

● Northern Ireland Council



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**Submission to the Committee for Social Development  
on the Welfare Reform Bill 2012**

**October 2012**

## **1. Introduction**

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination and where equality and human rights are guaranteed. As an umbrella organisation<sup>1</sup> we represent the views and interests of black and minority ethnic (BME) communities.<sup>2</sup>

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

NICEM sits on a number of consultative fora and networks dealing with human rights and equality issues in general and welfare reform (ICTU Welfare Reform group) in particular and fully supports the work of other organisations.

As already mentioned NICEM represents a number of BME communities and we have also been involved in providing bi-lingual client services over the last number of years. This submission has been informed by the challenges and difficulties faced by those clients in accessing social welfare on a day-to-day basis. NICEM has seen first hand the effect that the misapplication of EU law can have on EU migrants who have entitlements under EU law. We have also experienced the restrictive nature of the social welfare system as it currently stands in terms of non-EEA nationals living in destitution which is a clear breach of international human rights obligations.

Therefore, this submission does not purport to conduct a comprehensive legal analysis of the Bill. In that regard we would like to take this opportunity to endorse the Law Centre (NI)'s submission. Instead, this submission will look at the impact of the proposed changes to the welfare system would have on BME communities, in particular the experiences of clients in contact with the Belfast Migrant Centre.

## **2. The right to social security and legal obligations**

The right to social security is enshrined in a number of international human rights instruments to which the UK is a party and the obligation to implement this right is one of a legally binding nature. This right appears in a number of United Nations (UN), Council of Europe and EU law instruments.

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<sup>1</sup> Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

<sup>2</sup> In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

Firstly, at the UN level, the right to social security is enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights.<sup>3</sup> The Covenant also refers to the concept of progressive realisation, which prohibits States from taking retrogressive measures or retrograde steps to row back on socio-economic rights, even in times of recession. It is submitted that the spirit of the Welfare Reform Bill itself represents a retrogressive measures.

The right to social security is also enshrined in other instruments such as the UN Convention on the Elimination of Discrimination Against Women and the UN Convention on the Rights of the Child.

Secondly at the Council of Europe level, Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) (which has been incorporated into domestic law by the Human Rights Act 1998) recognises a right to property. At this juncture it is worth bearing in mind that Article 14 ECHR states that all rights of the Convention must be implemented without discrimination. Therefore, every individual's right to social security must be equally protected, irrespective of nationality for example. In addition, in accordance with case law it is arguable that the ECHR prohibits state-enforce destitution under Article 3 of the Convention.<sup>4</sup>

Thirdly, the right to social security is enshrined in the EU Charter of Fundamental Rights. While the Charter only has legal effect when implementing EU law, it is highly relevant for the EEA migrant workers represented by NICEM because they are exercising their right to free movement and therefore the Charter comes into effect.

### **3. Access to social welfare**

Migrants have increased difficulty in accessing social welfare in terms of lack of local knowledge and therefore, navigating the administrative system, sometimes without access to interpreters, lead to increased difficulties.

NICEM is deeply concerned by the Department of Work and Pensions indication that all applications for Universal Credit will now be processed online and claimants will need a bank account.<sup>5</sup> Currently, it is quite difficult for non-British/Irish citizens to open bank accounts upon arrival due to anti-terrorism legislation.

Therefore, any move to administer payments in this manner would lead to increased barriers for migrants and could potentially lead to migrants living in destitution.

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<sup>3</sup> For further comment on the content of this right see, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: the right to social security (Article 9)*, 2007, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement>.

<sup>4</sup> Regina v. Secretary of State for the Home Department (Appellant) ex parte Limbuela (FC), [2005] UKHL 66.

<sup>5</sup> DWP, Universal Credit - FAQ, available at: <http://www.dwp.gov.uk/docs/universal-credit-faqs.pdf>.

#### **4. Rights of EEA nationals and compliance of the Welfare Reform Bill 2012 with EU law**

Social security is coordinated by EU Member States on the basis of established principles of EU law such as the free movement of workers and equal treatment. Coordination is governed by Council Regulation (EC) No 1408/71 and Regulation (EC) No 884/2004.

While the Welfare Reform Bill is an enabling Bill and most of the details will be teased out in the regulations, we are concerned that Northern Ireland will adopt the same approach as that of Great Britain. There has been some indications by the Department of Work and Pensions which would lead to differential treatment of EU migrants or would potentially discriminate against EU migrants by paying EU migrants lower rates of pay or putting extra restrictions or requirements. If the same approach is adopted in Northern Ireland this would impact the following clauses in the Welfare Reform Bill:

- a. Clauses 8-10: calculation of awards
- b. Clause 22: work requirement

In addition we are concerned that clauses 61-63 may have ramifications for migrants who may experience a change in immigration status as they no exclusion in relation to contributory benefits has been provided for.

Furthermore, the DWP has indicated that a new residence test will be introduced. Such a test has previously been held to be in breach of EU law and it is therefore recommended that the Committee seek to ensure that this will not be introduced.

In our experience, cases where there are entitlements under EU law are often refused due to the misapplication of EU law. Indeed, at the moment the European Commission is in the process of infringement proceedings against the UK in relation to the application of the right to reside test<sup>6</sup>. NICEM strongly urges the Committee to conduct a thorough review of the Bill to ensure that EU law will be fully complied with and that EEA nationals will be able to access their entitlements without discrimination since otherwise this would inevitably lead to maladministration of EU social security law, which would inevitably result in litigation before the courts.

#### **4. Clause 69 and potential impact of changes to Housing Benefit on BME communities**

Clause 69 and the proposed changes to Housing Benefit may lead to increased difficulties for migrants accessing housing. The case study below illustrates the problems currently faced by migrants:

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<sup>6</sup> European Commission, Press release, "Social security coordination: Commission requests United Kingdom to end discrimination of EU nationals residing in the UK regarding their rights to specific social benefits", [http://europa.eu/rapid/press-release\\_IP-11-1118\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1118_en.htm).

## **Case Study**

2011

Nationality: Polish

Mr. L is a sixty five year old man who has been in Northern Ireland since 2005. When he arrived he worked for a few years before becoming ill. He was in receipt of Employment Support Allowance and Housing Benefit. He had a severe back injury and was not able to work or gain any other income. He was dependent on his Housing Benefit to keep him from becoming homeless.

After a routine assessment his ESA was stopped as they decided that he was no longer ill. Because his ESA was stopped his Housing Benefit was also stopped. He was now at risk of homelessness.

We appealed the ESA on the basis that they had not taken his hearing problems into account and he was lip reading at the assessment, which prevented him from having a full understanding of what was being asked.

We supported him with our crisis fund to pay for rent until the appeal went through. Upon appeal his ESA was successfully reinstated. After this we spoke with Housing Benefit which was restarted.

## **5. Clauses 76-94: Problems with current administration of DLA and potential impact of PIP on BME communities**

Clauses 76-94 and the proposed changes to DLA may lead to increased difficulties for migrants with disabilities who are liable to suffer multiple discrimination. The case study below illustrates the problems currently faced by migrants:

## **Case Study**

September 2011 – December 2011

Nationality: Slovak

Client came to the Clinic. She has low rate care DLA. She had applied for DLA in 2009 and received low care and low mobility. She asked for a supersession, which she was granted in January 2010. However in Feb/March 2010 they sent an examining medical doctor who determined that she wasn't in need of the mobility component. This doctor and the occupational therapist did not use an interpreter. The mobility was taken away.

The Tribunal supported the supersession. She now wants to appeal this decision, which has to go to the social security commissioner. We helped the client submit an appeal.

On appeal, the client has received a new DLA award and it has been increased to high rate mobility and middle rate care.

## **6. Further Information**

For further information in relation to this submission please contact:

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