A submission by Sinn Fein members of the Ad Hoc Committee on conformity with equality requirements and human rights in relation

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)

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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 controvention 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.