

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 UC 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.

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

¹ DWP Explanatory Memorandum Universal Credit regulations June 2012 see SSAC website

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

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)

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 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 be 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.

³ Sanctions in the benefit system: Evidence review of JSA, IS and IB sanctions SSAC occasional paper No1 (2006)

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

⁴ op cit

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 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 updated 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 youth 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