



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response on the Welfare Reform Bill 2012

Summary

- A. The Commission has prepared this advice to assist the Northern Ireland Assembly as it scrutinises proposed reforms to the social security system for rights holders in Northern Ireland. International human rights law recognises that it is legitimate for Governments to reform their social security provision. However it stipulates the parameters within which these reforms must take place.
- B. The Commission is concerned at the absence of detailed human rights analysis of the Bill and its potential implications. A full assessment of the potential implications of the Bill is particularly complicated by the heavy reliance on secondary legislation.
- C. The Commission supports the aim of the Bill to assist people into work. The right of people to work is recognised in the European Social Charter and the Commission advises that the NI Executive must ensure access to the training and experience necessary to obtain employment is made available to people seeking work.
- D. The establishment of Universal Credit as an all-encompassing benefit payment is welcomed in principle. The Commission raises concerns regarding the payment of Universal Credit to one member of the household which may compound the difficulties faced by vulnerable families.
- E. The Commission notes the proposed replacement of Disability Living Allowance (DLA) with Personal Independent Payments (PIP). These payments are intended to assist disabled people in overcoming societal barriers and to enable their full participation in the community. Whilst costs savings is a legitimate aim of Government the Commission is concerned that achieving the required 20% reduction in spending on DLA/PIP has led to a focus on the medical model of disability rather than the social model of disability, which

focuses on overcoming the societal barriers faced by people with disabilities.

- F. The Bill proposes that those in receipt of benefits will be subject to various work related requirements, failure to comply with which may result in the imposition of a sanction. The Commission advises that the sanctions regime must be proportionate and procedurally fair. Furthermore, the Commission advises that the imposition of a sanction must not result in any individual being destitute.

- G. In respect of work related requirements the Commission raises a particular concern regarding women with child care responsibilities. There is a potential disparate impact on such women due to the absence of affordable childcare. The Commission advises that this issue be given specific consideration.

- H. The Bill proposes the abolition of the Social Fund which currently serves to assist individuals and families in maintaining an adequate standard of living. The Commission advises that the Committee examines the sufficiency of the proposed alternative emergency payment arrangements.

- I. The Bill proposes changes to the level and nature of support for housing costs under the Universal Credit, with the amount payable to be relative to household size and circumstances as well as actual rent. The Commission raises concerns regarding the potential implications of this proposal on tenants with disabilities currently in adapted accommodation within a supportive community. The Commission highlights the need to have regard for the particular characteristics of the Northern Ireland housing stock.

- J. The Bill envisages a role for private and voluntary sector providers in the assessment of claimants. The Commission advises that when carrying out activities of a public nature, private and voluntary sector providers must be required to comply with the Human Rights Act 1998.

Introduction

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights. In accordance with this function the following statutory advice is submitted to the Committee for Social Development ('the Committee').
2. The Commission bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include;
 - The European Convention on Human Rights, 1950 ('ECHR') [UK ratification 1951];
 - International Labour Organisation Social Security (Minimum Standards) Convention, 1952 [UK ratification 1954];
 - European Social Charter, 1961 [UK ratification 1962];
 - The International Covenant on Civil and Political Rights, 1966 ('ICCPR') [UK ratification 1976];
 - The International Covenant on Economic, Social and Cultural Rights, 1966 ('ICESCR') [UK ratification 1976];
 - The Convention on the Elimination of Discrimination Against Women, 1979 ('CEDAW') [UK ratification 1986];
 - The United Nations Convention on the Rights of the Child, 1989 ('UNCRC') [UK ratification 1991];
 - The United Nations Convention on the Rights of Disabled Persons, (UNCRPD') [UK ratification 2009].
3. The Northern Ireland Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore, advises that the Committee scrutinises the proposed Bill for full compliance with international human rights standards.
4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding but provide further

guidance in respect of specific topic areas. The relevant standard referred to in this context is;

- United Nations Declaration on Social Progress and Development, 1969.

5. The Commission has provided this advice in the timeframe available to it. There are a number of issues which merit further analysis however this is not possible in the time available.

Human Rights Analysis

6. By virtue of Articles 12 and 13 of the European Social Charter and the International Labour Organisation's Social Security (Minimum Standards) Convention, 1952, the Northern Ireland Executive is obligated to maintain a system of social security at a satisfactory level and should endeavour to raise progressively the system of social security to a higher level. International human rights law recognises that it is legitimate for Governments to reform their social security system. However standards also stipulate the parameters within which these reforms must remain; for instance an individuals' right to an adequate standard of living¹ must not be undermined.

7. The Commission recalls that Section 24 (1) of the Northern Ireland Act 1998 requires that all acts of the Northern Ireland Assembly are compatible with the ECHR. In addition, Section 26 also requires compliance with international obligations.

8. The Commission notes that during the passage of the Welfare Reform Bill through the House of Commons the Joint Parliamentary Committee on Human Rights (JCHR) was critical of the absence of a detailed human rights memorandum and, in addition, the JCHR raised numerous concerns regarding human rights issues. The Commission notes with regret the absence of a detailed human rights memorandum accompanying the Welfare Reform Bill, and in particular the absence of any consideration of the human rights issues raised by the JCHR.²

¹ International Covenant on Economic, Social and Cultural Rights, Article 11

² Joint Parliamentary Committee on Human Rights 21st Report Legislative Scrutiny Welfare Reform Bill

9. Recalling the human rights concerns raised by the JCHR, the Commission refers the Committee to section 35 of the Standing Orders, which makes provision for the establishment of an Ad Hoc Committee to consider and report on whether the draft Bill is in conformity with the requirements of human rights law.
10. The Bill has significant implications for the enjoyment of socio-economic rights as recognised in the ICESCR and European Social Charter. International standards, ratified by the UK Government and binding on the NI Executive, require the removal of barriers so as to ensure the progressive realisation of socio-economic rights.

Particular Circumstances of Northern Ireland

11. It is important that the Committee give detailed consideration to the particular circumstances of Northern Ireland many of which emerge from the legacy of the conflict. The Committee should note the high levels of socio-economic deprivation and reliance on welfare benefits. For example, 1 in 10 people in Northern Ireland claim Disability Living Allowance.³ In addition, the level of religious segregation in social housing restricts housing choice. The Commission advises that the Committee considers both the implications of the Bill on individual households and the cumulative impact on communities.

Use of Regulations

12. The Bill permits the Minister for Social Development to set down Regulations as regards claims and entitlement for benefit, basic conditions for award, exclusion from restrictions, claimant responsibilities, and capability for work or work-related activities. A full assessment of the potential implications of the Bill is particularly complicated by the heavy reliance on secondary legislation. The Commission advises that the Committee consider whether those Regulations proposed by the Bill subject to the negative resolution procedure should in fact be subject to either the affirmative resolution procedure or confirmatory procedure to ensure human rights compliance.

³ 102.7 per 1,000 population in Northern Ireland receive DLA compared to England with 49.6; Wales with 80.7; and Scotland with 65.9: Northern Ireland Assembly Research Briefing Paper, An Introduction to Welfare Reform, January 2011, NIAR 606-10, p 20.

13. The Commission advises that the Committee also considers the implications will wish to consider the implication of this Bill on parallel reforms to the health and social care system, such as the proposals contained in 'Transforming Your Care'.

Supporting Rights Holders into Work

14. ICESCR recognises the right to work under Article 6 which states that;

"(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

15. The European Social Charter also recognises the right to work and obligates the NI Executive to ensure adequate support for rights holders in exercising this right. There are a number aspects of this Bill which could potentially assist rights holders in obtaining work. However, to do so they must be implemented appropriately with regard to the particular circumstances of the individual concerned.

16. Article 9 of the European Social Charter "to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped". The Commission advise that the Committee in considering the impact of the Bill consider the adequacy of current investment in vocational training provision.

Payment of Universal Credit

17. The Universal Credit ('UC') is to replace the current benefits system which encompasses working tax credit, child tax credit, housing benefit, income support, income-based job seekers allowance ('JSA') and income-related employment and support allowance ('ESA').

18. The Commission acknowledges that UC is intended to be a single regular payment encompassing a range of benefits, and emulating a salary payment. This is designed to ease the transition into employment and afford a greater degree of financial autonomy to recipients.

19. The Commission notes that in the case of a joint claim by a couple, the benefit will be paid to one person only. Clause 99 provides that the Department will have the power to determine whether payment is made to a nominated person or to a person 'irrespective' of a nomination. This raises a concern with respect to instances of abuse within the home and the possibility of a nomination under duress.

20. The Commission notes that men are the primary earners in the majority of households in Northern Ireland.⁴ It seems, therefore, that men may be more likely to be the nominated recipient of UC. This may impact upon a women's access to resources and control over her own finances. International law prohibits discrimination on the grounds of sex. The CEDAW focuses solely on the issue of discrimination on the grounds of sex and Article 13 requires that;

"States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life. "

21. Children are particularly vulnerable and Article 27 of the UNCRC recognises that children are entitled both to an adequate standard of living and a right to social security under Article 26, which states that;

"1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and

⁴ Women's Resource and Development Agency (2011) The Northern Ireland Economy: Women on the Edge? A Comprehensive Analysis of the Impacts of the Financial Crisis, pg122

shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child."

21. The Commission is concerned that payment of UC to one member of the household may result in restrictions on the more vulnerable member of the household, inhibiting their autonomous decision-making in respect of their financial needs and investment of their benefits. The Commission draws particular attention to the obligations of non-discrimination under CEDAW and the paramourcy of the best interests of the child under UNCRC. The Commission advises that the Committee apply the international standards when examining the arrangements for payment of UC in light of the potential implications on the rights of women and children.

Personal Independence Payments

22. Personal Independence Payments (PIPs) will replace the current Disability Living Allowance. It is a specific benefit intended to assist disabled persons with the additional financial pressures they face. This is an important measure in ensuring that disabled people are able to exercise their right to independent living as protected by Article 19 of UNCRPD.
23. Clauses 77 and 78 of the Bill set out basic entitlement conditions for the Daily Living component and Mobility component. The Bill provides the Minister for Social Development with the powers to introduce Regulations on qualification criteria for PIPs. It is noted that the Department of Social Development has engaged in two public consultations on the assessment criteria.⁵
24. The UNCRPD requires the NI Executive to adopt the social model of disability. The social model of disability identifies systemic barriers, negative attitudes and exclusion by society (purposely or

⁵ Initial draft of the Personal Independence Payment assessment criteria – published May 2011 DSD, Second draft of the Personal Independence Payment assessment criteria – published 14 November 2011

inadvertently) that mean society is the main contributory factor in disabling people. It is the society as a whole which is responsible for creating barriers to full participation of persons with disabilities, and it is the society as a whole which has the responsibility to remove them.

25. The Commission advises that the Committee assess the proposed basic entitlement conditions contained within the Bill to ensure they adequately reflect the social model of disability. The Commission notes that the Office of the First Minister and deputy First Minister is currently developing a Disability Strategy which has the social model at its core. The Commission refers the Committee to a concern raised by the House of Commons Select Committee for Works and Pensions that an earlier version of PIP assessment criteria was reflective of the outdated medical model, which sees disabled people as having needs and requiring treatment.⁶ Qualification criteria for PIPs should be based upon the social circumstances of the individual.
26. The stated objective for the introduction of PIPs is to reduce expenditure by 20%.⁷ There is a strong presumption against retrogression in international human rights law, the Committee on Economic, Social and Cultural Rights in its General Comment No. 3 stated:

*"Any deliberately retrogressive measures...would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."*⁸
27. The Commission advises that the Committee assess any retrogressive measures of the Bill in line with this General Comment, in particular provisions relating to PIPs.

Sanctions Regime

⁶ House of Commons, Work and Pensions Committee, Government support towards the additional living costs of working-age disabled people (19 February 2012) pp. 34-41

⁷ Department of Work and Pensions, Disability Living Allowance Reform, Equality Impact Assessment (March 2011) paras 18-20

⁸ Committee on Economic, Social and Cultural Rights, General Comment 19 on The Right to Social Security (2008) E/C.12/GC/19, at [42]

28. The Bill establishes a range of claimant responsibilities, which are principally connected to work-related requirements. It further permits sanctions to be imposed for non-compliance without good cause.
29. Requiring benefit claimants to comply with certain conditions prior to the payment of benefits does not in principal raise human rights issues. The European Court of Human Rights ('ECt.HR') has held that the ECHR;

*"places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme."*⁹

30. It is important that the conditions are reasonable and proportionate to the aim. The ECt.HR recognises that the national authorities are in a better position to determine public interest on economic or social grounds and it represents;

*"the legislature's judgment as to what is "in the public interest" unless that judgment be manifestly without reasonable foundation."*¹⁰

31. The Commission notes that the imposition of financial sanctions on a benefit recipient who fails to comply with certain work requirements is not incompatible with international human rights standards. The UN Committee on Economic, Social and Cultural Rights has also stated that *"[t]he withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law."*¹¹
32. Contributory and non-contributory benefits are proprietary rights and are, therefore, protected under Article 1 of Protocol 1 of the ECHR. Any interference with a proprietary right must be in accordance with the law, for a legitimate aim and proportionate to that aim.
33. Reducing a benefit does not, in principle, violate Article 1 of Protocol 1; however, the ECt.HR has found a violation in the case of

⁹ *Stec v. the United Kingdom* (2006) 43 EHRR 47, at [54]

¹⁰ *James and Others v. the United Kingdom* (1986) 8 EHRR 123, at [46]

¹¹ UN Committee on Economic, Social and Cultural Rights, General Comment 19 on The Right to Social Security (2008) E/C.12/GC/19, para 24

Asmundsson v. Iceland.¹² The key consideration for the Court was whether the claimant faced an excessive and disproportionate burden as a consequence of the withdrawal of benefit. The Commission advises that the Committee assess the proposed sanction regime in light of this ruling.

34. The removal, or reduction, of benefits engages the right to an adequate standard of living which is protected under Article 11 of ICESCR which states that;

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

35. Where the claimant is a parent, it is important to consider the impact of a reduction in benefits upon the family as a whole. Article 3(1) of the UNCRC requires that in all matters concerning a child, *"the best interests of the child shall be a primary consideration"*. The UNCRC also requires under Article 26 that;

"States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law."

36. The UNCRC further states that children have the right to an adequate standard of living and that;

"States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."¹³

37. Any measure which would impact upon the above rights would not be considered to be in a child's best interests. The Committee must ensure that 'best interests' considerations are taken into account when

¹² *Asmundsson v Iceland* (2005) 41 EHRR 42

¹³ UN Convention on the Rights of the Child, Article 27(3)

imposing a sanction, given that it may have a wider impact upon children in the family.

38. The Commission advises that the Committee must assess the proposed sanction regime to ensure that it is procedurally fair and proportionate to the legitimate aim which it pursues. Carrying out this assessment is complicated by the absence of the relevant draft Regulations which must also be subject to scrutiny for full human rights compliance.

Hardship Payments

39. The Bill provides for hardship payments, under clauses 28 and 57, in circumstances where a sanction has been imposed.
40. It is not clear at this point if a hardship payment will be made immediately or if there will be a delay between the imposition of the sanction and the availability of relief. It is also unclear how a claimant will demonstrate hardship. The Commission advises that the Committee consider these issues in light of the international standards.
41. The impact of a disproportionate reduction in benefits may engage Article 3 ECHR, which prohibits inhuman or degrading treatment or punishment. The NI Executive is under a positive obligation under Article 3 to prevent hardship at a level that may amount to inhuman or degrading treatment.
42. For treatment to fall within the scope of Article 3 it must reach a minimum level of severity, and the assessment of that threshold will be relative and dependent on the circumstances of the case. The House of Lords have found that treatment resulting in the severe poverty and social deprivation of a group of individuals may amount to inhuman and degrading treatment.¹⁴
43. The reduction in benefits, as a result of a sanction, may risk a claimant being exposed to destitution, with a hardship payment being the only means to improve their situation. At this point a violation of

¹⁴ *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66

the positive obligation under Article 3 may have already occurred. The Commission advises the Committee to ensure that, in order to act as a safety net, the hardship payment needs to prevent destitution from occurring in the first instance rather than seeking to remedy the problem. The risk of destitution should be taken into consideration prior to the imposition of any sanction.

Child Care Responsibilities

44. Article 18 of the UNCRC requires the Executive to:

"render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children... [AND] take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible."

45. The United Nations Declaration on Social Progress and Development, 1969, also provides at Article 22(c) for;

"the establishment of appropriate child-care facilities in the interest of children and working parents."

46. The Commission notes the potential requirement on those with a child over the age of one to attend a work focused interview (Clause 21(1)(a)) and the potential requirement on those with a child over the age of four to engage in work preparation (Clause 21(5)). The ability of those with child caring responsibilities to comply with such requirements will be heavily restricted by the need to secure childcare, both in terms of its cost and availability. In addition, sanctions for failure to comply with requirements will disproportionately impact upon those with caring responsibilities and may be considered indirectly discriminatory against women.

47. In England and Wales the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs. NI has no corresponding childcare legislation, no lead Government department charged with developing a childcare strategy for NI, and no strategy agreed by the Executive. As the Social Security Advisory Committee states, "[m]any of the UK welfare reform proposals for both lone parents and working age couples with children are underpinned by the

*assumption of sufficient readily accessible and affordable childcare. This underpinning is simply not in place for Northern Ireland.”*¹⁵ Whilst the Commission notes a number of positive policy developments the provision of childcare in Northern Ireland remains inadequate.¹⁶

48. Article 8 of the ECHR protects the right to private and family life. The ECtHR has found that the right to private and family life extends to a right to seek employment and acknowledged that “[i]t is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world”.¹⁷ The ECtHR has found that where a measure has a disparate impact on certain groups, this may be considered to be discriminatory and a breach of Article 14.¹⁸

49. Article 1 of CEDAW defines discrimination as;

“[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

50. The imposition of unreasonable work related requirements on those with child care responsibilities may lead to a significant number of carers failing to meet these requirements and incurring sanctions due to the absence of adequate child care provision. In light of the fact that it is principally women who bear child care responsibilities this is likely to have a disparate impact on women. The Commission advises that the Committee considers what additional measures can be taken to assist women with child caring responsibilities and to mitigate against any potential legal challenge. This is an example of the need

¹⁵ Social Security Advisory Committee, 21st Century Welfare – A Response to the Department for Social Development (DSD) from the Social Security Advisory Committee, 2010 p.2. See also, Gingerbread and University of Ulster, Lone Parents and Work in Northern Ireland: Issues for Policy Makers, July 2009 and Horgan and M Monteith, What can we do to tackle child poverty in Northern Ireland?, November 2009, JRF.

¹⁶ HSC Board “Family Matters: Supporting Families in Northern Ireland – Regional Family and Parenting Strategy (March 2009)

¹⁷ *Campagnano v. Italy* (2006) 48 EHRR 43, at [53]

¹⁸ *Thlimmenos v. Greece* (2001) 31 EHRR 15, at [47]

for a co-ordinated approach to welfare reform which takes into account societal barriers faced by rights holders.

Social Fund

51. The Bill proposes to abolish payments of crisis loans, community care grants and budgeting loans from the discretionary Social Fund. A range of alternative emergency payments are to be introduced to replace the Social Fund.
52. The Commission notes that the availability of these measures has provided a safeguard for families and individuals who find themselves in financial difficulties. The Commission further notes that people with disabilities account for approximately 45 percent of all applications for community care grants, followed by pensioners (24 percent) and lone parents (21 percent).¹⁹
53. The Social Fund currently safeguards the right to an adequate standard of living, as protected by Article 11 ICESCR, through assisting families and individuals who have encountered unexpected financial difficulties. It also safeguards disabled people's right to an independent living, as protected by Article 29 UNCRPD, by offering financial assistance for unanticipated costs.
54. The protections offered by the Social Fund are significant and the Commission advises that the Committee examine the sufficiency of the proposed alternative emergency payments.

Housing Benefit

55. ICESCR recognises that the provision of adequate housing is essential to ensuring the right to an adequate standard of living. In its General Comment No. 4, the Committee for Economic, Social and Cultural Rights observed that all "*individuals, as well as families, are entitled to adequate housing regardless of age, economic state, group or other affiliation or status*".²⁰ Furthermore, all persons should possess a degree of security of tenure which guarantees legal protection against

¹⁹ Law Centre (NI) and Housing Rights Service Response to DWP Consultation on Social Fund Reform: debt, credit and low-income households, June 2010

²⁰ Committee for Economic, Social and Cultural Rights, General Comment 4 on The Right to Adequate Housing (Art.11 (1)): . 13/12/1991

forced eviction, harassment and other threats.²¹ The European Social Charter similarly recognises that the provision of family housing is a necessary condition for the full development of the family under Article 16.

56. Clause 11 sets out the intention to provide for an amount to be included in UC to cover housing costs. It does not provide for benefit entitlement to be related to actual rents in the local housing market. This has the potential to cause disconnect between housing costs and actual rents and, over time, this could create hardship.
57. Clause 69 of the Bill empowers the Department to set an approximate maximum housing benefit. For the private rented sector, the Department will be empowered to set rents at the lower end of either Consumer Price Index or the bottom 30th percentile of private sector rents. This change from the current approach where payments are linked to the 50th percentile.
58. For the social housing sector, the Department will bring forward regulations setting out the process for determining the approximate maximum housing benefit. It may introduce size criteria into the calculation of housing benefit for working age tenants in social housing. While the Bill does not currently provide detail on how these changes would be introduced, should the department take a similar approach to that taken in England, housing benefit payments for social housing tenants would be reduced by 14% of their rent for under-occupation by one bedroom, and by 25% for under-occupation by two or more bedrooms.²²
59. Taking an average rent, a tenant on full Housing Benefit who is under-occupying by one bedroom would see their benefit reduced by £8.25 per week and for a tenant occupying by two or more bedrooms, the figures would be £14.70 per week.²³ The Commission is concerned at these figures and advises that the Committee examine the level of hardship which may be felt among low income households as a result.
60. The Commission advises that the Committee consider the particular circumstances of Northern Ireland and the segregated nature of

²¹ Ibid, para 8(a)

²² See http://www.nihe.gov.uk/welfare_reform [accessed 19.10.12]

²³ Ibid.

housing stock. It is likely that changes to housing benefit will result in households that face shortfalls seeking to move home. In social housing, where the stock is highly segregated, choice is restricted. The Commission recalls the continued prevalence of sectarianism and the threat which this poses to human rights.²⁴

61. Northern Ireland's housing stock has traditionally been dominated by larger dwellings which should be taken into account when determining eligibility on the basis of size.²⁵ The Commission understands that there is a scarcity of smaller housing units in Northern Ireland and this may lead to difficulties in respect of the introduction of size criteria into the calculation of housing benefits.

62. The Committee for Economic, Social and Cultural Rights have outlined that effective monitoring is an obligation of immediate effect, requiring that;

*"for a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within...society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups."*²⁶

²⁴ See, Brendan Murtagh & Geraint Ellis (2011): Skills, Conflict and Spatial Planning in Northern Ireland, *Planning Theory & Practice*, 12:3, at 365; Louise Arbour (2006) Economic and Social Justice for Societies in Transition, *International Law and Politics*, 40:1, pp. 8-9

²⁵ Northern Ireland Housing Executive (2009) Housing Condition Survey - The 2009 House Condition Survey found high proportions of larger homes- bungalows (22%); terraced houses (31%); semi-detached houses (20%); detached houses (19%) with apartments and flats accounting for just 8%- approximately the same size as 2001- indicating that the proportion of these homes should not have been expected to dramatically increase since 2009.

²⁶ *Ibid*, para 13

63. The Commission advises that the implementation of this proposal must be monitored closely. The impact on disabled persons must in particular be considered. Article 19 of UNCRPD states that;

"Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community."

64. The Commission advises that the Committee consider providing for monitoring to ensure that changes to Housing Benefit do not result in disabled persons moving into accommodation that is not suited to them and away from supportive communities and individuals upon whom they rely.

65. The Commission notes that concerns have previously been raised regarding a proposal to abolish provision for direct payments to landlords. It is noted that the Minister for Social Development indicated an intention to retain provision for the direct payment of landlords. This is welcomed.

Private and Voluntary Sector Contractors

66. Clause 30 of the Bill allows for contracted providers in the private and voluntary sectors to exercise functions of the Department of Social Development or the Department for Employment and Learning relating to work-related and connected requirements. The Commission notes the significant role which assessment relating to work-related and connected requirements may have on an individual's entitlement and benefits and, by extension, on their right not to be treated in an inhuman or degrading manner and their right to an adequate standard of living.

67. The duty to comply with the Human Rights Act 1998 extends not only to public authorities but also 'include[s] bodies which are not manifestly public authorities, but some of whose functions only are of a public nature'.²⁷ This was reiterated in March 2012 during debate on the Health and Social Care Bill when Parliamentary Under-Secretary of

²⁷ HL Debs, col. 797 (November 24, 1997), The Lord Chancellor's comments on section 6(3)(b) of Human Rights Act 1998.

State for Quality, Lord Howe reiterated that, *'the Government's view is that all providers of publicly funded health and care services should indeed consider themselves bound by the [Human Rights] Act and the duty.'*²⁸ *This is the position that we expect private and third sector providers to follow'.* The Committee for Economic, Social and Cultural Rights has further reiterated that the state must take responsibility for the effective administration of the social security system.²⁹

68. The Commission advises that the Committee give consideration to inserting a clause in the Bill requiring contracted private and voluntary sector providers must be required to comply with the Human Rights Act 1998.

²⁸ HL Deb 13 March 2012 at column 238 concerning proposed amendment 292A to the Health and Social care Bill 2012.

²⁹ Committee on Economic, Social and Cultural Rights, General Comment 19 on *The Right to Social Security* (2007) E/C.12/GC/19, para 11