for those in receipt of Disability Living Allowance under Personal Independent Payments will result in loss of income for claimants at either the enhanced or standard rate? The Committee should ask the Department why the 'Standard Disability Premium' addition to Income Support is not considered within this clause under the extra elements to the standard allowance within Universal Credit.**
12. This clause considers the amounts to be included in the Universal Credit award for other needs or circumstances which would be extra elements in addition to the standard allowance. The Commission understands this clause refers to additional income supplements for disabled people who are assessed as having limited capability for work or limited capability for work-related activity with reference to the existing 'Severe Disability Premium'. We note that this clause does not include an alternative provision for the 'Standard Disability Premium'

addition to Income Support. We are concerned that this may result in loss of additional income for many disabled people.

13. We understand that this 'Standard Disability Premium', which claimants would receive in addition to their Income Support, will no longer be directly linked to the receipt of the new Personal Independence Payments, as it is under the current system of Disability Living Allowance. We have already highlighted to the Department our concern that disabled people who qualify for entitlement to the Personal Independence Payments will be required to take an additional assessment for entitlement to additional income-related benefits which are currently automatically granted under the existing Disability Living Allowance framework⁴.

Additional Concerns:

Passport Benefits

14. **The Committee may wish to seek clarification regarding access to, and entitlement of, passport benefits taking account of changes to the benefit system as well as other wider benefits such as the operation of the Blue Badge Scheme etc.**
15. Under the existing system, entitlement to Disability Living Allowance (DLA) and Attendance Allowance facilitates access to a range of other benefits which are vital to disabled claimants, such as Motability, Free Road Tax, Blue Badge Scheme, Income Support, and the Standard Disability Premium. We are concerned that there is insufficient detail on how passport benefits, plus other issues, such as childcare costs, carers' support allowance, rate rebates (in Northern Ireland) and mortgage interest support will be integrated into Universal Credit.

Payment of Benefits Online

16. **The Committee may wish to seek assurances from the Department that the development of the online system for Universal Credit will contain a range of safeguards against any immediate impact on claimants where information relating to claimant's entitlements is wrongly calculated or recorded outside the control of the claimant. The Committee should ask the Department what action has been taken or is being taken in this regard.**
17. Action to ensure safeguards, and the provision of accurate and timely information, to claimants is important. This is particularly important as many equality groups in Northern Ireland may exhibit lower internet usage than the general population. In recent research carried out on behalf of the Commission, it reported that there is clear evidence that there are large areas of information which are inaccessible to disabled people, see for example RNID and BDA

⁴ Equality Commission response to DSD Draft Consultation on DLA Reform and Personal Independence Payment (PIP) – Completing the Detailed Design (2012), and Equality Commission response to DSD consultation on Personal Independence Payment (2012)
http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Disability_consultation+responses&cmsid=7_33_229&id=229

(2009)⁵ and the ECNI (2008)⁶, and it is particularly disappointing that a primary source of information, the internet, is underused by disabled people. A 2011 survey on internet usage by the Office for National Statistics (ONS)⁷ revealed that in Northern Ireland, participants with a DDA⁸ defined disability (46.3%) were much less likely than non disabled people (77.4%) to have "ever used the internet". The figures also reveal that internet usage amongst disabled people in Northern Ireland is less than the average in the UK for people with a DDA defined disability (63.8%)⁹.

PART 1 UNIVERSAL CREDIT, CHAPTER 2 CLAIMANT RESPONSIBILITIES

'Introductory' - Clause 14 - Claimant Commitment

18. **The Committee may wish to seek clarification from the Department regarding the requirement for a claimant or "both members of a couple" to enter into a claimant commitment as part qualification criteria for Universal Credit.**
19. This provision may have an impact upon for those with dependents and for women who are typically the primary carers in many households. We are concerned that if only one member of a couple accepts the claimant commitment and the other refuses, then both parties may be penalised. We believe this clause may have an unintentional adverse effect particularly when children are involved.

'Work-related requirements: supplementary' - Clause 25: compliance with requirements and 'Reduction in benefits' - Clause 26: Higher-level sanctions and Clause 27: Other sanctions

20. **The Commission urges restraint in the blanket application of these sanctions and recommends that each case should be considered on its own merits taking into account the Departments equality obligations under Section 75 and the Disability Discrimination Act 1995 (as amended).**

'Introductory', 'Work-related requirements', Application of work-related requirements', 'Work-related requirements: supplementary' and 'Reduction in benefits' – Clauses 13 to 18, 21 to 27 and Clauses 58 and 59

21. **The Committee may wish to determine what measures are in place to provide support to parents with young children to meet the conditionality**

⁵ RNID and BDA (2009) 'Access to Public Services for Deaf Language users'

⁶ ECNI (2008) 'Formal Investigation under the Discrimination legislation to evaluate the accessibility of Health Information in Northern Ireland for people with a Learning Disability, June 2006 to December 2007' See [http://www.equalityni.org/archive/pdf/FormalInvestDisability\(Full\).pdf](http://www.equalityni.org/archive/pdf/FormalInvestDisability(Full).pdf)

⁷ Office for National Statistics (2011) (ONS) 'Internet Access Quarterly Update 2011, Q1, <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=5672> Note: The disaggregated figures for disabled people in Northern Ireland contained in the raw data for this survey were unpublished and were obtained by Disability Action from the ONS in May 2011

⁸ Disability Discrimination Act (DDA)1995 as amended by the Disability Discrimination(Northern Ireland) Order 2006

⁹ Disability programmes and policies: How does Northern Ireland measure up? Monitoring Implementation (public policy and programmes) of the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") in Northern Ireland. Full Report. Harper, C., McClenahan, S., Byrne, B., & Russell, H. (Disability Action). Equality Commission for Northern Ireland, Belfast (2012). <http://www.equalityni.org/archive/pdf/UNCRPDFullReportFINAL260112.pdf>

requirements of entitlement for Universal Credit / Income Support, and for those parents belonging to the Employment Support Allowance work-related activity group.

22. Here, we are concerned with Clauses 13-18, 21-27 58 and 59, and the Lone Parent Conditionality in respect of entitlement to Universal Credit / Income Support and Employment Support Allowance. The Commission is concerned that the lone parent conditionality, and the lack of appropriate, accessible and affordable childcare in Northern Ireland, may restrict¹⁰ a claimant's ability to seek education and training opportunities and may undermine, or run counter to, the plan within the Northern Ireland Executive's Economic Strategy to "improve the skills and employability of the entire workforce so that people can progress up the skills ladder, thereby delivering higher productivity and increased social inclusion".
23. The Assembly needs to provide the appropriate support infrastructure to assist lone parents into work, such as affordable and flexible childcare to help lone parents find sustainable employment.¹¹ The Committee should note that the statutory obligation to provide childcare is applicable only to England, Scotland and Wales. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation, where both the availability and affordability of childcare does not meet the demand or the needs of local families¹².

PART 1 UNIVERSAL CREDIT, CHAPTER 3 SUPPLEMENTARY AND GENERAL

'Supplementary and consequential' - Clause 32 – Supplementary and consequential amendments and Schedule 2: Universal credit: amendments

24. **The Committee may wish to seek clarification as to whether a claimant reaching the qualifying age for Pension Credit will be subject to the conditions and sanctions associated with entitlements of Universal Credit until their partner reaches the qualifying age requirement for Pension Credit. The Committee could also seek assurances that this clause will not result in the loss of income for couples where one partner has not yet reached the qualifying age for Pension Credit.**
25. We are concerned about the qualifying criteria for Pension Credit. In that, a member of a couple who has attained the qualifying age for Pension Credit may

¹⁰ NI Welfare Reform Group Briefing Paper - Welfare Reform Bill, Second Reading House of Lords July 2011 page 4 - Evidence suggests that forcing lone parents of children under 5, the majority of whom are as the consultation paper acknowledges are women, would have an adverse impact on both the parent and the child / and older siblings - limiting educational and training opportunities to enable good quality work opportunities as opposed to a low pay unskilled job, as well address the need for quality child care that meets the 'best interests' of the child. It should also be noted the correlation between low income families and the increased likelihood of child poverty. Save the Children research points out that 21% of children in Northern Ireland live in persistent child poverty which is double the GB percentage rate, and severe child poverty stands at 40,000, almost 10%.

¹¹ NI Welfare Reform Group Briefing Paper - Welfare Reform Bill, Second Reading House of Lords July 2011 page 4

¹² Employers for Childcare Charitable Group (2011): Northern Ireland Childcare Cost Survey 2011 <http://vouchers.employersforchildcare.org/media/Website%20Version%20-%20Childcare%20Cost%20Survey%202011.pdf>

not receive it until their partner has reached the same qualifying age. We recommend that the Committee reviews this provision for the purpose of clarifying its intended effect. It is not clear whether those claimants who reach the state pension age are prevented from claiming Pension Credit because of the age status of their partners when their partners continue to be subject to requirements / conditionality of entitlement for Universal Credit.

'General' - Clause 38 - Capability for work or work-related activity

26. **The Committee may wish to determine what measures will be taken for the implementation of Work Capability Assessments for work-related activity, under the Universal Credit, taking into account the failings of the similar assessment process for the transition from Incapacity Benefit to the new Employment Support Allowance, to ensure that fair, appropriate and individualised assessment processes and practices are put in place in Northern Ireland.**
27. The Commission strongly recommends a review of all procedures in determining a person's capability for work-related activity and employment, given the recent controversy and media attention¹³ around the Work Capability Assessments for the transition from Incapacity Benefit to Employment Support Allowance. In any assessment of this nature, it should include evidence from the claimant as well as medical evidence from the claimant's own doctor, or relevant medical professional, and not left solely at the discretion of an independent medical assessor who has no previous knowledge of the claimant's health condition or personal circumstances. According to the Department's own figures, we note that approximately one third of Work Capability Assessments, in respect of the transition from Incapacity Benefit to Employment Support Allowance, are overturned on appeal¹⁴.

'Regulations' - Clause 42 – Pilot schemes

28. **The Committee may wish to determine what measures are in place to assess the effectiveness of the implementation of Universal Credit, including proper consideration of any adverse equality impacts, for example, what independent review and monitoring frameworks are in place to assess the outcome and impact of the implementation of Universal Credit.**
29. In respect to the pilot schemes of the regulations under Part I of the Bill, we recommend that the Committee considers this in the context of the ongoing statutory equality duties on the Department, to ensure that the information gained from any pilot schemes assists in the monitoring of policies for adverse impacts, in line with Equality Scheme commitments. The Commission expects that all matters decided upon during implementation of the provisions of the current Bill will be assessed according to the commitments in the Department's Equality Scheme (or that of any other implementing organisation), particularly

¹³ See "*Disability news roundup: Work capability assessment investigated*" for a snapshot of the discussion. http://www.bbc.co.uk/blogs/ouch/2012/08/disability_news_roundup_work_c.html

¹⁴ "67% of Employment and Support Allowance appeals upheld in Department's favour"
<http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dsd/news-releases-dsd-august-2012/news-dsd-010812-esa-appeals-upheld.htm>

the policies will be screened and if necessary, subject to an Equality Impact Assessment.

PART 2 WORKING-AGE BENEFITS, CHAPTER 1 JOBSEEKER'S ALLOWANCE

'Claimant responsibilities for interim period' – Clause 47 (and related clauses) - Sanctions

30. **The Committee may wish to ask the Department to outline what steps have been taken to ensure that disabled people / older people are not unduly penalised for failing to meet the requirements of entitlement for Job Seekers Allowance by taking account of claimant's individual circumstances.**
31. The application of sanctions, as specified in Clause 47 of the Bill, should be considered on a case by case basis, and in light of the effects a person's disability may have on that person in respect to failure to attend work-focused interviews, in leaving a job, and in refusing or failing to apply for a job. For example, a person with recognised mental health issues such as "depression" may be unable to meet all the conditions and requirements of entitlement during the timeframe in which their disability is symptomatic, and has an impact on their decision making abilities, in relation to accepting job opportunities and retaining employment etc. It is important that cases of this nature are considered on their individual merits and that sanctions are not applied without proper consideration of the individual claimant's personal circumstances.

PART 3 OTHER BENEFIT CHANGES

'Housing benefit' - Clause 69 – Housing benefit: determination of appropriate maximum

32. **The Committee may wish to ask whether assessments for Housing Benefit will fully take into account the needs (and rights) of tenants who are disabled, or who are separated from their partners and require additional rooms to respectively accommodate their carers and children. Furthermore, whether assessments for Housing Benefit will fully take into account of the tenants' ability to move to new accommodation considering the separate nature of social housing in Northern Ireland. The committee may wish clarification that tenants under these circumstances will not be placed under financial hardship.**
33. Clause 69 relates to the introduction of the size criteria into the calculation of housing benefit for working age tenants in the social rented sector. The Commission is concerned that the Department ensures that Housing Benefit assessments of disabled persons and separated parents, including those in similar situations, fully takes into account the needs (and rights) of these groups. Furthermore, the Commission is concerned in regard to a tenant's ability to move may be severely restricted, due to the separate nature of social housing in Northern Ireland. Therefore, the tenant may be placed in financial hardship because of a reduction in benefits due to under occupancy.
34. In implementing this provision, consideration should be given to the individual circumstances of each claimant and the support networks available to them in the communities and localities in which they currently live. For example,

informal support networks developed by disabled people to meet their day-to-day living and mobility requirements, in particular those disabled people who may not be entitled to the new Personal Independence Payments or any additional consideration as a result of changes to their benefit entitlement status may still require additional rooms to meet their care / support requirements to deal with the affects of their disability.

35. The Commission recommends that the Department delay implementation of this provision / clause until appropriate housing stock is available to facilitate this provision, through the implementation of the current draft Housing Strategy¹⁵. The Minister has acknowledged in previous statements to the Assembly that the Northern Ireland housing infrastructure cannot accommodate claimants affected by this provision, in particular, those claimants who require 1-2 bedroom accommodation¹⁶.

‘Social fund’ - Clauses 70, 72 and 73 - Ending of discretionary payments, Determination of amount or value of budgeting loan and Community care grants

36. These clauses refer to the ending of discretionary payments from the ‘existing Social Fund. The Bill does not make clear, at this stage, what alternative arrangements are in place in relation to budgeting loans, crises loans and community care grants. The Northern Ireland Assembly should continue to invest the same level of resources in this core provision, and retain a non-loan grant scheme for those assessed as being unable to repay loans as a result of financial hardship.

PART 4 PERSONAL INDEPENDENCE PAYMENTS

‘Personal independence payments’- Clauses 76, to 79

37. In wider responses¹⁷ we have raised concerns regarding the higher qualification criteria under the Personal Independence Payment (PIP) compared with the existing Disability Living Allowance¹⁸ (DLA) and that the experiences faced by disabled people through the implementation of the ATOS assessment scheme for ESA and DLA (and the subsequent very high percentage rate of successful appeals for those refused DLA) should not be replicated for the implementation of PIP and that people currently in receipt of the DLA care component should not lose out under Personal Independence Payment (PIP).

¹⁵ *Facing the Future: Housing Strategy for Northern Ireland. Consultation on Northern Ireland Housing Strategy 2012-2017.* Department for Social Development (2012) Department for Social Development. <http://www.dsdni.gov.uk/housing-strategy-consultation.pdf>

¹⁶ Welfare Reform Bill: Second Stage (9th October 2012).

¹⁷ Equality Commission response to Department for social Development Call for Evidence for the Independent Review of the Work Capacity Assessment (Professor Harrington), and ECNI and NIHRC (2011) Evidence to the Joint Committee on Human Rights (JCHR): Inquiry into the implementation of the right of disabled people to independent living as guaranteed by Article 19, UN Convention on the Rights of Persons with Disabilities.

¹⁸ The proportion of working age people in receipt of DLA in Northern Ireland is approximately twice the level in Great Britain - 10.3 per cent of the Northern Ireland population (http://www.dsdni.gov.uk/dla_publication_august_10.xls). Reform of the DLA system therefore could result in many thousands of disabled people in Northern Ireland losing entitlement to this benefit or receiving reduced support – with potential impact on personal mobility; independent life in the community and adequate standards of living.

38. The Commission has responded to both consultations undertaken by DSD and DWP regarding the regulations for the introduction of Personal Independence Payments. The Commission is not aware of the outcomes to responses to the two recent public consultations on the Personal Independence Payments.

'Entitlement and payability: further provision' - Clause 85 – Hospital in-patients

39. In respect to Clause 85 of the Bill, there appears to be no account taken of our recommendations regarding the withdrawal of the mobility component of the Personal Independence Payments for hospital inpatients. The Bill specifies that for the first 28 days after the claimant becomes a hospital inpatient that they will continue to receive the relevant disability benefit after which time it will be withdrawn. We have recommended to the Department that this period be extended for disabled adults to approximately the same period allowed for disabled children to retain the mobility component. We do not see the justification for limiting access to the mobility component for adults in comparison with the extended timeline provided for children¹⁹.

¹⁹ Equality Commission response to DSD Draft Consultation on DLA Reform and Personal Independence Payment (PIP) – Completing the Detailed Design (2012)http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Disability_consultation+responses&cmsid=7_33_229&id=229

ANNEX 2:

The Equality Commission for Northern Ireland

40. The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
41. The Commission's remit also includes overseeing the statutory duties equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations, as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).
42. The Commission, along with the NIHRC, has also been designated as the ‘independent mechanism’ in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).

30 October 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Ms Paula Bradley
 Ms Pam Brown
 Mr Michael Copeland
 Mr Sammy Douglas
 Mr Mark Durkan
 Mr Fra McCann

Witnesses:

Ms Evelyn Collins
 Mr Darren McKinstry
 Mr Tony O'Reilly

*Equality Commission
for Northern Ireland*

1. **The Chairperson:** I formally welcome Evelyn Collins, chief executive of the Equality Commission; Darren McKinstry, the director of policy and research; and Tony O'Reilly. You are very welcome, folks.
2. I remind members that the briefing paper from the Equality Commission is before them. A copy of the commission's response to the equality impact assessment (EQIA) in 2011, and a briefing paper for the Committee from March 2012 may also be found in the folders.
3. Without any further ado, I invite you, Evelyn, and your colleagues, to brief the Committee. The floor is yours.
4. **Ms Evelyn Collins (Equality Commission for Northern Ireland):** Thank you very much, Chair. We are very pleased to be here again as you engage in your important work of scrutinising the Bill that has now been published. We appreciate that you are devoting a great deal of time and energy to it. We think that this is very important.
5. I am accompanied today by Darren McKinstry, who was with me in March, and by Tony O'Reilly who has not been with us before.
6. As you said, Chair, we have submitted a briefing paper outlining some of our concerns and queries about the equality implications of some provisions in the Bill. I appreciate that you will want to ask us about those in some detail. Darren will present them in summary terms after I have said a few words. Then, obviously, we will be happy to deal with any questions that you may have.
7. Our briefing is based upon our statutory remit. You know that we have specific powers and duties under the various anti-discrimination statutes and in respect of the equality and good relations duties of public bodies arising out of the Northern Ireland Act 1998. As we have said to you before, we have also been designated, jointly with the Northern Ireland Human Rights Commission (NIHRC), as an independent mechanism to promote awareness of and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities, with regard to the Government's obligations in Northern Ireland.
8. We said in our earlier briefing — and I am glad that members have copies of it before them — that, although the commission agreed with the broad policy aim to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency, we saw then that there was a real need to properly understand, consider and respond appropriately to the potential impacts of the proposed reforms. We said to you that we had concerns that some reforms aiming to encourage people into work might not reflect the fact that barriers to employment exist for particular groups of people — people with disabilities, older people, non-working women and so on — which are often social or institutional, not individual, and that, without appropriate support, it is not right to assume that everyone has the ability to improve their own situation. At that stage, we had particular concerns which we shared

- with you about universal credit, lone-person conditionality, housing benefit cap and disability benefit reforms. Those are some of the issues about which we still have concerns.
9. We also advised you in March that we advised policymakers in the Department for Social Development (DSD) not only about the requirement but the critical importance of assessing the potential equality implications of the policy proposals. Again, I heard you say that it is in members packs. We had concerns about the Department's draft EQIA, and you have copies of those. Some of those concerns remained when the final EQIA was published in May. Again, we raised those concerns with the Department.
10. You will know that the Minister indicated on 4 May, when publishing the final EQIA, that he intended that the Department would continue to look at the possible equality impacts as the Bill moves forward, and also that work was ongoing in his Department to analyse the impact of policies across the various section 75 groups.
11. We have engaged further with officials and have been assured that that will be the case; that the original EQIA was the first part of what they intend to be a lengthy assessment process to determine the impact of the various elements of the Welfare Reform Bill; and that there will be further equality screening and, possibly, further EQIAs carried out on the detail of some of the reforms and indeed, more particularly, as regulations are made. We understand that this is, in their own words, an "enabling" piece of legislation.
12. We have also been assured that the intention is to update the EQIA, and that it is a living document. The Department intends to update the EQIA following a review of additional data received from HMRC recently, which, the Department says, will improve the information available and its ability to identify potential adverse impacts.
13. So, we expect that the data that the Department now has will be significant in relation to the detailed proposals that will be contained in regulations. Officials have said that, as each set of regulations is prepared, the proposal will be screened for differential impact to assess the need, or otherwise, for an EQIA. This is an area in which the commission will maintain a close watching brief, continuing to monitor what the Department is doing and advise it of its equality duty obligations and responsibilities.
14. We know that it will also be of interest and importance to the Committee to monitor this and scrutinise the results of any screening and, indeed, EQIAs and, importantly, to consider any mitigating measures put forward by the Department to address potential adverse impacts, as it is obliged to do under section 75 of the Northern Ireland Act.
15. We are now seeing the outworking of the policy proposals on welfare reform in the draft Bill. We have looked to see what equality implications there may be across the various groups covered by the section 75 duties. We understood from your request for evidence today that you wished us to focus on the provisions of the draft Bill as it stands, and that is what we have done. We have gone through the Bill and have highlighted a number of those issues. There are probably others and, indeed, looking at some of the evidence that you have already received, there are certainly some others in which we will want to take an interest. However, you have seen in our briefing our first cut through since the publication of the Bill.
16. I will ask Darren to take you through the summary of the document. We are here to answer any questions.
17. **Mr Darren McKinstry (Equality Commission for Northern Ireland):** Good afternoon, all. As Evelyn mentioned, the Bill is an enabling framework, which gives us some difficulty in providing detailed comment on a lot of the detail, which will come in the regulations that will follow. However, we have tried, in the

- paper that we have made available to you, to comment on a clause-by-clause basis. I will pull together some of the key themes and summarise them.
18. We noted the flexibility indicated recently by the Minister, and our view is that it is important that ongoing consideration is given to the flexibilities proposed and to other flexibilities that may be available. One of those is the initial proposal that universal credit will be paid to the main earner, who is usually a male. We argued that we thought that that effectively reversed the social security provisions and reforms of the 1970s. In our paper, we propose that consideration is given to making that payment, not to the main earner but to the primary carer or second earner to facilitate more equal access to funds and use of funds in the household but with the option for splitting as necessary.
19. We have identified a few points for clarification, where we feel it is not easy to tell the intended direction of travel. Existing passported benefits is one key area for us. It is not clear to us how that will go forward or, indeed, exactly how that will link in. In our recent consultation, in a response to the personal independence payment (PIP) regulations, we highlighted that we were concerned that those who are already being assessed for PIP would have to take a further work capability assessment for some income-related benefits that are already passported under disability living allowance (DLA). So, there are extra steps, which may affect efficiency and create onerous requirements. We are concerned that this may lead to a loss of income, which, in itself, could further drive disadvantage.
20. In the paper, we note the intention to move to a more online system. Some other submissions that you have had over the past week or so have made similar points about lower internet usage in Northern Ireland and particular barriers for equality groups. In a recent UK survey, 47% of those who were Disability Discrimination Act (DDA) disabled said that they had ever used the internet, compared to 80% of non-DDA disabled. Those patterns are very different. Our view is that it is important that safeguards are in place to ensure that information collected or made available is accurate and accessible, that the benefit calculations are appropriate and that any sanctions on timelines for responding or actioning take account of people's access and ability to access.
21. As far as the claimant commitment is concerned, we recommend that clarification is sought on how clause 14 is intended to operate for couples. We would be concerned if both members of a couple or their families were to be sanctioned when only one party in the couple failed to sign up or comply with that commitment. We want to see general sanctions across the board carefully applied so that their application takes account of the individual circumstances that may impact on people's ability to comply, such as disabilities or access to childcare, and that may affect timelines for actioning things. A range of things could be looked at.
22. Clause 38 deals with pension credit. As was raised in some submissions last week, we also encourage the Committee to seek clarification on how that will work and its intended effect where one part of the couple has reached the age for pension credit but the other has not. We should also seek clarification on how universal credit sanctions and conditions will be applied in that situation.
23. We note that clause 42 includes provisions for pilot schemes. We are not aware of any that are intended for Northern Ireland, and we encourage clarification to be sought on what, if anything, might be intended for Northern Ireland. Those pilot schemes could play an important role in considering the equality impacts in Northern Ireland to make sure that whatever is implemented is appropriately tailored to our needs. We note the clauses relating to the end of the existing social fund. It is not clear to us what is intended to replace that, and we certainly encourage that

- sufficient resources are allocated to whatever is intended to replace it.
24. I will highlight some of the concerns that we have raised previously and which we are raising again in this paper. We have highlighted concerns about the Atos assessments and the fact that a third of them are being appealed against successfully. It is important that lessons are learned from that and are taken on board as we go forward.
25. We have previously highlighted our concerns about housing benefit and the caps therein. It is important to take account of the needs of different groups, such as: people with disabilities and fluctuating care requirements, who may have a fluctuating need for live-in care; and separated parents with various child access arrangements. Also — and I know you are aware of this point, given the available housing stock in Northern Ireland — our ability to move to a system when we do not necessarily have the stock in place to facilitate it. There are similar concerns about lone-person conditionality in the context of available childcare in Northern Ireland.
26. I will wrap things up, or pull those points together as regards the importance of enabling provisions in Northern Ireland being available. In GB, welfare reform is operating in the context of a number of provisions that are not yet present in Northern Ireland. The Childcare Act 2006 in GB sets out a requirement on local authorities to meet childcare needs. We do not have that requirement here. We are developing a childcare strategy, but it is important that it focuses not just on child poverty but on maximising economic participation. That plays an important role. There are things such as the work programme that is underway in GB. As Mr McCausland said at the start of the year, the introduction of such a work programme is critical for Northern Ireland, so it is important to see that. And again, there is the housing issue, which I have just mentioned.
27. It is vital that the Bill, as it comes forward, takes account of the specific situation in Northern Ireland, and I have given some examples of that.
28. We are happy to take any questions.
29. **The Chairperson:** Thank you very much. I open the session to members' questions.
30. **Mr Copeland:** I have a general question. I am uncomfortable, in some ways, because it requires a degree of speculation.
31. I am given to understand that the United Nations Convention on the Rights of Persons with Disabilities lays an onus, or some very clear responsibilities, on Governments. In particular, articles 19, 23 and 28, deal with:
- “Living independently and being included in the community”;*
- “Respect for home and the family”;*
- and
- “Adequate standard of living and social protection”.*
32. On the basis of what you have seen so far, do you believe that the Welfare Reform Bill should remain unchanged? Does it breach any of those articles? If you believe that it does, have you reported your concerns to the Office of the First Minister and the deputy First Minister (OFMDFM), as the lead Executive office concerned with protecting and ensuring compliance with anti-discrimination legislation? What are the potential consequences of a UN convention being breached? To the best of your knowledge, has Northern Ireland, or any other constituent member, ever breached such a ruling?
33. **Ms Collins:** My word. Thank you for such an important question. I think that it would be fair to say that, in the time available, we have concentrated on looking at the potential equality implications of the clauses of the Bill. I know that the Human Rights Commission will follow us and will have been looking at this from the point of view of international human rights treaties. They may well have brought a somewhat different focus to it than us.

34. On our reading of the Bill to date, we have not said that there is a very obvious standout breach of the UN convention. However, in our joint monitoring role, we have ongoing discussions with OFMDFM about the importance of ensuring that the obligations contained in the convention are implemented fully in Northern Ireland. That goes with the disability strategy that OFMDFM and others were consulted on. There are concerns around people with disabilities in particular and with the impact that some of the reforms may have. One of the issues we highlighted in our response to you today is that there are some areas in which the devil will be in the detail of further regulations, or where it is not clear on the face of the Bill what precisely the implications might be. We would want to push the Department for clarity on those.
35. **Mr Copeland:** On your last point, pretty much everyone around the Table is concerned that we are dealing with enabling legislation, whereas the real bite will come in the regulations. In your view, is it possible for us to arrive at any sensible conclusions regarding the bit that we see now in the absence of the regulations?
36. **Ms Collins:** It is difficult for everyone to see the full implications, but I think that there are certainly questions to be asked of the Department about what is in the Bill. We need further clarification about intention and so on, and it is possible for you to exercise your scrutiny role and for us to raise concerns or ask for clarification about the impacts. As I said in my opening remarks, I think that it is important that we hold the Department to account on its equality obligations when it does its screening and equality impact assessments, where necessary, on the regulations. It has assured us that it will do that. The devil will be in some of that detail, and we will have to be very careful to scrutinise it.
37. **Mr Brady:** Thanks very much for your presentation. I just have a few questions.
38. Some of the groups that have given us submissions have indicated that they would consider a statutory right to independent advice. In other words, they want to make sure that people who claim whatever benefit have the right to independent advice. What are your thoughts on that?
39. My next question is on the sanctions. If someone has a good reason for losing their job, whether that is through misconduct or whatever, they may not be sanctioned. However, if, for instance, someone has an undiagnosed mental health problem that could be an issue.
40. We hear so much about parity, and it is always assumed that it is, necessarily, about money, and, I suppose, to a large degree it is. However, while listening to the radio yesterday, I learned that a survey has been done in Britain. It found that if someone is to have a decent standard of living, they need an hourly wage of £7.20, yet the minimum wage here and in Britain is £6.19 it went up by 11p a couple of weeks ago. That survey indicated that people in the North will be much harder hit, as we live in a minimum wage economy.
41. I have asked you this question before, and I do not want to put you on the spot too much. It is not just about the regulations; it is about the guidelines. The guidelines will play a very important part in the Department's attitude to sanctions, because there will, hopefully, be discretion involved, and objective rather than subjective decisions will be made on the basis of the guidelines. If the Bill does not comply with equality regulations, what takes primacy? Section 75 considerations are unique to the North and do not apply in Britain, and there all sorts of other issues that you mentioned, such as the lack of childcare and statutory provision for childcare in Britain was introduced in 2006. How does that all tie in? If the Bill is not compliant, how will that interact with section 75 considerations that might have primacy?
42. **Ms Collins:** I will deal with the last point first and work backwards. When we were here in March, we discussed what the requirements of equality and

- good relations are on the Department. It is quite clear that the Department has to implement its equality scheme, and, as part of that, it has to consult on the potential impact of its proposals under its section 75 and schedule 9 obligations. That took place last year, and the reaction was that its treatment of the implications could have been much better. It was not just the Equality Commission that said that to the Department.
43. In my introductory remarks, I said that we have focused very much with the Department on trying to ensure that it looks at and properly assesses the actual or potential implications of its proposals, and that it takes that into account when bringing forward its policy proposals. That requirement stands on the Department, regardless of what is in play in the rest of Britain, and it has to pay due regard to equality of opportunity in this as in other things within its framework. As we discussed before, you cannot really say that that trumps anything else. The Department has a set of obligations that it has to comply with, one of which is its section 75 duties.
44. In the context of establishing a decent standard of living and having an appropriate minimum wage, I am not sure whether the Department is responsible for setting the minimum wage here. One of the key things that is important about that — perhaps it goes back to the previous question about whether any of us have a full picture of the potential implications — is that a number of other issues will impact on its outworking. For example, DSD published a housing strategy recently that may have overall implications for housing going forward and that will need to be taken into account. That is difficult. As to whether section 75 obligations trump or take primacy over everything else, section 75 obligations are one of a number of obligations on the Department and need to be effectively applied.
45. **Mr Brady:** Obviously, I accept what you said, but, at some stage, a decision may have to be made when the regulations or the guidelines are published. The reason that I raised the minimum wage is that it highlights more inequalities that persist here than necessarily do in Britain. If parity compares like with like, we are at an obvious disadvantage. That was really the point that I was making.
46. **Ms Collins:** Yes. We have been quite clear that the specific situation in Northern Ireland is the situation that the Department is working in. The number of adjustments that the Minister announced last week show that adjustments can be made to make the provisions as relevant as possible to the Northern Ireland situation. It is about paying due regard to the specifics of the Northern Ireland situation.
47. The first question you asked was about the statutory right to independent advice. I am afraid that I am not familiar with the regulations that might impact on that statutory advice.
48. On the questions of sanctions, I hope that we have been quite clear in our response and more generally that whatever sanctions are used have to take account of the different circumstances people are in. Of course, the fact that people in Northern Ireland may be suffering from mental ill-health may impact on their approach to benefits. That has to be taken into account. There cannot be blanket sanctions that do not take account of individual circumstances, whatever they may be. I think that that is a very important point that the Committee should scrutinise in the context of the Bill.
49. **Mr Brady:** Finally, the point has been raised that claiming universal credit is predicated on making an application. That is the simplification. In my constituency, there is a huge rural hinterland. People simply do not have access to broadband or, in some cases, they do not have the ability to use computers or access to them. There is an almost universal acceptance that people have the internet at their fingertips, but that is simply not the case, and I am sure that it applies to many other constituencies.

50. In Britain there are huge urban areas, in which it is incumbent on providers to ensure that there is instant internet access. There is also the issue of mobile access being provided through Everything Everywhere (EE). That will happen in 10 cities in Britain, but, of course, it will not happen until Christmas or afterwards. In a sense, that is another inequality.
51. Part of the difficulty here is that, in many cases, people need face-to-face contact. That is particularly the case for those with mental health problems, yet the Department may not have the resources available. Access might be seen as another equality issue.
52. **Ms Collins:** There are two issues, are there not? The first is the access to an online facility and the second is the ability to use that effectively. Like many people, I have to get my children to help me with some of these things on occasions. It is also important that these are the sort of things on which there should be an impact assessment. What impact will having such a facility have on the range of people covered in the section 75 category?
53. **Mr Brady:** A lot of the true impact will not be felt until the regulations and guidelines are outlined. Thanks very much.
54. **Mr Douglas:** Thank you for your presentation. My point probably follows on from Michael Copeland's about human rights and equality. I got the impression during the Assembly debate on welfare reform that the Minister had got legal advice that assured him that the Bill was human rights and equality compatible. The suggestion here is that you and the Human Rights Commission had little or no contact with the Department, although I think that you refer to it. Are you happy enough with the discussions that you have had with the Department to date?
55. **Ms Collins:** We are in contact with the Department. We made our submission on the equality impact assessment and I hope that we made our points clearly and that they were understood by the Department. We have had engagement at permanent secretary level about the importance of these matters. As I said in my introduction, we have had some assurances that more information has become available through HMRC that enables the Department to look more closely at the potential impacts and that they are continuing to do that. The Department understands that that is important and that there is a commitment to screening — taking a preliminary look at — the proposals and regulations and to conducting equality impact assessments as this is rolled out. We have had that assurance at senior level.
56. **Mr Douglas:** Is that ongoing?
57. **Ms Collins:** I talked to them on Friday about some of these issues, and, as I said, we recognise that we have an important role in advising Departments and ensuring that they are doing what they ought to be to comply with section 75 requirements. That is our ongoing function.
58. **Mr Douglas:** I have another two quick questions. You recommend that the Committee considers supporting the payment of universal credit to the primary carer, who is usually the mother. Would doing that discriminate against men?
59. **Mr Tony O'Reilly (Equality Commission for Northern Ireland):** The question relates to the primary carer and does not assume that person to be either a woman or a man. In some cases, the primary carer may be a male single parent or a female lone parent. The basic aim in this instance is to protect the child. Non-carers who are given the money have a tendency not to consider the wider implications of how it is spent, whereas the primary carer will always consider household matters and their caring responsibilities.
60. **Mr Douglas:** A lot of organisations have told the Committee that it should specify that the mother should be sent the money. Would that cause any equality problems for you?

61. **Mr O'Reilly:** We specify the carer and not so much the mother. Yes; the mother is generally assumed to be the primary carer —
62. **Mr Douglas:** I think that we agree on that, anyway. I was just checking. What is your view on the possibility of split payments, as indicated by the Minister?
63. **Mr O'Reilly:** The Minister indicated that split payments could go to both parties in a household. That goes some way towards addressing the matter, but not quite far enough in the sense that the primary care-giver would have more responsibilities and, therefore, more financial obligations in their role. That would not necessarily always be the case for the other recipient of the split payment.
64. **Mr McKinstry:** Our default position would be for payment to go to the primary carer, with the option of allowing people some flexibility for split payments.
65. **Mr F McCann:** I want to follow up what Sammy said. He started by asking about meetings with the Department. There is a big difference between having meetings and getting some common ground on equality impact assessments. There are quite a lot of different elements and parts of the Bill that people would say — *[Inaudible.]* Are you happy and content — maybe those words are too strong — that the Department will follow through with that and that that may result in some changes to the Bill?
66. **Ms Collins:** I think I have to take that when the Department says squarely — and it has said it to you as well —
67. **Mr F McCann:** I thought that you were going to plead the fifth amendment.
68. **Ms Collins:** The Department officials have also said to you in evidence that they will continue to scrutinise and undertake screening and equality impact assessments. We have to take that and monitor that they do it and that they do it appropriately with the right levels of information and that, where they identify a potential adverse impact, they look seriously at potential mitigating measures. That is an important role that the Department has to play in terms of its obligations. We have an important role to work with it to ensure that that happens, and the Committee has an important role in scrutinising what it does.
69. **Mr F McCann:** I will follow on by talking about pilot schemes. A number of pilot schemes have been rolled out in Britain. Mickey said earlier that there are clear differences between here and Britain. Would it be a breach of equality regulations to try to impose a pilot scheme here that reflects a different region?
70. **Mr McKinstry:** The lessons that can be drawn from any pilot scheme will be dependent on who is involved in it. So, if the characteristics of those involved in GB are different from the characteristics here, the lessons may not necessarily map on. There may be generic lessons that map on but maybe not specific lessons. The key thing is that the Department in Northern Ireland is required to consider the equality impacts in Northern Ireland and should use whatever information is necessary, whether it is some lessons from those pilot studies or further specific data relating to what is likely to happen here.
71. **Mr F McCann:** Would you advise the Department that it would be far better if a pilot scheme appropriate for the different considerations here is rolled out here to ensure that there is no breach of equality regulations?
72. **Mr McKinstry:** We would be very clear that it needs to consider the impacts in Northern Ireland, and, if that includes the need to run a pilot scheme locally, that is what it includes. It is about the equality impacts in Northern Ireland.
73. **Mr F McCann:** I say that because, back in maybe 2007 or 2008 when the local housing allowance was introduced here, one argument was that it was being done based on pilot schemes in the north-east of England. At that time, you were able to argue for and get a pilot scheme running here that dealt with the peculiarities here. The background of

- that question is that there is already a precedent set for pilot schemes.
74. The issue is cross-departmental. What happens in the Department for Social Development has a knock-on effect for the Department for Employment and Learning (DEL), and one of the major problems that will exist is the migration of people on employment and support allowance (ESA) across into the work-related groups. I asked a question in the Committee for Employment and Learning the other day: will the people who work for DEL be in a position to cope with the mass migration of thousands of people across into that? After a bit of study, the officials said yes, but I took that as a departmental holding response rather than one that any thought had been given to. Surely thousands of people, many of whom are suffering from mental stress and mental illness, who are put into those groups will need decision-makers and assessors who have the level of experience to accurately assess what people can and cannot do. Would that be seen as going against the equality of a person who might be suffering from that or even against that of the person who has been asked to do it, if they have not been provided with the special training required?
75. **Mr McKinstry:** A different system will, by definition, have different requirements, different resource requirements. You asked about the skills of the people at the front line, and we have been clear in our responses that appropriate equality training needs to be provided to individuals to ensure that they are better placed and that appropriately skilled staff are there to ensure that proper assessments are made.
76. **Mr F McCann:** There are two things that we are trying to establish. The first is the level of training for decision-makers who look at cases and the second, which I think is also a big issue, is what is “good cause”. We have never been provided with an explanation of what is regarded as “good cause”. I think that we were provided with a list of what may be deemed to be “good reason”, but that was changed to “cause” for some reason. In your dealings with the Department, will you also be asking it what “good cause” is and how it would be implemented, particularly when imposing sanctions?
77. **Ms Collins:** A direct answer is that we have not yet, but that is not to say that we will not. Obviously, as the Committee scrutinises the Bill, we will be watching for other evidence and picking up on things that we need to be conscious of. Our briefing to you is our first run through the lengthy Bill. However, you made an important point about the interrelationship between the changes being brought forward by DSD and those that are the responsibility of other Departments with equality obligations. We will need to reflect further on how we ensure that other Departments connected with the reforms comply with their equality obligations. So, thank you.
78. **Mr McKinstry:** We also made related points in our response to the work capability assessment. Part of that response concerns ensuring that the right people with the right skills make such assessments, but it is also about ensuring that there is access to an appropriate range of information. The information to be taken into account in the assessment should include that from the individual and from other professionals, for example the individual’s GP and other medical professionals. In any assessment, it is important that the right information is taken into account.
79. **Mr F McCann:** The follow-on point that arises from that is the primacy of medical evidence, which is one of the things that Mickey and the Chair have argued. That has certainly concerned us, particularly in relation to assessments carried out by Atos. May I take it that in all these cases you would argue that the best medical evidence should be available for the protection of these people?
80. **Ms Collins:** Tony may want to come in on this, but further to that, we also have some concerns, which we did not voice in our briefing but have articulated over

- many years, about how disabled people are governed by a very medical model of disability that does not take into account the fact that many of the barriers are social. I said at the beginning that although an overall drive to encourage more people into work may be a very good thing, the fact is that there are specific groups of people for whom there are barriers to employment, including the absence of childcare, institutional barriers or more social barriers. We would certainly like to see a more clearly expressed public policy of using the social model of disability. Tony is much better equipped and more articulate than me on that issue.
81. **Mr O'Reilly:** In our response to the second review of the work capacity assessment that Professor Harrington undertook, we made it clear that it was not so much a question of who conducts the assessment but more how that evidence is broken down, presented and used.
82. The Committee is well aware of the criticism that the independent assessor has simply been used, and the assessor has said, "Right, we are under pressure to get such and such, and we will go with that." What evidence have they used? Is the evidence from the Department's doctor? Is it from a person who knows the witness, their experience and their circumstance? And, to what extent is the evidence taken from the witness? In other words, to what extent is, in this case, the disabled person involved in the process?
83. The difficulty with the Atos assessment is that it is not clear how that evidence has been gathered and put together, and to what extent each part of the evidence has been highlighted or leaned on in making a determination. That concern applies equally to the work capacity assessment for the move from incapacity benefit to employment support allowance and to the work capacity assessment that is associated with the income support supplements related to personal independence payment awards. The same criteria should apply. It is important for the Committee to consider that.
84. **Ms Collins:** In the detail of our submission on pages 11 and 12, we mentioned that nobody has yet heard the Department's response to the consultation on personal independence payments that it issued earlier this year. So we will have to see what the Department does in that area. Again, going back to its obligations, the Department is obliged to consult on and consider the equality implications and to take account of the consultation. That is not to say that the Department has to satisfy every single person it consults, because that simply would not be possible. However, it has to demonstrate that it has taken into account the consultation responses it has received.
85. **Mr F McCann:** I think that I asked a similar question the last time you were here. If, at the end of this process, you see that there are a number of issues that clearly impact on the equality of groups or individuals, then in the Assembly and the Department, will the section 75 implications that the Bill throws up supersede what comes from Westminster, or is it the other way round?
86. **Ms Collins:** As I said before, the Department is under an obligation to conduct its duties in line with the Section 75 obligations. In the Assembly now, there is scrutiny of the Bill and political discussion about what clauses will end up surviving the legislative process. The Department has to give you information on the equality implications. The Bill is in your hands, and you as the legislature have to look at implications, seek clarification, make amendments, and so on. As I understand it, once the Bill is in the House, it is a matter for you what you do with it. Clearly there are arguments about parity and so on that we have heard, but you are scrutinising it, and it is in the hands of the legislature.
87. **Mr F McCann:** If, at the end of this, you see that there are clearly equality implications, would you come back to us and say, "Look, we have identified a number of elements in the Bill that clearly have implications for people's

- equality”? Would you come back to us or would you go to the Department or the Executive? Under those circumstances, where does your power to ensure and protect people’s equality come into being?
88. **Ms Collins:** Our role is to provide advice to authorities about the conduct of their duties. Where the commission believes that an equality scheme has been breached, it can undertake an investigation into that breach. It can also assist individuals who believe that an equality scheme may have been breached. The conclusion or outworking of such an investigation would not necessarily lead to the striking out of any particular provisions of legislation or a particular policy, but it may lead to our asking the Department to undertake, for example, another equality impact assessment and to look more closely at mitigating measures that it might bring to bear.
89. The outworking of the duty does not necessarily dictate one particular conclusion. The Department has to satisfy us that it is engaged in the conduct of its duties properly and effectively. If it has gone through a process of an equality impact assessment, whereby it has identified potential adverse impacts and initiated mitigating measures, then even if we do not like the result and are not satisfied it has breached its equality scheme, it may not be possible to challenge that through the investigation process.
90. **Mr Durkan:** Fra beat me to the punch there. I was going to ask you what teeth the commission has in this instance. In my opinion and, I am sure, in that of other Committee members, there are clearly equality issues right throughout the legislation. We take that very seriously. Indeed, just last week, there was an attempt, through the Chair, to invoke Standing Order 35 in order to establish an ad hoc Committee of the Assembly to look at equality issues in the Bill and the equality implications thereof. I was going to ask about the investigation procedure. I believe that it is covered in paragraphs 10 and 11 of schedule 9 to the Northern Ireland Act.
- As outlined there, Evelyn, that involves the commission looking into individual aspects and reporting back. Does that put the ball firmly back in our court?
91. **Ms Collins:** No. If we thought that any public authority had potentially breached its equality scheme, we could initiate an investigation under paragraph 11. The paragraph 10 provisions that you mention relate to our role in assisting individuals who believe that a scheme may have been breached. However, under paragraph 11, we can initiate an investigation, seek information and bring forward a series of recommendations. If a public authority does not comply with those recommendations and findings, we have access to the Secretary of State to direct that the relevant public authority —
92. **Mr Durkan:** Have you ever done so before?
93. **Ms Collins:** We have for one council that we found had breached its scheme. We made a recommendation to it that it had not complied within a reasonable period of time. We asked the Secretary of State to direct that it should. He did, and the council did.
94. **Mr Durkan:** Can you envisage the commission doing that again?
95. **Ms Collins:** We have thought about it for a number of significant policies. Let me rehearse hypothetically. If we had decided to initiate a paragraph 11 investigation given our concerns about the equality impact assessment, which we are on record as saying that we felt was not good, the recommendation may have been that the Department does its equality impact assessment properly. We now have an assurance that the Department is looking at the adverse impacts of its proposals based on better information and intends to update its equality impact assessment and screen any regulations coming forward. We want the Department to undertake its obligations properly. Hypothetically speaking, that is probably where we would have got to if we had undertaken a paragraph 11 investigation.

96. **Mr Durkan:** I want to raise one other wee issue around the pension credit entitlement for couples. You say that we, as a Committee, should seek assurances that clause 32 will not result in the loss of income for couples in which one partner has not yet reached the qualifying age for pension credit. Earlier, we had a witness from Age NI who outlined quite starkly that there will be quite a significant loss of income for couples in that situation. I think that it is potentially £104 or £114 a week. Are there equality issues there?
97. **Ms Collins:** The section 75 obligations cover people of different ages, so the answer is yes, if there is an adverse impact. Our response recommends that you seek clarification from the Department about that. It is not clear to us exactly how that might work. There is obviously a concern that couples might be prevented from claiming their pension entitlements if one partner has not reached that age. That raises age issues.
98. **Mr O'Reilly:** Another concern about that clause is the conditionality and entitlement framework associated with universal credit. Would that apply to somebody who had reached the qualifying age for pension credit and would not be subject to requirements and provisions such as the underoccupancy rule in relation to housing? Are they now subject to that? That also needs to be clarified.
99. **Mr Durkan:** I had asked about this, but it became clear only in the previous session.
100. **Ms Collins:** When pounds, shillings and pence are added to it, it is very stark.
101. **Mr Brady:** You answered one of my questions, which was about equality proofing the enabling Bill and the regulations as they come out.
102. One of the big issues with conditionality is the claimant commitment. If one member of a couple does not sign it, the couple will not get universal credit. If one person does not sign it, it may be that he or she has mental health problems or has taken umbrage with the Department for whatever reason. It has been suggested that the person who does sign it should get universal credit for themselves and for any dependent children. Surely that would impact on the person who does not sign it for whatever reason.
103. It has not been made clear how much investigation goes into the reasons why that person has not signed it. Mark also asked the question about age. You articulated very well how someone may qualify for one aspect but be discounted from another. That will raise its head more and more, and it has to be addressed. The age aspect may be a human rights issue, but I am just thinking about the conditionality.
104. Another issue is the work search. Under universal credit, a person who comes into the work activity aspect will have to look for work for 35 hours a week. You would not even have time to work, because you would be spending so much time looking for a job. I do not mean to be too facetious, but you get the point.
105. All those issues are linked to conditionality. It seems that it will put a huge burden on people that is not there at this point. There are certain conditions, and nobody is disagreeing that there should be conditions. However, it seems that some of them will have an inordinately harsh impact on people, particularly at a time when we have about 60,000 people looking for 5,000 jobs.
106. **Mr McKinstry:** Two things spring to mind in respect of your point about claimant commitment. First, a couple or family as a whole should not necessarily be impacted by the actions of an individual. Secondly, any consideration of a sanction on an individual should be appropriately considered to take into account his or her personal circumstances. A disability or anything that affects a person's decision-making ability at any given time must be taken into account appropriately. We are very clear that sanctions across the board should take into account —

107. **Mr Brady:** I am sorry to interrupt. I go back to a point that I made earlier about misconduct. Say it is someone who has an undiagnosed mental health condition. What you are saying is that the individual circumstances must be looked at very closely.
108. **Mr O'Reilly:** It must be done on a case-by-case basis. You may determine after an investigation that something, whether a disability or another external factor, has impacted on a person's behaviour and proceed on that basis. Our submission states that things must be considered on a case-by-case basis, particularly when the behaviour is unusual or different and against a claimant's interest. Surely that would encourage somebody to come forward and say, "It is not in the claimant's interest to do this, so why are they doing it?" Reason and logic should be used in the application.
109. **Mr Brady:** Sometimes reason and logic do not exist.
110. **Mr Copeland:** My point has been partially covered, but I want to talk about the obligations of legislation. We are in the process of reflecting on legislation that was drafted in the rest of the United Kingdom and has come here. We have other laws and requirements that go above and beyond that. Does responsibility lie with us to amend this legislation to conform to our laws? If cost implications arise from that, are those costs due from us or from the people who sent us the legislation in the first place?
111. **Ms Collins:** In this instance, it is the Department that has an equality scheme and is responsible for bringing the legislative proposals to you. You have a decision-making and scrutiny role, but it is the Department that has an equality scheme that should not be breached.
112. **Mr Copeland:** So we could endorse legislation — lovely — and someone could take legal action and derive compensation on the basis of that decision.
113. **Ms Collins:** Although the provisions of the Northern Ireland Act relating to equality and good relations duties give individuals some right to complain that equality schemes have been breached, they are not the same as the anti-discrimination legislation, which gives individuals the right to claim race, age or sex discrimination and may go to a tribunal. If successful, that could trigger an award of compensation. It is two different types of legislation: one is the mainstream equality duty, the parameters of which are set out in section 75 and schedule 9 to the Northern Ireland Act; and the other is about the individual right of action in employment tribunals, which may lead to *[Inaudible.]* a finding of discrimination contrary to the anti-discrimination statutes.
114. **The Chairperson:** You are right to remind us that we have a statutory obligation to deal with the Bill as we determine. This ongoing evidence-gathering process is important in our deliberations. Clearly, as we move on in our deliberations, we will discuss with the Department the raft of issues that has been raised with us, including by your organisation, and we will address those issues with the Department directly. The Department is also looking at the evidence, and I take it for granted that it will be prepared to have that discussion with us. You, like many organisations, have made the point that it is enabling legalisation, so it is difficult in some ways to go further in scrutinising it because, even though we basically know what is in most of the regulations, we do not have them in front of us.
115. Nevertheless, we have to deal with what is in the Bill, and I am conscious of that. You have been engaged, to some extent, with the Department over a period of months, and you said that you have been given assurances from it. I do not want to put a pointed question unfairly to you, but, apart from assurances from the Department that it will give further consideration to equality issues, have you got one specific example of it saying, "We have looked at a, b or c, and here is our response"? That is

important because when I am making my mind up on the Bill's provisions, I have to determine on the basis of what is in front of me, not on what somebody might do. I am not impugning the integrity of anybody in the Department or anybody else for that matter who tells me that they will do something, but what you might do after I have signed on for a Bill is no good to me, to be quite frank.

monitor developments closely. We wish you very well with your deliberations, which are detailed and complex. I know that, as a Committee, you are well able for it.

116. **Ms Collins:** It is an absolutely fair question, Chair. Some additional information was considered in the final EQIA that was published on 4 May and dated April. In response to concerns raised, we sought some additional information but, as I said earlier, we were still not satisfied that that was sufficient. We have seen no further analysis since then, but I understand that departmental officials are working to analyse the data that they have received recently from Her Majesty's Revenue and Customs (HMRC). That will make it easier for them, but we will continue to raise the issue with them. There was some additional information in the final EQIA, and we have assurances, but we have not seen anything concrete. I understand that they are still working on it, and we welcome your asking the Department about the issue.
117. **The Chairperson:** Thanks very much, Evelyn, Darren and Tony for your contributions this morning. For the record, we are due to make our report by 27 November. We have taken in the region of 40 written submissions and 20 oral presentations, some of which are by way of coalition. That is an important stakeholder engagement. I thank you for helping us in our consideration of the Welfare Reform Bill, and, no doubt, we will be in discussion with you again.
118. **Ms Collins:** Thank you for that and for inviting us today. We remain at your disposal. If we can get clarification or any further information, it goes without saying that we will be very keen to engage with you. The commission has considerable interest in this area and has concerns about the potential equality impacts. We will continue to

Law Centre NI

Submission to the Committee for Social Development: Welfare Reform Bill

Introduction

The Law Centre's submission to the Bill is set out in a clause by clause format as sought by the Committee. At this point, amendments to the Bill have not been drafted as we would prefer to receive a sense of the areas in which the Committee would like to receive possible amendments. Moreover, many of our comments relate to proposed regulations which will be drafted following the Bill.

The Law Centre has considerable concerns about the implementation of major items contained in the Bill for example, the introduction of Universal Credit and Personal Independence Payment. Nonetheless, we start from the premise that there is neither the time, money or IT within Northern Ireland to devise an alternative social security system. As a result, our response is aimed at improving the proposals designed for Great Britain taking into account the specific circumstances and needs of Northern Ireland.

The Welfare Reform Bill is in large measure an enabling Bill with much of the detail left to regulations. There are a number of critical issues being left to regulations including the essential details governing entitlement to housing credit within Universal Credit, the final level of earnings disregards for the various category of claimants on Universal Credit, the details of what exactly will be required of people in the all work related requirements, the rates of benefit payable, the details of daily living activities and daily mobility activities which will govern entitlement to Personal Independence Payment etc.

We do want to flag up issues which we think require scrutiny by the Committee and further clarity from the Department. The DWP has signalled its intentions on some issues and published draft regulations following the passing of the Welfare Reform Act in Britain.

The Committee should ask the Department to provide a draft plan including a timetable for publishing the regulations due to be made under the Bill.

Many of the key regulations are to be made under the confirmatory resolution statutory rule procedure. We understand this entails making and laying the regulations before the Assembly setting out the date of coming into effect. These regulations can be brought into effect, albeit they will cease to have effect after six months unless the Assembly has approved the regulations by way of a resolution.

Many of the areas where things can be done differently in Northern Ireland will be contained in regulations, or accompanying guidance, or different operational arrangements. As a result, the scrutiny process must find a way of addressing where legislatively the exact scope for specific flexibilities actually lie.

Part 1 Entitlement and Awards

Clauses 1 and 2: Universal Credit claims

Universal Credit may be awarded to a couple or an individual who is not a member of a couple. Clause 2 provides the power to make regulations to specify circumstances in which a member of a couple may claim for a single person.

It is important that consideration is given to ensuring that there are powers to award Universal Credit to a single person who remains a member of a couple (for example, if only one member of a couple is willing to sign the claimant commitment see clause 14). The Committee should seek an assurance from the Department that there is sufficient flexibility to award Universal Credit to one member of a couple only in appropriate circumstances. This is separate from the issue of whether some or all of the Universal Credit should be paid to the primary carer.

Clauses 3 and 4: Universal Credit entitlement

These clauses govern the basic conditions of entitlement to Universal Credit. Clause 4 provides powers for regulations to determine the details of rules governing when a person is treated as being or not being in Northern Ireland; circumstances in which temporary absences from Northern Ireland will be allowed and what is receiving education when excluding entitlement to Universal Credit. The regulations will also provide for exceptions to the requirements.

The issues for the committee to follow up include:

- (i) the intention is that both members of a couple must be above qualifying age for a couple for state pension to be paid otherwise couples must claim Universal Credit. With pension age being equalized for men and women by April 2018 this means that one member of a couple could be well above pensionable age and still face work related requirements and claimant commitment conditions. A woman aged 61 with a male partner aged 70 who has already retired claiming a means-tested benefit for the first time in October 2013 will move to Universal Credit rather than Pension Credit.

The arrangements for seeking work etc in these types of cases should be explored with the Department.

- (ii) will the existing rules regarding absence from Northern Ireland, being in Northern Ireland, when able to study and retain benefit be altered from current arrangements for Income Support (IS), income related Employment and Support Allowance (ESA and Jobseeker's Allowance) (JSA)? If so, what is the rationale for such changes? It is worth noting the introduction of income related ESA led to more restrictive conditions for studying and retaining benefit.

The DWP has signalled its intention to allow for up to one month and up to 26 weeks absence from home in specific circumstances. This includes payment of housing credit for up to 26 weeks where a person is in residential care or hospital. This contrasts with housing benefit rules which allow up to 13 weeks absence in some circumstances and up to 52 weeks where other conditions apply (for example, due to going into hospital or residential care on a temporary basis).

Entitlement to UC for 16 and 17 year olds to Universal Credit in certain circumstances is to be retained. The Department for Work and Pensions (DWP) has set out five circumstances in which 16-17 year olds may qualify for UK namely:

- those with dependent children – lone parents or couples;
- sick or disabled young people who have satisfied the Work Capability Assessment or are waiting to be assessed with medical evidence;
- those who are caring for a severely disabled person;
- young women who are pregnant between 11 weeks before and 15 weeks after the expected date of confinement;
- young people who are without parental support.

Young people coming out of care will continue to be supported outside the social security system as currently. Under the current rules, payments can be made on a discretionary basis where severe hardship occurs. We believe this provision should be retained.

Clause 5: financial conditions

This introduces a savings rule for Universal Credit which we understand will match the current capital limit for IS, JSA and ESA ie £16,000 with a tariff income for savings between £6,000 and £16,000.

This is a significant change for some claimants as tax credits and pension credit have no upper capital limit. Pension credit applies a tariff income on savings above £10,000 and tax credits ignores savings but, takes account of any taxable income generated by savings subject to a £300 per year disregard.

The new capital rule is likely to affect older claimants who have had more time to save towards retirement. There are two issues. First, will tax credits claimants transferred to UC be able to remain entitled under transitional protection arrangements? An assurance should be sought that such protection will be provided. Secondly, would the capital threshold be appropriate for people on Universal Credit where the claimant or one member of the couple has reached 60 years of age. This would recognise the importance of savings for people who are close to retirement age. The recent Joseph Rowntree Foundation report into 'Monitoring Poverty and Social Exclusion in Northern Ireland 2012' noted a rise in pensioner poverty in contrast to a fall in Great Britain. A significant contributory factor was the far less reliance on occupational pensions in Northern Ireland. Some claimants are likely to have modest savings yet low income. As a result, consideration should be given to an amendment confining the capital rules to people less than 60 years of age.

Clause 6: restrictions on entitlement

This clause allows for regulations to be made to exclude entitlement in specific circumstances. We understand this will apply to members of religious orders and prisoners. This applies to current means-tested benefits. The committee should seek clarity from the Department whether the regulations intend to go any further than the current exclusions provided for in IS, JSA and ESA.

Clauses 8 – 10: calculation of awards

These clauses cover calculation of awards including standard allowance and payments for children.

The DWP has signalled that it may restrict certain EU nationals (ie work seekers) entitlement to the standard allowance only.¹ Any such arrangement would be a retrograde step and possibly unlawful both under domestic law and European Union law. The Committee should seek clarity on the intention for Northern Ireland. In our view, there is no objective justification to paying EU migrants lower rates of benefits than those payable to UK and Irish nationals.

New standard allowance rates for Universal Credit will be paid based on the following categories

- single claimants under age 25
- single claimants aged 25 or over
- couples where both members are under age 25 and
- couples where one or both members are aged 25 or over.

1

DWP Explanatory Memorandum Universal Credit regulations June 2012 see SSAC website

This is a simpler structure than applies for IS, ESA and JSA. However, we understand that some young people under 25 claiming UC will receive lower rates of benefit than under existing benefits. The Committee may wish to seek clarity on this point.

A significant new feature of UC is that the self-employed will be treated as having a deemed minimum income which will reduce entitlement to UC. The DWP has yet to announce the amount of the deemed income. This 'minimum income' will not be applied during a one year period from the date of claim where on actual reported income will be applied. The DWP has also recently suggested it will only allow one start up period for self-employment every five years. Further, present proposals expect self-employed people on UC to report on income on a monthly basis. These arrangements if applied will have a substantial disincentive to try out or continue in self-employment. The proposals make no provision for people in self-employment falling ill or facing a downturn in orders or income by still applying the deemed minimum income. Moreover, most small self-employed businesses manage their reporting on a six monthly or annual basis and a monthly reporting requirement is unduly onerous. Monthly reporting for self-employed business where income ebbs and flows is likely to lead to constant changes to UC. In Britain, small employer organisations have made substantial representations to the Department that the current proposals are unworkable and likely to the original policy discourage rather than promote self-employment as a route out of benefit. The Committee should consider questioning the Department closely as to how they see Universal Credit working for people in self-employment.

The actual rates of allowances have yet to be announced for Universal Credit. Nonetheless, based on the information provided to date the recent report by Disability Rights UK and others has identified specific groups who will be worse off under Universal Credit². First, there are families with disabled children who currently receive additional financial support of £57 a week through the disability element of Child Tax Credit. Under UC this will be reduced to £28 a week unless the child is registered blind or on the high rate component of DLA.

Secondly, severely disabled adults who either live on their own, with another disabled adult or only with dependent children may be eligible for a severe disability premium of £58 a week within IS, income based JSA or income related ESA. The DWP has said that this support is being abolished in order to redistribute money to the most disabled adults. However, as the Disability Rights UK report notes the redistribution will still leave people with the most severe level of impairment who have no adult to assist them substantially worse off. Thirdly, disabled people working more than 16 hours a week are entitled to the disability element of Working Tax Credit worth up to £52 a week. Under UC any person requiring additional support because of a disability will have to undergo the Work Capability Assessment (WCA). Anyone found fully fit for work following a WCA will receive no equivalent additional financial assistance to the disability element of WTC. There is clear evidence that people with disabilities who are in work face additional costs (as recognised by DLA and PIP benefit paid whether in or out of work). While transitional protection provides temporary respite it will inexorably be eroded inexorably while young people with disabilities reaching adulthood will not be able to avail of such transitional protection. We would urge the committee support the recommendations of the Disability UK report.

Clause 11: housing costs

Almost all of the essential detail about the payment of housing credit is being left to regulations. The payments are essentially rent, mortgage interest and other owner occupation payments and service charges.

One key change being signalled by the DWP is that an owner occupier on Universal Credit will lose help with housing costs if doing any paid work (the zero earnings rule see paragraph 82 of the DWP Explanatory Memorandum for Universal Credit regulations). As a result, for

2 Holes in the Safety net the impact of Universal Credit on disabled people and their families – Disability Rights UK, Citizens Advice Bureau and the Children's Society (2012)

example, a lone parent who takes a mini-job one day a week on a temporary basis will lose all help with mortgage interest. This is likely to undermine the financial incentive to work for many owner occupiers with outstanding mortgage liabilities. As a result, the Committee should ask the Department to set out its intentions and the ramifications of any such approach for claimants in Northern Ireland.

The waiting period before housing costs are paid to owner occupiers who claim UC is still to be determined. There used to be a waiting period of up to 39 weeks for claimants on IS, JSA and ESA. This was modified to 13 weeks for new claimants from January 2009. Tax credit only claimants do not get help with mortgage payments. Early clarity of the waiting period is important.

The limit of help with mortgage interest to two years for income related JSA claimants only is being transferred to Universal Credit. This will affect potentially much larger numbers as it effectively extends this provision to former IS and ESA claimants. The Committee should explore with the Department the likely numbers involved and what can be done to protect households affected by these provisions.

Chapter 2: Claimant Responsibilities

Clause 14: claimant commitment

A claimant or both members of a couple will be required to enter into a claimant commitment as part of a claim for UC.

Our understanding is that both partners must sign the 'claimant commitment' for UC to be paid. As a result, if one partner signs the commitment and the other refuses (for example, due to relationship tensions, or one partner's addiction or mental health problems) then, no UC is paid. This appears to penalize both the partner willing to meet the condition and any children in the claim. As a result, we recommend that powers be taken and provision made to pay UC at the single person rate with child allowances in such circumstances.

Clauses 15 – 24: work related requirements

There will be four types of work requirements that will be imposed on claimants depending on their circumstances namely:

- **work focused interviews:** attend periodic interviews to discuss plans and opportunities for returning to work (immediately or in the future);
- **work preparation:** actions to prepare for work – such as attending training courses, preparing a CV or taking part in the work programme;
- **work search** – take all reasonable action and any particular specific actions to find work – such as applying for suggested vacancies or registering with a recruitment agency;
- **work availability** – be available and willing to immediately take up work.

In certain circumstances for example, where a woman is about/has recently given birth there will be no work requirement.

The following issues need to be scrutinized by the Committee.

Clause 16(4) introduces a work focussed health-related assessment. This was originally part of the requirements for claiming ESA but, was suspended it was designed to look at employability though not part of establishing entitlement to ESA. There does not appear to be any need to reintroduce this additional assessment.

The Committee may wish to explore whether it is being restored and, if so, on what basis.

Clause 22 the all work requirement is the most onerous commitment and applies to all those who do not fall into the other categories. The DWP has signalled that most claimants will be expected to spend 35 hours a week looking for or preparing for work. In practice, this appears almost impossible to meet on an ongoing basis. While CVs can be updated, employers written to, jobs and benefit offices visited, websites and newspapers perused for vacancies etc there will come a point where all this work searching has been done and a claimant is waiting on a response. To continue to spend 35 hours a week searching for work over a period of months is not practical. This is an area where proportionate operational arrangements need to be put in place. The corollary of not spending 35 hours a week in work search activities is the possibility of sanctions being applied.

Clause 22 the DWP has stated that EU workers or jobseekers will always be placed in the 'all work related requirement' group. This is provided for in Schedule 1 para 7 of the Bill (see page 15). This is clearly discriminatory, appears to be based on a particular Ministerial view of EU migrant workers within the DWP. It is likely to be unlawful and serves no reasonable purpose. The Committee should ensure that no such prejudicial arrangement are introduced in Northern Ireland.

Clause 22 all work requirements can be imposed on claimants in work who earn below a specific threshold. This is new. Claimants in part time work on tax credits are currently not expected to seek work on top of their part time commitments. It is unclear how this will work in practice. The DWP has said it wishes to pilot approaches from October 2013 onwards. The Committee should determine what approach will be taken in Northern Ireland.

The clauses introduce significantly increased sanctions for claimants who fail to meet the conditionality requirements under Universal Credit. There are higher level sanctions and effectively medium, low and lowest level sanctions.

Existing JSA sanctions of one to 26 weeks which apply to employment related requirements are replaced with new provision of 13 weeks within the all work related requirements for a first failure, 26 weeks for a second failure (within 52 weeks of the first failure) and three years for a third failure within 52 week period. The new sanction regime applies to failure to apply for a particular vacancy without good reason, to take up an offer of work without good reason, leave work through misconduct or voluntarily without good reason or lose pay voluntary or through misconduct without good reason. The actual periods are to be covered in regulations.

Medium level sanctions can be imposed on claimants subject to all work related requirements. Those sanctions cover failure to undertake all reasonable work search action, or fails without good reason to be able and willing immediately to take up work (or more paid work or better paid work). The sanction anticipated is 28 days for a first failure, and 13 weeks for a second and subsequent failure within 52 weeks of the first failure.

The lower level of sanctions will apply to claimants subject to all work related requirements, work preparation and work focussed interview requirements. The lower level sanctions include failure to undertake specified work action without good reason, failure to comply with a work preparation requirement without good reason, failure to comply with a requirement to provide evidence or confirm compliance without good reason and failure to comply with a work focussed interview requirement without good reason.

The level of sanction anticipated is

- (i) an open ended sanction until the claimant complies with the condition plus
- (ii) a fixed period of seven days for a first failure, 14 days for a second failure within a year of the first failure and 28 days for a third failure within a year.

A lowest level sanction will be introduced for claimants with work focussed interview (WFI) requirements who fail to participate in a work focused interview or a connected requirement. The sanction will be open ended until the required condition is met.

A summary of the arrangements is included in the table below:

UC sanction durations

Sanction	Applicable to	Duration		
		1st failure	2nd failure	3rd or subsequent failure
High level eg failure to take up an offer of paid work	Claimants subject to all work-related requirements	91 days	182 days	1095 days
Medium level eg failure to undertake all reasonable action to obtain work	Claimants subject to all work related requirements	28 days	91 days	
Low level eg failure to undertake particular, specified work preparation action	Claimants subject to all work related requirements Claimants subject to work preparation and work-focused interview requirements	Open ended until re-engagement plus		
		7 days	14 days	28 days
Lowest level Failure to participate in a work-focused interview	Claimants subject to work-focused interview requirements only	Open ended until re-engagement		

There are a number of issues for the Committee to consider. They include

- (i) is the increased level of sanctions proportionate given its impact on the rest of the household including children? We would suggest the increase is disproportionate and sanctions of 13 weeks, 26 weeks and 3 years is too long.
- (ii) regulations in Britain only provide five working days for a claimant to establish good reason before a sanction is applied. The penalty for non-compliance will be increased sharply to should a longer period to provide details of a good reason also be provided. The Law Centre would suggest an increase to at least 15 working days to show reasonable cause.
- (iii) the DWP has introduced some of the increased sanctions arrangements for JSA and ESA in advance to broadly align with UC. This seems unnecessary given that the apparent advantages of Universal Credit are not available to claimants in the interim.
- (iv) a sanction for failing to take up more paid work or better paid work is new and raises questions of the appropriateness of such a provision.

Sanctions arrangements is also an area where operational flexibilities could be put in place and the Department should be pressed hard on this issue with specific undertakings given. These could include specific safeguards for people with mental and physical health

problems, with learning disabilities. Research has shown that people in these groups are disproportionately prone to being sanctioned³.

Clause 28: hardship payments

This provides a power for regulations to provide hardship payments for a claimant who has been sanctioned.

A new feature of hardship payments is that they will be recoverable (in effect loans). The DWP has signalled that the hardship rate will be 60 per cent of the daily amount by which the claimant's UC has been reduced by a sanction.

The Law Centre recommends that the hardship payments should not be recoverable. Evidence on sanctions has revealed that around 20 per cent of claimants did not know they had been sanctioned until after the event.⁴ The loss of a significant amount of benefit is a sufficient punishment without a claimant having to pay additional money back. The preponderance of sanctions applied to people with mental health problems for example, is likely to create even greater difficulties in circumstances where hardship payments are made recoverable.

Chapter 3 – Supplementary and General

Clause 31 – regulation making powers

This clause and Schedule 1 provides powers for regulations to cover income and savings rules including what is to be taken into account as income and savings and what it to be ignored.

The DWP has said the rules on savings are not going to change significantly. One change signalled by the DWP is that a claimant who spends savings reasonably and moves on to benefit will no longer be caught under 'deprivation of capital' rules. The Committee should seek clarity as to what, if any other changes will be made.

Schedule 1 paragraph 6 provides for regulations to pay all or part of UC through vouchers. The Committee should seek information about when a voucher will be paid to claimants. The Law Centre can see no immediate basis for paying UC through vouchers.

Schedule 1 paragraph 7 allows for regulations to provide that claimants from the EU with a right to reside who fall into the no work-related requirements, work focussed interview requirement only and work preparation requirement only can instead be made subject to the all work related requirements. We would recommend that this clause be deleted from the Bill. The provision is likely to prove unlawful. Article 14 of the European Convention of Human Rights provides for freedom from discrimination. The right is not free standing and must be invoked alongside another substantive right in the Convention. Article 1 of the Convention provides for a right to property. In *Sec v UK* (2005) the Grand Chamber of European Court of Human Rights held that social security benefit whether funded on a contributory or non-contributory basis were covered by Article 1 or Protocol 1. This leaves the Department having to provide an objective justification for treating EU nationals adversely. We can see no objective basis for such discrimination.

Clause 32: regulation making powers

This clause allows other regulation making powers under Schedule 2.

The scheme provides for amendments to allow some UC claimants to receive free school meals or legal aid. The relationship between UC and passport benefits remains unclear and

3 Sanctions in the benefit system: Evidence review of JSA, IS and IB sanctions SSAC occasional paper No1 (2006)

4 op cit

the Committee should press the Department for clarity on this issue as it potentially impacts on incentives to take work.

Paragraph 49 of Schedule 2 amends the State Pension Credit Act to ensure couples with one partner under pensionable age cannot receive pension credit. This may be an area where the Committee want to consider an amendment to safeguard older claimant couples forced to remain on UC.

Clause 37: migration to Universal Credit

This covers the provisions for transitional protection when moving from IS, JSA or tax credits onto Universal Credit and also provides for a short gap in benefit to not automatically lead to a loss of transitional protection. The Committee has already sought details of the arrangements for transitional protection and this will need to be carefully scrutinized. We understand that the transitional protection is likely to be eroded as benefits are uprated each year.

Clause 42: pilot schemes

This provides for pilot schemes to be introduced for specific purposes as part of the implementation of UC. The Committee should ask the Department what pilot schemes if any, are envisaged.

Clause 43: regulations

Sub-paragraph (6) allows for regulations to be made for different provision for housing costs and other additional needs to be made in different areas. The Committee should seek clarity from the Department as to what is the purpose of this provision.

Clause 44: statutory rules procedures

This sets out the statutory rules procedures for regulations. The committee should seek a plan with a time frame for the regulations as they remain a critical part of the scrutiny process.

Clause 47: sanctions

This clause introduces the anticipated new increased sanctions arrangements for Universal Credit into JSA in advance of the introduction of UC. As the improved earnings disregard arrangements will not be implemented in advance of UC we can see no justification in implementing a more punitive sanctions regime in advance. It also implements new hardship payments in advance of UC including turning these payments from grants into loans. The Committee should consider not implementing this clause.

Clause 52: Employment and support allowance: restriction of entitlement

This clause limits entitlement to contributory ESA for people in the work related activity group to 52 weeks. The provision is to be applied retrospectively in that claimants on contributory ESA for before enactment of this clause will have that period of entitlement counted towards the 52 weeks. In effect, many people will lose contributory ESA immediately. Claimants affected by this clause can move to income-related ESA if satisfying the means-test or alternatively lose benefit altogether where the claimant has a partner in work or savings above £16,000. Figures available from the DWP Equality Impact Assessment showed that almost half of those affected in Britain were aged 50 years of age or older. The implementation of this clause may be contrary to Article 1 Protocol 1 of the European Convention of Human Rights. In *Kiartan Asmundsson v Iceland* (2004) the Court held the removal of an industrial injury benefit from existing claimants was contrary to the right to property under Article 1 Protocol 1. The Court held if the pension had been reduced proportionately rather than terminated altogether then there would have been no breach. The Bill envisages that claimants already receiving contributory ESA for 12 months prior to

the introduction of the clause will lose benefit immediately, this clause is introduced. We understand the Department is likely to introduce this clause shortly after the Bill receives Royal Assent giving claimants on contributory ESA for 12 months little notice of the change.

The Committee should consider either not implementing this clause or amending it. There is a cost to such action which is currently estimated at £12.25 million in 2012/2013, £52.88 million in 2013/2014 and £56.92 million in 2014/2015. It is not clear if this is a net cost ie after taking into account the displacement costs of some claimants moving to income-related ESA or not. The Committee may wish to seek further information from the Department. In the alternative, an amendment to tie this provision to the age of a claimant eg those under 50 or 55 years of age or arrangements for the 12 months period not to commence until actual implementation might be considered.

Clause 54: ESA in youth

This abolishes ESA in your which is payable to young people under 20 (and in certain circumstances under 25) without the normal national insurance contributions conditions being satisfied. Existing claimants who are in the work related activity group will lose the benefit after 12 months. The Committee should consider not implementing this clause. The current cost is estimated at £390,000 a year. It is not clear whether this is net of the displacement costs of claimants moving to other benefits eg JSA.

Clause 57 and 58: hardship payments/claimant responsibilities

These clauses introduce the new claimant responsibilities, sanctions and hardship payment arrangements (including loans) for Employment and Support Allowance.

The new claimant responsibilities will not be introduced until the introduction of Universal Credit. The higher level sanctions arrangements associated with the 'all work requirements' do not apply to ESA. However, the increase in sanctions in other work related categories will be introduced in advance of Universal Credit to broadly align with the UC arrangements.

The Work Programme equivalent will not be introduced until October 2013 at the earliest and the improved work disregards will not be made available in advance of Universal Credit. As a result, it would be inequitable to introduce the increased sanctions in advance of Universal Credit.

Once UC is introduced the increased sanctions will only be relevant to claimants on contribution based ESA.

Clauses 61, 62 and 63 entitlement to work: JSA and ESA

These clauses create new requirements for claimants to have an entitlement to work for contributory JSA, contributory ESA, maternity allowance, statutory maternity, paternity and adoption pay.

Current immigration rules provide that people 'subject to immigration control' are excluded from income related JSA and income related ESA. These provisions will be extended to Universal Credit. The exclusion does not extend to contributory benefits where a person has paid his or her tax and national insurance contributions.

We can see no basis for creating this new provision. Moreover, a person whose legal status may have changed and who is legitimately challenging the situation will be denied a contributory benefit despite lawfully working during the period of building up contributions. Moreover, under the old A8 work registration scheme it was possible to lose the 'right to reside' status almost overnight in some circumstances.

These clauses should not be passed. The Department should be asked to provide likely numbers affected and cost savings. The figures (if available) will be very small though the impact on individuals will be significant.

Clause 69: housing benefit – determination of the appropriate maximum

This is a significant clause which allows the Department to set the local housing allowance by reference to the lower of either the Consumer Price Index or bottom 30th percentile of private rented sector and to introduce the new public rented sector size related criteria into the calculation of HB for people of working age.

The calculation of the LHA by the lower rate of CPI or 30th percentile of private rented sector will have a considerable impact. The average increase in CPI since 1997 is around 2 per cent compared with a 4 per cent increase in 30th percentile rents in the private rented sector. At present, claimants on HB are expected to find accommodation in the cheapest 30 per cent of rents. Based on past evidence, the new arrangements will lead inexorably to HB claimants having to find accommodation in an even more restricted bottom end of the market or pay the difference in cost. This change needs to be considered as part of the wider cumulative impact of HB savings already implemented. This estimated savings for this £1.3 million in 2013/2014 rising to £7.92 million in 2014/2015.

In areas where demand for private rented sector accommodation is high, HB claimants will not be able to access accommodation. We recommend that this clause is not passed.

This clause also introduces the new size related element of housing credit for people of working age living in public/rented sector housing. This will lead to a reduction in maximum eligible housing credit of 14 per cent where a claimant is deemed 'over-occupying' by one bedroom and a 25 per cent reduction where deemed 'over-occupying' by two bedrooms or more. Draft regulations suggest that there will be few exceptions to this rule. The provision is unlikely to apply to accommodation registered

As a result, the new proposed arrangements will affect significant numbers of households in Housing Executive and Housing Association accommodation. The Housing Executive stock includes 44.3 per cent of homes with three bedrooms or more which have three bedrooms or more. The Housing Executive and Housing Association movement has yet to come up with alternative proposals to manage the difficulties created by this provision.

Moreover, the significant proportion of 'single identity estates' contained within the Housing Executive stock will also make moving tenants to smaller accommodation even less straightforward. These proposals are likely to face legal challenges on a number of fronts. First, in *Burnip v Secretary of State for Work and Pensions (SSWP) 2012* *Trengrove v SSWP (2012)* and *Gorry v Secretary of State for Work and Pensions (2012)* the Court of Appeal considered similar provisions which had been applied to HB in the private rented sector. The Court of Appeal held that the provision was indirectly discrimination which was covered by Article 14 of the ECHR and that HB was covered by Article 1 Protocol 1 of the Convention. In two of the cases, the applicants were severely disabled and required an extra bedroom for full time carers. This circumstance was resolved by an amendment to the HB regulations introduced in April 2011. The exemption in the size related criteria in the public sector covering the need for an extra bedroom for a full time carer has been included in draft regulations. However, in the third successful appeal (*Gorry*) the issue concerned two daughters aged 10 and 8 who both had disabilities which meant it was impractical for the children to share a room. The Department has not added this to the exemptions in either the private sector HB regulations or the draft proposed public sector size-related regulations. This omission is unlikely to survive a further legal challenge bearing in mind that discretionary housing payments were also available in the cases before the Court of Appeal.

A further challenge is also likely to arise under the right to a home, family and private life under Article 8 of the European Convention on Human Rights in cases where an extra room is provided for legitimate family reasons during temporary absences or in circumstances where a family is prepared to move to accommodation of a reduced size and no such transfer is forthcoming the private rented sector provides less secure tenure and a reduction in housing credit is applied.

As a result, the Law Centre would recommend that a delay in implementing this clause is made until firm and clear proposals for dealing with the issue are in place. In the alternative, additional exemptions from the provisions should be provided in the regulations including for families with children under 10 years of age with disabilities where sharing a room is not appropriate, foster carers who are between fostering placements and other circumstances where an additional bedroom is retained for legitimate family purposes.

The savings anticipated from this provision is £15.51 million a year from 2013/2014 onwards. The Committee might wish to get more details of how this has been calculated and what additional discretionary housing payments are expected to be paid as a result of the new arrangements.

Clause 70: ending of discretionary payments

This clause paves the way for the end of the discretionary part of the Social Fund (ie community care grants, budgeting loans and crisis loans). In Britain these payments will be administered by local authorities from April 2013. In Northern Ireland a replacement scheme will be introduced alongside the existing discretionary housing payments scheme administered by the Northern Ireland Housing Executive. Awards in advance of payment of benefit will be covered by Universal Credit. We understand the Department is considering the retention of the Social Fund beyond April 2013 as any replacement scheme will have to be consulted on, developed and may also require legislation. This will not therefore be completed by April 2013. As a result, this clause is unlikely to be introduced immediately. The Committee should ask the Department to clarify its intentions and timetable for replacing the Social Fund.

Clause 71: purposes of discretionary payments

This allows the discretionary Social Fund to pay loans for maternity expenses. Access to social fund maternity grants has been curtailed and the average social fund maternity grant (£506.87 in 2009/2010) and funeral expenses payment (£967.86 in 2009/2010) does not cover the actual costs associated with a birth or death.

Clause 74: state pension credit carers

This clause appears to extend entitlement to the additional amount of the guarantee credit beyond claimants receiving carer's allowance. It is not clear what the extension will be as this is being left to regulations.

Clause 75: state pension credit: savings rules

This introduces a savings limit for housing credit which will be paid as part of Pension Credit. The existing arrangements for Pension Credit claimants with housing costs involve claiming HB which also has a savings limit. For owner occupiers with outstanding mortgages, the capital limit is new as help with mortgage interest in Pension Credit is not subject to a capital limit. The Committee may wish to ask the Department to provide details of the numbers affected by this provision.

Chapter 4: Personal Independence Payment

Clauses 76 – 94 Personal Independence Payment

These clauses introduce the framework for Personal Independence Payment (PIP) which will be replacing Disability Living Allowance for working age claimants.

The new benefit is due to be introduced from June 2013 onwards. The Treasury Report produced at the time of the announcement of PIP stated the aim to save 20 per cent over projected expenditure on DLA. In Northern Ireland savings of £22.19 million and £65.94 million are projected from 2013/2014 and 2014/2015.

PIP will have two components – a daily living component and a daily mobility component. The details of both will be contained in regulations. The details of the components and the scores attached to satisfying the conditions have been the subject of consultation but, remain to be finalized.

The new benefit will also entail more regular medical assessment which will be provided outside of the DSD. The Committee may wish to press the Department on the terms of any new contract including any penalty clauses for poor quality assessments bearing in mind the problems associated with the delivery of the ESA medical assessment contract by ATOS Healthcare.

Changes to the framework between the DLA and PIP which have been confirmed by DWP include the following:

a claimant must satisfy the conditions for PIP for three months before the date of entitlement and six months afterwards. This compares with periods of three months before and six months afterwards for DLA. We would recommend amending clause 80(1)(b) and 80(3)(b) to six months

where an award has ended and a claimant's condition has deteriorated then, where a new claim is made within 12 months, the new three month waiting period does not have to be served. This is a reduction from the 2 years that applies to DLA. This will be dealt with in regulations.

a new residence/presence test is being introduced. The new past presence test will be much more restricting than the current test. The new past presence test will expect claimants to have been in the UK for two of the past three years. The previous residence/presence test was unlawful in European law terms (see ECJ C 503/09 *Stewart v United Kingdom*). The new test is also unlikely to survive a challenge in the European Court of Justice. This issue will be dealt with in regulations.

PIP will not be paid to prisoners or people held on remand after 28 days.

If a person is held on remand and there is no sentence of imprisonment or detention, or any charge is dropped or any conviction is quashed then no arrears will be paid. DLA is not paid to prisoners or those held on remand, however, if released without charge or a conviction is quashed then arrears of benefit are paid. The arrangements for PIP are unfair to people wrongly held on remand. We would recommend amending clause 86 to restore the position that applies to DLA.

The rules on temporary absence from the UK are being made tougher. They will allow entitlement to PIP for only four weeks or up to 26 weeks where a claimant goes abroad for treatment. For DLA temporary absences of up to 26 weeks do not normally affect entitlement and temporary absences for treatment do not have a specific time limit. This will be dealt with in regulations.

Part 5: Social Security General

Clauses 95 and 96: benefit cap

These clauses pave the way for the Benefit Cap. Regulations will set out the level of the cap, how the cap will be calculated, the benefits which will be taken into account, how any reductions in benefit will be applied and exceptions from the cap. The cap will be set at a level designed to match the average weekly wage after tax and national insurance payments. A separate figure will be set for single people (£350 a week) for lone parents and couple households (£500 a week).

The numbers affected by the benefit cap is likely to be small in Northern Ireland due to lower housing costs. Nonetheless, those affected will find it difficult to deal with what will be a significant loss of income. The Department should be asked to provide detailed figures of the numbers likely to be affected. The saving that will be made as a result of the cap is estimated at £7.26 million in 2013/2014 and £8.58 million in 2014/2015. We would be interested in how these figures were calculated. In the meantime, the Law Centre recommends that carer's allowance Widow's and Bereavement benefits and contributory based ESA are added to the list of proposed benefits exempt from the application of the benefit cap. Current exemptions proposed from the cap include households where DLA, Attendance Allowance, PIP, industrial injuries benefits, the support component of ESA and War Widow or Widowers Pensions are payable.

Clause 98: powers to require information relating to claims and awards

This clause amends the Social Security Administration (NI) Act 1992 to provide wider powers to require individuals or others to provide information or evidence which is relevant to a potential claim or an existing claim or award for benefit. Regulations will set out who is to be covered by this provision. We would suggest the Committee asks the Department which individuals and organisations will be covered by the regulations drawn up under this provision and the specific purposes of the wider powers beyond the examples provided in the explanatory memorandum.

Clause 100: payments on account

This clause provides for payments on account to be made in cases of need and in circumstances where the Department considers that prescribed criteria are met and a payment can reasonably be expected to be recovered.

It is not clear whether or not this is the legislation vehicle for the introduction of a replacement to the Social Fund. The Committee should seek clarity on this issue and also ask for a detailed process, timetable and substantial plans for any replacement to the Social Fund (see also clause 70).

Clause 101: mandatory revision before appeal

This clause provided for changes to appeals procedures so that all appeals are initially treated as applications for revision. Where the application is not changed as a result of the mandatory reconsideration the claimant must then seek a further appeal in writing. The Law Centre would suggest three changes to the proposals where have been separately consulted on. First, that where a mandatory revision does not provide the claimant with what has been requested then, the original application should be automatically treated as an appeal without the claimant being required to lodge a further appeal. Secondly, provision should be made to proceed straight to appeal in cases which are urgent (for example, in right to reside disputes where the decision often leaves a claimant without any income). This would not prevent the Department looking again at the issue in the interim. Thirdly, time limits are applied to claimants to deliver both the initial application for mandatory reconsideration and further appeal. A time limit should be applied to the Department to ensure an appeal is dealt with in a timely fashion. The Department of Work and Pensions and HMRC are both considering a 42 day time period in Britain. The Committee should seek an assurance that similar provision will be enacted in Northern Ireland.

Clauses 103-104: recovery of overpayment of certain benefits

This clause significantly changes the law governing the recovery of overpayments of JSA, ESA and UC and housing credit payable within state Pension Credit.

Currently, an overpayment of JSA and ESA is recoverable where the claimant or someone acting on his or her behalf fails to disclose relevant information or misrepresents circumstances (accidentally or otherwise) and the failure to disclose or misrepresentation

causes the overpayment. In effect, the claimant must have caused or contributed to the overpayment.

The new clause replaces this concept with a right to recover any amount of Universal Credit, JSA, ESA or housing credit in SPC. In practice, this can include where the overpayment is the fault of the Department and the claimant could not reasonably have realised there had been an overpayment. This is broadly in line with powers currently taken by HMRC to recover overpayments of tax credits.

The Committee should ask the Department for details of the circumstances in which a recovery of an overpayment will not be made. In addition, for tax credits the details of when a recovery is not sought is contained in a code of practice document COP26. The Department is likely to produce its own equivalent and details of the Code of Practice and what it will contain should be requested.

This clause also provides the Department with powers to recover overpayments through employers (including social fund loans and HB overpayments) without having to go to court and to add court costs to the sum recovered from benefit where court action is taken. The clauses also require employers to comply with the obligation to deduct money from an employees earnings and a failure to do so can be a criminal offence. An administrative charge (to be specified in regulations) can be levied for paying money over to the Department. All of these provisions are new.

Clauses 109 -111: benefit penalties for benefit fraud not resulting in over-payment

These clauses introduce additional powers to issue benefit penalties. At present, a benefit penalty can only be applied where there has actually been an overpayment. The benefit penalty as an alternative to prosecution is 30 per cent of the actual overpayment. The new powers allow for a benefit penalty to be introduced even where no overpayment has resulted and will increase the penalty to £350 or 50 per cent of the overpayment whichever is the greater up to a maximum of £2000. Where no overpayment has arisen the benefit penalty will be £350. At present, there is a 28 day cooling-off period to decide whether to accept the alternative to prosecution. This will be reduced to 14 days.

The Law Centre's view is that a minimum penalty of £350 is disproportionate particularly where no overpayment has arisen. In cases where there has been an overpayment the increase of a penalty from 30 per cent to 50 per cent of the overpayment (on top of the recovery of the overpayment itself) is also disproportionate. We would recommend not introducing those changes.

Clause 112: civil penalties for incorrect statements and failure to disclose information

This introduces an additional penalty over and above recovering any overpayment in specific circumstances. A similar provision is available to HMRC for tax credits but is new for covering UC and other social security benefits. The civil penalty was introduced in Britain on 1 October 2012 and is £50.

Clauses 113 – 115: benefit offences – period of sanction

These clauses increase the sanction periods imposed on social security benefits (save for certain exempted benefits) where a conviction or benefit penalty as an alternative to prosecution or caution instead of prosecution is secured. This is sometimes known as the 'one strike rule'. Where a second benefit offence occurs within five years a further period of sanctions is applied under the two strikes rule. The increase in the loss of benefit period increases proposed is as follows:

	One strike rule	Two strike rule	Serious organized or identify fraud
Current provision	Four weeks	13 weeks	No specific provision
Proposed changes under the WR Bill	13 weeks (or four weeks if accepting benefit penalty or formal caution)	26 weeks or three years if within five years of a two previous offences including benefit penalty	Three years

The Law Centre does not condone fraud. However, we believe the increased provisions are disproportionate. For example, a person whose actions have led to no overpayment and who accepts a benefit penalty will now have to both repay £350 and a loss of benefit of up to four weeks. Furthermore, a three year loss of benefit for repeated or serious offences of fraud is likely to have a severe impact on the rest of a benefit household including children who have not been involved in the subterfuge. We believe it would be better to use the extensive criminal law powers already available to deal with offenders rather than punishing innocent parties.

Clause 115 will lead to an end to cautions as an alternative to prosecution. Instead the more severe administrative penalty will be applied instead.

Clause 130: rate relief schemes

The Law Centre would recommend the Committee seek clarity from the Department as to what changes, if any, will be made to the Rate Rebate Scheme. In Britain, Council Tax Benefit (CTB) has been passed to local authorities allowing them to implement their own schemes. The money transferred to local authorities included a ten per cent reduction from the money spent on CTB. The Law Centre is unclear whether a similar ten per cent reduction is being made in Northern Ireland and if so, how this reduction in funding is being realized.

Law Centre (NI)

October 2012

Mencap in Northern Ireland



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Welfare Reform Bill – Committee for Social Development call for evidence

Mencap in Northern Ireland's submission

1.0 About Mencap in Northern Ireland

- 1.1 Mencap is the voice of learning disability. Everything we do is about valuing and supporting people with a learning disability, and their families and carers across Northern Ireland, England and Wales.
- 1.2 Mencap has over 60 year's experience of working alongside and representing the views and interests of people with a learning disability and their families. In Northern Ireland we deliver a range of service, support a membership network of local groups and clubs and campaign for equal opportunities and chances for people with a learning disability.
- 1.3 Through our employment and training services we provide help to young people and adults with a learning disability to prepare for, find and keep job. We help individuals with a learning disability to explore their options, provide skills training in the workplace and work to remove the barriers to work for each person.
- 1.4 We also provide independent advice and information through our helpline and community based advisor services, ensuring that people with a learning disability and families have the information about their rights and entitlements and can access the services they need.

2.0 About Learning Disability

- 2.1 A learning disability is a reduced intellectual ability and difficulty with everyday activities - for example household tasks, socialising or managing money - which affects someone for their whole life.
- 2.2 People with a learning disability tend to take longer to learn and may need support to understand complex information, develop new skills, and interact with other people. The level of support someone needs depends on individual factors, including the severity of their learning disability.

3.0 Welfare Reform Bill – Introduction

- 3.1 The particular set of circumstances in Northern Ireland in relation to welfare reform, we believe, needs to be considered when implementing any change to the benefits system. This includes the higher levels of poverty and disability, the requirements on public bodies outlined in Section 75 and the limited availability of community based services to support independent living.
- 3.2 Mencap draws attention to the proportion of the population claiming DLA, with double the amount of DLA claimants in Northern Ireland compared to the rest of the UK: over 180,000

claimants in 2010.¹ A report by The Institute of Fiscal Studies estimated that Northern Ireland, because it has a large population of households with children and higher levels of disabilities, will lose more income than any other region in the UK outside of London. Northern Ireland is likely to be disproportionately affected from the new restricted test for Personal Independence Payment than the announced budget in June 2010. We believe that this should be reflected in the EQIA and mitigating measures identified to minimise adverse impacts.

3.3 The completed Equality Impact Assessment (EQIA)² relating to the new Welfare Reform Bill was published by DSD in April 2012. The EQIA does not give sufficient information to adequately monitor the impact on disabled people and family carers. The report states that “the Analytical Services Unit will continue to work with DWP to develop a Policy Simulation Model which will better equip them to analyse the impact of policies across various section 75 groups”. This work is still to be published.

4.0 Claimant commitments and sanctions

Mencap believes that the Welfare Reform proposals must take account of the distinct impacts of learning disability on the individual concerned including significant difficulties with understanding, learning and communication. Many people with a learning disability do not have full control over their own lives and rely on others for assistance with everyday tasks.

Conditions placed on claimants should be reasonable and claimants with a learning disability will need extra support to help them understand and make decisions about the process they are involved in and what they have to do to meet any requirements.

Account should also be taken of the impact of learning disability on family carers who may wish to find and stay in employment but are unable to do so because of the lack of alternative care or support for their loved one.

Amendment allowing for consideration of impact of learning disability on claimant commitments and sanctions.

Safeguards to be put in place to protect people with a learning disability who do not understand what is being asked of them or have communication difficulties and who do not get the support they need.

5.0 Welfare Reform Bill – Part 1: Universal Credit

5.1 Mencap welcomes the stated principle behind the Universal Credit: to simplify the benefits system and make work pay. However, we are concerned about the potential loss of income for disabled people through the merger in Universal Credit of Tax Credits and disability premiums. In particular, there are two key areas of concern; the severe disability premium and children’s additions.

5.2 Calculation of Awards: Part 1, Chapter 1, Section 8

Under Universal Credit, the support currently offered by tax credits will be achieved through disregards which will allow certain groups to earn higher sums of money before their benefit starts to be withdrawn, thus raising the household income of these groups in a similar manner to tax credits. Disregards are to be established in regulations, but currently no specific mention is made of disability.³

1 The impact of tax and benefit reforms to be introduced between 2012-11 and 2014-15 in Northern Ireland, 2012, Institute of Fiscal Studies,

2 http://www.dsdni.gov.uk/index/publications/other_reports/equality.htm

3 Disability Benefits Consortium: key amendments to the Welfare Reform Bill 2011(April 2011)

There needs to be more about couple entitlement to Universal Credit. Currently, couples in which both partners have an impairment can both qualify for the disability element of working tax credit. However, as Universal Credit is based on households not individuals, disabled couples will lose some of this additional support unless provision is made under the disability disregard for a further extension to the disregard for each additional disabled adult living within a household.

Mencap would ask the committee to consider amendments which would ensure that disabled couples do not lose out on additional support.

Amendment allowing for a disability disregard

Part 1, Chapter 1, Clause 8, line 23, insert:

‘(5) Regulations made under this paragraph must specify that a particular amount of income be disregarded when calculating entitlement to universal credit, including in the following circumstances: a) where the claimant is disabled; b) where the claimant is a lone parent c) where the claimant is the second earner in the couple.’

‘(6) Where the claimant’s eligibility for an amount of income to be disregarded, in accordance with subsection (6), is based on two or more sets of circumstances, the amount specified for each of these sets of circumstances shall be added together to calculate the total amount to be disregarded.’

5.3 **Other particular needs or circumstances: Part 1, Chapter 1, Section 12**

5.31 **Children’s Additions**

Currently, disabled children receiving any rate of DLA are entitled to the disability element of child tax credit, worth around £54 a week. Those children on high rate DLA also receive the severe disability element of child tax credit in addition. This is worth an additional £22.

Under Universal Credit these disability elements will be replaced with a disability ‘addition’ and ‘higher addition’ within the Universal Credit. Children who are in receipt of high rate DLA will continue to get a similar level of benefit. However, those children who were receiving the disability element (i.e. those on low or middle rate care) will now receive the disability addition which will be worth £27 instead of the current £54.

Mencap would ask the committee to consider amendments that would retain the current level of children’s addition for those receiving low or middle rate care component of DLA. We have suggested an amendment below.

Amendment to maintain current level of children’s additions

Part 1, Chapter 1, Clause 10, line 36, insert:

“Such additional amount to be paid at either a higher rate, or a lower rate, which shall be no less than two-thirds of the higher rate as may be prescribed”

5.32 **The Severe Disability Premium (SDP)**

Currently, disabled people on means tested benefits can receive premiums which help meet some of the extra costs they face. Of particular importance is the Severe Disability Premium. This is currently worth £53.65 a week for a single person and aims to meet the extra costs experienced by a disabled person living alone.

Under the Welfare Reform Bill, there is no intention to continue this payment under Universal Credit. Instead, under Universal Credit, extra support for disabled adults (or ‘additions’) will

be based on disregards and eligibility for the Employment and Support allowance (ESA). In some instances this will lead to some people being less well off under the Universal Credit.

Mencap would ask the committee to consider amendments which would retain the current level of severe disability premium. We have suggested an amendment below.

Amendment aiming to replicate existing premiums

Part 1, Chapter 1, Clause 12, line 41, insert:

‘(d) The fact that a claimant is a disabled or severely disabled person.’

6.0 Welfare Reform Bill – Part 2: Working Age Benefits

6.1 Employment and Support Allowance (ESA) was introduced in 2008 to replace Incapacity Benefits, Income Support (because of a disability) and Severe Disability Allowance. Those eligible for ESA are put into either the ESA work-related-activity group (for those who need support to prepare to move towards work - WRAG) or the ESA support group (for those whose disability prevents them from working).

6.2 The Bill proposes a time limit for contributory Employment and Support Allowance (ESA) to a maximum period of 365 days for those in the work-related activity group. Contributory ESA applies to those people who have paid sufficient tax and National Insurance and are deemed to be able to carry out some work related activity to move towards work.

6.3 We believe that it is unfair and unjustified to time-limit benefits for people with a learning disability who have paid into the system, and who have a right to expect that they will be supported as they move towards work. Ultimately, we would ask the committee to remove time limits from the bill. We are suggesting, however, an amendment to the legislation should time limits be introduced.

Amendment to remove provisions for time limiting contributory ESA

Part 2, Chapter 2, Clause 52, line 10, leave out ‘365’ and insert:

‘a prescribed number of days, which must be at least 730,’

6.4 The time limiting of Contributory ESA for those in the Work Related Activity Group will have significant impact, particularly because the time limiting is effective straight away. So if you are in this group and have already received this benefit for 365 days then you will lose this benefit and will have to apply for other benefits. There is little evidence to show what support has been given to those on the WRAG group in the time period, the reasonable adjustments made due to a person’s disability and how effective support has been in people gaining and retaining employment. Evidence needs to be provided to demonstrate that effective support will be available for those people in the WRAG group.

Mencap would ask the committee to consider an amendment to ensure that the 365 days of the time limit for the WRAG group is continuous. We have suggested an amendment below.

Amendment to ensure that the days are continuous

Part 2, Chapter 2, Clause 52, Line 24 leave out ‘to be counted’ and insert ‘not to be counted’

6.5 The Bill also provides for a time limit for contributory ESA for those with a youth entitlement and further abolishes the youth condition in contributory ESA completely. The youth

entitlement allows claimants under the age of 20 (or 25 in some circumstances) to qualify for contributory ESA without having met the usual national insurance contribution conditions – for example those people who have been unable to pay contributions from childhood. This supports those people with severe and lifelong disabilities, such as those remaining in education beyond 16 years.

Mencap would ask the committee to consider an amendment which would continue Youth entitlement to ESA. We have suggested an amendment below.

Amendment(s) to continue Youth entitlement to ESA

Part 2, Chapter 2, Clause 52, line 24, after “2007” insert “, and subject to section 52,”

Part2, Chapter 2, clause 54, line 15, leave out clause 54 and insert the following new clause:

“Condition relating to youth

In paragraph 4 of Schedule 1 to the Welfare Reform Act 2007 (condition relating to youth), after sub-paragraph (1)(d) insert-

“(e) After the assessment phase has ended, the claimant has limited capacity for work-related activity.””

7.0 Welfare Reform Bill – Part 3: Other Benefit Changes

7.1 New Size criteria

7.11 The proposed new size criteria in the social housing sector will apply local housing allowance rules for the private rented sector to social housing. In effect, this, in many cases, will reduce the number of bedrooms that an individual is entitled to. As a result, some tenants will receive a reduced amount of Housing Benefit or be forced to move accommodation.

7.12 The reasoning behind this policy is to contain growing housing benefit expenditure and make better use of available social housing. There is a shortage in suitably sized properties available to people who would, under the new rules, be deemed to be under-occupying their home. In addition, many homes may have been adapted to meet individual need, meaning that – should the individual have to move – new adaptations would have to be paid for. Additionally, there are issues for people with a learning disability who may access their package of support or have built up support networks within the area in which they live which could not be maintained if they were forced to move out of the area.

7.13 The proposals do not take into account other factors relating to learning disability or the importance of living in a particular area, for example, being close to family or friends that provide support, accessing community services, transport and being a part of the community. The limited provision of accessible housing options may already significantly reduce the choice a person with a learning disability has over where to live. By implementing the housing criteria as it currently stands people with a learning disability may not have the opportunity to live independently in their own community.

7.14 Mencap would ask the committee to consider an amendment to exclude DLA/PIP claimants from the new size criteria. We would also ask the committee to consider amendments which ensure that in the case of someone with a disability or families with a child with a disability where an adaptation is in place, additional space is needed for treatment or equipment or services are only available in a specific area that they will not be required to move and will not have their benefit reduced (clauses 11 and 69).

8.0 Welfare Reform Bill – Part 4: Personal Independence Payment

- 8.1 The Bill provides for the introduction of a new Personal Independence Payment (PIP) to replace Disability Living Allowance. PIP will continue to be a non-means tested, extra costs benefit but everyone receiving it will have to undergo a new assessment (including people currently receiving DLA).
- 8.2 When reform was first announced the ambition was a 20% saving of the DLA expenditure with a commitment to focus resources on “those with the greatest need”. In Northern Ireland this would mean that 24,000 people could potentially lose this benefit under PIP. We believe that the UK Government has not fully considered the huge and detrimental impact that the proposed changes will have on the lives of the UK’s most vulnerable individuals and their families.
- 8.3 Mencap conducted a survey entitled ‘DLA: why it matters’ in 2010 to explore the usage of DLA by people with a learning Disability. The key findings are as follows:
- 66% of respondents were in receipt of social services in addition to their DLA.
 - 84% of people with a learning disability said that they spent their DLA on paying for care and support, including help around the home and support with leisure activities and transport needs. One respondent said, “I use my DLA to pay for taxis. I do not like using buses. I have been teased on buses.”
 - 61% of respondents commented that they spent more money on ‘everyday’ things as a result of their learning disability.
 - 71% of respondents commented that DLA made a difference to their lives. One respondent said, ‘Without DLA allowance my daughter would become very isolated she would lose a lot of her independence.’
- 8.4 The survey’s findings highlight the central role DLA plays in the lives of people with a learning disability, helping them to afford the support they need to live an independent and fulfilling life. Mencap believes access to all rates of DLA must be protected otherwise people with a learning disability will be left socially and financially vulnerable and isolated.
- 8.5 It will introduce face-to-face assessment for most PIP claimants, stricter criteria and a shorter timeframe for the claiming process. The changes proposed to the assessment process will put people with a learning disability and their families under considerable stress and increase their reliance on independent advice providers and organisations that provide support.
- 8.6 The new process will also require disabled people to provide independent medical evidence. The majority of this evidence will come via a medical professional. With GP appointments estimated to cost the NHS up to £60 per visit⁴, therefore based on this, the PIP reassessment process of the current 188,600 DLA claimants could cost the health service in NI up to £11 million.
- 8.7 The aim of the reforms is to ‘reduce dependency and promote work.’ It is estimated, however, that less than 10% of people with a learning disability are in paid employment due to the difficult barriers that they face when trying to find work. The proposed changes to welfare do not address any of these barriers and instead may lead to some disabled people in work being forced to give up their jobs because they can no longer afford support without DLA. In a survey by the Disability Alliance in 2011⁵, 56% of disabled people said they would have to stop or reduce work if they lost DLA. This could potentially result in 1200⁶ disabled people

4 Royal College of Nursing based on 2009 NAO statistics, see
http://www.rcn.org.uk/__data/assets/pdf_file/0008/317780/003598.pdf

5 http://www.disabilityalliance.org/r68.doc#_Toc285815634

6 Figure of 1200 based on calculating that if 24,000 DLA claimants do not receive PIP and using the government figure that 9% of claimants are in paid employment, this equals 2,178. Using the Disability Alliance figure of 56% potentially leaving employment this equals 1,219.

in Northern Ireland becoming unemployed which would lead to a loss of £6 million, based on the average NI salary⁷, in income tax and national insurance to the treasury.

- 8.8 Some of our other main concerns are that “Life-time” or “indefinite” awards will no longer be available, even for those with progressive or life-long conditions. Also, under PIP, families will lose the right to retain Motability vehicles if they spend 28 days or more as a hospital in-patient in any 365 day period. This fails to recognise just how families depend on these vehicles, often as the only vehicle in the family, and just how often many disabled people with complex needs have to stay in hospital. Losing their Motability vehicle could be devastating for families.
- 8.9 As the responsibility will be on the individual, once they receive correspondence from Social Security Agency, to make a claim to PIP there may be implications for people with learning and communication disabilities. If people cannot read or have difficulties in reading, or if they do not realise that they have been asked to apply for PIP they may not realise the impact of not engaging in the process. The level of support needed for people with a learning disability must be recognised and resourced by SSA.
- 8.10 One of our main concerns is the changes to entitlement for enhanced rate mobility component. Currently under DLA an individual can be awarded high rate of mobility component if they: have severe mental impairment, are in receipt of high care component or have significant challenging behaviour. Under PIP this criteria, for receiving high rate mobility component, will be removed. Several people with a learning disability, that Mencap supports, meet this criteria under DLA and are currently in receipt of high rate mobility. The removal of this award will have a huge financial impact for the individual, their family and carer. Having funding for a mobility car or to pay for transport is a life line and the removal of this will have a devastating effect on their lives.
- 8.11 There was no consideration given to the knock-on impact on family carers’ finances or the likely increase in caring responsibilities in the existing impact assessments. Carers currently depend on the person they look after receiving DLA to be eligible for receipt of Carers Allowance. Therefore the loss of PIP/DLA will directly impact on carers’ income.
- 8.12 The majority of changes to Personal Independence Payment will be in the regulations and we would like to use this opportunity to highlight possible measures to mitigate the negative impact of the changes on people with a learning disability:
- Ensure that the descriptors and thresholds are amended to reflect a true understanding of learning disability and the context in which people with a learning disability live. The list of daily activities must be located in the context and environmental (both physical and attitudinal) in which the individual with a learning disability lives.
 - The customer journey must be based on a rights based approach and ensure that people are given additional information and support that they require to complete the process including reasonable adjustment and where necessary advocacy and advice from externally organisations.
 - Retain the current time limit of 2 years for reclaiming that exists with DLA, rather than the suggested 1 year for PIP
 - Remove the 28 day restriction in relation to hospital inpatient and Motability Scheme.
 - Review the effectiveness of face-to-face assessments when sufficient written evidence exists and the additional costs incurred when sourcing additional medical evidence.
 - Publish policy simulation modelling results and clearly state mitigating actions where the impact on people with a disability and carers is required.

7

NI Annual Survey of hours and earnings 2011, DFP

- 8.13 Mencap would ask the committee to put in place protections for those people who may not meet the criteria for PIP and their carers in relation to poverty and social exclusion. We would also ask the committee to consider an amendment to ensure a review after the first year of PIP being introduced into Northern Ireland and a review every two years after that.

Amendment to ensure yearly review of PIP

Part 4, Clause 88, line 25, remove line 25 to 27, and insert:

“(a) Within the 1 year beginning with the date on which the first regulations under that section come into operation

9.0 Final comments:

- 9.1 We would like to thank the committee for the opportunity to present written evidence on the Welfare Reform Bill and would welcome an opportunity to discuss any of the points or suggested amendments in more detail.

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Submission to the Committee for Social Development on the Welfare Reform Bill 2012

October 2012

1. Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination and where equality and human rights are guaranteed. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.²

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

NICEM sits on a number of consultative fora and networks dealing with human rights and equality issues in general and welfare reform (ICTU Welfare Reform group) in particular and fully supports the work of other organisations.

As already mentioned NICEM represents a number of BME communities and we have also been involved in providing bi-lingual client services over the last number of years. This submission has been informed by the challenges and difficulties faced by those clients in accessing social welfare on a day-to-day basis. NICEM has seen first hand the effect that the misapplication of EU law can have on EU migrants who have entitlements under EU law. We have also experienced the restrictive nature of the social welfare system as it currently stands in terms of non-EEA nationals living in destitution which is a clear breach of international human rights obligations.

Therefore, this submission does not purport to conduct a comprehensive legal analysis of the Bill. In that regard we would like to take this opportunity to endorse the Law Centre (NI)'s submission. Instead, this submission will look at the impact of the proposed changes to the welfare system would have on BME communities, in particular the experiences of clients in contact with the Belfast Migrant Centre.

1 Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

2 In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

2. The right to social security and legal obligations

The right to social security is enshrined in a number of international human rights instruments to which the UK is a party and the obligation to implement this right is one of a legally binding nature. This right appears in a number of United Nations (UN), Council of Europe and EU law instruments.

Firstly, at the UN level, the right to social security is enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights.³ The Covenant also refers to the concept of progressive realisation, which prohibits States from taking retrogressive measures or retrograde steps to row back on socio-economic rights, even in times of recession. It is submitted that the spirit of the Welfare Reform Bill itself represents a retrogressive measures.

The right to social security is also enshrined in other instruments such as the UN Convention on the Elimination of Discrimination Against Women and the UN Convention on the Rights of the Child.

Secondly at the Council of Europe level, Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) (which has been incorporated into domestic law by the Human Rights Act 1998) recognises a right to property. At this juncture it is worth bearing in mind that Article 14 ECHR states that all rights of the Convention must be implemented without discrimination. Therefore, every individual's right to social security must be equally protected, irrespective of nationality for example. In addition, in accordance with case law it is arguable that the ECHR prohibits state-enforce destitution under Article 3 of the Convention.⁴

Thirdly, the right to social security is enshrined in the EU Charter of Fundamental Rights. While the Charter only has legal effect when implementing EU law, it is highly relevant for the EEA migrant workers represented by NICEM because they are exercising their right to free movement and therefore the Charter comes into effect.

3. Access to social welfare

Migrants have increased difficulty in accessing social welfare in terms of lack of local knowledge and therefore, navigating the administrative system, sometimes without access to interpreters, lead to increased difficulties.

NICEM is deeply concerned by the Department of Work and Pensions indication that all applications for Universal Credit will now be processed online and claimants will need a bank account.⁵ Currently, it is quite difficult for non-British/Irish citizens to open bank accounts upon arrival due to anti-terrorism legislation.

Therefore, any move to administer payments in this manner would lead to increased barriers for migrants and could potentially lead to migrants living in destitution.

4. Rights of EEA nationals and compliance of the Welfare Reform Bill 2012 with EU law

Social security is coordinated by EU Member States on the basis of established principles of EU law such as the free movement of workers and equal treatment. Coordination is governed by Council Regulation (EC) No 1408/71 and Regulation (EC) No 884/2004.

While the Welfare Reform Bill is an enabling Bill and most of the details will be teased out in the regulations, we are concerned that Northern Ireland will adopt the same approach as that of Great Britain. There has been some indications by the Department of Work and Pensions

3 For further comment on the content of this right see, UN Committee on Economic, Social and Cultural Rights, General Comment No. 19: the right to social security (Article 9), 2007, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement>.

4 Regina v. Secretary of State for the Home Department (Appellant) ex parte Limbuela (FC), [2005] UKHL 66.

5 DWP, Universal Credit - FAQ, available at: <http://www.dwp.gov.uk/docs/universal-credit-faqs.pdf>.

which would lead to differential treatment of EU migrants or would potentially discriminate against EU migrants by paying EU migrants lower rates of pay or putting extra restrictions or requirements. If the same approach is adopted in Northern Ireland this would impact the following clauses in the Welfare Reform Bill:

- a. Clauses 8-10: calculation of awards
- b. Clause 22: work requirement

In addition we are concerned that clauses 61-63 may have ramifications for migrants who may experience a change in immigration status as they no exclusion in relation to contributory benefits has been provided for.

Furthermore, the DWP has indicated that a new residence test will be introduced. Such a test has previously been held to be in breach of EU law and it is therefore recommended that the Committee seek to ensure that this will not be introduced.

In our experience, cases where there are entitlements under EU law are often refused due to the misapplication of EU law. Indeed, at the moment the European Commission is in the process of infringement proceedings against the UK in relation to the application of the right to reside test⁶. NICEM strongly urges the Committee to conduct a thorough review of the Bill to ensure that EU law will be fully complied with and that EEA nationals will be able to access their entitlements without discrimination since otherwise this would inevitably lead to maladministration of EU social security law, which would inevitably result in litigation before the courts.

4. **Clause 69 and potential impact of changes to Housing Benefit on BME communities**

Clause 69 and the proposed changes to Housing Benefit may lead to increased difficulties for migrants accessing housing. The case study below illustrates the problems currently faced by migrants:

Case Study

2011

Nationality: Polish

Mr. L is a sixty five year old man who has been in Northern Ireland since 2005. When he arrived he worked for a few years before becoming ill. He was in receipt of Employment Support Allowance and Housing Benefit. He had a severe back injury and was not able to work or gain any other income. He was dependent on his Housing Benefit to keep him from becoming homeless.

After a routine assessment his ESA was stopped as they decided that he was no longer ill. Because his ESA was stopped his Housing Benefit was also stopped. He was now at risk of homelessness.

We appealed the ESA on the basis that they had not taken his hearing problems into account and he was lip reading at the assessment, which prevented him from having a full understanding of what was being asked.

We supported him with our crisis fund to pay for rent until the appeal went through. Upon appeal his ESA was successfully reinstated. After this we spoke with Housing Benefit which was restarted.

6 European Commission, Press release, "Social security coordination: Commission requests United Kingdom to end discrimination of EU nationals residing in the UK regarding their rights to specific social benefits", http://europa.eu/rapid/press-release_IP-11-1118_en.htm.

5. Clauses 76-94: Problems with current administration of DLA and potential impact of PIP on BME communities

Clauses 76-94 and the proposed changes to DLA may lead to increased difficulties for migrants with disabilities who are liable to suffer multiple discrimination. The case study below illustrates the problems currently faced by migrants:

Case Study

September 2011 – December 2011

Nationality: Slovak

Client came to the Clinic. She has low rate care DLA. She had applied for DLA in 2009 and received low care and low mobility. She asked for a supersession, which she was granted in January 2010. However in Feb/March 2010 they sent an examining medical doctor who determined that she wasn't in need of the mobility component. This doctor and the occupational therapist did not use an interpreter. The mobility was taken away.

The Tribunal supported the supersession. She now wants to appeal this decision, which has to go to the social security commissioner. We helped the client submit an appeal.

On appeal, the client has received a new DLA award and it has been increased to high rate mobility and middle rate care.

6. Further Information

For further information in relation to this submission please contact:

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31 October 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Ms Paula Bradley
 Mrs Judith Cochrane
 Mr Sammy Douglas
 Mr Fra McCann

Witnesses:

Ms Jolena Flett	<i>Belfast Migrant Centre</i>
Ms Karen McLaughlin	<i>Northern Ireland</i>
Mr Patrick Yu	<i>Council for Ethnic Minorities</i>

1. **The Chairperson:** Members, we are going to move on to the next briefing, from the Northern Ireland Council for Ethnic Minorities (NICEM).
2. I formally welcome representatives from NICEM here this afternoon. I apologise if you have been held up longer than was necessary. I am sure that you have heard that often enough, but there you go. I welcome Patrick Yu, director of NICEM; Karen McLaughlin, legal policy officer; and Jolena Fleet, manager of the Belfast Migrant Centre. I welcome you all here this afternoon. The floor is at your disposal, so without any further ado, please make your presentation.
3. **Mr Patrick Yu (Northern Ireland Council for Ethnic Minorities):** Thank you, Chair and Committee members, for giving us the opportunity to speak to you today on the Welfare Reform Bill. I will do a short introduction, and then Karen McLaughlin, our legal policy officer, will talk about the implications of the Bill for ethnic minorities, in particular, and the EU legislation. Jolena is the manager of the Migrant Centre, which provides a wide range of advocacy, advice and support services for all migrants. She will use two cases to illustrate the implications of the Bill for ethnic minorities.
4. I am pleased to follow yesterday's submission from the Northern Ireland

Human Rights Commission, in which the chief commissioner gave a detailed account of the human rights implications of the Bill, with which we completely agree. However, the commission ignored the impact on ethnic minorities, which are protected by international human rights law under, in particular, the UN Declaration on the Elimination of all Forms of Racial Discrimination.

5. So, something was missing from the commission yesterday, and we are happy to fill in the gap today. We appreciate the opportunity to present our case, and we are very narrow on the race issue. A lot of submissions have already covered the wider implications of different aspects that impact on ethnic minorities, and we are one of the many groups affected by the Bill.
6. My key message to the Committee today is that the Bill might infringe a number of EU laws. My colleague Karen will give more detail about that effect. Under the Northern Ireland Act 1998, the Assembly cannot make any law that is incompatible with EU law and the Human Rights Act 1998. Our assessment is in line with that of the Joint Committee on Human Rights, which was very critical of the absence of a detailed human rights impact assessment on the same Bill, which is now being discussed in the Assembly. So, we have more or less copied and pasted everything from England, Wales and Scotland, and, in Northern Ireland, we do not have a mechanism similar to the Joint Committee on Human Rights to scrutinise. This Bill is so important and affects so many people. I ask the Committee to talk to the other Assembly Committees about whether they should put a mechanism in place to safeguard the legislative process in the future.
7. This Bill will affect the most vulnerable groups in our society. We are coming out of a conflict and have a high level

- of poverty and social deprivation. Without a full EU law and human rights impact assessment, the Assembly will be vulnerable to making law that is incompatible with EU law and the Human Rights Act. Any law that is incompatible with EU law will be void.
8. Therefore, we request that the Committee seeks a full human rights impact assessment and EU law impact assessment from the Minister before the Bill continues. It will be more expensive if the Bill is not done properly, and, therefore, it is better to do the right thing in a sufficient time rather than to rush it through. The Chair had very good experience when we engaged with him on the seafarers Bill that is proposed by the Office of the First Minister and deputy First Minister. That is exactly the same situation. History tells us that it will cause a lot of people anguish and, at the same time, create more unnecessary litigation. Therefore, I ask the Committee to consider our suggestion. I will pass over to Karen.
9. **Ms Karen McLaughlin (Northern Ireland Council for Ethnic Minorities):** Thank you, Patrick. At the outset, I want to point out that it is important to recognise that social welfare law is not developed in a legal vacuum. I have set out in section 2 of our briefing paper the number of international human rights standards, including the concept of progressive realisation, that prohibit the introduction of retrogressive measures, and I am sure the Committee has heard from a number of groups over the past number of days that believe that the Welfare Reform Bill constitutes a retrogressive measure.
10. As well as international human rights standards, NICEM is particularly concerned that the Welfare Reform Bill seems to have been developed in the absence of a thorough consideration of EU law. A number of sources of EU law should be taken into consideration, and I will go through them in four points.
11. First, the principle of non-discrimination on the basis of nationality is enshrined in article 45 of the Treaty on the Functioning of the European Union.
12. Secondly, the right to social security and the principle of non-discrimination is enshrined in articles 34 and 21 of the Charter of Fundamental Rights of the European Union.
13. Thirdly, a crucial issue for us is that the Race Equality Directive 2000/43 lays down a framework for combatting discrimination on the grounds of racial or ethnic origin and puts into effect the principle of equal treatment. According to article 3(e), (f) and (h) of that directive, social protection, including social security, social advantages and access to the supply of public housing, followed in the scope of the directive. The concept of discrimination in the directive includes three elements: direct discrimination, indirect discrimination and harassment.
14. Finally, it is important to bear in mind that social security is also an area of co-ordination in EU law, and it is governed by two EU law regulations, nos. 1408/71 and 884/2004. So bearing that in mind, I will briefly outline three of NICEM's key concerns in relation to the compatibility of the Welfare Reform Bill and programme with EU law.
15. It appears that some parts of the Bill are inherently discriminatory. For example, the provision for differential treatment of EU migrant workers, set out in schedule 1 paragraph 7 of the Bill is quite striking. That provides for EU claimants, who ordinarily fall under the non-work-related requirements to be instead placed into the work-related requirement category. As I have already mentioned, one of the core principles of EU law is equal treatment, and that forms the basis for the co-ordination of social security law in the union. This is a clear case of differential treatment of EU migrants that would undoubtedly be found to be discriminatory in court. Therefore, NICEM recommends that this provision be deleted from the Bill.
16. In addition, NICEM is also concerned that clauses 61 to 63 may discriminate

- against migrant workers, who may experience a change in their immigration status. These provisions introduce a new requirement for claimants to have an entitlement to work in order to claim certain contributory benefits. This is particularly concerning for non-European economic area (EEA) nationals, who ordinarily are not entitled to non-contributory benefits. So effectively, that would exclude non-EEA nationals even further from the welfare system. Bearing in mind the Limbuela case cited in the briefing paper, it is arguable that those clauses can have a potential to breach human rights, where migrants have lost their jobs and, despite having paid tax and national insurance contributions, migrants may find themselves being forced to live in destitution by the system that the state has put in place. Therefore, NICEM recommends the deletion of those clauses from the Bill.
17. Our second concern relates more broadly to the programme of welfare reform. Since the Welfare Reform Bill before the Committee is an enabling Bill, most of the details will be left to the regulations. NICEM is deeply concerned that Northern Ireland will adopt the same approach as Great Britain in drafting the regulations. The draft regulations in Great Britain, as well as indications by the Department for Work and Pensions (DWP), suggest that EU migrants may be paid benefits at lower rates. That again would constitute direct discrimination. The introduction of the requirement to seek work for 35 hours per week could also potentially discriminate indirectly against EU migrants, particularly in relation to paragraph 7 of schedule 1, as I have already mentioned.
18. So, in NICEM's view, clauses 8 to 10 of the Bill, which deal with the calculation of awards, and clause 22, which deals with work requirements, could potentially allow for Great Britain's approach to be transposed to Northern Ireland, and that would undoubtedly amount to discrimination.
19. Therefore, NICEM calls upon the Committee to put in place safeguards
- within the Bill to ensure that those provisions do not provide a pathway for discrimination in the regulations.
20. The DWP has indicated that a new residence test will be introduced for personal independence payments (PIPs): a worker must have been in the UK for two of the past three years. Such a test has previously been held to be in breach of EU law and, in addition, the Council of Europe's 'European Code of Social Security' prevents the state from setting a minimum time period to determine residency. The introduction of such a test could potentially lead to infringement proceedings by the European Commission against the UK, concerning the misapplication of EU law. In the briefing paper, I have referred to ongoing infringement proceedings against the UK in relation to the application of the right-to-reside test.
21. I have already mentioned potential breaches of international human rights obligations, but those are not legally binding. However, it is important to bear in mind that EU law is legally binding, and any breaches of EU law may result in infringement proceedings which could lead to hefty fines, as Patrick has already mentioned in his introduction.
22. That concludes my presentation and I will now pass on to Jolena to provide some cases studies to illustrate the ongoing issues faced by migrants on a daily basis. Given the fact that the Bill paves the way for differential legal treatment, this will undoubtedly have a knock-on effect on the administration of payments at the coalface.
23. **Ms Jolena Flett (Belfast Migrant Centre):** Chair and the Committee, thank you for the opportunity to present to you. I would like to set the context of what we are seeing in our advice services and how the changes are beginning to impact on individuals among the black and minority ethnic (BME) population.
24. NICEM has been formally providing advice since 1998, and to the migrant working population in particular since

- 2004, beginning with the floating support project. In 2010, we received three years of Big Lottery funding to establish the welcome house project, which has now become the Belfast Migrant Centre. The centre has one full-time adviser, two part-time advisers and an immigration adviser. Since 2010, the advisers have assisted in over 5,000 cases, with 41% of those related to welfare benefits.
25. Our increased capacity for advice services has allowed us to monitor trends and respond to the different needs of the migrant population. We have seen our caseload change from queries about filling out forms and simple questions about benefit eligibility to complex appeals in the alarming rate of people who are in crisis situations. The increasing demands on our services mean that we no longer have the capacity to meet the ever-increasing need. There is an increasing need for tribunal representation, which we do not have the resources to provide. There is also a difficulty in accessing that through other advice centres that do have the resources, as they are already oversubscribed.
26. There are further difficulties around language, as many advice centres have no funding to provide interpreters, and, even with the basic grasp of English, the terms used in assessments and tribunals are not feasible without the help of an interpreter. For example, a client who was doing an assessment to transfer from disability living allowance (DLA) to PIP was asked whether she had trouble communicating. She answered yes, as she could not speak good English.
27. We continue to be concerned about the access that our service users will have with the changes proposed under the Welfare Reform Bill. Migrants have increased difficulty in accessing social welfare as a result of a lack of local knowledge. Therefore, navigating the administrative system, sometimes without access to interpreters, leads to increased difficulties. We are deeply concerned by the indications that all applications will now be processed online and that claimants will need a bank account.
28. There are two case studies in the briefing paper that outline some of the difficulties people have faced. One of those refers to a 65-year-old man whose employment support allowance (ESA) was stopped after an assessment, which had the knock-on effect of stopping his housing benefit. That meant that he had to live off a credit card for six weeks and got into debt as a result. Help from our crisis fund helped him to pay his rent to avoid homelessness. The other case study looks at the impact of an assessment that was done by a GP without the use of an interpreter, which meant that the claimant's DLA was stopped. On appeal, she was awarded a new DLA award that was increased to high rate mobility and middle rate care and that effectively met her needs.
29. The other issue we have had, which I am sure you have heard about from other groups such as Advice NI, is about getting GP reports and having to pay for further information. That has further decreased people's access to what they need to get a proper assessment done.
30. We have received funding because there was a recognition of the gap in accessible and independent advice services for people from the black and ethnic minority community, particularly those who are migrant workers from EU and non-EU states. Difficult economic times, austerity measures and welfare reform have dictated that the need for the service will continue to increase. However, our funding officially ends in June 2013.
31. Issues of discrimination and harassment at work and in housing, increased redundancies and unemployment of migrant workers, delays in the benefits system due to a lack of understanding of eligibility and compliance investigations have put the BME population in an increasingly desperate situation. Many of the crisis situations we have supported have been caused by delays in the processing of tax credits and benefits,

- with an increasing number of our service users being referred to the compliance unit almost immediately after applying for what they are entitled to. That has led to an increase in depression and mental health issues and substance abuse. Our staff have had to train themselves in mental health awareness and suicide prevention, although counselling is not within their usual remit.
32. I hope that the increasing pressure on the independent advice sector is taken into account, especially the advice needs of those who are particularly marginalised in our society. We also hope that there will be recognition that people in those communities also suffer from disabilities and include older and younger people. Thank you.
33. **The Chairperson:** Thank you very much for your presentations. Before I bring in Sammy Douglas, you have, obviously, raised a range of concerns in your submission. Have you raised any of those with the Department?
34. **Mr Yu:** No, not yet. I think that you are aware that we have lobbied Departments like the Department for Employment and Learning (DEL) on the agency worker directive, which gave us a problem. We are in the same situation with this Bill. We also lobbied on the seafarer's regulation and the amendment of the whole race legislation. At the moment, we have so many things in one pot.
35. We will not let the Department off the hook. Our presentation of evidence to the Committee today is just the starting point. As we have done previously, we will publish a more detailed paper and present that to the Department. We will also circulate that to the Committee.
36. **Mr Douglas:** Thanks very much for the presentation. In your paper, you stated that:
"DWP has indicated that a new residence test will be introduced."
37. You went on to state that:
"Such a test has previously been held to be in breach of EU law".
38. Patrick, I think that you said that you endorsed the Law Centre's presentation to the Committee.
39. **Mr Yu:** Yes.
40. **Mr Douglas:** OK. The Law Centre also raised serious questions about the potential discrimination of migrant workers as a result of paragraph 7 of schedule 1 to the Bill. What is your view on that? Should it go ahead, have you considered some sort of legal challenge to the Bill?
41. **Ms K McLaughlin:** I will take up the question on paragraph 7 of schedule 1, and I will leave the question of the legal challenge to Patrick. Was your question about the case that was found to be in breach of EU law?
42. **Mr Douglas:** It was about the potential discrimination of migrant workers.
43. **Ms K McLaughlin:** The way that it is set up, migrant workers, who would ordinarily not fall within the work-related categories, will now fall within them if such regulations come into effect. It is a cause of concern for us that that power even exists or that even the idea of differential treatment has been set out. Clearly, primary legislation should not set out differences between one group and another. EU social security law is based on the free movement of workers. It allows workers to move from one member state to another, and, equally, workers can move from here to another member state. They should be treated equally. So, that is quite concerning.
44. **Mr Douglas:** Are you saying that, as it stands, this is very much a misapplication of EU law?
45. **Ms K McLaughlin:** Yes, on the basis of the principle of equal treatment and the free movement of workers.
46. **Mr Yu:** We are not worried about the litigation issue now. We are going to our own lawyer to ask. This is what we have indicated as the prima facie cases at the moment. We just give them more detailed legal opinion on how far it may infringe.

47. As I said, EU law is quite straightforward. All the cardinal rules are already set up by the European Court of Justice. We will see whether the infringement will worry us. The Committee had very good experience of that when it dealt with the seafarers regulations.
48. **Mr Douglas:** Jolena, those case studies were very good. Anything like that is very helpful to us. We are going through all the clauses, but it is people's lives we are talking about here.
49. **Ms Flett:** We have several case studies to illustrate all the different points. Anything that is needed is available for submission.
50. **Mr F McCann:** On the back of what Sammy said, the Equality Commission, the Human Rights Commission and the Citizens Advice all raised the problems that might be faced by ethnic minorities in relation to the Bill. It baffles me that there are clear breaches of European law ahead but DWP and others are still pushing ahead. The difficulty of dealing with an enabling Bill is that the devil will be in the detail. Most of the detail will come in the regulations, and you will probably find that it will be much worse once they start to lay the thing out. Although groups have individually spoken about that, is there a possibility of the groups coming together under the auspices of NICEM?
51. One of the questions we have asked every organisation was whether they have considered legal action on aspects of the Bill. I would not expect an organisation like yours, with the little resources that you have, to be able to tackle something like that. However, if you joined with the Law Centre, the Human Rights Commission, the Equality Commission and Citizens Advice you could, maybe, launch a united action once the regulations come out, based on all the stuff you said today. Many of the representations that have been made to us show that there is growing concern.
52. You heard me ask the people from Mencap and Disability Action who were here before — and I have asked the question a number of times at different levels — about how people are treated under the proposed legislation or the old legislation when they go into the offices. That can be related to migrant workers. Sammy is right about the need for clear examples. If there are other examples we can use in evidence or that you can put into evidence, those will be helpful.
53. **Mr Yu:** That is very important. We always keep a legal challenge in our minds. It is one of the many options that we should consider. We are highly likely to take a legal challenge in this case, because we are not happy about the whole benefit system. We have a lot of cases. Jolena gave just two examples, but have dealt with more than 4,000 cases on the benefit side alone. Most of those are all about discrimination.
54. You can see that the process will lead to the commission bringing infringement proceedings. The legislation has not yet come fully into effect. I imagine that the commission is watching the British Government very closely to see how they introduce the legislation. We will keep in contact with the commission and send our assessment to it to see whether it will take any action on the issue. The bigger issue is who should take the legal challenge. There is no doubt that, according to statutory duty, the Human Rights Commission and the Equality Commission have more and more powers, functions and resources. However, we, as a voluntary and community sector, are also very important. Any legal challenge must not be out of context. We need to produce a very good testing case and keep within our remit. You are talking about multi-layer partnership. Each of us does our bit to help the process if the law is not made right.
55. As I said clearly at the outset, it is very important that the Committee should consider, or raise with the Business Committee, the lack of mechanisms that our Assembly has to scrutinise the Bill to determine whether it is in breach of human rights or equality legislation. I remind the Committee

- that an additional duty applies to the Assembly under section 75. You must make sure that the legislation will not discriminate. You also need to promote equality of opportunity on so many different grounds. This Bill is more or less a wake-up call. That is why it is very important that we should have the scrutiny mechanism. Otherwise, like the Committee for the Office of the First Minister and deputy First Minister (OFMDFM), you will have more trouble later because of a law that was forced to pass.
56. **Mr F McCann:** Patrick, you are right. As Mickey often quotes, in 2007, this Committee put down amendments challenging the early stages of the Bill. Last Thursday, there was a proposal from this Committee to, under Standing Order 35, suspend the Committee and set up an Ad Hoc Committee to look at the human rights and equality implications of the Bill. It was a deadlocked vote, which meant that it was lost. Yesterday, the Chair mentioned bringing that proposal back to the Committee next week. Do you see that as a way forward in looking at the human rights and equality implications?
57. We asked the Human Rights Commission representatives yesterday whether they will consider legal action, and they were not as clear as you were. It was the same with the Equality Commission. There needs to be someone to pull all those groups together and say, "We have all said this. How can we deal with it? Rather than having singular cases, let us present a collective case." What do you think about the proposal under Standing Order 35?
58. **Mr Yu:** I agree that article 35 is the first step towards rectifying the situation that we face. However, in the long term, we should also have that kind of parliamentary mechanism to properly scrutinise a Bill such as this, which is so important because it affects every section of society. You can imagine that there may be more such legislation in the future for which we will need to give over more time for scrutiny. My gut feeling is that this is quite simple.
- Just like the Human Rights Act, all Departments must attach to Bills their assessments of who will be affected by them. They need to do that before the Bills come to the Committees otherwise Committees will always need to second-guess or seek legal advice before they scrutinise Bills, and I do not think that that is fair to members.
59. **Mr Brady:** Thanks very much for the informative presentation. What Karen said bears out that the Welfare Reform Bill was formulated in Britain with complete disregard for European law. European law is legally binding. If this legislation goes ahead, and the draft regulations and guidelines have yet to come, there will, without doubt, be legal challenges. Patrick makes a practical point by asking who has the resources to do that. I am sure that larger organisations will come together to bring legal cases, because, as you said, the Bill contravenes various European laws. Britain just seems to have flouted EU law in pursuit of the ideology on which the legislation is predicated. We talked about invoking Standing Order 25 to set up an Ad Hoc Committee, but that is another discussion.
60. I was interested to see Citizens' Advice's proposed amendment to clause 24(7), which makes special provisions for victims of domestic violence. It wants that provision to be extended to those who suffer hate crimes and have to be rehoused. The wording is relevant to you and states:
- "For the purposes of subsection (7)...'hate crime' has such meaning as may be prescribed and shall include grounds of ethnicity, sexual orientation, gender identity, religion, political opinion or disability".*
61. The proposed amendment continues by explaining that a:
- "'victim of hate crime' shall be defined by regulations under subsection (7)...'resulting in a need to be rehoused' shall be defined in regulations".*
62. It goes in to say that the amended provision will apply to a person who has "recently been a victim" of hate crime.

- A lot of hate crime is racially motivated throughout the North, not just in Belfast and other places. It has happened in my constituency and in others. Provision for victims of hate crime could reasonably be enshrined in clause 24 in particular because domestic violence is seen as something that needs to be addressed, and hate crime is no different. What is your view on that?
63. **Ms K McLaughlin:** Picking up on the point that was made about EU law: I reiterate that infringement proceedings have been ongoing for a year in relation to the right to reside and those proceedings do not seem to have fazed the drafting of the Bill. So, there is a clear disregard.
64. **Mr Yu:** Before we go to Jolena, I would like to say that this is a very complex issue. I think that your intention to protect that grouping is good. Jolena will give you more practical examples. In the end, people are being excluded, or they will relocate to England instead of staying here, because they feel that enough is enough.
65. **Ms Flett:** Obviously, any further protection for victims of hate crime is welcome. There is also a lot to be said on the interpretation of who is a victim of hate crime, the under-reporting of hate crime and the police failure to report hate crimes as such. That is another discussion. If that line is to be followed, then a lot of work must be done on who falls into the hate crime category, how it is interpreted, and what the guidelines will be. There needs to be training and more understanding in the Departments about what a hate crime is and how it is reported.
66. **Mr Brady:** I wanted to flag that up because I agree that it is a very complex issue and can vary from individual to individual.
67. You talked about the right of residence. Habitual residence was introduced by the Tories in 1995 by Peter Lilley and was pure xenophobia. There was no other reason or logic to it because it contravened European Union law.
- However, it is interesting that the majority of people affected are people who were born here and lived here, went to America or Australia or wherever to work and came back. It is such a nebulous concept, because you could be here for a week and be accepted by the Department as being habitually resident and somebody else in another office could decide that it is three months, because the case law states that the longer you are here, the more habitually resident you become. That needs to be addressed.
68. **Ms K McLaughlin:** Definitely. That is the issue that we have with the two-year rule. In the South, they had a two-year rule, which had to be rowed back from because it was simply in breach of EU law. Any move towards that would be silly because it will be open to legal challenge immediately and will be an easily won case. It will draw out the process and lead to litigation costs for the Government.
69. **Mr Yu:** Another implication is that, once you infringe EU law, that part of the law will be void immediately, and there will be consequences for the implementation of the programme.
70. **The Chairperson:** I thank members. Are there any additional points, Karen, Patrick or Jolena, that you need to put to the Committee before the session ends?
71. **Mr Yu:** I want to raise a little bit of detail about the programme. Karen briefly mentioned indirect and direct discrimination. Part of the programme in the future will involve the use of online applications, and you are aware that such applications will exclude a lot of people. I tried to highlight that more than 65% of migrants from the EU cannot speak any English. How could they apply for benefit? A second element of the online application process is that a person must have a bank account. You are aware that we have anti-terrorist legislation, and that if a person wants to open a bank account, he or she needs to reside here for six months and show that they have a residence requirement and ID for that purpose. In particular,

- if the person does not have a tenancy, they will not get a bank account. A former colleague of mine from NICEM worked in Brussels for four or five years and then came back. She resided here before and has all the bank records, but she cannot get a bank account until at least six months have passed. As you can see, this is the trouble.
72. Most migrants from the EU work in meat-processing plants, and quite a lot are agency workers. I highlighted the same issue to the Committee for Employment and Learning, and there was a formal investigation by the Equality and Human Rights Commission in GB into the meat-processing industry. One effect is that there is multi-layered exploitation. One layer is that employers give people cheques but know that they can never cash them. They ask people to become self-employed and give them cheques. A lot of people then become doubly exploited. If they try to cash the money, they need to go to the Western Union, where they will pay a certain interest rate or fee in order to do so. As you can imagine, such people are very low paid already, so that kind of exploitation system is created. If you do not have the language and a bank account, and cannot apply for one, there is both direct and indirect discrimination due to language and the barriers created.
73. As well as ethnic minorities, you also have the vulnerable groups of people who are illiterate. We came across some Chinese people who can speak with a very good local accent but who cannot read or write. That group will most likely be in the benefit system. So, you will be excluding not only the ethnic minority but also those in the margins. You should think about how to improve the programme otherwise there will be a lot of legal challenges.
74. **The Chairperson:** Thank you very much for your written presentation and for your contribution today. You will understand that you have raised a number of issues with us, not least the last couple of points regarding potential direct and indirect forms of discrimination arising from the Bill. You gave us a number of case examples, and Karen gave us some more fulsome responses on that matter. You will have also determined from members' questions and other submissions that a range of concerns has been raised by others as well as those that you have raised this afternoon. It is very important that we receive concerns that are confirmed by a spectrum of organisations.
75. Thank you for your invaluable contribution, which will help us to scrutinise the Bill to the best of our ability. We look forward to completing our report by 27 November under the current schedule. Your contribution has been a big help to us in understanding the Bill and its consequences, and it will help to shape our response when we come to the clause-by-clause scrutiny.
76. Again, thank you very much, and we look forward to continuing our discussion with you in due course.

Northern Ireland Housing Executive



Briefing for Social Development Committee 25 October 2012

Introduction

The Housing Executive welcomes the invitation to make a submission to the Committee. This Bill represents an important piece of legislation for Northern Ireland which will significantly change the welfare reform system and have an impact on social housing in Northern Ireland.

We are aware that the Bill deals with the creation of Universal Credit, the replacement of Disability Living allowance with Personal Independence Payments, the reform of the Social Fund, Housing Benefit reforms, the benefit cap; and conditionality and sanction powers.

While this submission deals with the impact of the changes to Housing Benefit on social sector tenants in the main, we will also make reference to the impacts on other changes contained in the Bill.

The Housing Executive welcomes the concessions which Minister McCausland has secured for Northern Ireland. These operational flexibilities, particularly the continued direct payment of the housing costs element of Universal Credit to landlords will help to limit the impact on low income tenants, help to avoid rent arrears, with all the implications that can have for claimants and their families and help to prevent increases in homeless presentations.

Department

The Minister has asked the Housing Executive in its role as regional housing authority and also as a landlord to assess the implications of the Welfare Reform Bill on housing services in Northern Ireland.

The Department for Social Development has convened a number of Working Groups which the Housing Executive attends. The Housing Executive has also completed a detailed analysis of the indicative impacts on its applicants, tenants and business activities and is working closely with colleagues in the Department and Housing Associations to review policies and services in the light of the forthcoming reforms. Any changes, for example in the Housing Selection Scheme, will need to be consulted on and agreed and or approved by DSD in due course.

Key Issues

1. Regulations

The Welfare Reform Bill is enabling legislation and much of the detail will be in the regulations which we understand will be grouped into three packages depending on their operational date. NIHE would like to make a more detailed commentary on sight of the Northern Ireland regulations. Nevertheless it is possible to comment on some aspects of the Welfare Reform Bill itself with particular reference to how these may impact on NIHE.

2. Under occupation (Clause 69 Appropriate Maximum Housing Benefit AMHB)

Under-occupation level	Singles	Couples	Family	Totals
1 bedrooms	9,215	601	9,034	18,850
2 or more bedrooms	5,415	1,047	856	7,318
Totals	14,630	1,648	9,890	26,168

The table above shows that a substantial number of NIHE tenants (26,168) will be affected by the under-occupation rule. This represents around 60% of all NIHE tenants of Working Age claiming Housing Benefit. Of these, over

7,000 are under-occupying by more than one bedroom and would incur the higher restriction.

We are aware that the Minister is still discussing flexibilities in Northern Ireland with Lord Freud but the Housing Executive is also considering the ways in which we can mitigate under occupation for our tenants.

We are also aware that Discretionary Housing Payment is set to increase from £3.4 to £6.9million. The increase will be primarily used to help offset the impact of the under occupation rules.

3. Vulnerabilities

Significant changes will arise as a result of the personal independence payments in Part 4 and Chapter 4 which will influence overall levels of personal/ family finance in relation to households with disabled people. While other disability related benefits are not intended to be used for housing costs any reduction in housing benefit will impact on the overall usage of family income. The additional costs of living with disability are well documented.

The administration and targeting of a range of services, including DFG grants where eligibility is determined by passport benefits will require new arrangements. It may prove challenging to identify specific benefit strands within the combined universal credit system.

While older people will be exempt from these changes, it is difficult to see how inequalities in housing services for disabled people might not arise as a result of the introduction of welfare reform legislation and in particular deductions in housing benefit resulting from under occupation. While the House of Lords debate of the 15th October 2012 makes reference to the use of discretionary payments, there is real concern regarding the adequacy and sustainability of such provision.

We are still awaiting details on the households affected by the Benefit Cap which will be implemented through a deduction from the award of Housing Benefit from April 2013. When the information is available we will be able to model the impact.

Part 5: Sanctions

The Bill introduces a new civil penalty for giving false information to be administered by the Housing Executive. There could be significant costs in administering such Civil Penalties. The word “negligently” is used in relation to making an incorrect statement or giving incorrect information. This is a very subjective term and could lead to inconsistent decision-making.

25 October 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Pam Brown
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann
Mr David McClarty

Witnesses:

Mr Pat Durkin
Ms Dolores Ferran *Northern Ireland*
Mr Gerry Flynn *Housing Executive*
Ms Fiona Neilan

1. **The Chairperson:** I welcome Gerry Flynn, Dolores Ferran, Fiona Neilan and Pat Durkin of the Housing Executive. Thank you very much for coming here this morning. We are very pleased to have you.
2. **Mr F McCann:** Is there a written presentation?
3. **The Chairperson:** The presentation is on its way round.
4. **Mr Gerry Flynn (Northern Ireland Housing Executive):** Chair, I apologise for our lateness. We have with us copies of our briefing. Because of our lateness in finishing it, we have not had an opportunity to have it formally cleared through the Department. We have made comments, clause by clause, against the Bill's provisions, and I have brought a summary of our views on the big issues, and what we are trying to do to mitigate the impact of this on our tenants.
5. I have copies of our presentation for members.
6. I will quickly take members through the summary. My colleagues, who are steeped in our work on welfare reform, can contribute. We are happy to take questions from members and deal with any issues of detail that may arise.
7. We welcome the opportunity to make a submission to the Committee. This Bill is an important piece of legislation for Northern Ireland. It will significantly change the welfare system and have a significant impact on social housing across Northern Ireland.
8. We are well aware, as are Members, that the Bill deals with: the creation of universal credit; replacement of the disability living allowance (DLA) with personal independence payments (PIPs); reform of the social fund and housing benefit; benefit caps — which we are all well aware of — and conditionality of sanction powers.
9. This submission deals in the main with the impact of the changes to housing benefit in the social sector, but it also refers to impacts and other changes contained in the Bill. As to recent developments, we welcome the concessions which Minister McCausland has recently obtained on behalf of Northern Ireland, particularly in the arena of direct payment and the method by which that payment will be made to individuals. Members are aware of our concerns about individuals getting access to monthly payments in arrears, which will result in their having to make arrangements, potentially, for paying rent right across the social sector. So we welcome those interventions
10. In terms of the relationship between the Department and ourselves, the Minister has asked the Housing Executive to act on two fronts: one is that, as a regional housing authority, we should comment on the impact of welfare reform; and another is to comment as a landlord managing 90,000 tenancies. To that effect, we have worked very closely with the Department in putting together working groups to examine the various strands of the welfare

- reform review. On the basis of that, we have carried out a detailed analysis of the potential impacts on applicants looking for housing, our tenants and the business activities that we manage as an organisation. To that extent, we have worked closely with our colleagues in the housing association movement, who have to deal with similar issues in managing social tenancies.
11. I will deal with the key issues for our organisation. The Bill is known as a piece of enabling legislation. Much of the detail that will come out of it will be in regulations. We would require and request that when regulations are drafted, we get an opportunity to comment on them in detail because they will impact on how we deliver this.
 12. A big issue with regard to the Bill is underoccupation. I have provided data for members. As you can see, in the main, we have around 26,000 tenancies with the potential to underoccupy either one or two bedrooms. The impact on those individuals, as you will see – bearing in mind that they are people who, in the main, are on benefits – is that they will have to find between £7 and £15 a week out of their universal credit allowances to cover the shortfall in their rental payments.
 13. So, we are doing a lot of analysis. We have piloted that and my colleagues might want to talk about that in more detail later. We have done a lot of analysis to see what the impact will be locally on the people who live in our housing stock, what impact that might have and the mitigations that we would have in place to try to deal with those issues. When you look at the make-up of Housing Executive stock, you see that although we have 90,000 properties, somewhere between 10,000 and 12,000 of those are targeted at one-bed accommodation. So, we have around 26,000 underoccupying tenancies. If everybody presented at our door tomorrow morning looking for accommodation that is appropriate to their needs, we would have a major issue to try to deal with that. We would not have the supply to match their needs.
 14. With regard to vulnerabilities, significant changes will arise as a result of personal independence payments in the Bill. I have quoted the chapter there. They will impact directly on how people manage their family income. Although other disability related benefits are not intended to be used for housing costs, you can understand that any reduction in housing allowances to cover rental costs will have to be met from the payments that they get for other issues. The additional costs of living with disability have been well documented. The administration and targeting of a range of services, including disability facility grants, for which eligibility would be determined by passporting individuals through access to the system, could prove challenging to us in ensuring that individuals match up to the rules.
 15. Although older people are exempt from the changes, it is difficult to see at this stage — I know that the data that we have collected provides only indicators — how people in the disability sector may not be impacted adversely by that. I know that it is early days. The proof of that will come as we gather hard-nosed data. Therefore, if you are of working age, you are directly impacted. However, if you are of working age and you have a disability, there is potential that your group may be impacted adversely. The proof of that will come out through the detailed research that we carry out.
 16. We are still waiting for details on households that are affected by the benefit cap, which will be implemented through deduction from awarded housing benefit. When that is available, we will be in a better position to come back with more information.
 17. I will make a point about sanctions. There is a penalty in the Bill that relates to people's providing false information. We need to be very careful about how we manage that as regards whether people have provided false information deliberately, negligently or simply because they were confused about the information that they were asked to provide. As we move forward, that part of the Bill needs closer examination.

18. I would like to make a final general point before I close. In our initial responses to managing the impacts of welfare reform, we set up our own working groups. We produced internally a document called a “social welfare action plan”, which looks at the sorts of things that we would have to do as a major social landlord in Northern Ireland to mitigate the impact of that. Part of that includes a lot of significant research on tenant profiling, the level of underoccupation and the level and type of individual who applies for accommodation in Northern Ireland. So, we are doing a lot of research on those issues.
19. We are trying to gather information about the extent to which young singles are on our waiting list. Up until last week, we have also done a lot of work on the potential impact of direct payments and how that would be managed. The Minister’s intervention could certainly mitigate that.
20. We also need to look at the make-up of the newbuild programme and whether we have sufficient one-bed accommodation built into that to cater for potential demands that are coming down the track. We also have to review the nature of the building form itself. I mentioned the mismatch between the nature of the housing stock and the requirements of people who are looking for accommodation. We certainly need to look at issues with regard to houses of multiple occupancy (HMOs).
21. One big aspect of our work will be looking at the review of the housing selection scheme, on which we have worked very closely with the Department, and, in particular, the rules on how people access bed spaces and the mismatch between that and the current housing benefit rules. So, we are also doing a lot of work on that.
22. We are also trying to promote, through technology — my colleagues may want to talk about that — the impact of direct exchanges and how people can potentially swap for accommodation that is more suitable to their needs. We have looked extensively at the impact of universal credit as it comes down the track, bearing in mind that we have statutory responsibility for processing housing benefit payments and a significant workforce currently employed in doing that.
23. We also need to develop some significant work on the potential for a review of a new rates scheme in Northern Ireland, which is currently impacted through the management of housing benefit. As a result of the changes coming up in how we manage bed spaces, it might be incumbent on us as we move forward to look at how the current rent scheme of the Housing Executive is structured.
24. Finally, underpinning all of that, it is incumbent on us, as a manager of major stock in Northern Ireland, to get simple, precise information and advice out to the wider public on how we move forward and manage changes that are coming down the track. Underpinning that, we hope to develop a fairly comprehensive communication strategy to deal with those issues.
25. Those are the sorts of things that we are dealing with at a very high level. I am quite happy to take questions from members.
26. **The Chairperson:** Before I bring in other members, I want to be clear on this point: you produced a table in your summary identifying 26,168 tenants who will be impacted by the underoccupancy rules, 7,000 of whom are underoccupying by more than one — *[Inaudible.]* You said that, if all of those people who will be impacted by that were to present themselves for alternative accommodation, you would have a serious challenge to address that. Does that mean that you would not be able to address it, or it would be a serious challenge to address it?
27. **Mr Flynn:** If they all presented tomorrow morning, the evidence shows that we would not have the accommodation for them. If all of those people who are underoccupying presented at the front door of the Housing Executive in the

- morning, could we, within a week or so, move them to suitable accommodation? The answer to that is no, we could not.
28. **The Chairperson:** OK. I appreciate that.
29. **Mr Brady:** Thanks for the presentation. I have just a couple of questions. On underoccupancy, you mentioned a figure of 26,000. We are constantly told that the whole premise of universal credit is to get people back to work. Do you have any stats on how many of those 26,000 are actually in work? With the single-room rent — *[Inaudible.]* — I think 37% of those people affected were actually working, so it is not just about people who are not working. It is also about people who are on low income, and we live in a low-income economy. Will you check that out and get back to us?
30. **Mr Flynn:** I will get back to you, but I do not have that data at this stage. It is an important question.
31. **Mr Brady:** That is fine. It is an important question, because it skews the rationale to a certain degree.
32. The other thing relates to the disabled facilities grant. They are saying that, under the universal credit, it is going to be more difficult to identify the criteria. If someone is in receipt of DLA or attendance allowance then it makes it much easier. A lot of people are going to be affected by that move by being taken off DLA and not necessarily going on to receive a personal independence payment. That is a challenge for you.
33. The other thing about underoccupancy is that you mentioned the house not being available. Apart from the way housing works in different areas, where people are reluctant to move, one of the criteria in certain areas if you have a disability is that you move near family and friends for support. That may well be badly affected if, for instance, the only single-room accommodation is 10 miles away. I do not think all of that has been factored in. I am sure you probably have thought about it. Those are a couple of issues that I just wanted to raise.
34. **Mr Copeland:** Hi Gerry, and welcome to your team. There are a couple of issues that I want to clarify at the start.
35. Of the 26,000-odd citizens or families who will be affected, each one is currently in possession of a tenancy offered to them on the basis of reasonable accommodation by the Housing Executive, and each one of them could well ask why you are now putting them into a property that they cannot afford to live in.
36. Secondly, I have seen some Housing Executive properties classed as having three bedrooms when the third bedroom is not really a bedroom and was never intended to be a bedroom. Is there any opportunity to reclassify what constitutes a bedroom and perhaps ameliorate that in some way?
37. Lastly, what about a case in which underoccupancy is created by the provision of a downstairs disabled bedroom to facilitate a disabled person, thus freeing a bedroom upstairs? Will that person, who has already gone through the trauma of all that, be affected? What about overnight stays, particularly with reference to parents without care, and the requirement of some people to have on a regular basis someone to stay with them due to some sort of stress or trauma? Will any of that be allowed for in the context of the legislation?
38. **Mr Flynn:** You touch on a range of very —
39. **Mr Copeland:** They are all quite similar.
40. **Mr Flynn:** They are all very challenging. We are not on our own; every local authority across the United Kingdom is faced with the same issues about how to deal with working practice that applied in the past, such as where we provided an extra room for someone who had access to children at a weekend. Under the benefit rules, they would be hit and would have their benefits reduced. We have promoted in areas in which it has been difficult to let accommodation that was much bigger than the needs of the families on the basis that we do not want to

- blight the area; we want to have the properties occupied. All of those are real issues for us. We do not have the solutions. We are working through options and evaluating whether it is possible to change the building form to accommodate the people who live there and ensure that you are not creating any inequalities in the system, so that somebody who happens to be on housing benefit does not have their rent reduced because of something that we do to amend the property while somebody who works and pays their way has to pay a different level of rent. There are issues with the equality dimensions of this. We are working through them; we are trying to gather as much data as we can. That is why I said earlier that we may have to look at the rules of the housing selection scheme. We may have to look at the construct of the rent scheme, which has been known to us and has worked for quite a long time, to deal with this. All those policy changes would have to be widely consulted on and formally approved by the Department and back in here through the Assembly.
41. **Mr Copeland:** The issue, in some ways, is that, for us to take an informed decision, we need to know that before we can judge the effect of this. Is it likely that we will be in possession of that information in time to do that?
42. **Mr Flynn:** Yes. Our research is pretty well advanced —
43. **Ms Dolores Ferran (Northern Ireland Housing Executive):** Yes.
44. **Mr Flynn:** — in respect of the information that we are gathering.
45. **Mr Copeland:** Could I also ask, tongue in cheek and knowing the constituency that I come from, if the Department or the Government place a financial penalty on those who are underoccupied, will they consider placing a financial premium on those who are over-occupied?
46. **Mr Flynn:** That is the other side of the coin. We have data on the level at which our accommodation is over-occupied. That is why, in many respects, we are trying to use all the tools that are available to us to try to get a better match with the accommodation that we have through the tenant exchange scheme.
47. If people know that they are underoccupying and somebody else down the street is over-occupied, we are trying to create a situation in which people will willingly swap accommodation. That has not happened in the past because people get used to where they are living. However, the financial penalties that are potentially coming down the track open the door to seeing a greater level of exchanges.
48. A big issue that we will have to face coming down the track is that, if you fine people who are underoccupying, and they get their benefits reduced and have an inability to pay their way, we, like all the other social landlords, are going to be faced with hard decisions about the action that we will take with those individuals. It is different for someone who just refuses to pay and has the wherewithal; we have evicted those people in the past. There are big social issues. Are we going to take hard-nosed action against individuals who just cannot pay as opposed to those who refuse to pay?
49. **Mr Copeland:** On the basis of that, do you feel that this Westminster legislation is not particularly compassionate, if that is the right word? Legislation is seldom compassionate, but this did not pay particular attention to Northern Ireland. There are pressures here, given the polarisation, in many cases, of your properties, which, quite simply, are not taken into account by the legislation. Although it is not your view to prejudge a Minister, should we make the case that that aspect requires some degree of re-examination?
50. **Mr Flynn:** Certainly. I do not want to speak for the Minister, but he is looking forward to meeting Lord Freud. He will try to make the case that Northern Ireland is different. I fully understand the issue about parity with the rest of the United Kingdom and the cost to the Northern Ireland block if we do

- something different, but if we could do something that allows us to work within the rules with different sets of procedures, that is something that we would like to see.
51. **Mr Copeland:** It depends, in some ways, on whether you view parity as a simple financial computation or whether it is parity of outcome. Although the financial parity may exist, the parity of outcome will be dramatically different in Northern Ireland.
52. **Mr Flynn:** We need to be mindful that any change that we look to put in place in Northern Ireland does not cost the Northern Ireland block. If we take it out of one pot, it has to be found somewhere else. That is the issue.
53. **Ms Ferran:** It might be useful if Fiona adds a little bit. We are doing what we call a pathfinder in Lurgan and Portadown. That involves going out and talking to households and tenants who are underoccupying currently to see how they are going to cope with the potential changes.
54. **Mr Copeland:** Would that be what you call a pilot scheme?
55. **Mr Flynn:** Yes.
56. **Ms Fiona Neilan (Northern Ireland Housing Executive):** It is indeed. We have about 1,100 underoccupied tenants, according to the size-restriction rules, in that district. We are doing that pilot scheme to talk to as many of those as possible. That involves face-to-face interviews and discussion about how they will be affected, a calculation of the likely financial impact and their shortfall in rent.
57. There will also be discussions about what they are likely to do and whether they would prefer to stay and try to pay the shortfall or whether they are likely to be willing to move. Less than 10% are saying that they would prefer to move at this stage. For anyone who indicated that, we are discussing options for transferring and, as Gerry mentioned, the direct exchange. There are — *[Inaudible.]* — on board with the new — *[Inaudible.]* — exchange scheme now that is going to be up and running.
58. We are also talking about offering some budgeting advice and referrals to other agencies to get some help with budgeting and talking about ways to pay rent. That will be important, as will be discussing our rent card, direct debits and other housing options, such as transferring to another area, etc. That is a very useful exercise. It has given us a lot of information. It shows that an overwhelming number of tenants would like to stay where they are.
59. **Mr Copeland:** I wish that some of the other areas of the Department involved were as keen to carry out pilot schemes. We had a discussion a couple of days ago about it. I think they are sleepwalking on a minefield.
60. **Mr Flynn:** We are also tracking the pathfinder pilots in the UK. Some of the new changes are up and running, and we will track closely what they are dealing with because we all face the same challenges.
61. **Mr Copeland:** Although Northern Ireland has an added layer of challenges.
62. **Mr Flynn:** I accept that.
63. **Mr F McCann:** I have a quick question. In terms of the 26,168 people on housing benefit who it will affect, is that people on full housing benefit or people at all ranges? Does it take in, as Mickey said, low pay?
64. **Mr Pat Durkin (Northern Ireland Housing Executive):** That takes in everybody who is on housing benefit. Some of those would be on part benefit. They have not gone down to that level at this stage.
65. **Mr F McCann:** Could that be broken down? It is crucial. Mickey is right: what is lost in here also is the fact that a sizeable amount of people are also on low pay. Sometimes, we are given the impression that all the people who are on housing benefit are scroungers, but many people are also working. Many people suffer from severe disabilities.

- A breakdown of that would be useful, because it is crucial.
66. The Minister and some from the Department said that the increases in discretionary payments will take care of what has happened. Sometimes, however, exactly what a discretion payment is and how long it lasts for is lost on people. It is a short-term fix for a long-term solution. After a short time, people will feel the full impact of what is happening. You can stop me if I am wrong. I take it that people will be paid for the first 13 weeks at the full rate and 80% for the second 13 weeks. There was some confusion about whether people would be paid at all after the second 13 weeks.
67. **Mr P Durkin:** It will depend on the numbers who apply and the extent of our budget. That is the overriding factor that we have to apply. If we do not have the money available to pay them, we will not be able to pay them. At present, when we put on a discretionary claim, it is for 26 weeks. At the end of that period the tenant is entitled to ask again for a further payment period, but there is no guarantee of how much they will get or for how long they will get it after that because it is seen as a short-term solution, as you said.
68. We cannot guarantee it indefinitely, otherwise there would not be enough funding left for new people to come into the scheme. We have to make case-by-case determinations as to how long we can pay a claim for and how much we pay out.
69. There is no guarantee that, when we make an award, it will cover all the shortfall even at the first time of applying. We have to judge the budget and the demand and try to make sure that we live within our budget.
70. **Mr F McCann:** I thought that the 26-week period was broken down into two different 13-week cycles.
71. **Mr P Durkin:** No, not at the moment.
72. **Mr F McCann:** When did that come in? I was talking to people about six weeks ago and the information that I got from housing benefit was that it was 13 weeks at the full rate and 80% for the next 13 weeks.
73. **Mr P Durkin:** No. Our policy at the moment is a 26-week award. It is purely to provide some degree of stability for tenants and give them a chance to find alternative accommodation. If you were limited to 13 weeks, it is a very short period for someone to have to up sticks, find somewhere new and move. We decided that —
74. **Mr Flynn:** If you want, I will forward a note to cover that, if it helps.
75. **Mr F McCann:** The point is that it is a short-term fix.
76. **Mr P Durkin:** It is.
77. **Mr F McCann:** People will feel the full weight of the cut in housing benefit after a short period. You are right; it depends on the amount of money that is available and whether there is the ability to pay. The discretion lies with whoever to determine whether a claim can be given.
78. I wonder whether you have taken into consideration the legacy of the conflict that we live with, especially in some of the big urban areas where it may be dangerous. Just recently, we heard on the news about cases of intimidation where people have been put out of houses and are afraid to go into certain areas. Was that taken into consideration when you drew up your report or submission?
79. **Mr Flynn:** We have rules for dealing with intimidation and how people get pointed.
80. **Mr F McCann:** Let me give you an example. There are parts of north Belfast where quite a number of houses are lying empty. Some areas are overcrowded, so if people from those areas went to you tomorrow to say that they wanted to move into those houses, would you be in a position to move them?
81. **Mr Flynn:** Well, those are things that would have to be discussed in the round. We would deal with the circumstances as they presented themselves.

82. **Mr F McCann:** Yes, but if you do not do it they can still be penalised for underoccupancy.
83. **Mr Flynn:** The nub of the issue is that if someone presents looking for accommodation of a certain kind and we do not have it, and we are making them an offer, it is about the action that we are going to take as a reasonable landlord in making reasonable offers to those individuals. That is one of the issues that we have to try to deal with.
84. As I said earlier, if everyone who is underoccupying presented, could we offer them accommodation directly appropriate to their needs in the morning? The answer is no; we could not deal with them all. Some of the work that we are currently doing —
85. **Ms Ferran:** We are currently looking at issues in low-demand areas. We have different solutions where there is high demand, for example, where if you have a three-bedroom house you could let it. However, if we cannot let in a low-demand area, it is better to have a house let than have it empty. If someone is underoccupying, how are we going to compensate for the loss that that person might experience under the new regulations.
86. **Mr F McCann:** On top of that, the point is that there are areas, certainly in Belfast and perhaps Derry, where houses may be empty, which people cannot move into. Is that being worked into your considerations?
87. **Mr Flynn:** Setting aside the issue of the impact of welfare reform, we have been doing a lot of work, considering that there are over 20,000 people in housing stress on our waiting list, to ensure that our accommodation is used to its maximum. Our level of voids has reduced significantly over the past period of time and we will continue to look at that.
88. **Mr F McCann:** Have you started any process that identifies future newbuild to meet the needs?
89. **Ms Ferran:** Yes. We have been actively talking to housing associations this year about acquiring smaller properties such as one-bed apartments. That has not been terribly successful, but we now have a target of having 200 units in the programme for next year in that target market. It will take a while for those to come through into the supply. We are also looking at converting some of our houses. There is potential to convert some into an apartment upstairs and a bedsit below. Whether it is economical to do so is another question, but we are looking at the feasibility of all that.
90. **Mr F McCann:** How would that work in areas of high demand? How would you match that?
91. **Ms Ferran:** High demand is probably not a factor, because we can let the house anyway. The difference in rent between a three-bed house and a converted bedsit with a one-bedroom apartment does not make it a good investment to spend £30,000 on conversion.
92. **Mr F McCann:** Although it might be different elsewhere, in areas such as west and north Belfast, most of those on the waiting list and staying in hostels are young families and one-parent families. How will you deal with that when building 200 houses or flats to meet the need?
93. **Mr Flynn:** I do not have all the facts with me, but it is fair to say that the waiting list contains a significant number of young families. An increasing chunk of our waiting list is made up of singles looking for appropriate accommodation. Schemes from some of our local offices have brought back into use void one-bed properties that were not popular. The impending change means that they are now popular, and we are starting on work to bring some of those properties back into stock.
94. **Ms Ferran:** In Belfast, 48% of those in housing stress are single.
95. **Mr F McCann:** May we have a copy of that information?

96. **Mr Flynn:** Yes. I will provide one note to cover a couple of issues.
97. **The Chairperson:** Fra was getting at what is one of the elephants in the room. Gerry, you said earlier that there is a particular problem that exists not just in urban areas, although it is probably more stark in some urban areas, particularly Belfast. I agree entirely that you do not want to allow houses to lie empty and blight an area. By the same token, people might need additional accommodation in a neighbouring district, maybe one street away, but would not be allowed to live there. That issue has to be grappled with, because that is us trying to manage sectarianism in basic, simple terms. That is an elephant in the room that we have to address.
98. **Mr Campbell:** It was a very useful presentation. I was very interested in the Lurgan survey, which found that only 10% would prefer to move. I do not know what type of questions were asked but, presuming that the survey was within the past couple of months, most people being surveyed about changes as a result of welfare reform were probably thinking that it would not affect them immediately but might do so some way down the line. Although the survey is useful, and I glad that you conducted it, it would be even more helpful if another one were to be carried out when the changes are imminent, because somebody's view about a change next year, the year after or some time in the future will be different to their answer closer to the time. If you were to carry out another survey and ask for people's views when they know that the change is about to happen in the next month or two, you may well get a radically different figure than the 10% from this survey. It might become 25%. I do not know what the figure would be, but a survey at that stage would be even more useful. Do you plan to do that closer to the time?
99. **Ms Ferran:** Yes, we have planned further communications, and, from January, we plan to roll out communication with everybody who is underoccupying and offer them a face-to-face visit if there are vulnerabilities or if they need more information.
100. **Mr Campbell:** A number of members have asked about the table in your submission, and I am not 100% clear on that either. It shows that a total of 26,000 people are underoccupying. Below the table, you state:
"This represents around 60% of all NIHE tenants of Working Age claiming Housing Benefit."
101. I am not clear on what that means. Does it mean that 60% of all 90,000 Housing Executive tenants who are of working age claim housing benefit? Are 60% of the 26,000 eligible to claim housing benefit?
102. **Mr Flynn:** No. The general breakdown is that over 70% of our tenants are on housing benefit.
103. **Mr Campbell:** Of all your tenants?
104. **Mr Flynn:** Yes. Say we have 90,000 tenants, about 64,000 or 65,000 of those are currently on housing benefit.
105. **Mr Campbell:** Yes, but what percentage of the 26,000 are getting housing benefit?
106. **Mr P Durkin:** All 26,000 are on benefit.
107. **Mr Campbell:** They are all underoccupiers, but are they all on housing benefit?
108. **Mr P Durkin:** They are all housing benefit claimants.
109. **Mr Campbell:** Of any kind?
110. **Mr Flynn:** Yes.
111. **Mr Campbell:** Right. That means that approximately 60,000-odd other tenants are protected.
112. **Mr Flynn:** They are protected because they are not of working age or because they are able to pay their way. They are exclusive of the rules. We are trying to grapple with underoccupation. So we ask ourselves who will be affected and can we get their addresses. Anecdotally, our information shows that about 26,000 will be affected. We really have to try to deal with them. Part of that was picking a sample

- area, Lurgan, and asking what the real issues are for those households. We believe that 26,000 people would be directly impacted if the change came in tomorrow morning. Their benefits would be reduced by the amount applied to one or two bedrooms.
113. **Mr Campbell:** That is helpful. Do you plan pilots other than in Lurgan to see whether that was reflective?
114. **Ms Ferran:** As you can imagine, it is quite a time-consuming task. If the legislation goes as planned, it will come into force in April next year, so we do not really have time to go out and visit every single person. There will be a lot of telephone contact and visits to people who have greater needs than can be dealt with over the telephone.
115. **Mr Campbell:** My last question is about sanctions. Again, I have full sympathy with you here. Presumably, a number of people, and I do not know whether that number will be large or small, will give false information. Your problem, as you outlined, is how to distinguish between those deliberately giving false information and those doing so inadvertently. If most of the people who give false information are assessed or designated as having done so inadvertently, how difficult will that be to manage?
116. **Mr P Durkin:** It will be a subjective decision. There is no suggestion of fraud necessarily. It may well be that some people did not tell us on time that their circumstances had changed. We will have to decide whether that was due to their negligence or because something else happening in their lives meant they just did not get round to telling us. We would have to get to the bottom of that level of information in every case if we were to decide to apply a penalty in one case but not in another. It would be a very complex addition to an already complex decision-making process. Determining whether an overpayment should attract a penalty could add 50% to the time taken to decide whether there had been an overpayment in the first place. That would be a major addition to our work and have a major impact on the person who, for whatever reason, had not told us in time that their circumstances had changed or, possibly, had not provided us with the full range of information required.
117. **Mr Campbell:** I appreciate fully all the time constraints involved, but the point that I am trying to get at is this: if a significant number of people are assessed as having either inadvertently given wrong information, or if, as is reasonable to assume, some mitigation is taken into account, the end result will be that you have spent a great deal of time for little result. Taking all mitigating factors into account would mean few or no sanctions.
118. **Mr P Durkin:** That is right. There would be no end result of all the work up to that point.
119. **Mr Campbell:** I am on your side on that. What is the solution, other than not going down that route?
120. **Mr P Durkin:** The regulation is discretionary and states that the Department “may” act.
121. **Mr Campbell:** Do you pursue it or not?
122. **Mr P Durkin:** The choice can be made not to pursue it. It is in the legislation, but the Department may decide that the regulation is not one that it wants necessarily to pursue in every case.
123. **Mr Flynn:** Under the current housing benefit regime, people do not provide us with the necessary information because they do not understand what is required. The view is that, if they did not understand the rules and failed to provide the information, they were paid benefit that they were not entitled to. That is a pretty harsh approach. Housing benefit is fairly complicated.
124. As we move to the introduction of universal credit, the expectation is that individuals will eventually make applications online of their own volition. You can understand the difficulties that will be faced by staff processing applications for universal credit, which

- is a composite of all the benefits in one payment. The problems that we struggle with every day of the week in processing applications will be added to.
125. There are two issues: training for staff who process cases and the information that we get out to people in a simple format. It is easy to talk about that, but it is not so easy to do. As some of our studies have shown, despite all the press coverage, discussion and media awareness, an amazing number of people do not know what universal credit is about. They do not understand. That may be a failing of ours: we are a public service, and we need to be better at getting the message out in a simpler and more readily understood fashion. It is alarming that, as close as we are to the introduction of the legislation, people do not really understand that, for example, if they underoccupy a property, their benefits will be cut by £5, £6 or £7 a week. So it is incumbent on us all, as officers in the public service and as officials, to try to get that message out in as many forms as possible.
126. **The Chairperson:** For us as legislators, it is all very well for somebody to tell us that they might not act anyway, but we have to agree legislation that sets out what can be done. You rightly pointed out that this is enabling legislation. If I am asked to support legislation that sets out what the rule will be, it is no good telling me, "Well, we are not really going to do that anyway". If I pass the legislation, I have already enabled it. That is a matter for us to decide on in due course.
127. The legislation already provides for penalties to be levied, and so on, if people give information that is wrong, inadvertently or otherwise. The legislation will specify how much giving the wrong information will cost, even if it is done innocently.
128. **Ms Ferran:** That is in clause 112.
129. **The Chairperson:** When you take that into the benefit arena, people will be paying through the nose, whether they have made a genuine mistake or not.
- Of course, that does not reverse the sanctions from the Department.
130. **Mr Douglas:** I thank Gerry and the rest of the team for their presentation. I want to go back to my colleague Gregory's point about people being evicted. At a recent conference in east Belfast, that was the one issue that people became agitated about. They said that the number of people being evicted due to underoccupancy, a reduction in benefits or whatever, would increase. What is the situation with evictions? Do you have any predictions for the potential increase in evictions?
131. **Mr Flynn:** We currently take a very hard line. If people who have the wherewithal do not pay, we evict them. We will take a hard line when advertising that. So it is incumbent on you, if you get a tenancy from us, a housing association or someone in the private rented sector, to pay your rent. If you do not pay your rent, you lose your home. If you lose your home in those circumstances, you do not qualify for help as someone who is homeless because you are intentionally homeless, and we do not have any responsibility to help you.
132. This is slightly different, as we may find individuals who do not have access to the wherewithal and have had their benefits cut. If the proportion of their universal credit left to cover their housing costs does not meet the need, we will be faced with a real choice. We have not made any decisions about this yet, and I do not want to pre-empt what might go to our board and through the Department. The first case of eviction because of underoccupancy might involve someone who simply does not have the money and has a young family. Think of the press coverage and the political flak that we would get, but we have a set of rules and public money to manage, so it is about striking that balance.
133. There are figures being bandied about for the rent arrears of all those affected in the first year. If everybody refused to pay, our rent arrears could go up by between £12 million and £15 million

- in the first year. The issue for us is whether to continue to try to manage those tenancies and collect what we can. Do we keep a record of the debt until such times as they are able to pay, or do we take a hard-nosed approach and evict. However, if we evict because of an inability to pay, they are not intentionally homeless. That decision has to be taken separately. If they are not intentionally homeless, they can call at a different Housing Executive door and apply to be treated as homeless. We would then be responsible for finding them temporary accommodation and would have to put them up in a temporary placement, the cost of which would be far greater than the average rent that we charge. It is a vicious circle. We have not reached a conclusion, but I do not want anyone to be under any misapprehension: if people do not pay their way deliberately, we will evict them. I imagine that you would expect us to say that, because 20,000 people are queuing to get a property from us and our social tenancy colleagues. If people who have a property do not value it, it is important for us to take action.
134. **Mr Douglas:** The other side of the coin is people who will not pay. Let me give you an example: I am sure that here are seasonal spikes, where you have —
135. **Ms Ferran:** Christmas?
136. **Mr Douglas:** Yes, Christmas, Easter, Halloween or whatever. Also, at back-to-school time, people will pay for their families' needs but deliberately not pay rent. If I were in that situation, I would do the same. I would look after my family rather than paying my rent. Will such people be in the category that you just described?
137. **Mr Flynn:** We have been at this a long time, and we know the patterns of payment behaviour. We know that there are spikes in individual tenancies, and we know that they always come back and enter into agreements. The issue for us is to demonstrate that we are managing the debt, taking appropriate action and getting people back into agreements as quickly as possible.
138. Our information shows us that, particularly in new tenancies, if people do not get into the way of paying and get beyond the four-to-six week period, they develop a mindset of, "We will never to be able to pay this; the debt is too great." The average rent is £50 per week. People think that, if they go beyond £300 in debt, they will never be able to pay it, and so they just stop paying. However, if we get in early and get people on to a payment plan, it is OK.
139. It is the same as any debt. You must give people hope that they can get to the end of it. That is why we are doing a lot of work on tenancy counselling and trying to work with the Department of Enterprise, Trade and Investment (DETI) to address the problem of the loan sharks who are rife in estates and giving "advice" and "support" to people. They say that they will help people out, but the rates that people have to pay for that "help" are very high. Someone owing £100 one week can suddenly owe thousands of pounds. I am sure that you are all well aware of that. It is incumbent on us to try to get advice, assistance and support to those people. There is potential for that type of debt to increase. It is incumbent on us to manage that and to have a social conscience as we do so.
140. **Mr Douglas:** I have a final question. Obviously, this is a daunting task for you. You said this morning that you face huge challenges. One thinks of the whole future of the Housing Executive and of all the structures aligned with it. This morning, I reflected on the task for your staff in retraining and getting up to date with all the legislation.
141. This morning's previous set of witnesses was from WAVE. They asked whether we could do something for them. Our question to you is this: what can the Committee do to help you? I think that you will come back to us with suggestions for the regulations. As you said in your report, the Minister has been very helpful in his work with Lord Freud, and so on. It would be good if you came back and said to us, "These are the specific areas in which we need help."

142. **Mr Flynn:** The Minister is right that one of the biggest concerns that we face is direct payment. I do not have the exact figures, but we collect something like £225 million or £230 million a year in housing benefit. We were suddenly faced with having to knock doors and collect that money, which would have been a massive task. It would have been a return to the rent collectors that we employed in the late 1970s.
143. Equally, many people, including public and community representatives, tell us that they do not want the responsibility of having to think about paying us their rent. If a way can be found to collect rent out of their universal credit payment, that would be fine with them. Suddenly faced with hard decisions about Christmas, back-to-school time, and so on, many will decide not to pay their rent. If they do not pay their rent, however, they will not have a home. I think that the intervention on the direct payment has significantly taken the fear away from us. It has been the same for housing associations, which would have been faced with the same challenge of collecting rent and putting arrangements in place. Some of the pilot schemes in England have got people to sign up to direct debits, so people get their universal credit payment paid into their bank account, and they are virtually walking with them to ask them to sign up to a mandate that will take £50 or £60 out of that. That is the way it is being done in those schemes in England, and that is among the things that we would have had to consider. The evidence will be when we start to roll that out. It is one intervention that will have helped all social landlords.
144. **Mr Brady:** Gregory made a point about civil penalties and sanctions. The same problem has existed over the years with social security, whether because of misrepresentation or failure to disclose. Those are the sorts of criteria. You cannot disclose something that you do not know, but you can misrepresent something, so there is a difference.
145. I have a question for Fiona on the pathfinder pilot schemes. I heard or read somewhere that people might be encouraged to take in lodgers to solve the underoccupancy problem. The difficulty is that, if you do that and they pay rent and you are on a means-tested benefit, you will lose that amount from your benefit, so I am not sure of the rationale or logic. Has that been suggested?
146. **Ms Neilan:** It is an option for people to consider, and some may think that it is a viable option for them. Obviously, it will be up to the individual to decide how it will impact on their benefits.
147. **Mr Brady:** That needs to be explained to people. That is extremely important.
148. **Ms Neilan:** There are some plans — maybe Pat would know better — about the change to benefits.
149. **Mr P Durkin:** Some discussions are going on about disregarding the income from a lodger from the calculation of the tenant's benefit. It has not come through yet, but the scenario that you are painting has been accepted as one that is not the desired outcome here, and steps are being taken to deal with that.
150. **Mr Brady:** That is creating a new cohort, if you like, of people who, rather than going into bedsits or somewhere, will become part of a household, in a sense. It is a kind of social engineering, apart from anything else. You are parachuting people in on families.
151. **Ms Neilan:** Yes, absolutely. It may not be the option for many people, but it is certainly one option. In looking at good practice and at how other local authorities are putting out a range of options that are open to people, this is one of the options that has been identified, but I recognise that it will not be an option that will be useful for everyone to consider. Some people may be able to think about it.
152. We are also doing other things to look at, for example, the selection scheme, about relaxing the rules around the creation of joint tenancy, whereby, if someone is currently in their home, they may wish to create a joint tenancy with

- another individual to share the burden of underoccupancy. That is one of a number of things that we are looking at in the proposals to change our housing selection scheme to realign with housing benefit rules regarding underoccupancy. We are looking at ways to ensure that the new housing that we are allocating does not result in underoccupancy and also at ways to ensure that tenants who are currently in underoccupied properties are supported and maybe given more priority and assistance under the housing selection scheme if they wish to downsize. Creation of joint tenancies is one of those things that we are building in.
153. **Mr Brady:** Pat mentioned the disregard. That would be fine if the income were all disregarded, but if there is a shortfall, there is no underoccupancy. I presume that, in normal circumstances, the lodger, becoming part of the household, would have to be fed and would, possibly, use extra facilities. Presumably, a reasonable amount would be charged. I am not sure whether that would be encompassed in the disregard. To me, it complicates an already complex and complicated system, even with the administration of something such as that. There will be displaced costs. These things do not seem to have been thought out to any great degree.
154. **Mr Flynn:** It is like all of the aspects. We have put everything on the table to try to work through it and come up with a solution. It is like anything that you start from new: lots of things go on the table but do not stay on the table. We would not rule anything out at this stage, because, if we are trying to create a situation where we are helping people, it is incumbent on us to look at all of the options.
155. **Mr M Durkan:** Thank you for the presentation, and I am sorry that I had to nip out there. We will all share your relief at the flexibilities that have been afforded, particularly around direct payments. You mentioned your team processing housing benefits. What impact will this have on them? What role will they have to play in the administration of the direct payments? In general, what implications will the Bill have for your work?
156. **Mr Flynn:** The decisions on the management and administration of universal credit have not been finalised. Until those decisions are made, we will not really be in a position to comment. Suffice to say, we have about 400 staff working on housing benefit and benefit-related work. Some of those people might still be working on it. The challenge of moving back to providing people with advice, assistance and tenancy-counselling will be huge. Our view is that work will be created in and around that.
157. It is like everything else; it is about having finite resources to manage this. As with any other public body, there is a cap on our resources. You have to live within your means. Those are real challenges coming down the track. As soon as the decisions are made on how the future of universal credit will be managed, we will know exactly what we are dealing with and will respond accordingly.
158. **Mr M Durkan:** You spoke about a lack of knowledge on the streets about the impact of the Welfare Reform Bill. I agree wholeheartedly with you on that. There are people who will suffer as a consequence of this new underoccupancy legislation but who are oblivious to it. However, I meet more and more people who will be exempt, such as pensioners, who are panicking about it. Are you doing anything to ease those people's fears?
159. **Mr Flynn:** That is part of our communication strategy. We have had evidence of that as well. People contact us and ask, "Will I have to move?" On the one hand, it is because people are suddenly getting an understanding of all of this. On the other hand, we need to be self-critical sometimes. If elderly people are coming to us with those questions, we need to ask: what have we not done to help them? We need to step back and look at the information that is given to people and how we get

- that information out to people. Through the housing community network, we have a fairly comprehensive network. We have contacts in every single estate. We need to find better ways of getting a simpler message out. If that is not in written format, it may be done through running clinics or going to community halls in the evenings to tell people clearly who is affected and who is not. That is something that we need to address.
160. **Mr Copeland:** I have been doing some work on homelessness. On Saturday evening/Sunday morning, I will be going out with the Welcome Organisation to look at what it does to try to ameliorate homelessness. It seems to me that, somewhere down the line, there will be, or could be, a potential growth in the number of people who are homeless. On the evening that I spoke to Sandra Moore, which was about the middle of last week, there were three beds available in the city of Belfast for people who are homeless. Have you factored in the likely peak that this will lead to and considered whether or not the current provision needs to be increased to accommodate that peak?
161. **Mr Flynn:** What a question. We have a statutory responsibility to deal with homelessness. We have a fairly extensive portfolio of accommodation to deal with families and single people who present. We have the approvals to acquire private rented accommodation to deal with pressure spikes that arise. We have fairly searching standards to make sure that people meet the standards.
162. **Mr Copeland:** That could be viewed as being more expensive than the situation that pertains at the minute.
163. **Mr Flynn:** It could be. There is always a danger, Michael. It is about striking a balance. If you think that you will have x number of people homeless, you can build more hostels or enter into more arrangements with voluntary groups to build more hostels. However, the demand might not materialise. You can also have a flexible regime in which you can respond quickly to a short-term spike in demand. That is about access to and working with the private rented sector. We have moved away from building hard-and-fast hostels. We have stopped doing that with our voluntary partners. We have tried to use the private rented sector. To date, we have been able to work with the private rented sector to provide sufficient accommodation; we will keep that under review.
164. **Mr Copeland:** It is fair to say that the profile of those presenting as homeless may change dramatically. It is traumatic — I do not mean that in a way that is detrimental to you — for people who suddenly find themselves without a home.
165. **Mr Flynn:** A by-product is that, in working with our voluntary sector partners who provide homeless services for us, we need to step back and look at the thresholds that they use for taking people into their accommodation. We need to step back and say, “These people are homeless. There should not be categories of homelessness. If you are homeless, you have a need for accommodation.” We should all step back and work to that mantra. It is also about getting the best use of the accommodation that we have available to us.
166. **Mr Copeland:** I come back to the profile. A lot of the people who find themselves homeless now are people with difficulties. Drink, drugs or a whole raft of other things may be involved. However, in the future, you could be looking at low-paid working families, which is a totally different demographic to that which the sector has been used to dealing with. If you put someone from that demographic into that world as it exists now, the outcomes would be very expensive in both financial and emotional terms.
167. **Ms Ferran:** Pat can correct me if I am wrong, but I think that, if you stay in a hostel for more than three months, you are exempt from the underoccupation rules. So, it can be a perverse incentive.
168. **Mr Copeland:** Sorry; explain that.

169. **Mr P Durkin:** If a person aged under 35 who is affected by the shared-room accommodation rule has been in hostel accommodation for more than three months, they are exempt from it. Therefore, they could move from a hostel into a one-bedroom flat.
170. **Mr Copeland:** For what period of time will that that exemption pertain?
171. **Mr P Durkin:** There is no end to it at the moment.
172. **Mr Flynn:** That is when you reflect back on the decision that you make in respect of families who just cannot afford to pay their way and suddenly find themselves homeless. Are we actually going to put those people into a position where they become homeless? We would then have to find them suitable accommodation. Those are the factors that you need to weigh up when you are making decisions about who to take hard-nosed action against. Will it be those who cannot pay or those who refuse to pay?
173. **Mr Copeland:** I suppose there is no chance of keeping the house for them for the three months so that they get the tenancy changeover —
174. **Mr Flynn:** We are mindful of the issues.
175. **Mr F McCann:** Gerry, my understanding is that over half the people who declare themselves homeless are young singles and that they are usually deemed not to be acceptable as homeless. There is little chance of those people spending three months in a hostel before they go into the shared-room arrangement. So, you are talking about a very small number of people in the broad scheme of things.
176. As regards being able to handle what could be a serious increase, my understanding is that one fifth of the Housing Executive's workforce will be lost over the next wee while. How will that impact on your ability to deal with any rise in homelessness?
177. I know that there are some exemptions in respect of supported housing. However, I think that people in supported housing are unsure exactly what those exemptions are. How will they be impacted by an underoccupancy rule?
178. What about people who have had disability adaptations made to their home? In some of the cases of housing adaptations that I am dealing with, the children have grown up, and the house is underoccupied. How do you deal with stuff like that?
179. **Ms Neilan:** The figures for singles in statutory homelessness that I have to hand are that, at the end of September, we had just over 12,000 statutory homeless applicants on our waiting list. Of those, about 4,500 were singles.
180. **Mr F McCann:** They were not directed. We were told that, under the provision, you cannot house them. They are left to their own devices, so they are not in hostels for three months. They do not fall under the rule that you just spoke about.
181. **Mr P Durkin:** That rule will apply to people who have self-referred to a number of the homeless accommodations.
182. **Mr F McCann:** It is a very, very small number of people.
183. **Mr Flynn:** You made a point about the resources. We have to live within —
184. **Mr F McCann:** That was a comment more than a question.
185. **Mr Flynn:** We all have to live within our means. In many respects, it is about finding smarter ways of doing things.
186. **Mr F McCann:** And supported housing?
187. **Mr P Durkin:** Supported accommodation will not be impacted by the underoccupation rules. In fact, housing costs for supported accommodation are being held outside universal credit altogether, as we understand it. We do not see that the welfare reform changes, as they stand, will have any impact on that sector.
188. **Mr F McCann:** And disability adaptations?
189. **Mr P Durkin:** Part of the increase in discretionary budget that we are getting is specifically to cater for that

- type of case, so that is one that we will be looking at. If they are now underoccupying then yes, they would be affected by the change in legislation, but we would be looking to use our discretionary budget to ease the financial burden placed upon them.
190. **Mr F McCann:** It must be a never-ending pot of money.
191. **Mr P Durkin:** It is being increased.
192. **Mr F McCann:** The question is there. It is discretionary, so it is only a short-term solution. I get a bit annoyed — not at you — at the fact that, when people are talking about the solution to this, they often refer back to discretionary payments. People need to make it clear what those payments are. They are short-term; they will not deal with the long-term effect of what is happening.
193. **Mr Copeland:** I just want to clarify with Fiona whether the 12,000-odd figure referred to the number of applicants or applications.
194. **Ms Neilan:** That is the number of those awarded statutory homeless status. Having presented, they have been —
195. **Mr Copeland:** Yes, but is every one of those applications for one applicant, or could there be two, three or more people?
196. **Ms Ferran:** No, there are families.
197. **Mr Flynn:** Some of those might be families of four or five people.
198. **Ms Neilan:** The 12,000 figure refers to households, of which over 4,500 are single persons.
199. **Mr Copeland:** So that leaves 8,000, or it could be 20,000. That is what I am driving at.
200. **Mr Flynn:** It could be.
201. **Mr F McCann:** Are those last year's figures?
202. **Ms Neilan:** No, they are the figures at the end of September.
203. **Mr F McCann:** So I take it that it will probably hit 20,000 by the start of the next housing year.
204. **Mr Copeland:** Which could be 30,000 or 40,000 people.
205. **The Chairperson:** We are getting into speculation. No other members have indicated that they want to speak, and I think we have had a fair bit of discussion. Gerry, are you and your colleagues happy enough that you have presented your argument and made your points?
206. **Mr Flynn:** Yes, we were quite happy to come back on the detailed comments by the clauses through the Department, which will provide a formal briefing, so I said that today I would come for a general discussion.
207. **The Chairperson:** I am sure that you are aware that we are in Committee Stage and are due to complete our report by 27 November. We take on board the points that you have put to us, both in writing in your submission and in the contribution you have made today. Thanks very much for your presence today and your help to us in our deliberations.

Northern Ireland Human Rights Commission



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response on the Welfare Reform Bill 2012

Summary

- A. The Commission has prepared this advice to assist the Northern Ireland Assembly as it scrutinises proposed reforms to the social security system for rights holders in Northern Ireland. International human rights law recognises that it is legitimate for Governments to reform their social security provision. However it stipulates the parameters within which these reforms must take place.
- B. The Commission is concerned at the absence of detailed human rights analysis of the Bill and its potential implications. A full assessment of the potential implications of the Bill is particularly complicated by the heavy reliance on secondary legislation.
- C. The Commission supports the aim of the Bill to assist people into work. The right of people to work is recognised in the European Social Charter and the Commission advises that the NI Executive must ensure access to the training and experience necessary to obtain employment is made available to people seeking work.
- D. The establishment of Universal Credit as an all-encompassing benefit payment is welcomed in principle. The Commission raises concerns regarding the payment of Universal Credit to one member of the household which may compound the difficulties faced by vulnerable families.
- E. The Commission notes the proposed replacement of Disability Living Allowance (DLA) with Personal Independent Payments (PIP). These payments are intended to assist disabled people in overcoming societal barriers and to enable their full participation in the community. Whilst costs savings is a legitimate aim of Government the Commission is concerned that achieving the required 20% reduction in spending on DLA/PIP has led to a focus on the medical model of disability rather than the social model of disability, which focuses on overcoming the societal barriers faced by people with disabilities.
- F. The Bill proposes that those in receipt of benefits will be subject to various work related requirements, failure to comply with which may result in the imposition of a sanction. The Commission advises that the sanctions regime must be proportionate and procedurally fair. Furthermore, the Commission advises that the imposition of a sanction must not result in any individual being destitute.
- G. In respect of work related requirements the Commission raises a particular concern regarding women with child care responsibilities. There is a potential disparate impact on such women due to the absence of affordable childcare. The Commission advises that this issue be given specific consideration.
- H. The Bill proposes the abolition of the Social Fund which currently serves to assist individuals and families in maintaining an adequate standard of living. The Commission advises that the Committee examines the sufficiency of the proposed alternative emergency payment arrangements.
- I. The Bill proposes changes to the level and nature of support for housing costs under the Universal Credit, with the amount payable to be relative to household size and circumstances as well as actual rent. The Commission raises concerns regarding the potential implications of this proposal on tenants with disabilities currently in adapted accommodation within a

supportive community. The Commission highlights the need to have regard for the particular characteristics of the Northern Ireland housing stock.

The Bill envisages a role for private and voluntary sector providers in the assessment of claimants. The Commission advises that when carrying out activities of a public nature, private and voluntary sector providers must be required to comply with the Human Rights Act 1998.

Introduction

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights. In accordance with this function the following statutory advice is submitted to the Committee for Social Development ('the Committee').
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 Northern Ireland Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore, advises that the Committee scrutinises the proposed Bill for full compliance with international human rights standards.
4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standard referred to in this context is;
 - United Nations Declaration on Social Progress and Development, 1969.
5. The Commission has provided this advice in the timeframe available to it. There are a number of issues which merit further analysis however this is not possible in the time available.

Human Rights Analysis

6. By virtue of Articles 12 and 13 of the European Social Charter and the International Labour Organisation's Social Security (Minimum Standards) Convention, 1952, the Northern Ireland Executive is obligated to maintain a system of social security at a satisfactory level and should endeavour to raise progressively the system of social security to a higher level.

International human rights law recognises that it is legitimate for Governments to reform their social security system. However standards also stipulate the parameters within which these reforms must remain; for instance an individuals' right to an adequate standard of living¹ must not be undermined.

7. The Commission recalls that Section 24 (1) of the Northern Ireland Act 1998 requires that all acts of the Northern Ireland Assembly are compatible with the ECHR. In addition, Section 26 also requires compliance with international obligations.
8. The Commission notes that during the passage of the Welfare Reform Bill through the House of Commons the Joint Parliamentary Committee on Human Rights (JCHR) was critical of the absence of a detailed human rights memorandum and, in addition, the JCHR raised numerous concerns regarding human rights issues. The Commission notes with regret the absence of a detailed human rights memorandum accompanying the Welfare Reform Bill, and in particular the absence of any consideration of the human rights issues raised by the JCHR.²
9. Recalling the human rights concerns raised by the JCHR, the Commission refers the Committee to section 35 of the Standing Orders, which makes provision for the establishment of an Ad Hoc Committee to consider and report on whether the draft Bill is in conformity with the requirements of human rights law.
10. The Bill has significant implications for the enjoyment of socio-economic rights as recognised in the ICESCR and European Social Charter. International standards, ratified by the UK Government and binding on the NI Executive, require the removal of barriers so as to ensure the progressive realisation of socio-economic rights.

Particular Circumstances of Northern Ireland

11. It is important that the Committee give detailed consideration to the particular circumstances of Northern Ireland many of which emerge from the legacy of the conflict. The Committee should note the high levels of socio-economic deprivation and reliance on welfare benefits. For example, 1 in 10 people in Northern Ireland claim Disability Living Allowance.³ In addition, the level of religious segregation in social housing restricts housing choice. The Commission advises that the Committee considers both the implications of the Bill on individual households and the cumulative impact on communities.

Use of Regulations

12. The Bill permits the Minister for Social Development to set down Regulations as regards claims and entitlement for benefit, basic conditions for award, exclusion from restrictions, claimant responsibilities, and capability for work or work-related activities. A full assessment of the potential implications of the Bill is particularly complicated by the heavy reliance on secondary legislation. The Commission advises that the Committee consider whether those Regulations proposed by the Bill subject to the negative resolution procedure should in fact be subject to either the affirmative resolution procedure or confirmatory procedure to ensure human rights compliance.
13. The Commission advises that the Committee also considers the implications will wish to consider the implication of this Bill on parallel reforms to the health and social care system, such as the proposals contained in 'Transforming Your Care'.

1 International Covenant on Economic, Social and Cultural Rights, Article 11

2 Joint Parliamentary Committee on Human Rights 21st Report Legislative Scrutiny Welfare Reform Bill

3 102.7 per 1,000 population in Northern Ireland receive DLA compared to England with 49.6; Wales with 80.7; and Scotland with 65.9: Northern Ireland Assembly Research Briefing Paper, An Introduction to Welfare Reform, January 2011, NIAR 606-10, p 20.

Supporting Rights Holders into Work

14. ICESCR recognises the right to work under Article 6 which states that;

“(1)The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

15. The European Social Charter also recognises the right to work and obligates the NI Executive to ensure adequate support for rights holders in exercising this right. There are a number aspects of this Bill which could potentially assist rights holders in obtaining work. However, to do so they must be implemented appropriately with regard to the particular circumstances of the individual concerned.

16. Article 9 of the European Social Charter *“to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped”*. The Commission advise that the Committee in considering the impact of the Bill consider the adequacy of current investment in vocational training provision.

Payment of Universal Credit

17. The Universal Credit (‘UC’) is to replace the current benefits system which encompasses working tax credit, child tax credit, housing benefit, income support, income-based job seekers allowance (‘JSA’) and income-related employment and support allowance (‘ESA’).

18. The Commission acknowledges that UC is intended to be a single regular payment encompassing a range of benefits, and emulating a salary payment. This is designed to ease the transition into employment and afford a greater degree of financial autonomy to recipients.

19. The Commission notes that in the case of a joint claim by a couple, the benefit will be paid to one person only. Clause 99 provides that the Department will have the power to determine whether payment is made to a nominated person or to a person ‘irrespective’ of a nomination. This raises a concern with respect to instances of abuse within the home and the possibility of a nomination under duress.

20. The Commission notes that men are the primary earners in the majority of households in Northern Ireland.⁴ It seems, therefore, that men may be more likely to be the nominated recipient of UC. This may impact upon a women’s access to resources and control over her own finances. International law prohibits discrimination on the grounds of sex. The CEDAW focuses solely on the issue of discrimination on the grounds of sex and Article 13 requires that;

“States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life. “

4 Women’s Resource and Development Agency (2011) The Northern Ireland Economy: Women on the Edge? A Comprehensive Analysis of the Impacts of the Financial Crisis, pg122

21. Children are particularly vulnerable and Article 27 of the UNCRC recognises that children are entitled both to an adequate standard of living and a right to social security under Article 26, which states that;

“1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.”

21. The Commission is concerned that payment of UC to one member of the household may result in restrictions on the more vulnerable member of the household, inhibiting their autonomous decision-making in respect of their financial needs and investment of their benefits. The Commission draws particular attention to the obligations of non-discrimination under CEDAW and the paramourcy of the best interests of the child under UNCRC. The Commission advises that the Committee apply the international standards when examining the arrangements for payment of UC in light of the potential implications on the rights of women and children.

Personal Independence Payments

22. Personal Independence Payments (PIPs) will replace the current Disability Living Allowance. It is a specific benefit intended to assist disabled persons with the additional financial pressures they face. This is an important measure in ensuring that disabled people are able to exercise their right to independent living as protected by Article 19 of UNCRPD.
23. Clauses 77 and 78 of the Bill set out basic entitlement conditions for the Daily Living component and Mobility component. The Bill provides the Minister for Social Development with the powers to introduce Regulations on qualification criteria for PIPs. It is noted that the Department of Social Development has engaged in two public consultations on the assessment criteria.⁵
24. The UNCRPD requires the NI Executive to adopt the social model of disability. The social model of disability identifies systemic barriers, negative attitudes and exclusion by society (purposely or inadvertently) that mean society is the main contributory factor in disabling people. It is the society as a whole which is responsible for creating barriers to full participation of persons with disabilities, and it is the society as a whole which has the responsibility to remove them.
25. The Commission advises that the Committee assess the proposed basic entitlement conditions contained within the Bill to ensure they adequately reflect the social model of disability. The Commission notes that the Office of the First Minister and deputy First Minister is currently developing a Disability Strategy which has the social model at its core. The Commission refers the Committee to a concern raised by the House of Commons Select Committee for Works and Pensions that an earlier version of PIP assessment criteria was reflective of the outdated medical model, which sees disabled people as having needs and requiring treatment.⁶ Qualification criteria for PIPs should be based upon the social circumstances of the individual.

⁵ Initial draft of the Personal Independence Payment assessment criteria – published May 2011 DSD, Second draft of the Personal Independence Payment assessment criteria – published 14 November 2011

⁶ House of Commons, Work and Pensions Committee, Government support towards the additional living costs of working-age disabled people (19 February 2012) pp. 34-41

26. The stated objective for the introduction of PIPs is to reduce expenditure by 20%.⁷ There is a strong presumption against retrogression in international human rights law, the Committee on Economic, Social and Cultural Rights in its General Comment No. 3 stated:

*“Any deliberately retrogressive measures... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”*⁸

27. The Commission advises that the Committee assess any retrogressive measures of the Bill in line with this General Comment, in particular provisions relating to PIPs.

Sanctions Regime

28. The Bill establishes a range of claimant responsibilities, which are principally connected to work-related requirements. It further permits sanctions to be imposed for non-compliance without good cause.

29. Requiring benefit claimants to comply with certain conditions prior to the payment of benefits does not in principal raise human rights issues. The European Court of Human Rights (‘ECt. HR’) has held that the ECHR;

*“places no restriction on the Contracting State’s freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme.”*⁹

30. It is important that the conditions are reasonable and proportionate to the aim. The ECt.HR recognises that the national authorities are in a better position to determine public interest on economic or social grounds and it represents;

*“the legislature’s judgment as to what is “in the public interest” unless that judgment be manifestly without reasonable foundation.”*¹⁰

31. The Commission notes that the imposition of financial sanctions on a benefit recipient who fails to comply with certain work requirements is not incompatible with international human rights standards. The UN Committee on Economic, Social and Cultural Rights has also stated that “[t]he withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.”¹¹

32. Contributory and non-contributory benefits are proprietary rights and are, therefore, protected under Article 1 of Protocol 1 of the ECHR. Any interference with a proprietary right must be in accordance with the law, for a legitimate aim and proportionate to that aim.

33. Reducing a benefit does not, in principle, violate Article 1 of Protocol 1; however, the ECt. HR has found a violation in the case of *Asmundsson v. Iceland*.¹² The key consideration for the Court was whether the claimant faced an excessive and disproportionate burden as a consequence of the withdrawal of benefit. The Commission advises that the Committee assess the proposed sanction regime in light of this ruling.

34. The removal, or reduction, of benefits engages the right to an adequate standard of living which is protected under Article 11 of ICESCR which states that;

7 Department of Work and Pensions, Disability Living Allowance Reform, Equality Impact Assessment (March 2011) paras 18-20

8 Committee on Economic, Social and Cultural Rights, General Comment 19 on The Right to Social Security (2008) E/C.12/GC/19, at [42]

9 *Stec v. the United Kingdom* (2006) 43 EHRR 47, at [54]

10 *James and Others v. the United Kingdom* (1986) 8 EHRR 123, at [46]

11 UN Committee on Economic, Social and Cultural Rights, General Comment 19 on The Right to Social Security (2008) E/C.12/GC/19, para 24

12 *Asmundsson v Iceland* (2005) 41 EHRR 42

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

35. Where the claimant is a parent, it is important to consider the impact of a reduction in benefits upon the family as a whole. Article 3(1) of the UNCRC requires that in all matters concerning a child, “the best interests of the child shall be a primary consideration”. The UNCRC also requires under Article 26 that;

“States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.”

36. The UNCRC further states that children have the right to an adequate standard of living and that;

“States Parties, in accordance with national conditions and within their means, 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.”¹³

37. Any measure which would impact upon the above rights would not be considered to be in a child’s best interests. The Committee must ensure that ‘best interests’ considerations are taken into account when imposing a sanction, given that it may have a wider impact upon children in the family.
38. The Commission advises that the Committee must assess the proposed sanction regime to ensure that it is procedurally fair and proportionate to the legitimate aim which it pursues. Carrying out this assessment is complicated by the absence of the relevant draft Regulations which must also be subject to scrutiny for full human rights compliance.

Hardship Payments

39. The Bill provides for hardship payments, under clauses 28 and 57, in circumstances where a sanction has been imposed.
40. It is not clear at this point if a hardship payment will be made immediately or if there will be a delay between the imposition of the sanction and the availability of relief. It is also unclear how a claimant will demonstrate hardship. The Commission advises that the Committee consider these issues in light of the international standards.
41. The impact of a disproportionate reduction in benefits may engage Article 3 ECHR, which prohibits inhuman or degrading treatment or punishment. The NI Executive is under a positive obligation under Article 3 to prevent hardship at a level that may amount to inhuman or degrading treatment.
42. For treatment to fall within the scope of Article 3 it must reach a minimum level of severity, and the assessment of that threshold will be relative and dependent on the circumstances of the case. The House of Lords have found that treatment resulting in the severe poverty and social deprivation of a group of individuals may amount to inhuman and degrading treatment.¹⁴
43. The reduction in benefits, as a result of a sanction, may risk a claimant being exposed to destitution, with a hardship payment being the only means to improve their situation. At this point a violation of the positive obligation under Article 3 may have already occurred. The Commission advises the Committee to ensure that, in order to act as a safety net, the hardship payment needs to prevent destitution from occurring in the first instance rather than

13 UN Convention on the Rights of the Child, Article 27(3)

14 R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department [2005] UKHL 66

seeking to remedy the problem. The risk of destitution should be taken into consideration prior to the imposition of any sanction.

Child Care Responsibilities

44. Article 18 of the UNCRC requires the Executive to:

“render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children... [AND] take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.”

45. The United Nations Declaration on Social Progress and Development, 1969, also provides at Article 22(c) for;

“the establishment of appropriate child-care facilities in the interest of children and working parents.”

46. The Commission notes the potential requirement on those with a child over the age of one to attend a work focused interview (Clause 21(1)(a)) and the potential requirement on those with a child over the age of four to engage in work preparation (Clause 21(5)). The ability of those with child caring responsibilities to comply with such requirements will be heavily restricted by the need to secure childcare, both in terms of its cost and availability. In addition, sanctions for failure to comply with requirements will disproportionately impact upon those with caring responsibilities and may be considered indirectly discriminatory against women.

47. In England and Wales the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs. NI has no corresponding childcare legislation, no lead Government department charged with developing a childcare strategy for NI, and no strategy agreed by the Executive. As the Social Security Advisory Committee states, *“[m]any of the UK welfare reform proposals for both lone parents and working age couples with children are underpinned by the assumption of sufficient readily accessible and affordable childcare. This underpinning is simply not in place for Northern Ireland.”*¹⁵ Whilst the Commission notes a number of positive policy developments the provision of childcare in Northern Ireland remains inadequate.¹⁶

48. Article 8 of the ECHR protects the right to private and family life. The ECtHR has found that the right to private and family life extends to a right to seek employment and acknowledged that *“[i]t is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world”*.¹⁷ The ECtHR has found that where a measure has a disparate impact on certain groups, this may be considered to be discriminatory and a breach of Article 14.¹⁸

49. Article 1 of CEDAW defines discrimination as;

“[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

15 Social Security Advisory Committee, 21st Century Welfare – A Response to the Department for Social Development (DSD) from the Social Security Advisory Committee, 2010 p.2. See also, Gingerbread and University of Ulster, Lone Parents and Work in Northern Ireland: Issues for Policy Makers, July 2009 and Horgan and M Monteith, What can we do to tackle child poverty in Northern Ireland?, November 2009, JRF.

16 HSC Board “Family Matters: Supporting Families in Northern Ireland – Regional Family and Parenting Strategy (March 2009)

17 Campagnano v. Italy (2006) 48 EHRR 43, at [53]

18 Thlimmenos v. Greece (2001) 31 EHRR 15, at [47]

50. The imposition of unreasonable work related requirements on those with child care responsibilities may lead to a significant number of carers failing to meet these requirements and incurring sanctions due to the absence of adequate child care provision. In light of the fact that it is principally women who bear child care responsibilities this is likely to have a disparate impact on women. The Commission advises that the Committee considers what additional measures can be taken to assist women with child caring responsibilities and to mitigate against any potential legal challenge. This is an example of the need for a co-ordinated approach to welfare reform which takes into account societal barriers faced by rights holders.

Social Fund

51. The Bill proposes to abolish payments of crisis loans, community care grants and budgeting loans from the discretionary Social Fund. A range of alternative emergency payments are to be introduced to replace the Social Fund.
52. The Commission notes that the availability of these measures has provided a safeguard for families and individuals who find themselves in financial difficulties. The Commission further notes that people with disabilities account for approximately 45 percent of all applications for community care grants, followed by pensioners (24 percent) and lone parents (21 percent).¹⁹
53. The Social Fund currently safeguards the right to an adequate standard of living, as protected by Article 11 ICESCR, through assisting families and individuals who have encountered unexpected financial difficulties. It also safeguards disabled people's right to an independent living, as protected by Article 29 UNCRPD, by offering financial assistance for unanticipated costs.
54. The protections offered by the Social Fund are significant and the Commission advises that the Committee examine the sufficiency of the proposed alternative emergency payments.

Housing Benefit

55. ICESCR recognises that the provision of adequate housing is essential to ensuring the right to an adequate standard of living. In its General Comment No. 4, the Committee for Economic, Social and Cultural Rights observed that all "individuals, as well as families, are entitled to adequate housing regardless of age, economic state, group or other affiliation or status".²⁰ Furthermore, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.²¹ The European Social Charter similarly recognises that the provision of family housing is a necessary condition for the full development of the family under Article 16.
56. Clause 11 sets out the intention to provide for an amount to be included in UC to cover housing costs. It does not provide for benefit entitlement to be related to actual rents in the local housing market. This has the potential to cause disconnect between housing costs and actual rents and, over time, this could create hardship.
57. Clause 69 of the Bill empowers the Department to set an approximate maximum housing benefit. For the private rented sector, the Department will be empowered to set rents at the lower end of either Consumer Price Index or the bottom 30th percentile of private sector rents. This change from the current approach where payments are linked to the 50th percentile.

19 Law Centre (NI) and Housing Rights Service Response to DWP Consultation on Social Fund Reform: debt, credit and low-income households, June 2010

20 Committee for Economic, Social and Cultural Rights, General Comment 4 on The Right to Adequate Housing (Art.11 (1)): . 13/12/1991

21 Ibid, para 8(a)

58. For the social housing sector, the Department will bring forward regulations setting out the process for determining the approximate maximum housing benefit. It may introduce size criteria into the calculation of housing benefit for working age tenants in social housing. While the Bill does not currently provide detail on how these changes would be introduced, should the department take a similar approach to that taken in England, housing benefit payments for social housing tenants would be reduced by 14% of their rent for under-occupation by one bedroom, and by 25% for under-occupation by two or more bedrooms.²²
59. 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.²³ The Commission is concerned at these figures and advises that the Committee examine the level of hardship which may be felt among low income households as a result.
60. The Commission advises that the Committee consider the particular circumstances of Northern Ireland and the segregated nature of housing stock. It is likely that changes to housing benefit will result in households that face shortfalls seeking to move home. In social housing, where the stock is highly segregated, choice is restricted. The Commission recalls the continued prevalence of sectarianism and the threat which this poses to human rights.²⁴
61. Northern Ireland's housing stock has traditionally been dominated by larger dwellings which should be taken into account when determining eligibility on the basis of size.²⁵ The Commission understands that there is a scarcity of smaller housing units in Northern Ireland and this may lead to difficulties in respect of the introduction of size criteria into the calculation of housing benefits.
62. The Committee for Economic, Social and Cultural Rights have outlined that effective monitoring is an obligation of immediate effect, requiring that;
- “for a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to “provide detailed information about those groups within...society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.”²⁶*
63. The Commission advises that the implementation of this proposal must be monitored closely. The impact on disabled persons must in particular be considered. Article 19 of UNCRPD states that;
- “Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.”*

22 See http://www.nihe.gov.uk/welfare_reform [accessed 19.10.12]

23 Ibid.

24 See, Brendan Murtagh & Geraint Ellis (2011): Skills, Conflict and Spatial Planning in Northern Ireland, Planning Theory & Practice, 12:3, at 365; Louise Arbour (2006) Economic and Social Justice for Societies in Transition, International Law and Politics, 40:1, pp. 8-9

25 Northern Ireland Housing Executive (2009) Housing Condition Survey - The 2009 House Condition Survey found high proportions of larger homes- bungalows (22%); terraced houses (31%); semi-detached houses (20%); detached houses (19%) with apartments and flats accounting for just 8%- approximately the same size as 2001- indicating that the proportion of these homes should not have been expected to dramatically increase since 2009.

26 Ibid, para 13

64. The Commission advises that the Committee consider providing for monitoring to ensure that changes to Housing Benefit do not result in disabled persons moving into accommodation that is not suited to them and away from supportive communities and individuals upon whom they rely.
65. The Commission notes that concerns have previously been raised regarding a proposal to abolish provision for direct payments to landlords. It is noted that the Minister for Social Development indicated an intention to retain provision for the direct payment of landlords. This is welcomed.

Private and Voluntary Sector Contractors

66. Clause 30 of the Bill allows for contracted providers in the private and voluntary sectors to exercise functions of the Department of Social Development or the Department for Employment and Learning relating to work-related and connected requirements. The Commission notes the significant role which assessment relating to work-related and connected requirements may have on an individual's entitlement and benefits and, by extension, on their right not to be treated in an inhuman or degrading manner and their right to an adequate standard of living.
67. The duty to comply with the Human Rights Act 1998 extends not only to public authorities but also 'include[s] bodies which are not manifestly public authorities, but some of whose functions only are of a public nature'.²⁷ This was reiterated in March 2012 during debate on the Health and Social Care Bill when Parliamentary Under-Secretary of State for Quality, Lord Howe reiterated that, *'the Government's view is that all providers of publicly funded health and care services should indeed consider themselves bound by the [Human Rights] Act and the duty.'*²⁸ *This is the position that we expect private and third sector providers to follow'*. The Committee for Economic, Social and Cultural Rights has further reiterated that the state must take responsibility for the effective administration of the social security system.²⁹
68. The Commission advises that the Committee give consideration to inserting a clause in the Bill requiring contracted private and voluntary sector providers must be required to comply with the Human Rights Act 1998.

27 HL Debs, col. 797 (November 24, 1997), The Lord Chancellor's comments on section 6(3)(b) of Human Rights Act 1998.

28 HL Deb 13 March 2012 at column 238 concerning proposed amendment 292A to the Health and Social care Bill 2012.

29 Committee on Economic, Social and Cultural Rights, General Comment 19 on The Right to Social Security (2007) E/C.12/GC/19, para 11

30 October 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann

Witnesses:

Mr Colin Caughey	<i>Northern Ireland</i>
Mr John Corey	<i>Human Rights</i>
Dr David Russell	<i>Commission</i>

1. **The Chairperson:** I welcome the representatives of the Human Rights Commission: John Corey, who is one of the commissioners; Dr David Russell, the deputy director; and Colin Caughey, who is a policy worker. Without further ado, I ask the representatives to kick off.
2. **Mr John Corey (Northern Ireland Human Rights Commission):** Thank you very much, Chairperson. I thank the Committee for inviting the commission to speak to our advice on the Welfare Reform Bill.
3. I must go through the formality of stating that the Northern Ireland Human Rights Commission (NIHRC) provides advice pursuant to our role under section 69(4) of the Northern Ireland Act 1998. The commission grounds its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), which is incorporated in the Human Rights Act 1998, and the treaty obligations of the Council of Europe and United Nations systems.
4. I will start with general points on the human rights analysis, which are addressed in the commission's advice to the Committee. The commission particularly welcomes the attention that this Committee has given to the human

rights implications of the Bill. However, I must record that the commission is disappointed that there is a lack of evidence that the Department has undertaken the required human rights scrutiny of the Bill. We noted that, last Monday, the Minister for Social Development advised the Assembly that the Department had conducted a full analysis of the Bill against the European Convention on Human Rights. However, we are not aware that that analysis has been made available to the Committee or that it will be published. In addition, the commission points out that the Department is obliged to analyse the Bill against all relevant human rights standards in the treaty obligations of the Council of Europe and the United Nations systems, not just on the European convention.

5. The commission also submits that the heavy reliance on secondary legislation complicates the task of providing a human rights analysis of the Bill. That is addressed in our submission, whereby we advocate that the regulations should be subject to affirmative resolution or confirmatory procedure to ensure scrutiny against human rights standards. I note that Mr Copeland is not here; however, we read the answer to a written Assembly question provided by the Minister in relation to the process and procedure of affirmative resolution. However, the commission still stands by its advice to you on that matter: the secondary legislation should be subject to affirmative procedure.
6. Our submission highlights a number of specific issues that require the Committee's attention. The commission's focus is on testing the Bill against human rights standards, not the politics of welfare reform. The commission can support the stated aim of the Bill, which is to assist people into work, the right of people to work is recognised in the European Social Charter. The

measures included in the Bill, intended to assist and encourage individuals to exercise the right to work, must, however, take into account the particular circumstances of an individual. That can be taken forward into the particular measures. We cover universal credit in our submission and have raised concerns regarding the payment of universal credit to a single member of a household. That may compound difficulties faced by vulnerable families, particularly, for example, when domestic violence is present. In that context, the commission welcomes the Minister's announcement that universal credit payments may be made to two persons, but the commission will want to analyse the detail of the proposed arrangements on that.

7. The Commission will be familiar with the widespread concerns about the replacement of disability living allowance (DLA) with personal independence payments (PIPs). DLA or PIPs is an important benefit that assists disabled people to overcome societal barriers that they may face. The commission submits that the UK has ratified the UN Convention on the Rights of Persons with Disabilities, and, under that convention, the Northern Ireland Executive are required to protect the right of disabled people to live life as independently as possible. The commission's advice is that the convention requires the Executive to adopt the social model of disability and that that needs to be reflected in the assessment criteria for PIPs. The commission further advises that the Committee needs to investigate how the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by claimants with disability.
8. We deal with the sanctions regime in our submission and have raised concerns about the potential for the sanctions regime, relating to the various work-related requirements. Our concern is that those will be imposed unduly harshly, with the result that an individual may become destitute. The Bill contains

numerous safeguards, so that the sanctions should not be imposed without good reason, and allows for those who have sanctions imposed on them to apply for a hardship payment. However, our concerns remain. The system places a significant amount of power in the hands of those who are responsible for its administration, which is how the benefits system has traditionally operated.

9. Paragraph 7 of schedule 1 to the Bill provides for regulations that will define the circumstances in which a claimant could be determined as not having a good reason. The commission advises that it is important that those regulations take into account the particular circumstances of an individual. In that context, we have raised specific concerns regarding women with childcare responsibilities and have advised that the regulations should make specific provision for those with dependants. We also submit that that is an area in which the particular circumstances of Northern Ireland are relevant. We further advise the Committee to consider more generally how the absence of adequate and affordable childcare in Northern Ireland impacts and whether that should be reflected in the Bill.
10. We cover the issue of hardship payments in our submission. As I said earlier, when a sanction is imposed, individuals may apply for a hardship payment, provided they can demonstrate that they are or will be in hardship. The commission's advice is that the imposition of a sanction that has the potential to result in an individual becoming destitute engages the Northern Ireland Executive's positive obligation under article 3 of the European Convention on Human Rights. That is an obligation to prevent hardship at a level that may amount to "inhuman or degrading treatment". The commission's concern is that a sanction creates a significant risk that it may result in individuals or their dependants becoming destitute. For example, the commission is

- concerned that vulnerable members of society, particularly those with mental health problems or impairments, may encounter difficulties when applying for hardship payments. Again, the working arrangements for hardship payments are to be set down in regulations. The commission's advice is that those regulations should expressly provide that a sanction should not be imposed when there is a significant risk that it may result in individuals or their dependants becoming destitute. The Committee may wish to investigate whether the regulations may make provision for an alternative sanction in circumstances in which there is a risk of destitution.
11. As a general point, the commission also advises that all staff who are responsible for the conditionality and the sanctions regime must be adequately trained and that every effort should be made to resolve a difficulty before a sanction is imposed. The sanctions regime must be proportionate and procedurally fair.
12. Clause 70 of the Bill provides for the abolition of the discretionary part of the social fund, which includes community care grants, crisis loans and budgeting loans, all of which have provided important safeguards when an individual encounters financial difficulties. Community care grants in particular have provided support to disabled persons. We understand that a replacement scheme is to be developed, and we encourage the Committee to interrogate the sufficiency of the replacement scheme to ensure that it provides similar safeguards to the current system.
13. Clause 69 empowers the Department to set an approximate maximum housing benefit. The precise details of how that will be calculated will, again, be set out in regulations. The commission advises that those regulations should provide for a specific assessment of the personal circumstances of an individual, particularly when an individual is disabled. Again, because of the particular circumstances of the Northern Irish housing stock, we think that specific provision needs to be made to monitor the implications of that proposal closely.
14. Clause 30 allows for contracted providers in the private and voluntary sectors to exercise the functions of the Department that relate to work-related and connected requirements. That could impact on individuals' entitlement and benefits and, by extension, on their right not to be treated in an inhuman or degrading manner and on their right to an adequate standard of living. The commission submits that it is important that there is no ambiguity about privately contracted providers being subject to the provisions of the Humans Rights Act 1998. Private contracted providers should also be required to provide adequate training to their staff, which should include training in relevant aspects of human rights law and, specifically, on the rights of disabled people. The commission advocates that those matters should be covered in statute.
15. A final point that is not in our submission relates to migrant workers, which we understand the Law Centre has also raised with the Committee. Paragraph 7 of schedule 1 to the Bill allows for regulations to provide that claimants from the EU with a right to reside will be placed in the all-work requirements category. That appears to treat migrants in a discriminatory manner, and the commission advises that it may be in breach of article 14 of the European Convention on Human Rights. As pointed out in our submission, contributory and non-contributory benefits are proprietary rights protected by article 1 of protocol 1 of the European Convention on Human Rights (ECHR). The commission intends to analyse the issue further, and we advise the Committee to seek analysis undertaken by the Department on the matter.
16. Those are the points in our written submission that I wished to highlight to the Committee. My colleagues and I will be pleased to answer points of detail that Committee members wish to raise.

17. **The Chairperson:** Thanks very much for your presentation, which was quite comprehensive. Again, thank you for providing us with a written submission, which we were able to look at, and on which you further elaborated. A number of members wish to speak.
18. **Mr Douglas:** Thank you, Chair.
19. Thank you for your presentation. You mentioned what the Minister said in his statement on welfare reform. He said:
- “As part of the process for bringing a Bill to the Executive, my Department has already conducted a full analysis of the proposals contained in it for their compatibility with their obligations under the European Convention on Human Rights.”*
20. He then went on to detail the various articles and finished off by saying:
- “The Department’s view and mine is that the Bill is compatible with the convention rights, as defined in section 1 of the Human Rights Act 1998. That view has been confirmed by the Departmental Solicitor’s Office.”*
21. I note your concern about the absence of detailed human rights analysis of the Bill and of its potential implications. Either you are right or he is right, as you take totally different views. You also mentioned that there is no evidence of what the Minister detailed in his statement. Have you had any detailed discussions with the Minister or his Department on those details? Have you requested any of that information?
22. **Dr David Russell (Northern Ireland Human Rights Commission):** We are not disputing that the Minister has undertaken a human rights analysis or an impact assessment. In fact, we noted that he made that remark to the Assembly. The only thing that we are drawing to the Committee’s attention is whether it has had sight of that impact analysis?
23. **Mr Douglas:** Have you seen it?
24. **Dr Russell:** No, we have not.
25. **Mr Douglas:** Have you requested it?
26. **Dr Russell:** No, we have not.
27. In response to your final question, just to jump ahead, the commission met the Minister when the Welfare Reform Bill was passing through Westminster. At that stage, the commission made it clear to the Minister and his officials that it was willing to engage at whatever level they saw fit. However, in the interim period, the Department has made no approach to the commission seeking advice.
28. **Mr Douglas:** Have you approached the Department?
29. **Dr Russell:** No, we have not.
30. **Mr Douglas:** Do you agree that it is a two-way process? We will certainly be asking the Minister for some of that evidence after what you have said; it is a good point.
31. **Mr Corey:** To add to that, when the legislation was being considered at Westminster, the House of Commons Joint Committee on Human Rights criticised the absence of a detailed human rights memorandum at the time. Given that that criticism is on record, we take the view that it was not unreasonable to expect the Department to produce a memorandum when the Bill came in front of the Assembly. The warnings were already there.
32. **Mr Douglas:** Are you saying that there is no memorandum at the moment?
33. **Mr Corey:** That is one of the issues. The additional point I made in the submission is that the Minister spoke about testing the Bill against the ECHR. However, we submit that the Executive, the Assembly and, indeed, the Committee have obligations under United Nations and Council of Europe treaties as well as the convention.
34. **Dr Russell:** Just to add to John’s point, perhaps it would be useful to draw the Committee’s attention to section 26 of the Northern Ireland Act, which states that Executive Bills have to be rendered compliant with international standards. The obligation falls, in the first instance, on the Executive and, ultimately, on the Secretary of State to ensure that

- Assembly legislation complies with binding UN law. We would like to see the Department bringing that forward and the Committee addressing it. The explanatory memorandum to the Bill contained a human rights compliance statement, but unless the Committee has seen otherwise; to date, that is certainly all that the commission has seen.
35. **Mr Douglas:** I have a couple of quick questions. You do not seem all that happy with your experience in this process to date. Compared to previous processes, has this one been very different when it comes to your discussions with the Department and the information that you requested?
36. **Mr Corey:** I cannot rely on a lot of personal experience on this. The first answer that comes to mind is that I think that everyone recognises that the Bill is almost unique in its scale and impact on people. What should properly happen in this case must be judged on its own as opposed to being compared to what happened previously with the Human Rights Commission's consideration of a relatively straightforward Bill that did not raise the same range of human rights issues.
37. **Dr Russell:** We are happy to give you a few examples of recent such Bills. The Department of Health, Social Services and Public Safety (DHSSPS) engaged extensively with the commission and sought its advice privately on the mental capacity legislation, as did the Minister of Education on special educational needs reform.
38. **Mr Douglas:** Finally, you talked about the absence of detailed human rights analysis. If there were agreement to do that, what would that analysis look like?
39. **Dr Russell:** I suggest that we take as a starting point the international standards that the commission has identified, and look for convention compliance article by article relevant to each clause of the Bill; in much the same way as we assume that the Departmental Solicitor's Office would have done for the ECHR, which the Minister explained in his statement.
40. **Mr Douglas:** May I assume that that process would be fairly lengthy?
41. **Dr Russell:** It could well be. I caught the tail end of Mr Durkan's question raising the other alternative, which is for the Assembly to establish, under Standing Orders, an Ad Hoc Committee to undertake a detailed analysis. Westminster has the benefit of the parliamentary Joint Committee on Human Rights doing such analysis, but there is no Committee of that standing in the Assembly.
42. **The Chairperson:** By way of information; the Committee has sought legal advice on the specific issue around the migrant workers to which Les Allanby referred earlier.
43. **Mr Douglas:** Chair, may I ask another quick question.
44. **The Chairperson:** Sorry, Sammy; I am just putting on record that we have sought a legal opinion on that matter.
45. **Mr Douglas:** Some groups have told us that they may mount a legal challenge by seeking leave to apply for a judicial review. Would you be interested in doing that if we do not come to some sort of arrangement?
46. **Mr Corey:** There are many complications for the Human Rights Commission embarking on judicial review processes. Our engagement in this matter is under our statutory function. I see our duty as being to advise, in this case, the Committee of the human rights standards and issues that have to be engaged in its scrutiny of the Bill, and to clarify those to members. That is our role.
47. **Dr Russell:** The point is that court is the last resort. Within its competency, the commission's job is to make sure that the Bill is as compliant with human rights standards as we can possibly make it. That is our interest. We are certainly not interested in judicially reviewing anyone if we can at all help it.

48. **Mr Colin Caughey (Northern Ireland Human Rights Commission):** To amplify John's point: the European Court of Human Rights has emphasised that the more parliamentary scrutiny that there is of human rights issues the less likely it is that there will be a court challenge. The Committee's interest in the human rights issues raised by the Bill is one area of significant difference from previous processes.
49. **Mr Douglas:** OK. Thank you.
50. **Mr Brady:** Thanks for the very interesting and informative presentation. You are right to say that this legislation is unique. The most recent major change was instigated by Fowler in 1985 and enacted in 1988. This is much wider and more encompassing. I may be misreading your demeanour, and correct me if I am wrong, but it seems that there are certainly parts of this that you are not particularly happy about. Other groups have highlighted the Convention on the Elimination of Discrimination against Women and article 27 of the United Nations Convention on the Rights of the Child. There is the whole issue about universal credit. Many have argued that payment should go to the main carer, which would then protect vulnerable members of the family, particularly children. I wonder what your views are on that.
51. You also raised the issue of the transfer from disability living allowance (DLA) to PIPs. I know from talking to numbers of people with particular disabilities that DLA is there for a specific reason. It is to enable people to have a better and enhanced quality of life which they may not have otherwise because of their particular disability. According to the Social Security Commissioners' case law on DLA at this point in time, it is not necessarily what causes your problem that matters; it is how it affects you. This Bill takes that a step further: it is now about how you can cope. One of the issues that you raised is that it is also incumbent on the private sector — like Atos, for example — to ensure that human rights are properly dealt with.
52. If you saw the 'Dispatches' and 'Panorama' programmes, it will be very clear to you that there are big human rights issues involved. The contract for the changeover from DLA to PIPs has not been decided here. However, I think that we can be reasonably assured that there will be a similar process put in place. That seems to be, in many cases, a denial of fundamental rights, particularly of disabled people. I wonder as to your views on that, though I do not expect you to comment on particular private companies.
53. As to the work capability assessment, some people have been asked how far they can walk. I have had people in my constituency office who have said, "I have mobility problems and I told them that I can walk 20 yards". They were then asked, "How far can you go in a wheelchair?" They responded, "I do not have a wheelchair and I have no intention of getting one." That is the kind of situation that is developing.
54. One of the things that you pointed out very clearly, and this is important, is that each case should be dealt with on an individual basis. It should be dealt with objectively by the assessor. We have argued, and I continue to argue, about the primacy of medical evidence. If you are dealing with a benefit such as PIPs, DLA or employment and support allowance (ESA) medical evidence is important. People get DLA because they are medically assessed initially, whether it be self-assessment or through medical evidence from their GP or consultant. It seems that the decision-maker who makes the final decision but is not medically qualified needs to have all that evidence to hand in order to make any sort of reasonable decision in relation to that person's particular circumstances.
55. I think it is important that you mentioned that there are not just physical and mental disabilities; there are also the social barriers that people face. That is all interlinked with their human rights.
56. Can you comment on those issues?

57. **Mr Corey:** I will ask Colin to pick up on some of the detailed points that you have raised. You commented on my demeanour. I think it important that I restate that the commission's focus is to test the provisions of the Bill, as we would any piece of legislation, against human rights standards, and not the politics of welfare reform. There may well be differing views about welfare reform, the background and reasons for it.
58. A second general point that I would make, without commenting on any private company, is that the media reports that have been quite widespread about individuals' experiences of the system so far in Britain, serve at least to put everyone on notice that this is a critical area for examination. That is one of the reasons why the commission included that, specifically, in its submission. We could see that human rights could be affected by this, and we have heard and seen that.
59. My last general point is on your references to how individuals who are applying for PIPs are treated, as in the current DLA system. We have submitted the issues around the societal model of disability, as against the medical model of disability. However, we do not suggest that there should be some utopia in which assessments disregard a person's medical condition. That is not real, in the context of a person applying for that type of assistance. What we say, quite clearly, is that the assessment should take account of a wide range of factors and the societal factors that affect or may affect that individual. Not every two people will be the same, and we are essentially saying that each individual's full circumstances must be considered and that there must not be a regime of box-ticking. That is our approach. I will ask Colin to pick up the other points of detail that you raised.
60. **Mr Caughey:** In our opening statement, we welcomed the Minister's indication that universal credit could be paid to two people. Certainly, it is written in the United Nations Convention on the Rights of the Child (UNCRC) that children have the right to benefit from social security.
- So, our key concern will be to analyse whatever measures are proposed in that area so that they benefit the child. Similarly, with women; that the money there benefits female members of the family also.
61. I will amplify the PIPs point. As John said, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) very much supports the social model of disability and encourages and requires Governments to look at how societal barriers prevent a disabled person from engaging fully in life. We feel that it is important that that is reflected in the assessments for PIPs. There has been much discussion on how to do that in England, Wales and here. We encourage the Committee to keep that under review as the assessment criteria further develop to ensure that it is looking at what assistance an individual needs to ensure that they are able to fully participate in life.
62. **Mr Brady:** I have one more point, Chair. Mark alluded to it earlier, and it was mentioned this morning by Age NI. Because of the change, one partner in a couple may be eligible for pension credit and one for universal credit, because they are younger. This is the norm for couples in our society in most, but not all, cases. That person will then be brought back into the work pool, and we heard this morning about the very stark example that the couple could lose £115 a week. You mentioned destitution, and when people are on a benefit that is, by government's own admission, at subsistence level, £115 a week is a huge amount of money and could lead to people being in destitution. If someone receiving that amount of benefit is trying to budget to a particular level and manage a particular lifestyle and loses approximately 50% of their benefit, how does that tie in with human rights? Presumably, it flies in the face of some conventions because of how the person's human rights might be affected. Ultimately, benefit is not their chosen lifestyle or chosen income but is how they have to manage.

63. **Mr Caughey:** That indicates the importance of closely monitoring the implementations of the reforms once they are brought in and trying to anticipate the impact prior to that. As we mentioned in our opening statement, the Government are under a positive obligation to ensure that individuals do not find themselves in destitution.
64. **Mr Brady:** The difficulty is that, by the time the monitoring is completed, people may already be in that situation. That issue has to be addressed.
65. **Dr Russell:** I have not looked in great detail at the point about the universal credit and the pension provision. However, we have looked in more detail at the hardship payment, for example, and, with that, we are concerned that destitution constitutes a violation of article 3. So, there would be a breach in that instance. The difficulty with the provisions of the Bill — and I heard it mentioned in the previous evidence session — is what its outworkings may mean for potential human rights breaches is hard to quantify due to the lack of analysis combined with the reliance on secondary legislation. We do not really know in practice, and we could not say one way or the other, that a breach would occur. It seems to us that the hardship payment would kick in after the sanction, and that someone could find themselves in destitution. As a consequence, they would apply for the hardship payment and maybe receive support. At that stage, a violation would have already occurred. It is too late and is like trying to shut the door after the horse has bolted.
66. On your other point about private sector contractors, the European and domestic case law is quite clear on that: private sector contractors carrying out a public function are public authorities for the purposes of the Human Rights Act. That should be made clear in private sector contracts.
67. **Mr Brady:** Hardship payments will be recoverable. Although people may get a hardship payment to get them out of short-term destitution, they will be below subsistence level when their benefit kicks in again because they will have to pay back the hardship payment. The regulations may well deal with the amount. However, I think that it is true to say that, with respect to social security benefit and parity, it has always been the case that recovery from benefit here is more than its equivalent in Britain. People here have always had to pay back more. That was my experience when I worked for many years as an advice worker, and it puts people here in an even worse position.
68. **Dr Russell:** If people find themselves in that circumstance, the multiplier effect is a possibility. Until the new regime kicks in, it is hard to justify it. One thing we considered regarding the migrant workers point, for example, is that, with the work-related requirement categorisation of EU migrancy and the right to reside, because of some other aspect, such as a disability, migrant workers would find themselves subject to a sanction regime. As a consequence, their hardship payment would kick in too late after the violation had occurred. They could find themselves in the repeated scenario that you paint.
69. **Mr Copeland:** I would like to put to you one question that I asked previous witnesses. It is about the UN Convention on the Rights of Persons with Disabilities with particular reference to articles 19, 22 and 28. What are the potential consequences of legislation being enacted here that breaches that convention? To the best of your knowledge, has Northern Ireland or any other constituent member ever breached such a rule?
70. **Dr Russell:** Do you mean the UNCRPD?
71. **Mr Copeland:** The UN Convention on the Rights of Persons with Disabilities, which sets out some clear responsibilities.
72. **Dr Russell:** There are two aspects here. The question is this: what would be the impact if the Assembly brought forward legislation that had not been sufficiently scrutinised as regards compliance? It is a statutory requirement. However,

- the conventions are not justiciable. Therefore, if, as a consequence of the legislation, there was an unbeknown breach of the UNCRPD, the likelihood is that that would become part of the reporting process back to the United Nations.
73. However, the more immediate worry is how the unbeknown breach of the CRPD would be linked to a potential breach of the European Convention. One possible scenario would be where, under the new regime, there was a withdrawal, or partial withdrawal, of payment of PIPs from someone who is disabled and who is subject to the new cap for housing. They could easily find themselves facing a choice between keeping a roof over their head and feeding themselves. That would constitute an immediate breach of article 3. It would also engage article 19 of CRPD.
74. When people talk about the particular circumstances of Northern Ireland, we hear well-versed arguments about how we are different from the rest of the UK in respect of, for example, the housing stock. Something else that we think that the Committee should consider, which we mentioned in our submission, is the fact that there are a number of reforms taking place in a variety of Departments in Northern Ireland that coincide with the introduction of welfare reform and could also have a potential impact. As a consequence, in the scenario that I have just painted, someone could easily find that they would better-placed in a residential care home. However, we know that Transforming Your Care from DHSSPS will reduce the number of residential care homes in Northern Ireland. So, the situation could be compounded by the impact of another government policy.
75. **Mr Copeland:** What are the consequences of that for the legislation, for those who enact the legislation, and for those who carry it out?
76. **Dr Russell:** If, retrospectively, it were found that there was a breach, the legislation would have to be amended.
- You could easily find yourself with an individual claimant taking a judicial review.
77. **Mr Copeland:** Would the legislation then have to be changed?
78. **Dr Russell:** If there was found to be a breach, yes.
79. **Mr Copeland:** If I picked you up correctly, you said a few moments ago that there is a duty to ensure that this legislation is as compliant as possible. Is there an interpretation of “compliance”? I suppose that there must be. What did you mean by the phrase “as compliant as possible”? I would have thought that something is either compliant or it is not, in the absence of a legislative process to decide that.
80. **Dr Russell:** It is. However, ultimately, there is always the possibility that a legislature could unknowingly pass legislation that is then found to be in technical breach. It is the proper role of the courts to determine whether that is the case.
81. **Mr Copeland:** So, are you the arbiter here, in so far as you are the font of all knowledge about whether something is a breach? Does an onus, therefore, reside not only with the Department, to ensure that what it is proposing does not breach human rights conventions, but with us in our scrutiny role?
82. **Dr Russell:** Our role is to provide the best analysis, from a human rights perspective, as we can to the Committee and the Assembly in order to assist them to make good, compliant human rights legislation. A number of other actors have that responsibility as well, such as the Departmental Solicitor’s Office. As has been suggested, there is the possibility of the Assembly formulating an ad hoc scrutiny Committee to deal with this serious legislation. There are a number of avenues open to the Assembly under Standing Orders, and the commission will play its part.
83. **Mr Copeland:** If I were to give two lawyers a piece of paper with x, y and z written it, they would argue about the

- relevance of x, y and z for hours. I have always found that to be the case.
84. Basically, at the end of this process, if we have done our job properly, we should be advised about whether what we are proposing to recommend, accept or declare as scrutinised is compliant. Even at that point, however, it could be subject to an interpretation from someone with a different view.
85. **Dr Russell:** It could be. However, the Committee has at its disposal the possibility of making the recommendation about the secondary legislation under affirmative or confirmatory resolution. We certainly think that that would add in an extra layer of protection in respect of human rights compliance for those parts of the Bill that we have not yet seen and do not know the impact of. From a human rights perspective, that would be an extra safeguard.
86. **Mr Copeland:** Sticking strictly to the human rights aspects of this, I presume that the rest of the United Kingdom is bound by the same conventions. Your view is that it would be unsafe for us to accept their findings because we have another layer of consideration to apply from the equality legislation and stuff. Some would say that we really are making a whip to beat ourselves. Given that this has gone through Westminster, there is an assumption that it has already been human rights-proofed and that everything is hunky dory. Are there implications for Westminster if we raise issues here about compliance with the human rights conventions?
87. **Dr Russell:** This is a devolved matter. It is within the competency of the Assembly to pass this legislation. So the duty is on the Assembly to ensure compliance. Whether the welfare reforms that have been introduced in England and Wales, and Scotland are compliant is a matter for those Parliaments. In this instance, the commission is advising you. However, we engaged in the Westminster process as well, because we knew full well that the Act would be replicated here according to the parity principle. The Joint Committee on Human rights, a scrutiny Committee in Westminster, raised very similar issues to the ones we are presenting today. It may be worthwhile for the Committee to look at what the Joint Committee concluded and advised the Government.
88. **Mr Copeland:** If, at the end of this process, we are faced with legislation from Westminster that satisfies its requirements but does not satisfy the requirements here, does responsibility for any financial implications arising from potential breaches and mitigating factors that have to be put in place lie with those who sent the legislation to us in that form or does it reside with us from our own meagre resources?
89. **Dr Russell:** Responsibility for the implications of a breach would reside with the Department, because it is exercising the legislation. I am not sure what you mean by potential financial implications, but if you are talking about the possible impact on the block grant —
90. **Mr Copeland:** Yes. In other words, that the legislation sent to us was not attuned to our needs, and that the cost of attuning it to our needs in order to comply with as much as we could was rested in the fact that the expectations to be realised in the Bill were not achievable in our context.
91. **Dr Russell:** The Committee may conclude that. It would not be for the commission to analyse that. I can give you an example. The shift from DLA to PIPs, for example, is premised on a 20% cost saving. We do not doubt for a minute that 20% may be saved as consequence of the shift from DLA to PIPs. Our concern is that it might be a blanket approach determined in advance. Who knows? As a consequence of moving from DLA to PIPs and analysing people individually, you may well find that the government's requirement to support people, while complying with convention requirements and the Convention on the Rights of Persons with Disabilities (CRPD), will cost more, and resources would be

- better diverted from other parts of the pot.
92. **Mr Corey:** Some of your questioning bears out the point that we made about the importance of secondary legislation or regulations being subject to scrutiny, even though the equivalent regulations may not have been subject to scrutiny or may have gone through the Westminster Parliament by negative resolution. We are saying that affirmative resolution or confirmatory procedure should be applied. We would almost say that you should apply that approach to all the regulations that will come through on this. It reminds me of a phrase that we used in the past when we talked about parity in other areas, which is, “We are interested in parity but not parrotry.”
93. **Mr F McCann:** Much that I was going to ask has been covered, but I will go ahead anyway.
94. **Mr Durkan:** Parrotry — who’s a pretty boy? *[Laughter.]*
95. **The Chairperson:** He does not really mean that badly.
96. **Mr F McCann:** Do you want us to be here until 5.00 pm?
97. Thanks for your very informative presentation. Things would be different if we were talking about a Bill that does what it says, which is to change or reform. The Bill that we are dealing with is, however, more ideologically driven than it is aimed at bringing changes for the better to people in England. Obviously, I will not ask you to comment on that. It is also sanction-led, as you, quite rightly, said. In the Assembly, some time ago and more recently, we tried to get at the “two strikes and you are out” issue. You could be sentenced for a particular social security issue through the justice process, then, on release, you walk into an office where you can apply for and get benefit. However, if you are caught doing the double, your benefit can be suspended for 26 weeks, two years or whatever. So, if you are charged with a benefit offence and apply, you will be refused benefit. Something in that seems unfair: you could be done for robbing a bank and be accepted as a legitimate claimant, but if you make an error claiming benefits, you are refused benefit.
98. As I read through the information, I noted the case of *Ásmundsson v Iceland*, which I think that you quoted. What were the consequences of that? Does the judgement have a knock-on effect on how sanctions are applied here?
99. Housing is the other issue. Is there an international standard for the size of rooms? Most of the old Housing Executive or social housing providers’ homes had a box room that measured about 6 feet by 10 feet or 8 feet by 10 feet and could take a single bed, but now we are told that it can sleep two people. Is there anything in law that states that, at a certain age, people of opposite sexes have to stay in a separate room or even people of different ages?
100. **Mr Corey:** I will ask David to pick up your first and third questions, and Colin will deal with the second.
101. **Dr Russell:** The *Ásmundsson v Iceland* case was a European Court judgement on a sanctions regime. The court determined that the removal of social security benefits was disproportionate. So, yes, case law has been set down. You raised the issue of how long a sanction should go on for, and sanctions could be subject to a test. We have included the case law in our presentation to indicate that there is the possibility of sanctions being tested when the new sanctions regime kicks in. What the court would consider in that instance is whether it was a proportionate and reasonable response to fulfil a legitimate aim of the sanction. There is nothing adverse to human rights standards in imposing the sanctions regime; the question is whether it is a reasonable and proportionate response and, vitally, and what most concerns us, will it push people into destitution? That would be unacceptable, and it would be a clear breach under inhuman and degrading treatment. As the sanctions regime

- sits now, our concern is that that might happen. However, that comes with the caveat of our not knowing what the secondary legislation will be. European case law would have relevance in this jurisdiction, because the Human Rights Act 1998 is read in conjunction with European Court judgements.
102. **Mr Caughey:** Another judgement is *Limbuela*, which is equally difficult to pronounce. That case related to an asylum seeker's eligibility to apply for benefits, and a restriction had also been placed on his working. The House of Lords ruled that it was possible that making someone unable to access benefits could be considered as leaving them in destitution.
103. There is nothing as specific as that case on your point about the size of rooms. However, under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the right to independent living, it may be that someone will require a carer to enable them to live more independently or will, occasionally, require a carer to stay. There are ways in which the size of a room or the availability of additional rooms in a house would be relevant to someone's enjoyment of rights that are protected under international human rights law.
104. **Mr F McCann:** Are there different definitions of destitution?
105. **Mr Caughey:** The principal definition is contained in the *Limbuela* case. That comes from the Nationality, Immigration and Asylum Act 2002 definition, under which someone would be considered as being destitute if they lack:
"accommodation, and food and other essential items".
106. **Dr Russell:** In essence, we are talking about the choice between having a roof over your head and feeding yourself. Everyone should have the right to shelter, accommodation, food and clothing. Where people are faced with choosing between those, there is the potential that we could overstep the mark and be in breach.
107. The general reference of the UN's Committee on Economic, Social and Cultural Rights is to "adequate housing". However, there is no definition of what constitutes that. Once again, the focus on human rights is on individual need. These decisions should be premised on individual circumstances. What a family of four requires not to be destitute will be completely different from what a single person living alone requires.
108. **Mr F McCann:** On the housing issue, would the legacy of conflict, underoccupancy and the difficulties that remain with people moving from one area to another have an impact on people's human rights? They may have been asked to move but refused because they feared for their life.
109. **Dr Russell:** There is a clear, positive obligation on the state to ensure that there is no potential breach of the right to life. Given the nature of society here and the threat of sectarianism and all that goes with it, the choice of housing stock in which it would be appropriate to accommodate people is limited. That is only one particular circumstance. We also know that there is a higher level of DLA claimants as a consequence of the impact of conflict here. We do not, necessarily, have the highest level, as there is some debate about how the UK is broken up regionally.
110. **Mr F McCann:** That is interesting. I have one final question on the cap on benefits. We were told that 520 or 580 families will be directly affected by that. However, over 13,000 people on DLA may also be affected by the transition to PIPs. Obviously, through the Bill, it has been decided to place a cap at a certain level. That will penalise a certain section of the community — those with large families. Is there anything there that you see as impacting on destitution or taking away people's right to quality of life?
111. **Dr Russell:** The right to family and private life under article 8 of the European Convention on Human Rights would be engaged at that point,

- and there would also be a potential breach of article 14, as it may be discriminatory.
112. **Mr Corey:** It almost comes back to the earlier point of how you measure destitution and hardship and the impact that they have. If benefits are capped, it may not affect a small family, but it could start to have the impact that you described on a large family.
113. **Mr Durkan:** Those comments are timely, as I was going to make a point about the UN Convention on the Rights of the Child. In my opinion, the inclusion of child benefit in the benefit cap is a breach of that convention. Further possible regulations will certainly be a breach, particularly as we have heard Iain Duncan Smith talking about stopping child-related benefit at two children. Article 26 of the convention states:
- “Parties shall recognize for every child the right to benefit from social security”.*
114. There is no mention of just the first two children. What would be the implications if the UN Convention on the Rights of the Child (UNCRC) were breached? Do you think that this could constitute such a breach?
115. **Dr Russell:** The Convention on the Rights of the Child is binding law on which the UK Government and the Northern Ireland Executive have to report back periodically to the United Nations. I am sure that the UN’s Committee on the Rights of the Child will look at that issue closely. It is not dissimilar to the previous point. I would imagine that, in the first instance, because you are talking about a move from the family unit with two children to the three children scenario, the most likely first avenue to explore would be whether family life was impacted in a discriminatory fashion, which would engage article 14 of the European Convention on Human Rights. You would then bring in the UNCRC on top of that. Domestic human rights protections and international protections quite often mirror each other.
116. **Mr Durkan:** It is proposed that the mobility component of PIPs be removed from someone in a hospital or care home. Would that be a breach of human rights?
117. **Mr Caughey:** The UNCRPD requires that disabled people be supported to live life independently. If a car was a necessary element of enabling someone to live life independently, there is certainly the potential for their not having one to have adverse implications on their right to an independent life. As far as I understand it from my reading of developments in England and Wales, the mobility component is to be retained for persons in care homes. However, that may be inaccurate.
118. **Ms Brown:** Thank you very much for your very interesting presentation. I want to ask you about the lack of a childcare strategy and the necessary infrastructure and resources. That places women at an obvious disadvantage in relation to welfare reform. Will you give us your view of placing work-related requirements on women with childcare responsibilities and the possible sanctions? Northern Ireland is unlike England and Wales, where there is a responsibility to provide childcare. Are there any apparent human rights issues?
119. **Dr Russell:** Yes. We addressed that issue in our submission, which lays out the standards quite clearly. Article 22 of the United Nations Declaration on Social Progress and Development 1969 provides for:
- “the establishment of appropriate child-care facilities in the interest of children and working parents.”*
120. As with all the treaties mentioned in our submission, that has been ratified by the UK and is binding on the Northern Ireland Executive. Furthermore, article 8 of the European Convention on Human Rights might also, potentially, be engaged in that area, as could article 1 of the Convention on Eliminating All Forms of Discrimination Against Women (CEDAW), which does not allow for discrimination against women on the

- basis of sex and in comparison with men. It demands equality in political, economic and, vitally in this instance, social life. All those could potentially be engaged.
121. We are conscious that the situation with childcare here is different. There has been some indication — I do not have the figures to hand — that the demand for childcare is higher and would outstrip the current supply. So the requirement to attend interviews, for example, will obviously be onerous on women, and there is potential for discrimination. Again, I do not know. All this has to come with the caveat that we do not know what the regulations will say. A regulation could provide adequate protection to deal with this circumstance.
122. **Mr Brady:** Fra talked about the double-whammy effect. We have been told that someone who receives an overpayment of £50,000 in benefit, or is jailed for an offence relating to social security fraud, will have their benefit sanctioned for three years. So someone who has spent two years in jail and is released will have their benefit sanctioned for a further year. He will return to the household with, say, his partner and three children, and they will not get benefits. Presumably, though it will depend on the outworkings of the regulations, he will be living in a household that receives a certain amount of money for his partner and children, but not for him. Presumably, he will be assimilated back into the household. Then we come back to the issue of possible destitution, whatever the definition of destitution may be. There seems to be no provision made for those circumstances. That sanction may well lead to the break-up of the family, because money will be coming in for only four people, not five. There are all sorts of implications connected with that. Would that particular situation be considered as a breach of human rights?
123. Fra made the point that, if you commit a crime, you go through the judicial system and are punished. When you come out, you can immediately claim benefit,
- but not if the crime related to social security. Since 2008, here in the North, the incidence of social security fraud has continually decreased, whereas the incidences of claimant error and departmental error have risen. DLA, for example, is the benefit least prone to fraud: it is less than 0.01%. Yet the demonisation of people on benefits has contributed to the general atmosphere around so-called welfare reform. There is almost an acceptance by some people of the attitude, “I am working, so why should those people be better off?” The reality is that all the changes to contributory benefits, such as ESA being paid for only a year, irrespective of how many contributions have been paid, will have an impact, not just on the working poor, the unemployed, or those on benefit, but on people who work.
124. **Dr Russell:** Your first point was on the demonisation of those on benefits. The commission’s views are quite clear: the human rights requirement on the state, under the European Social Charter, is to ensure that there is an adequate social security system.
125. On the specific issue of prisoners, the deprivation of liberty is the punishment for the crime. The further punishment, which you suggest may be introduced after a prisoner has been released, raises a serious human rights concern. The commission would have to look at that in more detail. To date, we have not analysed that, but we will be happy to do so should the Chair or Committee see fit to ask.
126. **Mr Brady:** We talk of demonisation, but what has been forgotten in all this is the duty of care that the state owes to the most vulnerable. If you listen to some of the media here and in Britain — I have said this before and will continue to say it — you would think that the Social Security Agency was some sort of charitable institution that gives out money like a church organisation or the Society of St Vincent de Paul. There is a duty of care to be met, and, as you said, a requirement on the state to provide an adequate — “adequate” is an important word in this case — social

- security system for the betterment and enhancement of people's lives. I can say in all honesty that no one to whom I have spoken has ever said that they like being on benefit, or that they are there by choice. It is as simple as that.
127. **Mr Corey:** Absolutely. You refer to the duty of care owed by the state to the most vulnerable. From the perspective of the Human Rights Commission, our priority is the most vulnerable people. People in prison are among the most vulnerable, and on their release they are also amongst the most vulnerable. As David said, the commission staff have not yet examined that, but if asked, we will pick up that point.
128. You made a wider point about the demonisation of individuals by, for example, allegations of benefit fraud. At the end of the day, we all want a benefit system that is there for everyone. This is not about examining benefit from the point of view of people who have committed fraud but about benefits for people who are ill, disabled or lose their job, and the system should be there to protect everyone with dignity and respect. That is what this should all be about.
129. **The Chairperson:** John, David and Colin, thank you for the commission's written submission and for your contribution today. It has been very important and very illuminating for all of us.
130. I want to make one point. Most organisations that come here refer to the recent announcements by the Minister. Last week, he announced that the Bill would be modified to facilitate direct payments to landlords, for example, for people in receipt of universal credit and rent support. That will go, by default, to the landlord directly. However, there was a question about split single payments or monthly payments. The implementation of universal credit has been deferred from October 2013 to April 2014 to facilitate the development of the IT system to provide for the modification of the method of payment, either by way of single or monthly payments. Last week, however, I had discussions with David Freud, who in no way accepts that the default mechanism will be that people can get their choice of fortnightly payments. That will still have to be negotiated by way of some type of special circumstances. The detail has not been worked out yet, but he made it very clear that they still want to pay as many people as possible monthly and by way of a single payment. I am just making the point that the Minister took that at face value, but it is for the panel to examine that, and people will submit their views on what form split payments might take. You have ideas, and the women's sector will have ideas. As yet, there has been no agreement on the ultimate nature of any modifications. Our difficulty, as a Committee, is that we will have to decide on the Bill at Committee Stage before any of those deliberations have been concluded, but it is up to us to grapple with that.
131. For your information, we will complete Committee Stage and provide our report to the Assembly on 27 November. Your contribution has been a very important part of our deliberations. Thank you, and we will, no doubt, engage with you again.
132. **Mr Corey:** Thank you very much, Chairperson.

A Guide to the Welfare Reform Bill



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Assembly

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Eleanor Murphy

A Guide to the Welfare Reform Bill

1 Introduction

The Welfare Reform Bill for Northern Ireland was introduced to the Assembly by the Minister for Social Development on 1 October 2012. The measures contained within the Bill, and the changes to the social security system announced as part of the Coalition Government's June 2010 Budget and October 2010 Spending Review, have been described as the most radical shake-up of the benefits system since the foundation of the welfare state.

This Guide is intended to assist Members in their scrutiny of the Bill by providing links to key papers and information on welfare reform.

2 An Overview of the Welfare Reform Bill

Universal Credit

Part 1 of the Bill contains provisions and confers regulation-making powers for a new integrated working-age benefit – known as Universal Credit. Universal Credit will replace Working Tax Credit; Child Tax Credit; Housing Benefit; Income Support; income-based Jobseeker's Allowance; and income-related Employment and Support Allowance. Universal Credit will include a standard allowance to provide for basic living costs (it is suggested that this will be comparable to the standard rates for Jobseeker's Allowance and Employment and Support Allowance). This will be supplemented with additional elements for responsibility for children or young people, housing costs and other needs. Universal Credit will be payable to people both in and out of work, providing that they are aged between 18 and the qualifying

age for State Pension Credit. Universal Credit may be available to those younger than aged 18 (e.g. young people estranged from their parents).

Claims for Universal Credit will be made on the basis of households rather than individuals and a cap will be applied to the amount of benefits a household can receive. Tapering of benefits will be introduced to ease the transition into work by reducing the support a person receives at a consistent rate as their earnings increase.

Claims for Universal Credit will be made via the internet and claimants will have access to the information about their claim and payments online. The Department for Social Development has indicated that alternative access routes will be made available for people who do not have access to online services (e.g. by telephone and face-to-face interaction).

Universal Credit will be paid on a monthly basis, the Coalition Government state that this is to encourage responsibility and to be consistent with the 'real time earnings approach'. Although there have been indications that more regular payments will be available for 'vulnerable' groups.

Conditionality and Sanctions

Part 2 of the Bill makes provision for changes to the responsibilities of claimants of Jobseeker's Allowance, Income Support and Employment and Support Allowance leading up to the introduction of Universal Credit and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support.

There will be a new claimant commitment which will be a record of the requirements claimants are expected to meet in order to receive benefits. It will also set out the consequences should a claimant fail to meet these requirements. Part 2 sets out the different types of work-related requirements and the expectations to meet these requirements depending on their circumstances and capability for work. The different types of activity are:

- no work-related requirements: the Department will not impose any work-related requirements on e.g. claimants who have a limited capability for both work and work-related activity due to a physical and mental condition, responsible carers with a child under the age of one; and any claimant with regular and substantial caring responsibilities.
- work-focused interview requirements: these interviews are to discuss the steps that a claimant might take (immediately or in the future) to increase (a) their chances of getting work (b) increasing the numbers of hours they work or (c) getting work that is better paid.
- work-preparation requirement: actions specified by DSD for DEL in order to increase a claimants chances of a) their chances of getting work (b) increasing the numbers of hours they work or (c) getting work that is better paid. The work preparation requirement may include taking part in a health-related assessment which will be carried out by a health professional.
- work-search requirement: there are two parts to this requirement – a general requirement that claimants must take all "reasonable action" to obtain paid work; and, a requirement to take any particular action specified by DSD or DEL (e.g. applying for a specific job or registering with a particular recruitment agency).
- work-availability requirement: a requirement that the claimant is able and willing immediately to take up paid work, increase the number of hours they work or get work that is better paid.

The Bill also makes provisions for a new sanctions regime which provides for a reduction in the amount of a claimant's award in the event of failing to meet certain requirements (e.g. failing to take part in a prescribed type of work placement or mandatory work activity; failing to apply for a particular vacancy when required to do so; failing to take up an offer of paid work; leaving paid work voluntarily or because of misconduct). The Bill makes provision for sanctions of up to three years depending upon the type of failure of the requirements. The

Bill also enables regulations to make provision for universal credit payments to be made to claimants who have been sanctioned and who can demonstrate that they are or will be in hardship. It also enables regulations to make provision for such payments to be recoverable.

Personal Independence Payment

Part 4 of the Bill contains the framework for a new benefit called Personal Independence Payment (PIP) which will replace Disability Living Allowance (DLA). The detailed design for PIP will be contained within secondary legislation. It is proposed that there will be a simplification of the system by reducing the number of rates than that currently available under DLA. The intention is to move away from a system that awards automatic entitlement to certain rates of benefit for certain conditions.

There will be a new assessment process and a periodic review of those awarded the benefit. It has been suggested that the eligibility criteria for PIP will be much more restrictive than it is currently for DLA. This may be a particular problem for Northern Ireland given that it has the highest prevalence of DLA claimants per head of population in the UK. Around 1 in 10 people claim DLA in NI, a substantial number of these claims are on the basis of mental health.

Benefits Cap

Part 5 of the Bill contains provisions relating to the administration of social security benefits. It includes provisions for regulations to be made for a benefit cap to be applied to the welfare benefits to which a single person or couple is entitled. 'Welfare benefit' means a prescribed benefit, allowance, payment or credit (but will not include state pension credit or certain retirement pensions).

This part of the Bill also sets out measures to deal with benefit fraud (including measures relating to the Housing Executive powers to prosecute housing benefit fraud) and also contains measures that enable DSD to share data with other bodies.

Child Maintenance

In January 2011 the Coalition Government published a consultation document, "Strengthening families, promoting parental responsibility: the future of child maintenance. This document set out proposals that parents should be encouraged and supported to make their own-family arrangements for the maintenance of their children wherever possible, rather than using the statutory maintenance scheme. It was suggested that this would enable the Department to focus on cases where it is not possible for parents to make the arrangement themselves.

Part 6 of the Bill makes provisions to implement the proposals which support the principles in the consultation document and which require primary legislation.

3 Key Publications and Information

This section provides links to key documents including the Welfare Reform Bill, Northern Ireland Assembly Research Papers and House of Commons Research Papers on the Stages of the Westminster Welfare Reform Bill. The Northern Ireland Welfare Reform Bill Explanatory and Financial Memorandum provides an overview of each of the 134 clauses of the Bill.

Northern Ireland Assembly Resources

- The Northern Ireland Welfare Reform Bill - www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Welfare-Reform-Bill/
- Explanatory and Financial Memorandum - www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Welfare-Reform-Bill/
- NI Assembly Research and Information Service Paper (2011) – “An Introduction to Welfare Reform” - <http://archive.niassembly.gov.uk/researchandlibrary/2011/1311.pdf>

DSD Resources

Department for Social Development Welfare Reform Webpages on: www.dsdni.gov.uk/index/ssa/welfare-reform-ssa.htm

- the introduction of Universal Credit
- The introduction of Personal Independence Payment
- Changes to Housing Benefit
- The introduction of a benefits cap
- The introduction of new fraud and error powers
- Changes to Social Fund
- Changes to Employment and Support Allowance
- Changes to sanctions and hardship provisions

Department for Social Development – Welfare Reform Bill Equality Impact Assessment (April 2012) - www.dsdni.gov.uk/welfare-reform-bill-completed-eqia-april-2012.doc

DSD Consultations:

- Proposals for a Welfare Reform Bill: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/eqia-welfare-reform-bill.htm
- DLA Reform and Personal Independence Payment: completing the design detail: www.dsdni.gov.uk/index/consultations/archived-consultations/consultation-dla-reform-and-pip.htm
- Personal Independence Payment: assessment thresholds: www.dsdni.gov.uk/index/consultations/archived-consultations/consultation-pip.htm
- Support for Mortgage Interest – Informal call for evidence: www.dsdni.gov.uk/index/consultations/archived-consultations/consultation-support-for-mortgage-interest.htm
- Housing Benefit Reform – Supported Housing: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/consultation-housing-benefit-reform-supported-housing.htm
- Strengthening families, promoting parental responsibility: the future of child maintenance: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/consultation-the-future-of-child-maintenance.htm

- Disability Living Allowance Reform: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/consultation-disability-living-allowance-reform.htm
- Universal Credit: welfare that works: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/consultations-universal-credit-welfare-that-works.htm
- 21st Century Welfare: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2010/consultation-21st-century-welfare.htm
- Supporting people into work: the next stage of housing benefit reform: www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2010/consultation-next-stage-housing-benefit-reform.htm

House of Commons Resources

The Welfare Reform Act 2012 – the Bill and amendments: <http://services.parliament.uk/bills/2010-12/welfarereform/documents.html>

House of Commons Library Bill Papers:

- Welfare Reform: Universal Credit Provisions - www.parliament.uk/briefing-papers/RP11-24
- Welfare Reform Bill – Reform of Disability Benefits; Housing Benefit; and other measures – www.parliament.uk/briefing-papers/RP11-23
- Welfare Reform – Committee Stage Report - www.parliament.uk/briefing-papers/RP11-48
- Welfare Reform Bill – amendments to the Lords Committee and Report Stages - www.parliament.uk/briefing-papers/SN06202

See also the following House of Commons Library Research Papers:

- Personal Independence Payment – an introduction - www.parliament.uk/briefing-papers/SN06422
- Paying Housing Benefit Direct to Tenants in Social Housing - www.parliament.uk/briefing-papers/SN06291
- Under-occupation of social housing: housing benefit entitlement – www.parliament.uk/briefing-papers/SN06272
- Housing Benefit: Size Criteria and Discretionary Housing Payments - www.parliament.uk/briefing-papers/SN04887
- The Household Benefit Cap - www.parliament.uk/briefing-papers/SN06294



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