Consultation Response in respect of the
Clauses contained in the Welfare Reform [NI] Bill 2012

1. The South Tyrone Empowerment Programme (S.T.E.P) is a not for profit community development organisation, which was established in 1997. It is based in Dungannon, Northern Ireland. Our range of services has continually diversified in response to changing community needs and gaps in service provision. We have grown to provide both local and regional services to the community. We aim to contribute to building a rights – based, participative, peaceful and prosperous society which provides equality of access and opportunity, embraces diversity and respects difference. Our objectives are to enable those most vulnerable to marginalisation, disadvantage and exclusion, to develop the confidence and skills to be heard; to identify their own strengths and needs; to access the support and expertise to help them in finding solutions and advocating social change.

2. S.T.E.P welcomes the opportunity to respond to this consultation which looks at the clauses contained in the Welfare Reform (NI) Bill 2012.

3. S.T.E.P is responding to this consultation for two key reasons:

   (a) We are mindful that the legislative process in respect of the Welfare Reform (NI) Bill has already commenced and we are keen to assist in the mitigation of the effects of this new legislation. Notwithstanding the recommendations we have made herein, we wish to explicitly outline our wholehearted opposition to the Welfare Reform (NI) Bill 2012 in its entirety. We oppose this legislation as it will have the practical impact to marginalize and impoverish the most vulnerable and needy in Northern Ireland. It will also, in our view, expressly lead to greater poverty and social depravation.

(b) We are an NGO which provides extensive legal advice and assistance to local and migrant communities. In this way, we can provide support services to the most vulnerable, impoverished and in need of welfare.

(c) Community-based support networks are vital in assisting exploited individuals. The availability of advice and information allows the claimant to be better informed when making welfare benefit applications and maintains quality by ensuring that legislation is correctly applied.

SCOPE OF THIS CONSULATION RESPONSE

4. To consider the clauses contained in the Welfare Reform (NI) Bill 2012 ("The Bill"). To provide an informed analysis of the clauses themselves and the impact and effect they are likely to have. In addition we will make recommendations for improving the clauses as they are currently drafted.

5. We do not propose to respond to every clause as contained in the Bill, and intend our submissions to be cross transferrable where similar arguments can be made in other clauses.

BACKGROUND TO THE WELFARE REFORM (NI) BILL 2012

6. The issue of social security In Northern Ireland is a devolved matter requiring a separate legislative process to bring about reform to the welfare benefit system. Welfare benefit payments come directly from Westminster, thereby avoiding money being taken from the Northern Ireland block grant. Figures released by the Department for Social Development highlighted that in 2009, £4,176,435,887 was claimed in welfare benefits (including State Pension), all of which was sourced directly from Westminster. In funding welfare in this way the NI Assembly are under considerable pressure to maintain a system of parity which largely operates in the UK.

7. The issue of parity is a contentious one. We recognise the merits in a congruent benefit system with the same principles as the rest of the UK; but are gravely concerned as to the impact these will have upon a separate jurisdiction. Northern Ireland has higher rates of joblessness, disabled claimants claiming sickness benefits (such as Incapacity Benefit and DLA) than in other parts of the UK, and we are largely a divided community emerging from conflict.

8. S.T.E.P believe that the Bill provides the Assembly with an excellent opportunity to best insulate and protect the most vulnerable in our local communities from the hard reality of austerity measures through the UK. We are aware that this legislation (in some form) will be passed and will become binding law. We strongly encourage the Assembly to ensure that every effort is made to explore the possibility of making substantive changes to welfare reform legislation to take account of Northern Ireland-specific circumstances, thereby mitigating its effects.

9. There should be a sharp focus on operational flexibility within the Departments and in the delivery and impact of these reforms. The Assembly have an excellent opportunity to shape the future of our nation and we recommend that every effort is made to protect the most marginalised and vulnerable.

THE WELFARE REFORM BILL 2012 – CLAUSES

PROPOSED CLAUSE 4:

10. Clause 4 identifies five basic criteria for eligibility. Clause 4(1)(e) identifies that the claimant must have "accepted a claimant agreement". This makes no reference to personal circumstances nor qualifies the non-acceptance of such an agreement. It is conceivable that Carers of both children and adults are the most likely to have difficulties committing to a claimant agreement and are likely to fail to adhere to such agreements due to their caring duties.

11. In these circumstances the claimant agreement should have an element of reasonableness attached to it and the acceptance of such based upon the

reasonableness principle. The agreement should then be tailored to best suit his/her needs.

12. We are of the view that greater protection and clarity should be added to Clause 4(1)(e), in identifying that the clients personal circumstances have been considered.

13. STEP recommend that s.4(1)(e) is amended to add "…, which has been tailored with regard to his personal circumstances."

PROPOSED CLAUSE 14:

14. Further to our submission in respect of changes to clause 4, we are of the view that the proposed clause 14 must also be reconsidered in the same light. This Clause fails to lay down any criteria for the creation or development of claimant contracts. Instead it provides a *carte blanche* for the department to make potentially restrictive agreements. In this regard 14(2) goes too far in that it allows the claimant commitment to be "prepared by the Department and may be reviewed and updated as the Department thinks fit."

15. Clause 14 should be specifically amended to afford protection to the client on the grounds of fairness and reasonableness. Claimants should have the specific right to contribute to the agreement and only reasonable contracts be imposed. Where contracts are disputed on the grounds of reasonableness; these should be subject to challenge and/or appeal. One possibility would also allow for this to be challenged in the way such agreements are presently challenged under the present Job Seekers Allowance regime. In either event the right to dispute should be codified in a new sub-Clause in s.14.

16. Clause 14(4)(b)&(c) provide for the department to use: "any prescribed information' (Clause 14(4)(b)) and "any other information the Department considers appropriate" (Clause 14(4)(c)). Clause should in our view be clarified and should be amended to read "…insofar as this other material is relevant and reasonable to be considered."

PROPOSED CLAUSES 15 & 16:

17. We submit that the proposed s.15 (Work Focused Interview Requirement) & s.16 (work preparation Requirement) both be amended to specifically indicate that Department decisions are subject to reasonableness and proportionality, subjective to the claimants circumstances.

18. We further submit that for the same reasons as set out in our paragraph 9 above, that Clauses 15&16 are also subject to a challenge/appeal procedure.

PROPOSED CLAUSE 19:

19. Clause 19(2)(c) makes provision where "the claimant is the responsible carer for a child under the age of one." They will not be subject to work-related requirements. S.T.E.P are of the view that parity with this aspect of the Welfare Reform Bill should not be maintained. This rules only seeks to adversely advantage those with childcare needs.

20. Traditionally the *Income Support* rules recognised the fact that childcare was a key issue. In fact, so much so, that recent reforms to the Income Support rules recognised this with regard to work-related activities. Recent reforms imposed the requirement that work-related requirements were possible and should be undertaken where the child is of school age (age 5 and over.) Clause 19(2) is very much at odds with this recent rationale.

21. We are of the view that imposing work-related activities where the responsible parent where a child is over one (and under school age) will create a childcare crisis for many individuals. On the one hand they are required to engage in work-related activities yet are struggling to do so due to the availability or indeed affordability of childcare, which would otherwise allow them to engage in such activities.

22. Clause 19(2) will only seek to cause unnecessary hardship, anxiety and pressure on young families. We are of the view that 19(2) to should be

amended to read "...under the age of 5." To fail to do so would be in direct conflict with the governments principles underpinning the Welfare Reform (NI) Bill, namely 'to get people back into work' and 'to make work pay.'

Proposed Clause 24:

23. S.T.E.P welcome the inclusion of special provisions for victims of domestic violence under Clause 27(7), which affords a 13 week reprieve. Whilst we welcome these provisions; we are concerned that the provisions do not go far enough and that the 13 week time-frame is too short in terms of timescale.

24. We are aware that the terms 'domestic violence' and 'victim of domestic violence' are yet to be determined by Regulation, but we feel that there is a key opportunity for the NI Assembly to widen the scope of traditional domestic violence situations where relationship and physical abuse is the focus.

25. The use of the term 'violence' is also unduly narrowing the issue as it suggests a physical threat or outcome. STEP prefer the term 'abuse' rather than violence; as domestic abuse can take the form of emotional, psychological and financial abuse, all of which are equally damaging within a domestic setting.

26. We are of the view that the legislation could better make reference to 'victim of abuse within a domestic setting.' This is our view better reflects the broad spectrum of damaging abuse. It would also cover the increase in human trafficking, forced labour and servitude within Northern Ireland. We are of the view that human trafficking, forced labour and servitude are as damaging as domestic abuse/violence and are in need of similar protection.

27. We are of the view that 13 weeks may not be a long enough time-period to overcome barriers to work-related activities and recommend this is substantially extended.

PROPOSED CLAUSES 26 & 27

28. Clauses 26 & 27 provide for more rigorous sanctions than currently exist in the present benefits system. We are concerned by the use of the phase 'for no good reason.' No clarification as to the meaning of this or what may constitute such has been provided in the Bill. Our concern revolves around the instance that it may be left for the decision-maker to be persuaded by the reason, and provides for too much discretion in doing so.

29. We are further concerned that those with metal health, learning difficulties and those with communication difficulties may be unduly deemed as not having a 'good reason' when in fact their disability is their reason. Our concern remains the same for those who do have a good reason but cannot communicate this well enough to overcome the decision-makers discretion.

30. We recommend that safeguards are provided for and that claimants are afforded the full opportunity to explain the reasons and to provide additional information.

31. We are also of the view that these safeguards would ensure that sanctions are not used as a means of forcing claimants into work.

PROPOSED CLAUSE 28

32. Clause 28(1)(f) allows for Regulations to set down circumstances where hardship payments are not recoverable. Whilst we welcome this provision, we feel this clause should go further. We recommend that greater discretion is provided to not seek recovery of hardship payments at all, where exceptional circumstances arise.

33. We recommend that a new sub-clause added to provide a specific discretion not to recover hardship payments. This discretion should mirror current Department policy, not to recover where this will cause hardship. In all circumstances this should be based on subjective personal circumstances.

PROPOSED CLAUSE 52

34. Clause 52(1) seeks to impose the condition that Contributory ESA may only be claimed for up to 365 days, with this being the "relevant maximum number of days." We are of the view that this is an arbitrary time-limit which will only lead to financial hardship for families who are on a low income but do not meet a Universal Credit entitlement.

35. The time-limit of 365 days is an arbitrary time-limit. The National Insurance Contribution ("NIC") eligibility rules refer to the claimant having enough NICs in the last 2 tax years, as is the current eligibility criteria. The logical approach would be to exhaust all NICs over 2 tax years. Where the individual has paid NICs to the appropriate level, they should be allowed to fully avail of these. To impose a 365 day limit (one) year on a claimant who has 2 fully years NICs is to effect ignore the fact that s/he has paid to this level. We recommend this is removed completely or extended to 2 years as suggested.

36. Clause 52(1) (New (1A)(4)(f)) allows for the imposition of the 365day rule to apply to existing awards. S.T.E.P. feel that this is merely retrospective law making designed to save money and is unfair and unjust. Where the client is entitled to an award based on the criteria at that time, the principle of natural justice dictates that s/he fulfills the entitlement to that benefit on the basis of rules that were in place at that time.

37. S.T.EP advocate deletion of clause 52(1) (New (1A)(4)(f)) in its entirety. Awards that are currently in place should be allowed to run their natural course and only then should the new rules apply.

38. Clause 52(1) (New (1A)(1)(6)) allows for the further rules in relation to calculation of entitlement to Contribution-Based ESA. In assessing the 365 day rule it allows for days prior to the coming into effect of the new rules to be considered. In our view that is a further example of retrospective law-making designed to save money. It is unfair and unjust. Where a new rule comes into force it should only be from the "in-force" date and accordingly any time-limiting eligibility factors should not start running until that date.

39. S.T.E.P recommends the deletion of this clause on the grounds of fairness and natural justice.

PROPOSED CLAUSE 59

40. Clause 59(2) imposes work related activities on lone parents with children aged under 5. It is STEP's view that such conditions place an undue burden upon them in terms of obtaining and paying for childcare and thereafter taking up employment. Lone parents are affected by these the most.

41. For the reasons set out in paras 19-22 of this response we are of the view that imposing job related activities on lone parent families (with children under 5) should not be followed in Northern Ireland.

PROPOSED CLAUSE 78

42. Clause 78(7) provides that:

> *"Regulations may provide that a person is not entitled to the mobility component for a period (even though the requirements in sub-Clause (1) or (2) are met) in prescribed circumstances where the person's condition is such that during all or most of the period the person is unlikely to benefit from enhanced mobility."*

This Clause seeks to limit the availability of the mobility component yet fails to clarify what is meant by 'unlikely to benefit from enhanced mobility,' nor is any direction given to the scope of what the Regulations may contain.

43. The concept of a claimant being 'unlikely to benefit' needs clarification. It is too wide ranging in scope. To fail to do this in the Bill would potentially lead to circumstances were non-entitlement results in cases which were envisaged would normally be entitled under the spirit of the reforms.

44. The purpose behind the enhanced mobility component of PIP is to assist those most in need to lead independent lives. Where an individual is in constant severe pain whilst walking or mobilising (subject to the entitlement criteria) may be entitled to PIP Enhanced Mobility component (this would yield a DLA High Rate Mobility Component award today). In this example,

Clause 78(7) in its current form could arguably be used to justify non-entitlement on the basis that the claimant could be said to not benefit from enhanced mobility as the pain is constant and severe [i.e. the pain level is still the same and thus no benefit accrues].

45. STEP recommend that clause 78(7) is clarified and the scope of any potential Regulations to further define this, codified within this Clause.

PROPOSED CLAUSE 80

46. Clause 80(1)(b) imposes a 9 month projection on the duration of the condition (thereby limiting the ability of the claimant). This represents a extension of the current DLA criteria for the condition to be likely to last 6 months. In our view this clause only seeks to limit entitlement as a cost cutting measure. Such limitations are against the spirit of PIP which is to help disabled people lead independent lives. This is our view restricts disabled people to assistance only where they are likely to have the condition for a year (3months under clause 80(1)(a) and 9mths projected under clause 80(1)(b)).

47. S.T.E.P recommend that the current provisions of a 6month projection on an illness is more than adequate and clause 80(1)(b) should be limited to 6 months as is currently the case in DLA (the predecessor to PIP.)

PROPOSED CLAUSE 83

48. Clause 83 identifies that sickness benefits are not payable where the UK is not the competent state. Clause 83(2)(a)&(b) refer to the relevant EU Regulations governing this principle. We are of the view that this Clause fails to clarify the issue of competent state.

49. S.T.E.P has experience of assisting clients who are refused benefit entitlement under competent state arguments. In our experience the EU Regulations are not sufficiently clear. The EU Regulation 883/2004 appears to suggest that a claimant will be eligible where they are a family member of a worker in the UK, despite circumstances which would otherwise rule them

as not entitled. We are of the view that the legislation can best address this matter by providing clarification of the rule.

50. We recommend a full and detailed clause, fully explaining the entitlement and non-entitlement under competent state arguments.

PROPOSED CLAUSE 84

51. Clause 84(3) defined the term “Care Home” as meaning an “establishment that provides accommodation together with nursing or personal care.” We are of the view that this is an imprecise and vague definition. We are also concerned as to how this definition may be interpreted.

52. The use of ‘personal care’ needs specific clarification. If this refers to *medical care* or a form of assisted living arising from this (such a care worker providing washing and dressing services) then this must be specifically identified in the Bill.

53. We have concerns that providing accommodation and some other personal care would lead to claimants losing their benefits despite being entitled to PIP. This would apply to Shelters, Hostels and Refuges where a form of other support is provided over and above the accommodation.

54. Without clarification of Clause 84(3) we can arguably see clients losing benefit in circumstances where this was not envisaged under the Bill. The example of a Hostel resident who is in receipt of other support services (such as key worker or floating support services as current exist in NI), such as assistance to manage financial affairs could arguably be at risk under clause 84(3). Managing finances is an eligibility criteria for assessing the new PIP benefit and could thus be argued as personal care also.

PROPOSED CLAUSE 95

55. S.T.E.P are concerned that the imposition of a benefit cap will only further limit the entitlement of claimants, who are otherwise eligible for benefits. We have further concerns that the proposals in reality seek to doubly assess and cap claimants.

56. Where the claimant meets the normal rules of entitlement they should be eligible for that benefit free of a benefit cap. To impose a benefit cap is to effectively assess clients twice; first for eligibility and secondly for income. This has the effect of denying a benefit (or full amount) which the client is otherwise eligible for.

57. Changes to the Local Housing Allowance amounts and the extension to the shared room rate to cover persons up to age 35, have already imposed *de facto* benefit caps. To then impose an overall benefits cap in addition, is to cap the claimant's eligibility for benefit twice.

58. We are further concerned that a benefits cap will only lead claimants to the conclusion that they are 'better off' living and claiming separately, thereby potentially breaking-up households. This has a greater unforeseen impact on children.

59. Clause 95(5)&(6) amount to the relevant amount which is calculated by reference to the "estimated average earnings." We recommend that if parity is to be maintained in this regard, then this amount should be in line with the average earnings in the whole of the UK.

60. We further recommend that average earnings are calculated with regard to potential welfare benefits assistance under Universal Credit that those working would also be entitled. A consideration of this in relation to the current tax credit system highlights the issue. It is not correct to say a family's income is 'X' because they earn 'X' in their employment when in fact they are also entitled to in the region of £4000p/a in tax credits over and above those wages.

61. Clause 95(4)(c) provides Regulations to make "exceptions to the benefits cap". This is ambiguous in our view. It is not clear whether this refers to exceptions to the cap completely (i.e. not applied at all) or whether it provides for a disregard of certain benefits when considering the cap (such a Disability Benefits.) This must be sufficiently clarified. Our recommendation is that provision for both should be made sufficiently clear in clause 95(4).

FURTHER ISSUES WHICH SHOULD BE CONSIDERED IN THE BILL

62. S.T.E.P are of the view that the Welfare Reform Bill has presented an excellent opportunity to commence the legislation process for protection of victims of human trafficking, forced labour and domestic servitude.

63. Northern Ireland is currently the pioneering legislation against human trafficking, within the UK. The recent private member's bill [xxx] and subsequent awareness of human trafficking matters, has made legislating to protect victims all the more prevalent. The Welfare Reform [NI] Bill represents a real opportunity for our Assembly to address these issues and provide special recognition and protection for these vulnerable individuals within the welfare system.

64. S.T.E.P strongly recommends that a clause is added to protect victims of human trafficking and to provide for their access to welfare benefits.

FINAL REMARKS

65. STEP strongly urges the Assembly to undergo a rigorous consideration of the Bill in its current form and to fully consider the impact of the implementation upon vulnerable individuals.

66. Full protection and appeal rights should be provided in respect of the claimant. There should always be a right to request a reconsideration or

review in respect of their claim and to properly challenge decisions where discretion is granted.

67. Funding for the voluntary sector should be guaranteed and ring fenced in order to advise and assist those most in need as a result of these legislative changes.

68. Finally, it is imperative that further Regulations (not yet decided) are limited to their initial purpose of complementing the Bill rather than a means by which new savings and austerity measures can be introduced.

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