

The Northern Ireland Welfare Reform Group is pleased to respond to the Ad Hoc Committee Call for Evidence on the Welfare Reform Bill.

About the Welfare Reform Group

The Welfare Reform Group is an umbrella group of organisations that campaigns for positive and progressive changes to policy, service provision and legislation for those in receipt of social security while also providing advice and support to other advice giving organisations and disadvantaged persons in their capacity as individual members of the Group.

The Group supports an equality and human rights-based approach to the provision of social security which demonstrates an understanding of and focus on the needs and choices of all in receipt of benefits. In this paper we outline the significant equality and human rights issues likely to be presented by implementation of the draft Bill in Northern Ireland.

This response has been prepared by the following organisations:

Advice NI

Carers NI

Committee on the Administration of Justice

Employers for Childcare

Gingerbread NI

Law Centre NI

Mencap

Multiple Sclerosis Society NI

NIACRO

Niamh (The Northern Ireland Association for Mental Health)

NICVA

Save the Children

Women's Resource Development Agency

Introduction

The Welfare Reform Group supports a number of the principles behind the Government's package for reform, namely, to simplify the social security system and to support people to move into and progress in work. The latter is consistent with many international human rights instruments which recognise the right to work and the right to an adequate standard of living.

Northern Ireland presents particular circumstances for welfare reform and arrangements to move people into employment. There is considerable evidence of multiple disadvantage and deprivation in Northern Ireland including lower average wages, higher fuel costs, lack of childcare provision, greater incidence of mental health, higher levels of disability and higher trends of economic inactivity. In addition, economic forecasts from a variety of sources all suggest that Northern Ireland will take longer to emerge from the recession than Britain.

The Welfare Reform Group is mindful that legislation passed with detailed scrutiny of its human rights and equality compatibility is more likely to withstand legal scrutiny. Our response is aimed at improving the proposals taking into account the specific circumstances and needs of Northern Ireland. We believe that the Welfare Reform Bill presents significant human rights implications that require scrutiny by the Committee and further clarity from the Department.

We provide further insight into our thoughts below:

Welfare Rights and International Law

The UK is bound by a number of international human rights treaties which contain provisions relevant to the administration of social security. In addition to the European Convention on Human Rights, others include the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. These treaties do not insist on a specific type of welfare system instead allowing states to retain a "margin of appreciation" concerning the establishment of domestic systems: i.e they have considerable flexibility in completing the design. Nonetheless, these treaties do contain a number of provisions relevant to Committee's scrutiny of this Bill for observance of human rights and conformity with equality requirements.

Human Rights Act 1998 and European Convention on Human Rights

The European Convention on Human Rights (ECHR) is regarded as a 'living instrument'¹. The European Court of Human Rights is increasingly considering the protection of socio-economic rights under the ECHR. The UK courts, in interpreting the Human Rights Act 1998, which incorporates the ECHR into UK law, have recognized that certain rights protected under the ECHR may give rise to the protection of socio-economic rights for individuals in the UK.

Whilst the Convention set forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The mere fact that the interpretation may extend into the sphere of social and economic rights should not be a decisive factor against such a decisive interpretation; there is no water-tight division separating the sphere from the field covered by the Convention (Stec v UK 2005 , paragraph 52)

The European Convention on Human Rights sets out a series of individual rights, a number of which may be directly affected by statutory welfare systems. Article 1, Protocol 1 ECHR provides that any interference with or deprivation of established rights to property must strike a "fair balance" between the right of the individual to peaceful enjoyment of their possessions and the public interest. Welfare benefits (both contributory and non-contributory) are considered "possessions" for the purpose of this Article. Any interference or deprivation must therefore be in "in accordance with law", and be for a legitimate aim and proportionate to that aim.

Therefore the role of the European Court is not to substitute the role of the domestic court but to consider whether the Convention principles have been applied appropriately. It often decides the legality of a provision or restriction by examining:

- Whether the provision or restriction has a legitimate aim?
- Does it correspond to meeting a pressing social need?
- It is necessary and proportionate?

Equality Impact Assessment

¹ Tyrer v United Kingdom (1979-80) 2 EHRR 1 at para. 31.

The quality of the impact assessments conducted by the Department is pivotal for analysing the potentially discriminatory impact of the Welfare Reform Bill when little of the wider detail is available.

The NI Welfare Reform Group has repeatedly expressed concern about the lack of information in the Northern Ireland Equality Impact Assessment (EQIA) about the different section 75 groups.² It makes it difficult, therefore, to provide a full and detailed commentary and assessment of the potential impact in Northern Ireland. For example, we are concerned that the EQIA does not contain sufficient information to monitor the impact on disabled people and carers. The report states that “the Analytical Services Unit will continue to work with DWP to develop a Policy Simulation Model which will better equip them to analyse the impact of policies across various section 75 groups”. The Welfare Reform Group understands that this work has yet to be completed. We are, therefore, concerned that the DSD has not met its duties in relation to monitoring the impact of the proposed reforms on disabled people and putting in place mitigating actions. In addition, the EQIA did not refer to any data from the NISALD³ survey.

With regards to persons with dependants and persons without dependants there was little consideration in the EQIA about the impact on people with caring responsibilities. For example, in relation to the time-limiting of Contributory ESA for claimants in the Work Related Activity Group it states about the proposed changes “that no adverse differential impact will arise as a direct consequence of this measure”. However, if a claimant is to lose Contributory ESA as a result of this measure, the person with caring responsibilities for him or her may be impacted due to the requirement to financially support the claimant if they do not qualify for income-based ESA and lose income as a result. Further consideration needs to be given in all areas of reform to impact on those with a disability and those with caring responsibilities to ensure that mitigating measures are put in place for them and people with disabilities.

In addition, there is a real lack of essential data about the impact of the changes which will inform planning for the implementation of Universal Credit in Northern Ireland, e.g the marginal deductions rates and participation tax rates should be broken down by the household numbers for Universal Credit in Northern Ireland. Figures have been produced for Great Britain and adjusted as changes have been made to the Universal Credit proposals. No figures have been produced to date for Northern Ireland. We recommend that the Committee seeks assurance from the Department that these figures will be produced.

² Please refer to the Equality Coalition submission for further comment on the EQIA.

³ Northern Ireland Survey of Activity Limitation and Disability, NISRA, 2007

The Lack of Draft Regulations

Parliamentary legislation on social security tends to follow a common pattern, whereby broad policy principles are set out in primary legislation followed by regulations providing the detail of the how these policies will be implemented. This traditional approach to welfare reform can undermine parliamentary scrutiny and therefore the ability to examine human rights and equality compliance.

The Welfare Reform Bill follows this pattern, for example, the power to introduce the size related criteria in the social rented sector is contained within the Bill, however, the level of penalty and the categories for exemptions will be set out in the regulations. Thus effective scrutiny by the Committee will be difficult to achieve as the Bill is not accompanied by draft regulations or a high quality EQIA. Indeed the extent to which the Welfare Reform Bill makes use of regulations was noted by the Joint Committee on Human Rights.⁴

In addition, we are concerned that many of the regulations governing critical parts of the Welfare Reform Bill will proceed through the confirmatory process with limited scrutiny only happening after the regulations have been laid. DWP in Great Britain have only just published the final version of the Universal Credit regulations. Although we do not anticipate that the Northern Ireland measures will depart radically from those presented in Great Britain we cannot comment further until the publication of these regulations.

We recommend that the Committee's scrutiny of human rights and equality compatibility extends to information provided in the secondary legislation and that the Committee calls for the draft regulations to be published without delay.

Monitoring

The limited EQIA and framework of the Bill serves to increase the importance of monitoring procedures to assess the impact on individuals' rights of the measures once in operation. Limited safeguards present only apply to specific parts of the Bill ie. the Department is required to report to the NI Assembly on the operation of the assessment process for Personal Independence Payment.

We also recommend that the Committee presses DSD to publish detailed monitoring plans for post-legislative implementation with particular attention given vulnerable groups. By way of illustration, what claiming arrangements will be made for people with a sensory, physical or learning disability in Northern Ireland? In addition, how will vulnerable groups be supported when facing destitution or other disadvantage.

⁴ Please see <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/23302.htm>

Employment and Support Allowance

Contributory ESA will be time limited to one year for those in the Work Related Activity Group under the Bill. Currently contributory ESA can be paid until State Pension age. Some claimants will be able to claim income related ESA, however, claimants in the Work Related Activity Group with savings in excess of £16,000 or whose partner is in employment face a significant drop in their incomes. When introduced in GB in April there was no transitional protection, so existing claimants lost their benefit from the date of change. Those most likely to be disproportionately affected by this change will be aged 45. We would recommend figures detailing who will be impacted by this change are produced for Northern Ireland.

This measure may give rise to debate to whether it amounts to an unlawful deprivation of property contrary to Article 1 of Protocol 1 of the ECHR . We would draw the Committee's attention to the case *Kjartan Asmundsson v Iceland* . The Court found that ' as an individual was made to bear an excessive and disproportionate burden which, even having regard to the wide margin of appreciation to be enjoyed by the State in the area of social security cannot be justified by the legitimate community interests relied on by authorities'. Therefore if a claimant is a member of the groups disproportionately affected s/he may have an argument under Article P1, based on the Courts analysis in the Asmundsson.

We are also concerned that the removal of ESA in youth may contravene Article 19 of the UNCRPB which promotes the right to live independently and to be included in the community. Data is not currently held by the DSD in respect of youth cases and the information provided in the EQIA was assessed on the basis of 'Incapacity Benefit ' youth cases. According to these figures 2990 individuals are currently claiming Incapacity Benefit 'youth'. ESA in youth was introduced in October 2008 and the data has not added any of these new claims. The Committee should press the Department on this matter.

In addition, the EQIA stated that:

"Removing the 'youth' provisions will affect young disabled people. The Executive is committed to promoting employment prospects for younger people, with and without health conditions, by investing in employment support, apprenticeships and further education."

However, we have yet to see the detail of how that will be mitigated or how those who lose ESA in youth will be supported. We would urge the Committee to press the Department on this matter.

Personal Independence Payment

Currently DLA claimants have to satisfy a past presence test – they must have spent 26 weeks out of the previous 52 weeks in the UK at the point of claim and throughout an award in order to receive benefit payment. Under the new rules, it is proposed that claimants will have to have spent at least two years in UK out of the last three years before they can access Personal Independence Payment.

We are concerned that it is unclear as to how some groups will be treated for example refugees, EU citizens and returning British nationals. We would welcome further clarification on this matter.

Under occupation of Social Housing

From April 2013, it is intended to introduce size criteria for new and existing working age Housing Benefit claimants living in the social rented sector. The NIHE has projected this measure will affect approximately 26,168 tenants.

Creative solutions to the introduction of the bedroom tax in the public sector need to be found particularly with almost 50% of NIHE'S housing stock having three or more bedrooms. In evidence to the Social Development Committee, a representative of the NIHE stated:

*'If they all presented tomorrow morning, the evidence shows that we would not have the accommodation for them. If all of those people who are underoccupying presented at the front door of the Housing Executive in the morning, could we, within a week or so, move them to suitable accommodation? The answer to that is no, we could not.'*⁵

The Department for Social Development has indicated that it will mitigate the effect of this measure through the use of Discretionary Housing Payments (DHPs). We believe that mitigation for these groups should be through specific amendments to the Bill and in subsequent regulations rather than by discretionary support. We are concerned that DHPs are not an adequate alternative to Housing Benefit entitlement. Unlike Housing Benefit:

- DHPs are discretionary and are not paid as of right.

⁵ Please see SD Committee 25th October: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/October-2012/Welfare-Reform-Bill-Northern-Ireland-Housing-Executive-Briefing/>

- They are paid from a limited budget, effectively meaning that if the funding runs out, the claimant loses out
- In addition, DHPs are viewed as short term and claimants are often required to reapply at short intervals or are expected to move house or reduce their rent.

Without substantive and viable alternatives in places, we are concerned that this proposal could impinge on the Article 8 right to Family Life. There are limited exemptions included within the Bill. We recommend that the definition of under-occupancy should be amended to allow claimants to have one spare bedroom where the spare bedroom serves a legitimate purpose such as a family member returning home, or is required for treatment e.g, dialyses and/or storage of large items of equipment - for example hoists, showering equipment. It should also allow for circumstances where there is no alternative accommodation available to move to. In addition, the Department should exempt households with disabled people from the measure, as well as foster families in between foster placements and prisoners who intend to return to the family home.

Conditionality and sanctions

The Bill outlines the four types of work requirements that will be imposed on claimants and introduce significantly increased sanctions for claimants who fail to meet the conditionality requirements under Universal Credit. Schedule 1 Paragraph 7 provides that EU workers or jobseekers will always be placed in the 'all work related requirement group' regardless of their circumstances. This is clearly discriminatory and is likely to be unlawful, with little purpose. The Committee should ensure that no such prejudicial arrangements are introduced in Northern Ireland.

Increased conditionality and sanctions may contravene Article 3 of the ECHR which prohibits 'inhuman or degrading treatment'. It places an obligation on the state to ensure that individuals are not exposed to destitution and hardship at a level which amounts to inhuman or degrading treatment.

Under the new regime there is a risk of sanction for an individual person who may have been found fit for work but in practice is not capable of doing so and struggle to look for or maintain work. In addition, where individuals only have five days to show good reason as to why they did not comply with any particular requirement. This deadline may be unrealistic for individuals who are unwell or who have experienced a close family bereavement or who require support to read and understand implementation.

We believe the Committee should consider whether the level of sanctions is appropriate given its impact on the rest of the household including children. Due regard must be given to the impact on dependent children of sanctions applied to parents – especially

the most extreme proposal to disallow benefit payments for up to three years. The Department is obliged by Article 3 of the UN Convention on the Rights of the Child to ensure the best interests of children are a primary consideration in all matters affecting children. We believe that the increase is disproportionate and the periods of sanction of 26 weeks, 52 weeks and 3 years are too long. Moreover, this will further contribute to severe child poverty and works against the grain of the Northern Ireland Executive's child poverty strategy and target to reduce severe child poverty.

The NI Welfare Reform Group is concerned that the conditionality and sanctions provision in the Bill may lead to instances of destitution. The Department has stated that the hardship regime will be introduced to protect vulnerable claimants and their families. At present the policy intention is pay 60% of the benefit entitlement and to make hardship payments recoverable. The detail of these safeguards will largely be provided in the regulations proving it difficult to assess whether they will be sufficient to prevent claimants and their families facing destitution. We recommend that the Committee's scrutiny extends to this secondary information.

Benefit Cap

The Bill proposes to introduce a benefit cap to limit the total amount that a claimant can receive linked to the average earnings of £26,000 a year. We are concerned that this is a retrogressive measure that extinguishes existing social security rights for children and disabled people in particular. The data available in England and Wales shows that the majority of households affected by the cap contain one or more children. In comparison, little information is available as to the impact of this measure in Northern Ireland.

Child Poverty

Both the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural have expressed concern at the widespread child poverty in the UK. The Child Poverty Act 2010 was designed to address this inequality by placing legally binding targets on Executive ministers to end child poverty by 2020. This objective was reiterated in the Programme for Government. In Northern Ireland, 21% of children live in persistent child poverty, which is higher than the GB rate. More than 12%, or approximately 50,000 children, live in severe poverty.⁶ Furthermore, the extent of in-work poverty means that approximately half of children living in relative poverty are in families where one parent is working.

⁶ Delivering Change for Children, Save the Children, June 2012

It is against this backdrop that the impact of the Bill's measures on children should be assessed. There is a risk of a disproportionate impact on lone parents if in the administration of conditionality and sanctions that consideration is not given to the lack of jobs with flexible working hours and the lack of good quality, accessible and affordable childcare. We foresee a number of difficulties in introducing legislative powers for this purpose in Northern Ireland when the childcare infrastructure in Northern Ireland required to underpin these proposals is not in place. It is not appropriate to simply transfer these provisions from the Westminster Act to Northern Ireland as the infrastructure to implement the proposals is not available in Northern Ireland. Arguments of parity must take into account the lack of parity of provision of accessible and affordable childcare.

Currently there are 41,003 registered childcare places in Northern Ireland⁷ (DHSSPS, 2012). There are 305,376 children between the ages of 0 -12 (NISRA, 2012). Therefore for every one childcare place that exists there are 7.4 children. However, in addition there are 73,947 children aged between 13 and 15 years of age (NISRA, 2012). Sourcing suitable childcare for this particular age group is extremely difficult for families. Most registered childcare places are not for children above the age of 12.

If the infrastructure to support the introduction of many of the clauses within the Bill is not in place, we would urge the Assembly to work on developing and implementing an effective childcare strategy to enable lone parents and others to take up work. The current consultation document does not generate confidence that a credible strategy will be ready in the near future. Further, with high unemployment the current economic climate will make it difficult for lone parents to secure jobs that allow them to combine their work and family life.

Conclusion

The NI Welfare Reform Group welcomes the opportunity to respond to this call for evidence.

We recommend that the Committee's scrutiny extends to information provided in the secondary legislation as the Bill cannot be divorced from the details contained in the Regulations. We call for the draft regulations to be published as soon as possible. We also recommend that the Committee examines and calls for enhanced procedures to monitor the impact of the Bill once implemented.

We trust you will find our comments helpful. If there is any further way in which we could contribute to this process we would welcome the opportunity to do so.

⁷ This figure only takes into account registered day nursery, childminding and out of school club places.

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