

Comment on the Welfare Reform Bill

I thank the Ad Hoc committee for the opportunity to respond to comment on the Welfare Reform Bill. I am a senior lecturer at Queen's University School of Law and I am writing in an individual capacity.

Yours sincerely,

Dr Rory O'Connell

Queens University of Belfast, School of Law / Human Rights Centre

Email: r.oconnell@qub.ac.uk Twitter: @rjjoconnell

I wish to comment on the 'Household Benefit cap' in clause 95 of the Bill. Clause 95 allows for regulations to introduce a benefit cap based on estimated average earnings.

There are several human rights issues here. In terms of human rights standards I am relying especially on the right to non-discrimination.¹ In addition there is a right to social security and a right to an adequate standard of living provided in the International Covenant on Economic Social and Cultural Rights.² The relevant principles in international human rights law suggest that **non-discrimination** is fundamental – this requires that special attention be paid to the impact of measures on vulnerable or disadvantaged groups;³ beyond that any reduction in these rights ('retrogression') must be shown to be justified, that is to say a

¹ Article 14 of the European Convention on Human Rights (ECHR); Article 2 of the International Covenant on Economic Social and Cultural Rights.

² ICESCR – Article 9 and Article 11. In certain cases the withdrawal of a social welfare or security payment may breach the right to property in the European convention on Human Rights (Article 1, Protocol 1), or may even breach the right to be free from torture, inhuman and degrading treatment in the ECHR: *R (Limbuella) v Secretary of State for the Home Department* [2005] UKHL 66, [2006] 1 AC 396.

³ ICESCR general comment 20 has some comments on the non-discrimination point eg para 38 "Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination." para 41 "National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination." Available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

proportionate means of achieving a legitimate aim; no reduction should result in the denial of the **minimum core** of these rights.⁴

The Joint Committee on Human Rights (JCHR) identified several possibly discriminatory effects of the equivalent measure in GB. The JCHR indicated that the cap would particularly affect large families with several children;⁵ possibly members of certain ethnic minorities;⁶ single women including lone parents;⁷ and indirectly children.⁸

The DSD Equality Impact Assessment (EQIA) concludes that ‘the majority of households affected by the policy will have children’, and that the policy would likely affect more single women than single men as there are more lone single female parents.⁹ Again according to the EQIA the cap will impact on larger families.

The DSD EQIA did not address issues of equality in relation to religious belief, political opinion, racial group or sexual orientation. This is a serious concern given that the JCHR has suggested there would be a disproportionate effect on certain ethnic minorities.

The DSD EQIA indicated a number of measures of mitigation: the benefits cap would be based on the median income in England and Wales, which is higher than the NI level; households where someone receives disability living allowance constant attendance

⁴ The minimum core of the right to social security is defined as:

- (a) To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies;
- (b) To ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;
- (c) To respect existing social security schemes and protect them from unreasonable interference;
- (d) To adopt and implement a national social security strategy and plan of action;
- (e) To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups;
- (f) To monitor the extent of the realization of the right to social security

General Comment on the Right to Social Security <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement>. Footnotes omitted.

⁵ Para 1.56 <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/23305.htm#a14>

⁶ Para 1.57. According to the JCHR it was estimated that 30% of persons affected would be from ethnic minorities while only 20% of the overall benefit population were from an ethnic minority.

⁷ Para 1.58

⁸ Para 1.58.

⁹ Available at <http://www.dsdni.gov.uk/index/consultations/archived-consultations/archived-consultations-2011/eqia-welfare-reform-bill.htm>, page 27.

allowance or where there is a war widow will be exempt; also exempt will be households where someone is in receipt of Working Families Tax Credit; the impact on lone parents is said to be mitigated by measures to move them into work and so qualify for Working Families Tax Credit.

This EQIA raises further questions which the Committee may want to address when considering the Bill. These questions relate to whether the measure is non-discriminatory in effect as well as purpose; whether it is proportionate (appropriately tailored to achieve a legitimate aim) and whether it protects access to the minimum essential core of human rights.

- First, how feasible will it be for lone parents (who are disproportionately women according to the Department) to move into work, taking into account their child care responsibilities?
- Second, how will the impact on children be mitigated? The policy will affect particularly larger households, ie households with children. While the proposals indicate a differential cap will be set for households with children, there is no suggestion that this would be based on the number of children.
- Third, does the exemption for households where someone claims DLA sufficiently protect people with disabilities?
- Fourth, will persons subject to the household benefit cap be entitled to apply for support from any discretionary hardship fund in case of difficulties? This may be necessary to ensure that persons affected still have access to essential needs.
- Fifth, the DSD EQIA simply does not address issues of religious or political opinion, sexual orientation or racial background. The DSD EQIA did not address issues of equality in relation to religious belief, political opinion, racial group or sexual orientation. This is a serious concern given that the JCHR has suggested there would be a disproportionate effect on certain ethnic minorities.
- Sixth, it may be worth inquiring how many persons will be subject to the cap, and how the process of monitoring it will work? Will the cost of monitoring this system be greater than any savings from the cap?