



Northern Ireland
Assembly

Ad Hoc Committee on Conformity with
Equality Requirements, Welfare Reform Bill

OFFICIAL REPORT (Hansard)

Department for Social Development

11 December 2012

NORTHERN IRELAND ASSEMBLY

Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill

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Members present for all or part of the proceedings:

Mr Robin Swann (Deputy Chairperson)

Ms Paula Bradley

Mr Mickey Brady

Mr Colum Eastwood

Mr Tom Elliott

Ms Bronwyn McGahan

Miss Michelle McIlveen

Lord Morrow

Ms Caitriona Ruane

Mr Peter Weir

Witnesses:

Ms Martina Campbell

Department for Social Development

Ms Jane Corderoy

Department for Social Development

Mr Michael Pollock

Department for Social Development

The Deputy Chairperson: I welcome to the Committee Martina Campbell, Michael Pollock and Jane Corderoy, all from the social security policy and legislation division in the Department for Social Development (DSD). I take it that you have a presentation for us?

Mr Michael Pollock (Department for Social Development): Yes, Chair. We have a letter from the Committee that Martina has partially responded to. You referred to it as being in the members' pack yesterday, and it covers some of the issues. The letter is dated 7 December 2012 and contains a list of issues that I propose to go through to see whether we can provide responses and clarification for Committee members.

We have listened to the evidence sessions. One thing that I would say, if it is any comfort to members, is that we have not heard anything radically new by way of evidence in those presentations of which we were not already aware. By your leave, I turn to the letter of 7 December.

The Deputy Chairperson: Members, the letter is in your pack, and we will work our way through it.

Mr Pollock: The first issue raised is "The lack of a detailed Human Rights assessment". The letter states:

"The absence of a detailed Human Rights memorandum supplied by the Department gives rise to difficulties".

Martina covered that issue in her response yesterday, when she said that the human rights memorandum is protected by legal privilege. Therefore, it is not something that we would ordinarily share with the Committee. We have checked that position with our lawyers and that remains the case.

We can expand on what is in the explanatory and financial memorandum, in respect of the articles touched on by the Welfare Reform Bill, what articles are engaged and how we expand on them. Paragraph 637 of the memorandum provides a summary that the Minister would have submitted to his Executive colleagues before the Bill was introduced.

Mr Brady: Sorry, why is it a secret?

Mr Pollock: I do not think it is a secret, Mickey.

Mr Brady: It cannot be shown to the Committee for some reason. What is the rationale behind that?

Mr Pollock: The rationale is that it is something provided under legal privilege and, as such, it is protected. It is not ordinarily shared with Committees.

Mr Brady: So it is not transparent in that sense?

Mr Pollock: It is the same issue as that which Iain Duncan Smith responded to the Joint Committee on Human Rights at Westminster, and the same stance was taken here because we are linked with the UK.

Mr Brady: Should we not take a different stance, since here it is the devolved matter?

Mr Pollock: You can take that stance, but I am speaking from the Department's point of view.

Our legal advice is that the human rights memorandum, which is detailed, is not ordinarily shared with the Assembly. It is the Minister's statement that says that the Bill is in conformity and compliance with the European Convention on Human Rights (ECHR).

Mr Brady: Again, I ask why the human rights memorandum would not ordinarily be shared. Has it ever been asked for before in other circumstances? The Bill that we are looking at is unique in some ways.

Mr Pollock: The issue of human rights memoranda has been raised before on numerous occasions, but the memoranda have never been shared.

Mr Brady: Interesting.

Mr Pollock: However, as I said, we can expand in the explanatory and financial memorandum on the articles that we think are engaged and on how compliance with human rights is satisfied. Therefore, there may be something that we can do.

Mr Brady: Is this not a breach of human rights?

Mr Pollock: Whose human rights?

Mr Brady: Possibly our rights, as Committee members. I am being facetious. It just seems peculiar that there is something that is totally relevant to all of this, but we, the Committee members who are here for a specific equality and human rights purpose, cannot see it. I just want to make that point.

The Deputy Chairperson: Yes. That is fine. Thanks, Mickey.

I just want to make members aware that you referred to paragraph 637 of the explanatory and financial memorandum, to do with human rights issues. It is just this one sentence, Michael:

"The provisions of the Bill are compatible with the provisions of the Human Rights Act 1998."

Mr Pollock: Yes. As I said, I think that we can expand on the articles in the convention that are engaged with and on how human rights are satisfied.

I move to the second issue in the letter of 7 December, which is "The completion of the EQIA". The Department must:

"pay due regard to the need to promote equality of opportunity".

There are also some issues about the completion of the equality impact assessment (EQIA), and the Equality Commission has registered its concerns.

Again, that is not anything new to us. We recognised the data deficits, and I think that that will appear in the completed equality impact assessments. We recognised the importance of further screening and have already advised the Social Development Committee and this Committee that it is our intention to screen the regulations that arise from the primary legislation.

We also recognise the legitimate concerns of the stakeholders who have provided evidence about equality impacts. As I said, for the EQIA, we have repeatedly stated that it is a living document and that we are updating it. There is some mention of the data deficits, and, in that regard, I can advise that we are looking to update the policy simulation model. We have added in HM Revenue and Customs (HMRC) data; that is, tax and income data. We are looking to include the family resources survey (FRS) from 2010-11, and that should be available just after Christmas. Therefore, we will be able to produce a further module from the policy simulation model early in the new year.

The difficulty with the data, as we have explained repeatedly, is the lack of a pattern. If you are dealing with statistical modelling and are going to extrapolate, you have to have some sort of pattern from which you can draw conclusions. There is a cost attached to all of this. We mentioned the deficits for political opinion, race, religion and sexual orientation. Those are section 75 categories that have absolutely no bearing whatsoever on benefit entitlement. Anything that is gathered is effectively an intrusion into someone's human rights, from the other side of the coin.

A lot of issues around the data used to inform the equality impact assessment — the third issue — have been raised by the groups that have presented to this Committee and the Social Development Committee. From an official or government standpoint, we have to be sure as to the integrity of the data, so we must rely on publicly available figures such as the FRS, which is a statistical base that can be used to draw conclusions from which you can formulate policy. As I said, the policy simulation model, which is new and has been designed for Northern Ireland, is, at most, six to nine months old. We have to be cautious of producing iterations of it time and time again.

As I said, there is an undertaking with equality impact assessments that there will be further screening and further equality impact assessments carried out if necessary on the regulations as they appear.

That covers the third issue in the letter. The fourth issue is "The 'layering' effect". There is recognition in the Department for Work and Pensions (DWP) that, because of the breadth of the Welfare Reform Bill, it is almost impossible to get a picture of the cumulative effect of all the measures and impacts. The best that it can do, and the best that we are trying to model and mirror, is an aggregate approach whereby the policy simulation model is built up over time. Where we have valid data, we will feed it in.

Under the fifth issue, the Human Rights Commission (HRC) suggested the inclusion of the affirmative resolution procedure in the Welfare Reform Bill as an effective safeguard. That is not something that we would particularly welcome, in so far as it would take up Assembly and Committee time. Ordinarily, the process by way of confirmatory resolution — or affirmative resolution, as it is called there — would be that the regulations would be made, laid and then debated within a six-month time frame.

If, at the end of that time, there is a vote in the Assembly and those regulations fall, there has to be a total reversal of everything that has gone before. Therefore, you are talking about clerical workarounds, IT changes, potential delays to claimants, errors, and all of that. Ordinarily, the process would be — it is the same with this Bill as with any other Bill — when there is a major policy shift, the first raft of regulations that comes from that primary legislation are subject to affirmative resolution.

There is a recognition that, where there is a major policy change, that should be, and ordinarily is, debated in the Assembly.

It is the same for all the universal credit regulations where there is major policy change. The negative resolution procedure applies to benefits that are already in play and have been in play for 10, 12 or sometimes 20 years — the likes of jobseeker's allowance (JSA) and housing benefit. There is an uncertainty about that process if it is varied through having affirmative resolution for every regulation that comes out of it. There is a very real cost by way of delay, as well as to Committee and Assembly time.

A number of specific housing issues are raised under the sixth issue. I can provide a wee bit of clarification on what we said before. On housing issues, the EQIA does not take account of the nature of the housing stock. That is true, to a certain extent. There is quite extensive work going on in the Department, through the Housing Executive and the like, on research on how to solve a problem such as the housing issue and the reforms that are being introduced through the Welfare Reform Bill.

As I said, extensive research is being conducted. The Minister commissioned that through the Housing Executive. He has produced a housing strategy. Again, the more sophisticated that the policy simulation model becomes through development, the better that the information available on amelioration or the need for amelioration will be.

On childcare issues, all that I can reiterate is that to date no one has been sanctioned for lack of affordable childcare. It is in regulations already that good reason, as it is now being called, for not taking up a job is a lack of affordable or accessible childcare. There are some comparator figures on childcare tax credit take-up. In Northern Ireland, I think that it is on average £78 a week, whereas take-up in the rest of the UK is around £55. Therefore, there are issues around childcare and measures in place to address those issues. I would not for a minute suggest that a resolution is anywhere near, but there is certainly work going on across Departments. The Department of Health, Social Services and Public Safety (DHSSPS) would have an interest in that, as would the Department of Education (DE) and DSD. It is about getting a collective childcare strategy and moving forward. To date, as I said, a key point would be the welfare reform safeguards and anybody's human rights and equality rights under the protections already on the statute books.

The third point under the sixth issue is "Getting people back into work". There is again quite an extensive raft of programmes through the Executive and the Programme for Government to encourage people back to work. A key principle of the Welfare Reform Bill is to provide better incentives to ensure that it always pays when people get back into work. However, there are not in education, employment or training (NEET) and other programmes through the Department for Employment and Learning (DEL) and quite a few initiatives outlined in your own Programme for Government that are designed, if you like, to complement the welfare reform objective of getting people back to work or moving people closer towards the workplace.

On the seventh issue, "Other areas with possible Human Rights/Equality implications", you mention destitution, private contractors, impacts on the disabled, and ethnic minorities. On destitution, as far as the Human Rights Act 1998 is concerned, yes, there is a human right enshrined, but it is a right to entitlement to benefit. No actual amount would be specified. Hardship regimes have existed for quite some time for benefits, and a new hardship provision is being introduced for employment and support allowance (ESA).

As far as private contractors carrying out assessments for personal independence payments (PIPs) is concerned, we think that that is a red herring. The contract and the responsibility are still with the Department, so Capita or anyone else carrying out PIP assessments would be acting as an agent of the Department.

A number of issues were highlighted concerning impacts on the disabled, including extra support for people with disabilities. It is true that people with disabilities do need extra support. We contend that the Bill is proportionate in that respect in so far as there are higher disregards — work allowances, as they are now being called. There are additional components for people with disabilities; for example, the benefit cap does not apply to a family with a disabled person. There is also the prospect of getting carer's or attendance allowance.

The Equality Commission itself recognised that, in the equality impact assessment, we are using the social model more than the economic model for people with disabilities. We intend for any measures in the Bill to be proportionate in that regard.

I know that Les mentioned ethnic minorities yesterday. It is something that has come up time and again, particularly to do with paragraph 7 of schedule 1. There has been some movement in DWP's regulations, ensuring that spouses are not caught by the claimant commitment and having to meet all the work conditions. That will be modified and reflected in any regulations that we take forward.

As far as the right to reside condition is concerned, I think that it has been upheld by the Court of Appeal that the state is entitled to protect its public finances and resources by requiring a degree of social and economic integration in order for an individual to qualify for entitlement to contributory benefit. That is what this is about. Income-related benefit is a financial assistance-type benefit, and universal credit would be viewed in that regard. An individual's right to live anywhere, or claim anywhere, is there. If a person has paid contributions elsewhere in the European Economic Area (EEA), he or she would be entitled to their contributory benefits as such. This is to do with income-related benefit where it is deemed as being a type of financial assistance.

The only other issue mentioned is the difficulty with access owing to language barriers. We see that as being a bit of a red herring, because access to interpreters is available throughout the Social Security Agency (SSA) network.

Other than that, Chair, I do not have anything else to say. We have a timetable. Unfortunately, it is one that we have to rework because the Ad Hoc Committee is sitting and because we have to bring forward regulations. There are factors such as the Christmas recess and Easter recess to consider. All have a bearing on the lead times associated with bringing forward regulations.

Ms Martina Campbell (Department for Social Development): I can take the Committee through the timetable in general terms. It has not been signed off yet by the Minister, as Michael said.

The Deputy Chairperson: Michael, to be fair, the timeline of this Committee has been established for two weeks. The timetable should perhaps have been adjusted by now.

Ms M Campbell: I said that I can take you through the timetable in general terms. The issues is perhaps not so much when this Committee will report but whether the Social Development Committee will complete its scrutiny within the six remaining days.

We envisage that we will be presenting the regulations to the Social Development Committee in three packages. We have already shared a previous draft of the timetable with it. As I said, we propose to divide the regulations into three packages, depending on their time-critical operational date. We are also proposing a departure from normal procedure, in that we will submit the draft regulations to the Social Development Committee as soon as possible after the Bill's Final Stage and in advance of Royal Assent. We are doing that in recognition of the Committee's concern and the size of the package, and to give the Committee as much time as possible to allow it to scrutinise the regulations.

On the current estimate, we envisage that the Committee will receive the first batch of regulations during the week commencing 8 April 2013. We hope to be making those regulations by the first week in May. That will be for regulations coming into operation in GB in April 2013. Obviously, we will be a month behind.

The second package of regulations will be going to the Committee around the end of April 2013. We hope to be making those regulations in the last week in May. That will be for regulations mostly with an operational date in GB of April 2013. We will have an operational date of June 2013, which will leave us almost two months behind.

The final package will be the universal credit package, which we had envisaged going in around the first week after the summer recess, in September 2013, with a view to making those regulations by November 2013. As members will know, the introduction of universal credit has been pushed back to April 2014. So, some regs in that package cross-refer and are consequential, which is why we want to try to do the packages in sequence. However, we are reviewing the content of each of those packages, and, as I said, we are reviewing the timetable in consultation with the Minister.

That is a rough approximation of our plans, and, as I said, the process obviously depends on when the Social Development Committee completes its scrutiny and on when the Final Stage is.

Mr Pollock: That is us for the time being.

The Deputy Chairperson: The Committee's main concern about the regulations involves sub-paragraph 7 of paragraph 1 of schedule 1. Have you seen anything in the GB regulations that were laid yesterday that might allay the Committee's fears?

Mr Pollock: We have seen draft regulations that take account of the issue that I mentioned with foreign nationals' spouses being required to submit to claimant commitment work conditions. That is being changed.

Ms M Campbell: The issue with that sub-paragraph is that EU nationals are being asked to be subject to full conditionality. That includes areas such as testing their work search commitments. The coalition Government has not changed that position. EU nationals of course have a right to reside, work or whatever in another EU country, but they do not necessarily have a right to be sustained by the Government of that country. So, the only way that the Government can test EU nationals who are here for work search or work and who retain worker status is to check their conditionality, which is about knowing what work preparation and work search they are undertaking. That is why full conditionality is applied to them, unlike what happens with British or Irish nationals who live here and are not subject to it. We will go back to what we said about universal credit's being financial assistance, and there is obviously a human right to live and work wherever you want. However, the action that the coalition Government took, which we are proposing to adopt here, is proportionate, and protecting the country's economic position is a legitimate aim.

The Deputy Chairperson: I have another point about the ECHR memo, and I appreciate what you said, Michael, about being able to share legal opinion. What is the Attorney General's role?

Ms M Campbell: As members will know, the Attorney General completes a certificate of competence before any Bill goes to the Assembly.

The Deputy Chairperson: Has the Attorney General completed that certificate of competence?

Ms M Campbell: Yes.

Mr Eastwood: I am slightly concerned about the idea of the regulations arriving from London and our adopting them without any real change. We have been told that the devil is in the detail of the regulations. Do you have any sense of DSD having an opportunity to change any of the regulations, or will we just adopt them en masse?

Ms M Campbell: We will not be adopting them en masse, because the Minister said on 22 October —

Mr Eastwood: Other than the ones that have already been announced.

Ms M Campbell: All the regulations will be scrutinised where appropriate, but parity is, of course, the primary basis for the regulations. Where Northern Ireland circumstances dictate, we would have to consider mitigation outside the social security arena. That is why the Minister has established the Executive subcommittee on welfare reform, why the Office of the First Minister and deputy First Minister (OFMDFM) has an independent advisory group on alleviating poverty, including the impacts of the Bill, and why the Bill is an Executive priority. Do you want to add anything more, Michael?

Mr Pollock: No. If you look at the summary of the objectives of the Programme for Government, you will see that welfare reform is dotted throughout it; it is not something that has just bounced over the horizon. Any number of initiatives are in place; Martina mentioned the advisory group to Ministers. There is also the Executive subcommittee on welfare reform, the social protection fund, promoting social inclusions, child poverty issues, Delivering Social Change, neighbourhood renewal, NEETs, fuel poverty strategies and childcare strategies. Those issues are all linked in some way to ameliorating or alleviating hardship. So, there is already recognition at Executive level of the issues that are arising out of welfare reform. Those issues are funded ordinarily out of the block grant; they are not issues that are within the social security ambit. If you start from the premise that you are going to maintain parity of social security — in other words, the individual here gets the same benefits and is subject to the same conditions as someone elsewhere in the UK — you look to your Executive programmes and to initiatives to alleviate hardship.

Mr Eastwood: I understand your point. We could go through each initiative individually, but that is not really in your remit. We are failing completely in child poverty, for example, but that is outside your remit. So, you are basically telling me that there is going to be no change in the regulations. Is that correct?

Ms M Campbell: Obviously, the decision for the regulations lies with the Assembly, as, ultimately, the decision on what is in the Bill lies with the Assembly. It is an Executive Bill. However, at this stage, we do not know, because we have not completed our assessment of the regulations. Some of them were laid only yesterday in England. We do not believe that, in the main, there will be much change. However, operational changes may come through in the guidance that are not necessarily in the regulation.

Mr Eastwood: I have a couple of specific points to ask about. One concerns the mortgage interest payment. We have been told that that will go if a claimant receives even one hour of work a week. That strikes me as going against what you, Michael, said about work paying. It seems to be one of the very obvious examples of —

Mr Pollock: It looks perverse, but, in actuality, if you consider that someone who is starting work can apply for universal credit, you will see that it is not. As such, they are entitled to the tapers and disregards that are attached to universal credit. So, in that respect, they will be able to retain more of their benefits and earned income as they start work. They should not be worse off in support for mortgage interest (SMI).

Mr Eastwood: They lose the full mortgage interest —

Mr Pollock: Yes; a zero-earnings rule applies to the SMI.

Mr Eastwood: This is my last point. One of the points that has been made to us about the underoccupancy payment, or the spare-room tax, as it has been called, is to do with foster carers. A lot of foster carers can, at times, be between one and another set of kids. We have been told that they are going to be penalised because they will not be exempt. Is that the case? Are there any plans to change that?

Mr Pollock: It is the case that there is not a blanket exemption for foster carers. I could be a foster carer this week and then stop. If that were the case and there were some sort of exemption in the legislation for that, should I get an extra room ad infinitum? Cases are dealt with individually. The idea is that it is not sensible to have prescriptive blanket exemptions for underoccupancy.

Ms M Campbell: The amount that foster carers receive from the health trust is totally disregarded in full. So, it would be considered double provision.

Mr Eastwood: I understand that, but how do you deal with those foster parents who go without kids for one, two or three months? What do you do in those cases?

Ms M Campbell: They have to choose whether they wish to make up the difference.

Mr Eastwood: I just think —

Mr Pollock: To use an age-old phrase, there is access to discretionary housing payments.

Mr Eastwood: I just think that we should be doing everything that we can to encourage people to foster kids. We are very short on people who are willing to do that, so penalising people who are is not a good idea.

Ms M Campbell: The different regulations here will have a local version of the discretionary elements of the social fund, which will be taken out of the social security scheme. That will be responsive to local circumstances. Also, the rates element of housing benefit will be separate and different from that of the coalition Government.

Mr Pollock: They will not be social security payments, as such.

Ms Ruane: Go raibh maith agat, a Leas-Chathaoirleach. The previous time that we were here, I raised the issue of the lack of data collection. From some of the submissions that we got from other agencies, I know that they are as concerned about that as our party is. In the light of the fact that we made you aware that you are not collecting data as you should and given your section 75 duties, have you done anything to address that?

Ms M Campbell: I got the response from our colleagues in the Social Security Agency just last night, so I will be writing formally to the Committee. I told you the previous time that, as I understand, we did not collect data on, as Michael said, sexual orientation, race, religion and political opinion on the basis that benefit is an entitlement and that each of those characteristics do not impact on your entitlement. However, I can tell you that the family resources survey covers religious belief; racial group; gender; marital status; age; persons with a disability; persons with dependents; and, obviously, persons without dependents. The questions that were added to the 2011-12 family resources survey cover political opinion and sexual orientation. Those data will become available to us, but the statisticians have told us that, because the policy simulation model uses data from the family resources survey, the sample size is not viable. The family resources survey covers approximately 2,000 households, and the catchment element of race in that sample size is not within government standards.

Ms Ruane: It sounds as though it is not within government standards. Data collection is not about surveys; it is about knowing exactly who the population is and about looking at age, gender, disability, race, sexual orientation. So, I remain worried that you are not collecting data, and I would be interested to know how you are going to deal with that.

Sorry, did you want to say something about that, Michael? I wanted to move on.

Mr Pollock: I recognise your point about data collection. However, I mentioned that we have to be assured of the integrity of data where sample size is concerned so that we can extrapolate it to design policy. There is no point in me going out and counting red cars in the car park and then saying that, by extension, I think that there might be x number of red cars in Northern Ireland. There has to be a statistically valid basis for such work, and our statisticians are coming from that point in developing the policy simulation model to assist in the policy development. It is a statistical model. There are proxies, in that they will not be going out and asking someone whether they are Protestant or Catholic, gay, straight or whatever. There are proxies that they have to be able to prove the integrity of to ensure that the policy that results will be reasonable.

Ms Ruane: I remain concerned that there is no proper, adequate data collection. Other agencies and Departments have that. Given the importance of your Department, I think that that is very worrying. Anyway, we will have that point on the record.

Secondly, I know that you had some discussion about the timetable, but we need the verbal report that you gave us. I would like a copy of it in writing but with updates. It would be useful for us to have that as soon as possible, because we are meeting.

Thirdly, migrant workers are obviously a key issue, and we have to make sure that we do not contribute to racism in any way. I am concerned about how migrant workers will potentially be disproportionately adversely impacted in this matter. You can talk about parity, and you speak as though we always stick with parity. However, we do not. The social fund is a departure from parity. We depart from parity on lots of different issues right across the North. So, it is important that you understand that we have section 75 here, which they do not have in England, and that it is adhered to. My concern is that, to date, it has not been.

Mr Pollock: I understand the point. I will just mention that the social fund that the member is talking about is actually outside the social security ambit, so, in that sense, parity does not apply.

Ms Ruane: No, but there is not a social fund elsewhere. This Executive bring forward proposals on a regular basis. The point that I am making is that we should not talk about parity as though it is some sacred cow that we can never break. We break parity regularly on loads of different issues. I sit on the Policing Board, where we break it every single week.

Ms M Campbell: The difference is breaking parity when a funding stream is attached. Social security has a funding stream attached to it, and it is in the Northern Ireland Act 1998 that we seek to maintain single systems of social security entitlement so that people in Northern Ireland do not receive different

levels of benefit to people elsewhere in the United Kingdom. That is funded by the coalition Government.

Mr Pollock: That is outside the Northern Ireland —

Ms Ruane: No, I understand all that, but the whole reason that we are even having these discussions is because our Assembly brings forward the Bills, and our starting point cannot be that everything has to be the same just because England does it.

Mr Pollock: Absolutely —

Ms Ruane: If I could finish. Other jurisdictions are very clear that they look after their populations first, and they negotiate within that arrangement. Presumably, all of us around this table want to ensure that our constituents are catered for in a proper way rather than just being led by the nose by civil servants in England.

Mr Pollock: Absolutely. This is not our Bill; it is your Bill. It is an Executive Bill. It is your policy.

Mr Brady: Once again, thanks for the presentation. I have just a couple of points on housing to make. The Housing Executive made it very clear that it could not cope with the underoccupancy. As you mentioned, Michael, there is a housing strategy, but that is for the long term, in that any solution to underoccupancy will be a long-term solution. I just want to make one point. In answer to Colum's question, you mentioned the discretionary housing benefit. That is for the short term. To use your own phrase, it will not apply "ad infinitum"; it is for the short term. Again, it will be cash limited, in a sense, because, at the moment, it is up to local managers and Housing Executive offices to decide whether it is within the budget. I know that more money is being put into the benefit, but it is still a short-term solution for a long-term problem.

Obviously, we hope to get a childcare strategy in place. When I was in the voluntary sector, approximately 10 years ago, a survey was done in my constituency on the provision of childcare. That survey found that Newry and Mourne had the worst childcare provision of registered childminders in western Europe. Presumably, the guidance to people working in the offices will relate to whether people are sanctioned, and that will be taken into account. I think that you mentioned that.

You also mentioned hardship provision. There will be a hardship fund, but individuals will have to repay it. Currently, people do not. If you are getting hardship payment because you are in danger of destitution and benefit comes back into play at some stage, you will be repaying that out of funds that are already at what is termed as subsistence level.

I have one more question. Martina mentioned ethnic minorities and migrant workers, and she talked about British and Irish nationals not being affected, but they are habitual residents. Could anything change that? If an Irish passport or British passport holder who has been working abroad comes back here and wants to claim benefit, they have to show that they are habitually resident. That is a very arbitrary type of decision. Some offices might require you to be here for only two weeks, some for three, some for four, some for five and some for six months.

Ms M Campbell: I do not think that the guidance on habitual residence is changing. I think that we have had the discussion about people coming home from Australia or wherever to look after parents. They are home only for a short term for the specific purpose of looking after their parents, or whatever.

Mr Brady: I am not —

Ms M Campbell: It is not up to the Government to fund that; it is up to those people and where they paid their taxes.

Mr Brady: They are not the people that I am talking about; I am talking about the people who have come home to stay.

Ms M Campbell: If they have come home permanently, they should satisfy the test.

Mr Brady: The point that I am making is that there is no definitive period. That is why the guidance is so important. It used to be the case that you had to show your aeroplane ticket your children had to be registered at schools and you had to apply for a house.

Ms M Campbell: We will look at that for you.

Mr Pollock: I do not think that there is a specific period for what constitutes —

Mr Brady: The Social Security Commissioner case law on it says that the longer that you are here, the more habitually resident you become. However, it has not specified a period. That is important for some people, because some have been left waiting for three months and others have been paid within a fortnight. So, there needs to be uniformity.

Ms M Campbell: We will have a look at that.

Mr Brady: In finishing, I will say that there is the issue with the affirmative procedures for the regulations. I have made this point before, but the regulations are predicated on how the Bill is formulated. This primary legislation is enabling legislation, so the regulations will flow from the Bill, and guidance will presumably follow that. Therefore, it is very important that we get the Bill right. Presumably, that is one of the reasons why we are here.

Ms M Campbell: I will take the point about childcare. We understand from the Department of Health that childminders are giving up; a lack of children means that they are not renewing their registration. As I understand it, the Department of Health has undertaken to complete some work on establishing what childcare provision is. I will confirm that that is the position for you, Chair. Obviously, officials in the Social Security Agency are working closely with officials in OFMDFM, who are responsible for developing the childcare strategy. As Michael said, the lack of accessible and affordable childcare is already in guidance as good reason.

Mr Brady: I know that we talked about this before, but I want to pick up on the point about registered childminders. If they wanted to access, for instance, the childcare element of working tax credit, they would have to be a registered childminder. If they are registered, they have to look after at least one other child that they are not related to, and that comes under the social services provision. I am not sure that people are giving up because of a lack of children. We have one of the youngest populations in western Europe, and I am sure that the census figures today will probably verify that. I am sure that it happens as a result of the formalities, because if your mother, auntie or sister are involved, you have to go through a fairly rigorous child protection process, and rightly so. However, people are doing it anyhow, so there has to be a simpler way of doing it while keeping child protection being paramount, which I do not have to stress. That element is the same, and it will stay the same. I think that you confirmed to me before that that aspect of it will not change. If you are going to get any relief for childcare costs, you will have to be a registered childminder. Maybe there needs to be a wider discussion on that.

Ms M Campbell: Yes, I think that that is something for the childcare strategy. Where the formalities of registration are concerned, as I understand it, the additional £12 million that OFMDFM got for the childcare strategy included initiatives on registration and helping to clear the backlog of registration, as well as training for continuing professional development (CPD). Although I accept the point that childcare is an issue for some people, I do not think that it is insurmountable. I think that the issue is for all Departments to work together on.

Mr Brady: I am sure that we will rehearse these arguments again.

Ms M Campbell: Yes, I am quite sure of that.

Mr Weir: I am sure, Chair, that there will be a circular about it. I have to take slight exception to Mickey referring to the mothers, aunties and sisters. That sounds very sexist, Mickey. I am sure that males will also be operating.

Mr Brady: No, it is traditional and historical here.

Mr Weir: There is a concern across the board in Northern Ireland that the level of childcare provision is below that of elsewhere. That is a good defence — effectively, a complete defence — where sanctions are concerned.

Ms M Campbell: Yes, it is.

Mr Weir: Mention was made about a timetable for the regulations. I suppose that you can rejig that timetable a little and get back to us — fairly quickly, I hope. Does the timetable deal purely with the regulations, or does it refer to the guidance at all?

Ms M Campbell: It does not make any reference to the guidance.

Mr Weir: Has there been any thought about a timetable for guidance?

Ms M Campbell: I will have to ask colleagues in the agency about that, because that is not our —

Mr Weir: If there is a timetable for guidance, it would be useful if you shared that as well.

Ms M Campbell: Colleagues in the agency have committed to sharing the guidance with the Social Development Committee.

Mr Weir: It would be useful if there is at least a commitment on a timescale for the guidance.

Mention was made of the overriding significance of parity. That is a crucial issue from more than just a legislative point of view, because striving towards it is in the Northern Ireland Act. Parity may be thrown out the window through, for example, the application of social security rates, given that wages in Northern Ireland tend to be lower than those in other parts of the United Kingdom. It is then significant, because there is an argument centrally that the Government can simply say, "Well, if parity is out the window, you do not actually need the same high level of social security as elsewhere. We can provide lower rates." So, there is a high level of significance in that.

I think that Caitríona talked about other jurisdictions. How did Scotland and Wales deal with this matter?

Ms M Campbell: Social security in Scotland and Wales is not devolved.

Mr Weir: So, theirs is a carbon copy, if you like.

Ms M Campbell: Theirs is done by Westminster.

Mr Weir: So, whatever complaints are made about our following suit, at least we have been able to have some flexibility, as announced by the Minister.

Ms M Campbell: Yes, we have. Scotland, Wales and ourselves have the flexibility, as we have repeatedly said, to consider mitigation within the context of the Executive but outside the social security —

Mr Weir: Yes, in the difference between the departmental expenditure limit (DEL) and the annually managed expenditure (AME).

Ms M Campbell: I do not have the figures with me today. However, I am sure that Mickey and Paula will remember from our for Social Development Committee discussion on childcare that if the Assembly decides that it wishes, for example, to reinstate the 10% cut, from 80% to 70%, in the cost of childcare under tax credits —

Mr Pollock: It would cost another £17 million.

Ms M Campbell: The cost to the Executive of reinstating that 10% cut would be £17 million. From memory, it would give each person an additional £12. As Michael said, although Northern Ireland has the lowest rate of claimants for child tax credits, we claim back the highest average amount of

childcare by almost £20. The only other place in the United Kingdom that comes close to us is inner London.

Mr Weir: Finally, because of the way in which things have worked out, we are considering the Bill in the middle of the Committee for Social Development's consideration of it. That is a work in progress, presumably, in which there is consideration of Committee Stage amendments. I appreciate that you have gone through the evidence. In some areas of evidence, concerns have been raised and either the Minister has made announcements, or there has been consideration, of amendments. Is that a fair comment?

Mr Pollock: As I said, if it is any comfort to the Committee, I do not think that there have been any new issues in all the evidence sessions that we have heard. If we forget the child bride on the end, I think that there is something like 75 years' experience here. *[Laughter.]* So none of this is new to us.

Mr Elliott: Thanks for your presentation. I am sorry that I missed the start of it. My issue is a broader one. Some of the organisations that gave evidence over the past two weeks — in particular, the Human Rights Commission — were of the clear view that parts of the legislation may not be compliant. The commission indicated that those parts of the legislation could be compliant in other parts of the UK but may not be human rights-compliant in Northern Ireland. They mentioned the affirmative resolution procedure. How do you answer all those issues?

Mr Pollock: From my perspective, the affirmative resolution procedure has absolutely no bearing on human rights issues. I heard snippets of that evidence session through the link in the office. I was struggling to find areas in which we could possibly not be compliant, yet the rest of the UK is.

Mr Elliott: It might be interesting if you read that transcript. Perhaps we need to make more enquiries into that because those witnesses were quite specific, Michael.

Mr Pollock: They were adamant. However, from memory, they did not give any specific examples.

Ms M Campbell: As Michael said, all the new regulations — namely, universal credit and PIP regulations — will, as is normal procedure, be confirmatory for the first set of regulations. That is normal procedure when new policy is being introduced. So there will be an opportunity to vote on them.

Mr Elliott: So they will be subject to the affirmative resolution procedure.

Ms M Campbell: Clause 44 states which regulations will be under the confirmatory resolution procedure with regard to universal credit. They include:

"acceptance of claimant commitment ... capital limits ... income to be deducted ... standard allowance ... children and young persons ... housing costs element ... other needs and circumstances"

— which will cover childcare costs —

"work availability ... claimants subject to no work-related requirements ... sanctions ... hardship payments ... calculation of capital and income"

and the migration strategy for migrating existing claimants over to the new benefit. They will be made in the first instance by the confirmatory resolution procedure. Jane, do you want to add anything about PIPs?

Ms Jane Corderoy (Department for Social Development): All the main sets that make any policy changes will be by confirmatory resolution procedure, as will all the regulations from the clause that relates to fraud.

Mr Elliott: There were other examples, and I am trying to pick up on some of your issues now. Mr McDevitt raised some issues, particularly around the provision of childcare and housing stock. He said:

"Am I right in saying that those are the two specific areas of the Bill where you think that, because of our local circumstances, there is most risk that the legislation could be injurious or in potential breach of certain human rights obligations or international human rights standards?"

Professor O'Flaherty said that that was right. There was some discussion, and Mr McDevitt concluded by saying:

"In other words, if the Bill did not require affirmative resolution?"

Professor O'Flaherty said, "OK."

Mr Pollock: We have probably gone through the childcare issue to the death. No one has been sanctioned. It is already in regulations in Northern Ireland that lack of access to affordable, adequate childcare is deemed good reason for not taking up a work opportunity, work placement or whatever. There is a subtle difference in the local government set-up, in that local authorities in GB have a much wider remit than our district councils and, as such, there is a statutory duty on local authorities to provide childcare facilities in their local authority area. That is a subtle difference by virtue of where we are in Northern Ireland and our district council set-up. As far as human rights and childcare are concerned, the underlying issue is that no one's benefit would be affected if he or she cited lack of childcare as a valid reason.

Mr Elliott: OK. I suggest to you that you are disagreeing with the Human Rights Commission's assessment that, if there is not an affirmative resolution procedure for some of those issues, they will not be compliant. Is it reasonable to say that?

Mr Pollock: That is perfectly reasonable. We contend, as Martina mentioned, that the protocol is that, when there is a new policy or a major shift in policy, ordinarily those regulations would be subject to affirmative resolution procedure. That is the case with this Bill.

Ms M Campbell: Perhaps the Human Rights Commission is getting confused between the affirmative and confirmatory resolution procedures. In Westminster, the affirmative resolution procedure is used; here we use the confirmatory resolution procedure. The processes are broadly similar, but the reason why we use the confirmatory resolution procedure whereby a debate does not have to take place before regulations come into operation is simply to maintain parity of time. That means that, when there is uprating or whatever, claimants are not disadvantaged by having to wait for a debate to be scheduled in the Assembly before the uprating can be effected.

Mr Elliott: You are saying that the Human Rights Commission was confused about that position?

Ms M Campbell: I suggest that it has misunderstood the process and the subtle difference between the affirmative and confirmatory resolution procedures.

Mr Pollock: She is very kind.

Mr Elliott: On a final point: the commission indicated that the legislation could be in breach of human rights in Northern Ireland but may not be in breach of human rights in GB. Do you hold any —

Ms M Campbell: In what sense?

Mr Pollock: I cannot see how an individual's human rights could be adversely affected in Northern Ireland by application of the conditionality attached to the Bill.

Mr Elliott: It took me a long time to get an answer out of the Human Rights Commission, but I eventually did. At the end of a discussion, I said to Professor Michael O'Flaherty:

"From what Michael is saying, am I right to suggest that your answer is yes and that some of these treaties could be breached in Northern Ireland but not in the UK by using the same legislation."

Professor O'Flaherty replied:

"Not in GB — not in another part of the United Kingdom."

Ms M Campbell: Was that about housing stock?

Mr Elliott: No, it could be about any point.

Mr Pollock: I remember that discourse.

Mr Elliott: The Human Rights Commission clearly made the point that the legislation could be in breach of human rights in Northern Ireland but perhaps not in the rest of the UK.

Ms M Campbell: A memorandum has been completed on compliance with the European Convention, and it has been assessed that the Bill is compliant with human rights requirements. There may be an issue about whether the actions or measures taken are proportionate and justified to achieve a legitimate aim, such as protecting the social economy of the country.

Mr Brady: Is that the memorandum that we cannot see?

Ms M Campbell: Yes, that is right. *[Laughter.]*

The Deputy Chairperson: Mickey, you have been told that it is all right and not to worry about it.

Lord Morrow: It is better not to know some things.

Mr Brady: Probably.

Ms M Campbell: We have said that we will expand the explanatory and financial memorandum that accompanies the Bill to include a further summary of what is in the memorandum.

Ms McGahan: You mentioned impacts on the disabled and said that you felt that the Bill was proportionate. Will you expand a wee bit more on that? You said that the number of registered childminders is being reduced, which does not surprise me, given the poor uptake of childcare vouchers and the childcare component of tax credits. Apparently, according to Employers for Childcare, the figure is less than 2%. Questions have to be asked about that. Perhaps it is to do with the fact that there is no affordable childcare. You said that that problem is not insurmountable, but it could be bigger than you think.

Ms M Campbell: I will take your last point first. I agree with you about childcare; it is extremely strange that the uptake is low. I have figures in the office on the actual number of claimants, but I am sure that the Employers for Childcare report is correct in stating 2%. Why is that? Is it because of issues to do with lack of awareness of child tax credits? Is it, as you suggest, to do with affordability? Is to do with other issues, such as people using informal childcare arrangements? We would both agree that that is possibly a reason. However, we do not know. When universal credit comes in — indeed, before it comes in — the Social Security Agency will be conducting an awareness campaign with employers to try to raise awareness about access to claims to try to resolve that position. We are also working with OFMDFM, which is in the lead in developing the childcare strategy. That probably covers childcare.

Mr Pollock: You asked about the human rights and equality issue. As I said, there is already legislative provision that states that lack of affordable childcare or access to adequate childcare constitutes a good reason for not taking up a job. As I said, no one has been sanctioned on that basis, and that has been carried forward. There is certainly an issue around childcare and the lack of a cohesive strategy to determine who does what and where, but we do not see it as an issue in this context.

Ms McGahan: At the same time, however, there are parents who want to work, so the issue of childcare still needs to be addressed. Although there are informal childcare settings, there is still a lack of stimulation and child development. Parents want that to be addressed. I sit on the OFMDFM Committee, and I know about the issues surrounding flexible childcare as opposed to contracts.

Mr Pollock: That is in the Programme for Government.

Ms McGahan: My sister pays £750 a month for two kids, which is brutal.

Ms Corderoy: Yes.

Ms M Campbell: Yes; Jane pays quite a lot for her childcare. Those are valid points, but again, they are for colleagues outside the social security arena. They are not covered in the Bill.

Jane may want to add something more about PIP in relation to disability. Either Mencap or Disability Action told the Committee for Social Development that no assessment had been done on PIP in the EQIA. That is incorrect; there are nearly 10 pages covering the reform of disability living allowance (DLA) and PIP.

There was a question about winners and losers in relation to universal credit. Forty-one per cent of disabled people are likely to see no change in their entitlement under universal credit as opposed to 27% of non-disabled people. The marginal deduction rate (MDR) and participation tax rate (PTR) — please do not ask me to explain what they are —

Lord Morrow: You have just jogged my memory.

Mr Weir: You know what the next question is going to be. *[Laughter.]*

Ms M Campbell: I will give you the formal definition. The participation tax rate measures the proportion of total earnings lost from the withdrawal of benefit. It is a measure of the financial reward for entering work. The higher the percentage, the less incentive there is to go to work.

Let us take the percentage for people whose PTR is below 60%. These figures can be found at page 32 of the EQIA. Under universal credit, the PTR for 90% of disabled people will be 60% or below at 10 hours a week. That compares with non-disabled people, whose PTR will be 99%. Under the current system, the PTR for disabled people is 14%, so it is going up. To go from 14% to 90% is quite a high improvement.

The marginal deduction rate is the proportion of extra earnings that is lost as a result of paying more tax. It is the incentive to work more hours, so it represents how much extra someone gets for working extra hours.

Again, the higher the percentage, the less the incentive, so let us take the percentage under 60%. Under the current system, the MDR for 18% of disabled people is 60% or below. Under universal credit, that will increase to 42%. It is currently 29% for non-disabled people; under universal credit it will go up slightly to 33%.

I accept that there will be winners and losers. I do not think that we have ever denied that. However, the whole emphasis in disability and in the whole welfare reform programme is that the money that is spent on disabled allowances is being refocused and targeted at those who need it most.

Ms Corderoy: Personal independence payments will replace DLA for working-age people. The entitlement will depend on the effects of the disability on a person's life rather than on a particular diagnosis. Therefore, it is the social model rather than the medical diagnosis model. Several of those who gave evidence last week and this week were quite positive about that. PIP is intended to be fairer, more transparent, consistent and objective, and it would take better account of those with mental health, intellectual, cognitive and development impairments compared with DLA.

Ms McGahan: So your point is that it is all about how your condition —

Ms Corderoy: Impacts on your life, yes.

Ms McGahan: I am not sure whether that is a good thing. I have attended DLA tribunals at which people had excellent medical evidence and, because they could demonstrate that they could make a cup of tea in the morning, dress themselves and, perhaps, make dinner — whatever that means — and put themselves to bed, they lost their DLA. On the other hand, other people's medical evidence may not be as strong, but because they are able to demonstrate how their condition impacts on them, they win their DLA. There is an issue about medical evidence having primacy. I have heard doctors

sitting on tribunals saying that their patients have medical evidence, but because they did not meet the criteria, they were not successful. That is my own experience.

Ms Corderoy: The criteria developed for personal independence payments have gone through quite a lot of consultation and have changed as a result. More things have been taken on board to respond to the make-up of people's incapacities or disabilities. The Bill allows medical evidence to be taken into consideration, but it is taken in the round in a more holistic way, with many pieces of evidence going to the assessor. Medical evidence will still be considered.

Mr Brady: Essentially, it has all been wrong since 1992. I want Martina to explain the affirmative and confirmatory resolution procedures. An affirmative resolution procedure is debated before the regulations go into operation and confirmatory is —

Mr Pollock: In Westminster.

Mr Brady: We have the confirmatory resolution procedure here, and the regulations are in place before we debate them. So what is the point?

Ms M Campbell: The regulations can fall.

Mr Brady: They can fall, but essentially it is a done deal by that stage. Is that the difference? You said that they were generally similar, but one is debated before the regulations are laid and go into operation; with us, the regulations will be in operation, and then we debate them.

Ms M Campbell: We have the affirmative resolution procedure here, but we use the confirmatory for time —

Mr Brady: The Human Rights Commission said that it should be the affirmative resolution procedure here as opposed to the confirmatory so that we would get an opportunity, even if there were a raft of amendments, to debate regulations before they go into operation.

Mr Pollock: With the bulk of the regulations, the substantial changes to universal credit and PIP are already subject to the affirmative resolution procedure.

Mr Brady: However, that is not happening here, and we need that opportunity.

Ms Corderoy: We are committed to the regulations going to the Social Development Committee before then, and it will have had a chance to scrutinise them.

The Deputy Chairperson: Thank you very much, Jane, Martina and Michael, for participating today. We might see you back again before we finish.

Ms M Campbell: I thought that that was us. Thank you.

Mr Pollock: Thank you.

The Deputy Chairperson: I want to confirm the actions that were agreed — you will have a note of most of them: expansion of the articles considered as part of the explanatory and financial memorandum; more details of regulations as they would apply to ethnic minorities; a timetable in writing, including the guidance on regulations; and further information on the guidance for habitual residents.

Mr Pollock: Guidance is already in place, obviously, in the Social Security Agency. However, we will ask colleagues in the SSA about updated guidance, new guidance or guidance on any of the new benefits.

The Deputy Chairperson: Thank you.