



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Welfare Reform Bill

Twenty-first Report of Session
2010–12

Drawing special attention to:

Welfare Reform Bill



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*Report, together with formal minutes and
appendices*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), John Turner (Lords Clerk), Murray Hunt (Legal Adviser), Lisa Wrobel (Senior Committee Assistant), Michelle Owens (Committee Assistant), Anna Browning (Committee Assistant), Greta Piacquadio (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. Oral evidence is published online at <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/publications/>. References to written evidence are indicated by the page number as in 'Ev 12'.

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Summary

The Welfare Reform Bill was introduced in the House of Commons on 16 February 2011 and was brought from the House of Commons to the House of Lords on 16 June 2011. The Bill completed its Committee stage in the House of Lords on 28 November and its Report stage is scheduled for 12 December. In this Report we consider the significant human rights issues raised by the Bill.

The Government's principal objective in this Bill is to support people to move into and progress in work, while still supporting those in greatest need. We commend this objective, which is consistent with many international human rights instruments which recognise the right to work and the right to an adequate standard of living. We therefore welcome the Bill as a potentially human rights enhancing measure. This Report assesses whether the means for achieving the Government's objective are compatible with the requirements of human rights law.

Human rights memoranda, impact assessments and monitoring

We regret the fact the Bill was not accompanied by a full human rights memorandum. We remind departments of the examples of best practice by those departments which have provided us with detailed human rights memoranda accompanying Government Bills. The provision of such information to Parliament strengthens the principle of subsidiarity: as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

We call on the Government to improve its capacity to conduct equality impact assessments. We reiterate our previous recommendation that, where the Government's view on compatibility relies on safeguards to be provided in secondary legislation, draft Regulations should be published together with the Bill. We call upon the Government better to monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally.

The international human rights context

We are disappointed by the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP. We have commended a number of human rights memoranda from departments in the past which have done precisely that and we remind departments of this Committee's expectation in this respect.

Destitution

Imposing conditionality requirements on benefits is not precluded by human rights law. However, we believe there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR, if the individual concerned was genuinely incapable of work. We therefore urge the Government to give careful consideration to this risk, take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to this issue and carefully monitor the impact of the sanctions regime on people with particular

characteristics.

Discrimination

We are concerned that some of the proposals, such as those relating to employment support allowance and housing benefit, may be implemented in a way which could lead to a discriminatory impact and which does not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised. We consider that changes to welfare support designed to meet the right to social security and the right to an adequate standard of living should be supported by evidence and closely monitored after implementation.

With regard to the housing benefit cap, the disproportionate impact of current proposals on larger households is said by the Government to be justified because it promotes fairness with similar-sized households which are just outside entitlement to benefit. This is undoubtedly a legitimate aim. An alternative approach to increasing fairness is to compare like with like—that is to calculate the level of the cap based on earnings of families with children, rather than all households. We ask the Government whether they have carried out an assessment of these approaches with a view to comparing their proportionality. We are also particularly concerned about the possible disparate impact on some disabled people and we recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the benefit cap and from the provisions concerning under-occupation of social housing.

Retrogression

We recognise that the availability of resources is of central relevance to the extent of the UK's obligations under the UN human rights treaties. However, the duty of progressive realisation in UN human rights treaties entails a strong presumption against retrogressive measures affecting the right to social security and to an adequate standard of living. We have analysed several areas where such retrogression is proposed in the Bill.

We are not satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of Personal Independence Payments on the right of disabled people to independent living. We believe that the Bill should be amended to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants which would make it less likely that the Bill will lead to incompatibilities with the UK's obligations under the UN Convention on the Rights of Disabled People. We further recommend a trial period for the new assessment process and a report to Parliament on the implementation of the new testing system, to ensure that the impact of the new assessment process is fully assessed and analysed in light of its operation in practice.

We welcome the Government's avowed intention of improving ministerial accountability for the eradication of child poverty. However, any proposed changes to the current legal framework which has the potential to diminish ministerial accountability to Parliament for the reduction of child poverty requires the most careful scrutiny and we recommend that the Bill be amended to require the Secretary of State to make a statement to Parliament responding to the annual report of the Social Mobility and Child Poverty Commission and that the Government commit to providing an opportunity for Parliament to debate the

Commission's report and the Minister's statement in response.

Other issues

We are reassured by responses from the Government to concerns we had over information-sharing provisions in the Bill and with regard to certain powers to deal with benefit claimants thought to be abusing drugs or alcohol. However, on the issue of contracting out, legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of 'public authority', putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA

Government Bills

Bills drawn to the special attention of each House

1 Welfare Reform Bill

Date introduced to first House	16 February 2011
Date introduced to second House	16 June 2011
Current Bill Number	HL Bill 114
Previous Reports	None

Background

1.1 The Welfare Reform Bill was introduced in the House of Commons on 16 February 2011 and was brought from the House of Commons to the House of Lords on 16 June 2011. The Parliamentary Under-Secretary of State and Minister for Welfare Reform, Lord Freud, has certified that, in his view, the Bill is compatible with Convention rights. The Bill completed its Committee stage in the House of Lords on 28 November and its Report stage is scheduled for 12 December.

1.2 The Committee wrote to the Secretary of State on 20 July 2011 asking for further information on a number of specific issues raised by the Bill.¹ The Secretary of State replied by letter dated 26 September 2011.² We publish this exchange of correspondence with this Report. We also received submissions about the human rights compatibility of the Bill from Carers UK, Scope and Mr. A. Fisher. All submissions received are published on our website,³ and where relevant to the issues we consider to be significant, we refer to them below.

The purposes and effect of the Bill

1.3 The purpose of the Bill is to implement the Government's proposals for fundamental reform of the welfare system. The Government's aims, broadly speaking, are to improve work incentives, to simplify the benefits system, and to make it less costly to administer. The most relevant parts of the Bill, from a human rights perspective, are summarised below.

1.4 In short, Part 1 of the Bill introduces a new benefit, "Universal Credit", which will be payable to people who are unemployed and to people in low-paid work, and will replace Income Support, income-based Job Seeker's Allowance, income-related Employment Support Allowance (ESA), Housing Benefit, Child Tax Credit and Working Tax Credit. A feature of Universal Credit is the proposed "taper" approach to the withdrawal of benefits for those in work: it aims to smooth the transition into work by reducing the support a person receives at a consistent rate as their earnings increase. Claimants may be required to meet certain responsibilities, with the potential for the reduction of benefits if they fail to

1 Letter dated 20 July 2011 from the Chair to the Secretary of State.

2 Letter dated 26 September 2011, and accompanying written evidence, from the Secretary of State to the Chair.

3 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/leg-scr-2010-11/welfare-reform-act/>

meet those requirements and, ultimately, the withdrawal of benefits for periods of up to three years.

1.5 Part 2 of the Bill makes changes to the provision of ESA more broadly, including the introduction of a “time-limit” on the contributory element of ESA payments. Part 3 transfers responsibility for Social Fund Crisis Loans and Community Care Grants to local authorities and devolved administrations in England and Wales. It also introduces limits on housing benefits, including limiting access to over-occupied housing for social housing tenants.

1.6 Part 4 of the Bill replaces Disability Living Allowance (DLA) with a Personal Independence Payment (PIP). This Part of the Bill sets out the framework for the new benefit. The detailed design is to be provided for in secondary legislation. The Government has also stated that it intends to reduce the budget for DLA by 20% overall. Part 5 of the Bill introduces a cap on the amount of benefits a person or a couple are allowed to claim.

1.7 Part 6 amends the Child Poverty Act 2010 by removing the Secretary of State’s obligation to report annually to Parliament on progress towards the statutory targets and replacing it with a duty on the new Social Mobility and Child Poverty Commission to make such annual reports.

1.8 The Government’s principal objective in this Bill is to support people to move into and progress in work, while still supporting those in greatest need.⁴ **We commend the Government’s aim to support more people, and in particular people who might otherwise be disadvantaged in the employment market, into work as the most effective route out of poverty. This aim is consistent with many international human rights instruments which recognise the right to work⁵ and the right to an adequate standard of living.⁶ We therefore welcome the Bill as a potentially human rights enhancing measure.** It is our task, however, to scrutinise the means by which the Government proposes to achieve these goals for compatibility with human rights law, including the UK’s obligations under various international human rights treaties to which the UK is a party, and that is what this Report seeks to do. The most relevant human rights standards are identified below.

Information provided by the Government

Explanatory Notes/human rights memoranda

1.9 In a number of legislative scrutiny Reports this session, we have commended the practice of departments which have provided us with a detailed human rights memorandum either on or shortly after a Bill’s publication, setting out a detailed analysis of the Bill’s human rights implications and a very full explanation of the Government’s view that the Bill is compatible with human rights law.⁷ Such human rights memoranda facilitate proper scrutiny for human rights compatibility by this Committee and help to

4 See, for example, the Department of Work and Pensions White Paper, 21st Century Welfare (July 2010).

5 See, for example, International Covenant on Economic, Social and Cultural Rights, Article 6.

6 See e.g. UN Convention on the Rights of the Child, Article 27; International Covenant on Economic, Social and Cultural Rights, Article 11.

7 See, for example, our scrutiny reports on the Terrorist Asset Freezing Bill, the Protection of Freedoms Bill, the Armed Forces Bill and the Education Bill.

ensure that parliamentary debate about the human rights implications of Government Bills is properly informed. As such, they represent important steps by the Government to strengthen the principle of subsidiarity, by encouraging a greater role for Parliament in the scrutiny of laws for human rights compatibility, as increasingly recommended by international bodies and agreements, including the Interlaken Declaration and Action Plan agreed by the 47 members of the Council of Europe in February 2010.

1.10 The Department of Work and Pensions did not provide us with such a human rights memorandum in relation to this Bill. It was encouraged to do so, but declined. The Explanatory Notes contain a section on the European Convention on Human Rights,⁸ but the analysis contained therein is disappointingly lacking in detail. It analyses the human rights implications of the Bill as a whole according to the ECHR rights affected, rather than clause by clause. This means that the analysis is at a much higher level of generality than in the ECHR memoranda based upon clause-by-clause analysis which is undertaken for the Government's Parliamentary Business and Legislation Committee, on which other human rights memoranda we have received have been based. The Explanatory Notes are replete with assertions that a particular measure which interferes with a right is "proportionate" due to "safeguards", often without specifying what those safeguards are or, where they will be provided in regulations, precisely what those safeguards are intended to be. There is little reference to evidence to substantiate the Government's views assertions about justification and proportionality, and there is hardly any consideration of or reference to relevant case-law.

1.11 We remind departments of the examples of best practice by those departments which have provided us with detailed human rights memoranda accompanying Government Bills. This is not merely a matter of preference by this Committee. The principle of subsidiarity, which the Government rightly seeks to strengthen during its Chairmanship of the Council of Europe, requires the Government and Parliament to fulfil their responsibility for implementing human rights in the national legal system. The provision of detailed human rights memoranda to Parliament is an important means of demonstrating the Government's fulfilment of that responsibility. It also facilitates Parliament in fulfilling its responsibility in that regard. We also remind the Government that, as the case-law of the European Court of Human Rights clearly shows,⁹ laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

1.12 In the absence of a detailed human rights memorandum, we asked the Secretary of State a number of detailed questions in correspondence.

Adequacy of the impact assessments

1.13 The quality of the impact assessments conducted within Government becomes increasingly important for the purposes of analysing potential discriminatory impacts when little wider detail is available. Concern has been expressed about the thoroughness and coverage of the impact assessments carried out by the Government. Carers UK, for

8 HL Bill 75—EN paras 740–767.

9 See, for example, the recent decision of the Grand Chamber in *S.H. v Austria*, Application no. 57813/00 (3 November 2011).

example, have pointed out that the impact assessments make no mention of the impact of some of the changes on carers, even where this impact will be very significant, in particular in the case of the proposed reforms to DLA. Equality Impact Assessments were not published by the Government until the Bill was in Committee in the Commons, and, while equality impact assessments have now been published for distinct parts of the Bill, these do not attempt to assess the cumulative impacts of multiple provisions in the Bill on particular groups with protected characteristics. This is of concern, since individuals will experience these changes cumulatively, and their impact needs to be understood in this way. For example, a disabled person may find that they lose their lower rate DLA, and therefore become subject to a cap on their housing benefit such that they cannot afford to remain in their home. Moving may disrupt informal patterns of care and support at the same time as they have increased reliance on these supports.

1.14 Whilst accepting that such assessments of cumulative impact would be analytically complex and challenging, they nevertheless should be feasible. For example, a recent report by the Institute of Fiscal Studies assessed the impact on child poverty of the Government's changes to personal taxes and state benefits.¹⁰ It concludes that, while considered in isolation, Universal Credit should reduce relative poverty significantly (by 450,000 children), this reduction is more than offset by other changes, with a predicted increase in absolute child poverty by 200,000 in 2015–16 and 300,000 in 2020–21.

1.15 We call on the Government to improve its capacity to conduct equality impact assessments, in particular to go beyond piecemeal analysis of each measure by assessing the proposed provisions as a whole, including their cumulative impact on individuals and groups, from an equality perspective.

The lack of draft regulations

1.16 The degree of risk to human rights standards posed by the operation of changes to the welfare systems will depend to a considerable extent upon the detail of how a particular scheme is administered. The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny. The Welfare Reform Bill follows this traditional pattern. Human rights scrutiny is made more difficult if the Bill is not accompanied by draft regulations, clear statements on the policy intention of the Government, and high quality impact assessments.¹¹ While certain regulations will be subject to affirmative resolution on their first introduction, even this procedure presents only a limited opportunity for Parliamentary scrutiny. Moreover, it is only in relation to regulations which are subject to the affirmative resolution procedure that a statement on their compatibility with the ECHR will be included in the Explanatory Memorandum.

1.17 For the reasons we set out below we have concerns that the proposals may be implemented in a way which could lead to a risk of incompatibility with Convention rights. We reiterate our previous recommendation that, where the Government's view on compatibility relies on safeguards to be provided in secondary legislation, we recommend that draft Regulations are published together with the Bill. At the very

¹⁰ Institute of Fiscal Studies Child and Working Age Poverty 2010–2020 October 2011

¹¹ See, for example, the concerns expressed in the evidence of Scope.

least, the Government should describe in the explanatory material accompanying the Bill the nature of the safeguards it proposes to provide.

The need for monitoring mechanisms

1.18 The limitations on the scope of the impact assessments and the framework nature of much of the Bill increase the importance of monitoring mechanisms to assess the measures' impact on individual rights once the measures are in force. There are some safeguards in this respect in the Bill, but these are relatively few and limited to distinct aspects of the Bill. For example, the Bill proposes that the Government should report to Parliament on the operation of the assessment process for the Personal Independence Payment.

1.19 The Government says that detailed evaluation plans for post-implementation are still being developed. Administrative datasets will be used to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. However, this data will provide robust material only for age and gender not, as a rule, for other protected groups. This will impede the ability to effectively monitor whether there are adverse consequences for the human rights of particular vulnerable groups. **We call upon the Government better to monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally, with particular attention to the risks of destitution, discrimination and retrogression highlighted below.**

Relevant human rights standards

Our approach

1.20 Our remit is to consider “matters relating to human rights in the UK.” Since its inception in 2000 this Committee has always interpreted “human rights” to include all the human rights treaties to which the UK is a party. The UK has agreed to be bound by a number of international human rights treaties containing provisions which are relevant to the design and operation of its system of welfare benefits. In addition to the European Convention on Human Rights, these 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. Nothing in any of these treaties prescribes a particular welfare system. Individual states retain a wide “margin of appreciation” in respect of the establishment of domestic welfare systems: that is to say, they have some considerable leeway in deciding how they should be designed. Nevertheless, the treaties which bind the UK in international law do contain a number of provisions relevant to Parliament’s scrutiny of this Bill for human rights compatibility.

The legal status of the relevant standards

1.21 Before considering the specific provisions of those treaties which are relevant, we think it is important to point out the different nature of the legal obligations imposed on

the State by the European Convention on Human Rights on the one hand, and by human rights treaties such as the ICESCR¹² and the UNCRC on the other.

1.22 All human rights treaties impose legal obligations, but the precise nature of those obligations differs. ECHR rights are the archetypal legally enforceable rights, fully justiciable by courts and capable of protection by legal remedies. Rights such as the right to social security and the right to an adequate standard of living, on the other hand, are subject to progressive realisation and, as such, are less susceptible of judicial enforcement. **In our view, in any parliamentary democracy it is the democratic branches of the State, that is, the Government and Parliament, which should have primary responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority.**

1.23 It follows, from this difference in the nature of the legal obligations imposed by the ECHR and by other human rights treaties, that political accountability for compliance with the UK's human rights commitments under the UN human rights treaties is in practice even more important than legal accountability. Parliament therefore has a key role to play in scrutinising legislation to secure compliance with the positive obligations and minimum standards to which the UK has committed itself in those treaties.

The European Convention on Human Rights

1.24 The European Convention on Human Rights (ECHR) 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. As the Government accepts,¹³ welfare benefits are considered “possessions” for the purpose of this Article,¹⁴ and any interference or deprivation must therefore be in “in accordance with law”, and be for a legitimate aim and proportionate to that aim.¹⁵

1.25 The Government also correctly acknowledges that questions as to social security entitlement will be “within the ambit” of Article 1 Protocol 1 ECHR,¹⁶ and therefore the ECHR guarantee (in Article 14) that Convention rights must be enjoyed “without discrimination” is also relevant.¹⁷

1.26 Two additional ECHR rights are of potential relevance in the context of this Bill as discussed below: the positive obligation on the state to ensure that individuals are not exposed to destitution and hardship at a level which will amount to inhuman or degrading

12 Our predecessor Committee explained the legal status of the ICESCR in their report on the Covenant, see Twenty-first Report of 2003–04, *The International Covenant on Economic Social and Cultural Rights*, HL Paper 183, HC 1188, paras 16–17.

13 EN para. 743.

14 *Stec and others v UK*, App. No. 65731/01, Judgment dated 12 April 2006; *Zeman v Austria*, App No 23960/02 Judgment dated 29 June 2006

15 In order to be “in accordance with law” measures must have a basis in domestic law and be sufficiently precise to allow people to foresee the consequences of their actions.

16 EN para. 747.

17 Article 14 ECHR

treatment (Article 3 ECHR) or endanger their right to respect for private or family life (Article 8 ECHR).¹⁸

The UN human rights treaties: ICESCR, the UNCRC and the UNCRPD

1.27 The right to social security and the right to an adequate standard of living are both widely recognised in international human rights standards to which the UK has bound itself by international treaty. These are derived from the recognition in the Universal Declaration of Human Rights of the right to “security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹⁹ That Declaration was itself inspired by President Roosevelt’s “Four Freedoms” in his 1941 State of the Union address to Congress, including “freedom from want” and “freedom from fear”.

1.28 The UK is a party to the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantees amongst other things the right to an adequate standard of living and to social security. Article 11 ICESCR makes clear that circumstances where an individual is permitted to become destitute would be in breach of the right to an adequate standard of living, which includes ‘adequate food, clothing and housing [...] and the continuous improvement of living conditions’.²⁰ The UN Convention on the Rights of the Child similarly provides, in Article 27, for recognition by States of the right of every child to an adequate standard of living.

1.29 The right to social security has been subsequently incorporated in a range of international human rights treaties by which the UK has agreed to be bound, including the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)); the Convention on the Elimination of All Forms of Discrimination against Women (Articles 11 and 14); the UN Convention on the Rights of Persons with Disabilities (Article 28); and the UN Convention on the Rights of the Child (Article 26). The UN Convention on the Rights of Persons with Disabilities also requires the State to take progressive measures to promote the right of disabled people to live independently in the community and to refrain from retrogressive measures which undermine this right (Articles 4, 19 UNCRPD).

1.30 In its recent General Comment on the scope of the right to social security, the UN Committee on Economic and Social Rights explained:

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights.²¹

To demonstrate compliance with their general and specific obligations, States parties must show that they have taken the necessary steps towards the realisation

¹⁸ See the House of Lords decision in *Limbuela*, [2005] UKHL 66.

¹⁹ Universal Declaration of Human Rights, Article 22.

²⁰ See also Article 9, which protects the right to social security.

²¹ General Comment No 19, The Right to Social Security, 4 February 2008, E/C.12/GC/19, para 1. The Committee on Economic Social and Cultural Rights is the relevant Treaty Monitoring Body for this treaty. The purpose of these General Comments is to provide clear guidance to States and others as to the Committee’s approach to the interpretation of key issues in the ICESCR.

of the right to social security within their maximum resources, and have guaranteed that the right is enjoyed without discrimination and equally by men and women[...]

Violations include, for example, the adoption of deliberately retrogressive measures incompatible with the core obligations [...] the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security; [...] active denial of the rights of women or particular individuals or groups.

Violations through acts of omission can occur when the State party fails to take sufficient and appropriate action to realise the right to social security. In the context of social security, examples of such violations include the failure to take appropriate steps towards the full realisation of everyone's right to social security; the failure to enforce relevant laws or put into effect policies designed to implement the right to social security [...] The Covenant is clear that, although States are free to secure its minimum obligations through a variety of means, any failure to meet the minimum standards envisaged will be in violation of the international standards which the United Kingdom has accepted. The Government has recently stressed that it considers that the principle means of securing these rights in domestic law should be through legislation enacted by a democratically accountable Parliament.²² In our view, in ratifying the Covenant, the UK has made a commitment, binding in international law, to abide by the terms of the Covenant. This requires government, Parliament and the courts to make efforts to ensure the fullest possible compliance with the terms of the ICESCR.²³

1.31 The rights to social security and an adequate standard of living which are recognised in these treaties are subject to the principle of progressive realisation within available resources: States must take deliberate, concrete and targeted steps towards their realisation "to the maximum extent of their available resources."

1.32 The availability of resources is therefore of central relevance to the extent of the UK's obligations under the UN human rights treaties. However, the duty of progressive realisation entails a strong presumption against retrogressive measures. In its General Comment on the scope of the ICESCR right to an adequate standard of living and to social security, the UN Committee on Economic Social and Cultural Rights explained:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the

²² Cm 7577, *Rights and Responsibilities: developing our constitutional framework*, Mar 2009, paras 3.52–3.53.

²³ Twenty-first Report of 2003–04, *The International Covenant on Economic Social and Cultural Rights*, HL Paper 183, HC 1188, para 17.

measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.²⁴

1.33 These same principles apply to the other international rights treaties to which the UK is a signatory.

The scope of the Government's human rights analysis

1.34 One of the questions we asked the Secretary of State in correspondence was whether the Government has conducted any analysis of the proposals in the Bill for their compatibility with the UK's obligations under other internationally binding human rights treaties. As this Report explains below, a number of such treaties contain obligations which are clearly relevant to scrutiny of this Bill, including the UN Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the UN Convention on the Rights of Persons with Disabilities. The Government's response to the Committee's letter says "The Government does not consider that the proposals raise any particular issues in respect of these wider obligations such as to merit a detailed analysis." No such analysis has therefore been provided.

1.35 We are disappointed by the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP. The legal effect of these human rights obligations in the UK is different in kind from the legal effect of Convention rights, which are given effect in our national legal system under the Human Rights Act, but they are nevertheless binding obligations in international law and the Government should be able to demonstrate that they have considered the compatibility of legislative proposals with those obligations. We have commended a number of human rights memoranda from departments in the past which have done precisely that.²⁵ We remind departments of this Committee's expectation in this respect, which is explicitly referred to in the Cabinet Office Guide to Legislative Procedure.

1.36 We also remind the Government of the "clear commitment" given by the Minister of State for Education, Sarah Teather, to the House of Commons on 6 December 2010, "that the Government will give due consideration to the UNCRC articles when making new policy and legislation", and, in so doing, will always consider the recommendations of the UN Committee on the Rights of the Child.²⁶

24 General Comment No 19, The Right to Social Security, (2008), paragraph 42.

25 See, for example, legislative scrutiny reports on the Child Poverty Bill and the Education Bill, commending the departments in question for the detailed analysis of the Bill's compatibility with the provisions on the UN Convention on the Rights of the Child.

26 Written Ministerial Statement on the Children's Commissioner Review, HC Deb 6 Dec 2010 col 7WS.

Significant human rights issues

(1) Destitution

1.37 Article 3 ECHR, which prohibits “inhuman or degrading treatment”, places States under a positive obligation to ensure that individuals are not exposed to destitution and hardship at a level which amounts to inhuman or degrading treatment. The provisions of the Bill which may give particular rise to concerns in this respect are those which allow for sanctions reducing benefits for failure to comply with work-related requirements. We do not consider that making benefits conditional on compliance with work-related requirements is in breach of the prohibition on servitude and forced labour in Article 4 of the ECHR.²⁷

1.38 There are two issues in identifying a risk of breaching Article 3. Firstly, whether an individual’s situation is of the necessary gravity to constitute inhuman or degrading treatment; and, secondly, whether the state, through a positive act (such as introducing a provision which restricts the availability of benefits) or omission can be held responsible for that situation.

1.39 The leading domestic judgement on this issue, *Limbuela*, relates to asylum seekers barred from claiming benefit or working. We are not aware of any European Court of Human Rights cases in relation to conditionality of welfare benefits.²⁸

1.40 In the context of the exclusion of a person from welfare support, the standard of ‘inhuman and degrading’ is a very high threshold. It is a complex test which must take all relevant factors into account—including the entire package of restrictions and deprivations, and the vulnerability of the individual, for example whether they are elderly or in ill health.²⁹ The issue is judged by the standards of modern British society: therefore, for example, the suffering of a homeless woman, defenceless against the risks of the streets at night, might “very soon reach the minimum degree of severity required.”³⁰

1.41 The Government considers that there is no incompatibility with Article 3 because the reduction of a universal credit award where a claimant has failed to comply with mandatory work-related requirements does not amount to “treatment,” since claimants or potential claimants have the opportunity to avoid severe consequence by working, thus breaking the chain of State responsibility for the consequences.

1.42 Conditionality itself is clearly not a breach of Article 3 ECHR. However, where there is no ban on working but someone is “obviously unemployable” this situation may give rise to a claim of ‘treatment’ by the State such as to constitute a breach of Article 3.³¹ There is a risk, for example, that some disabled people who are adjudged to be capable of work may in practice not be able to do so. For example, whilst the Bill states that people will not face sanctions for not complying with their action plan to ready them for work if they have good reason not to do so, and they alert the authorities to their circumstances within five

27 As submitted in written evidence to us by Mr. A. Fisher.

28 Conditionality refers to conditions placed on benefits subject to sanctions. Sanctions include reductions in sums of benefit received.

29 *Limbuela*

30 *Limbuela* Para. 78

31 *Limbuela* Para. 91

working days, such a deadline may be unrealistic for people who are unwell. The Bill also states that any activity a claimant will be asked to undertake must be reasonable, taking into account the person's circumstances. There are concerns that in practice those administering the benefit will not have the tools necessary to assess effectively enough an individual's circumstances to know when a particular activity is appropriate or not. Further concerns have been raised that sanctions for leaving a job voluntarily may unfairly penalise some people who leave work because they judge it to be damaging to their mental health. If work-related requirements place an onerous burden on individuals who are not able to meet them as a result of their mental or physical disabilities, or which may exacerbate their health difficulties, they may lead to an increased risk of a breach of that individual's right to respect for their Article 3 rights.

1.43 In addition, the Government cites the hardship regime which will be introduced to protect vulnerable claimants and their families. However, these safeguards are largely to be provided in secondary legislation, which makes it difficult to assess whether they will be adequate to prevent claimants and their families falling into destitution.

1.44 For particular groups other means of support will be available where necessary to ensure compliance with Article 3. For example, section 95 of the Immigration and Asylum Act 1999 makes provision in some circumstances for asylum seekers. However, alternative welfare provision will not always be available.

1.45 The ECHR does not preclude individual member states from setting conditionality requirements in respect of work. However, there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR if the individual concerned was genuinely incapable of work. The absence of more detail about the proposed system of hardship payments, and the lack of publicly available statistics on the number of applications for hardship support under existing regimes, means that we are not in a position to assess the degree of risk. We urge the Government to give careful consideration to this risk, to take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to this issue and carefully monitor the impact of the sanctions regime on people with particular characteristics.

(2) Discrimination

1.46 Article 14 of the ECHR will be violated where there is discrimination in the enjoyment of a right which falls within the ambit of another Convention Article. This Bill's provisions fall within the ambit of a number of Convention Articles: Article 1, Protocol 1 ECHR, Article 3 and Article 8.³² Discrimination in this context goes beyond unjustified disparate treatment. We are not in a position to assess the degree of that risk in the absence of publicly available statistics on the number of applications for hardship support under existing regimes, and more detail about the proposed system of hardship payments.

1.47 The equality impact assessments of the Bill's provisions are limited in some respects because of lack of detail on some provisions. However, they do make plain that some

³² An issue can fall within the ambit of right, even where at right is not itself breached. Thus, the Explanatory Notes acknowledge that questions as to social security entitlement will be within the ambit for the purposes of Article 14, although they maintain that Article 1 Protocol 1 is not breached by the Bill's provisions.

provisions will have a disproportionate impact on protected classes, including women, disabled people, certain ethnic minority groups and children in larger families or single parent families.³³ In respect of each instance of disproportionate impact, a justification is provided. We wrote to the Minister questioning the possibility of the risk of discrimination in respect of changes to Employment Support Allowance (ESA); the introduction of a Household Benefit Cap and housing benefit restrictions.

1.48 For the reasons set out below, we remain concerned that these proposals may be implemented in a way which could lead to a discriminatory impact and may not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised. We consider that changes to welfare support designed to meet the right to social security and the right to an adequate standard of living should be supported by evidence. We recommend that the changes should be closely monitored to understand the implications of the proposals for individual rights, including the right to respect for an adequate standard of living, and the right to enjoyment of those rights without discrimination.

Employment Support Allowance

1.49 There are two forms of Employment and Support Allowance (ESA): contributory ESA, for those with a sufficient National Insurance contribution record; and income-related ESA, which is means-tested. Claimants who satisfy the Work Capability Assessment for ESA may be placed in either the “Support Group”, if they are deemed to have a “limited capability for work-related activity”, or in the “Work Related Activity Group”.

1.50 Currently, contributory ESA can be paid until State Pension age. The Bill would reduce this to 12 months. Some claimants will be able to claim income-related ESA, but this will be reduced if they have a working partner or capital over £16,000. Only 60% of people losing their contributory ESA will be wholly or partially compensated for this loss by income-related ESA.³⁴ The rationale for the change is to produce a simpler and fairer benefits system, targeting support at those who are most in need.

1.51 This provision will particularly affect disabled people because ESA is directly targeted at people with health conditions that limit their ability to work. This provision is said to be justified on the basis that time-limiting is only being introduced for people who it is anticipated will be able to return to work in the future with help and support. There is also predicted a higher average loss in household net income for women than for men, and it is thought probable that older people may be more likely to be affected, especially those who may find it difficult to get back into work due to their age. These impacts are said to be mitigated by increased support for these groups in accessing work.

1.52 The Minister has acknowledged that the decision to introduce a time limit has not been taken on the basis of any evidence which shows that twelve months is a reasonable time frame in which to expect people with a health condition or disability to have recovered, where appropriate, or found employment.³⁵ Moreover, there are considerable

33 DWP *Welfare Reform Bill Impact Assessments*

34 Time limiting contributory Employment and Support Allowance to one year for those in the work-related activity group, Equality impact assessment October 2011

35 Hansard, House of Commons, Welfare Reform Bill Committee, 3 May 2011, column 650

concerns about the operation of the tests assigning claimants to the work related group. **This may call into question the objective justification for the disparate impact, and at the very least suggests the need for close scrutiny to ensure that Article 14 is not breached.**

Household Benefit Cap

1.53 A cap will be introduced on the total amount of benefit that working-age people can receive so that households on out of work benefits will no longer receive more in benefit than the average weekly wage earned by working households. On average households affected by the cap will lose around £93 a week. Around 35% will lose more than £100 per week.³⁶

1.54 The Minister states that the reason for having a cap is to balance the interests of benefit claimants with the interests of taxpayers, and that the effect of the cap is proportionate, taking into account: (1) the amount of the cap and the fact it will be based on average household earnings; (2) the fact that claimants will be notified of the cap and given time to adjust their spending to accommodate their new levels of benefit; and (3) the fact the cap will affect relatively few households and that those affected will already have a substantial income from benefits.

1.55 At the same time, the Government acknowledges that it is difficult to predict accurately what will happen to the affected households, as it depends on households' behavioural responses and on the availability of accommodation.³⁷ **We believe that close monitoring of the impact of this change is essential, in order to ensure that it is proportionate, and to take mitigating action if necessary.**

1.56 The cap will particularly affect large families with several children, who might also live in larger family homes and so be entitled to high levels of Housing Benefit, or households in high rent areas receiving large Housing Benefit payments.³⁸ Over 80% of households who are likely to be affected by the cap will consist of 3 or more children, while fewer than 10% of households likely to be affected by the cap will consist of no children at all.

1.57 Because a large proportion of those affected by the benefit cap are likely to be large families, households from cultural backgrounds with a high prevalence of large families will be affected most. It is estimated that approximately 30% of the households that are likely to be affected by the cap will contain somebody who is from an ethnic minority. (Ethnic minorities form less than 20% of the overall benefit population.)

1.58 It is anticipated that 60% of those who have their benefit reduced by the cap will be single females, who comprise around 40% of the overall benefit population. Most of the single women affected are likely to be lone parents. The Children's Society has conducted an analysis which suggests that children will be disproportionately affected by the benefits cap.³⁹ The potential impact in terms of increased poverty for children is considered below.

36 Household Benefit Cap Equality Impact Assessment October 2011

37 Household Benefit Cap Equality Impact Assessment October 2011 para. 13

38 Household Benefit Cap Equality Impact Assessment October 2011

39 Children's Society, A briefing from the Children's Society: the distributional impact of the benefit cap 2011

1.59 **The disproportionate impact on larger households is said to be justified because it promotes fairness with similar-sized households which are just outside entitlement to benefit.⁴⁰ This is undoubtedly a legitimate aim. There is no Strasbourg case law on this specific issue. An alternative approach to increasing fairness is to compare like with like—that is to calculate the level of the cap based on earnings of families with children, rather than all households. We ask the Government whether they have carried out an assessment of these approaches with a view to comparing their proportionality.**

1.60 We have particular concerns about the potential impact on disabled people. Approximately half of the households that are likely to be capped contain somebody who is disabled, reflecting their proportion in the overall benefit population. All households which include a member entitled to DLA will be exempt from the cap.

1.61 The Government assert that not everyone defined as disabled has additional financial needs, and that where disabled claimants are adversely affected by the change (because they are not in receipt of DLA, and hence not exempt from the cap) they can avoid the impact of the cap if they start working sufficient hours to receive Working Tax Credit. **However, we are concerned that some disabled people who do not get DLA (especially with the tightened criteria of the new PIP regime) may be forced to move, and will face disparate impact in terms of extensive disruption regarding adaptations and caring/support networks. We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the cap.**

Under occupation of social housing

1.62 From 1 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 policy objective is said to be the reduction in the cost of Housing Benefit in order to tackle the budget deficit.

1.63 Black and minority ethnic claimants are less likely to be affected by the measure than white claimants.⁴¹ However, for the smaller number of black and minority ethnic households which are affected, average losses are larger. This is partially due to a higher proportion of black and minority ethnic claimants living in London where rents are higher than other parts of the country.

1.64 The proportion of disabled claimants affected by the measure is higher than for non-disabled claimants.⁴² The National Housing Federation estimates that about 108,000 tenants in social rented properties adapted specifically for their needs are likely to be affected by the introduction of the size criteria to restrict housing benefit.⁴³ If such tenants were forced to move into properties unsuited to their needs this might risk breaching their Article 8 rights to respect for private or family life⁴⁴ as well as being potentially discriminatory.

40 Explanatory Notes

41 Because a higher proportion of black and minority ethnic claimants having children living with them, and a tendency to have larger families, this means that under the size criteria, larger properties are appropriate for the claimant.

42 Housing Benefit: Size Criteria for People Renting in the Social Rented Sector Equality Impact Assessment October 2011

43 Written evidence submitted by the National Housing Federation to the Public Bill Committee 2011

44 *R v Enfield LBC (ex parte Bernard)* [2002] E.W.H.C. 2282.

1.65 The Government has indicated that it is prepared to look at exemptions for individuals who are disabled, where their homes have been subject to extensive adaptations.⁴⁵ However, this would not address the disruption to patterns of caring and support networks which can be vital.

1.66 We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions.

(3) Retrogression

1.67 As explained above, there is a strong presumption in the UN human rights treaties against retrogressive measures affecting the right to social security and to an adequate standard of living.

1.68 During this inquiry into the right to independent living for disabled people we have received evidence about specific concerns regarding potentially unjustified retrogression in relation to the UK's obligations under the UNCRDP, particularly Article 19 regarding independent living. These concerns particularly focus on the replacement of DLA with PIP.

1.69 DLA has a mobility component and a care component. The mobility component—for help with walking difficulties—is paid at two different levels. The care component—for help with personal care needs—is paid at three levels. DLA cannot be paid until a person has needed help for three months, and the person must be expected to need help for a further six months. It is proposed to change this qualifying period to six months. There are concerns that this could leave disabled people without support at a critical time, creating further risks to health.

1.70 The Government's view is that the proposal to replace DLA with PIPs is compliant with the UK's obligations under the UNCRDP. It says that PIP is intended to target resources on the people that need it most, taking into account the whole range of services available to, and balancing the various needs of, disabled people. It believes that the changes are justifiable, in terms of supporting those most affected by disability and introducing a fairer, more consistent and evidence-based, assessment system to identify such individuals.

1.71 However, the proposed 20% reduction in the overall budget for PIP means that funds are not merely being refocused on the most needy, but are being significantly reduced. There is considerable uncertainty about how this reduction will be achieved. Increasing the qualifying period for the benefit, and removing mobility element from those in residential care, will only achieve a proportion of the cost reduction required. Reduction in benefit rates and tighter eligibility criteria are likely to be needed to achieve savings of this magnitude. There is therefore a significant lack of clarity about how the Bill's provisions will be implemented. **In light of this uncertainty, and taking into account the discussion above of potential discrimination in relation to disabled people, we are not satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of PIPs on the right of disabled people to independent living.**

1.72 We had particular concerns regarding the proposal to remove the mobility element of PIP for those in residential care. The Government emphasised that this did not arise from economic necessity but from a concern to eliminate overlaps in provision,⁴⁶ and pledged to institute an internal review on this issue. In its written evidence to us, Scope pointed out the lack of any evidence base for this proposal. Lord Low's Review found no evidence of overlap in the support offered by the mobility component of DLA and that offered by local authorities and providers, all of which play a distinct part in meeting disabled people's mobility needs.⁴⁷

1.73 In light of the findings of the Low Review and its own internal review, the Government now accepts that there was insufficient evidence of overlaps in funding provision to justify the withdrawal of the mobility component. On 1 December the Government announced that the mobility component of disability living allowance will not be removed from people living in residential care homes and that the mobility component of PIP will also be payable to people in residential care homes provided they satisfy the entitlement conditions.⁴⁸ **We welcome the Government's willingness to listen to concerns raised about the proposal to withdraw the mobility component of PIP from residential care home residents, including in particular its impact on the right of disabled people to independent living, and its decision to table an amendment to the Bill to remove this provision.**

1.74 A new assessment process to be used to determine eligibility for PIPs is still being developed. The Minister states that it is intended to be fairer than the assessment process for DLA, taking a more holistic account of the impact of disability. **We welcome this intention, which is in keeping with the Government's avowed commitment to the "social model" of disability (as opposed to the outdated "medical model"). This approach recognises that the obstacles to disabled people's inclusion in society are not their physical condition but the environmental, social and attitudinal barriers to their full participation. The UNCRDP is entirely premised on this social model of disability.**

1.75 The proposed assessment process for eligibility for PIPs, however, has been criticised for failing to give effect to the Government's stated intention that the assessment process for PIPs takes a more holistic account of the impact of disability, because the test for eligibility provided for in the Bill is essentially a medical one. **We believe that amending the Bill to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants would make it less likely that that the Bill will lead to incompatibilities with the UK's obligations under the UNCRDP. We further recommend a trial period for the new assessment process and a report to Parliament on the implementation of the new testing system, to ensure that the impact of the new assessment process is fully assessed and analysed in light of its operation in practice.**

1.76 In relation to the UNCRC, the chief concern is that progress in addressing child poverty will be undermined, and may indeed be reversed. Article 27 requires states to recognize the right of every child to a standard of living adequate for the child's physical,

46 HC Deb 9 March 2011 c924

47 Independence Choice and Control, DLA and personal mobility in state funded residential care, The Low Review November 2011

48 HL Deb 1 Dec 2011 col WS21.

mental, spiritual, moral and social development. Whilst parents and carers have the primary responsibility to secure this, states also have responsibility to take appropriate measures to assist them. Both the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights have expressed concern that child poverty remains widespread in the UK, and called on the Government to intensify its efforts to combat it.⁴⁹ The Child Poverty Act 2010 was explicitly linked to the aim of progress towards the realisation of children's rights under international law.

1.77 It is against this background that the impact of the Bill's measures on children must be assessed. A recent report by the Institute of Fiscal Studies forecasts that, while considered in isolation, Universal Credit should reduce relative poverty significantly (by 450,000 children), this reduction is more than offset by the poverty-increasing impact of the Government's other changes to personal taxes and state benefits.⁵⁰ It predicts an increase in absolute child poverty by 200,000 in 2015–16 and 300,000 in 2020–21. The report identifies the most important reform in increasing poverty as the change to the Local Housing Allowance, which from April 2013 will be indexed in line with the consumer price index measure of inflation, rather than one derived from the retail price index.

1.78 Some provisions in the Bill will disadvantage particular groups of children who are already more likely to be in poverty. The provisions with regard to a household benefits cap are more likely to impact on those in large families, as discussed above.

1.79 Concerns regarding the sanctions regime in relation to breaches of Article 3 ECHR are discussed above. There is a particular risk of disproportionate impact on lone parents if those administering sanctions fail to take account of the poor availability of jobs with flexible working hours and affordable childcare. (This is exacerbated by the shift of lone parents with children under 7 but over 5 from Income Support to Job Seekers Allowance). **A report from the Department of Work and Pensions, prior to the Bill's introduction of tighter conditionality sanctions, identified the need further to consider the impact of the JSA conditionality regime on lone parents and the effect of any loss of benefit on them and their children.⁵¹ We endorse this recommendation for detailed research and monitoring of the impact conditionality regime on lone parents.**

1.80 Payment of Universal Credit to only one member in a household will reduce the financial autonomy of women.⁵² A Joseph Rowntree Foundation study demonstrated the continued importance of paying benefits for children to the caring parent and the continued significance of the intra-household distribution of benefits.⁵³ There is a high risk that women have little or no access to money, and will struggle to pay the bills or feed their children. The Secretary of State has said that he understood these and that "there should be

49 Committee on the Rights of the Child (Forty-ninth Session), Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4 (20 October 2008) Concluding Observations of the Committee on Economic, Social and Cultural Rights on the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (22 May 2009)

50 Child and Working Age Poverty 2010–2020 Institute of Fiscal Studies October 2011

51 Department for Work and Pensions (Jo Casebourne et al), Lone Parent Obligations: destinations of lone parents after Income Support eligibility ends, Research Report 710, 2010

52 Similar concerns have been expressed regarding the impact on disabled members of households and the potential to undermine the independence of disabled people.

53 Distribution of income within families receiving benefits, Jackie Goode, Claire Callender and Ruth Lister 1998

scope within the system to make alterations, where a change is required on specific payments”.⁵⁴

1.81 We are also concerned that the abolition of the Discretionary Social Fund, and its replacement with locally-based and designed discretionary provision, may have a negative impact on families who are most in need. The Fund is a national provision, and acts as a safety net for benefit recipients who face exceptional essential expenditure which they cannot meet. The rationale is to create a more responsive, better targeted and relevant service.⁵⁵ Local authorities are expected to devise their own schemes for emergency support. The Government does not expect local authorities to manage loan schemes. This will effectively abolish the provision of crisis loans. There is a risk that this will drive more people to use high-cost lenders. The Government confirmed intention not to ring-fence funding or to impose any new duty on local authorities to provide assistance.⁵⁶ In the current economic climate, it is highly likely that some or all of the funds may be diverted into other local priorities, and a crucial financial safety net would disappear.

1.82 We are concerned that the cumulative impact of the Bill’s provisions may lead to retrogression which is not justified by the factors set out in the General Comments of the UN Committees. We recommend that the Government consider what safeguards can be introduced to minimize this risk. For example, the Bill could be amended to allow payments intended for children to be labelled as such and be paid to the main carer.

Child poverty

1.83 The Bill amends the Child Poverty Act 2010 which imposes a duty on the Secretary of State to meet the child poverty targets set out in the Act by 2020. The Act contains a number of detailed mechanisms designed to ensure that the Secretary of State is assisted in the performance of his duty by an expert advisory Commission on Child Poverty and is accountable to Parliament for the Government’s performance of the statutory duty to ensure that the child poverty targets are met. The Bill amends those mechanisms in a number of ways.

1.84 Most significantly, the Secretary of State’s duty to produce annual progress reports to Parliament is repealed by the Bill.⁵⁷ Instead, the new Social Mobility and Child Poverty Commission, which will replace the Child Poverty Commission established by the 2010 Act, is required to publish annual reports assessing the progress made towards improving social mobility and reducing child poverty in the UK.⁵⁸ The Minister is required to lay these reports before Parliament.⁵⁹ The Bill also removes the obligation on the Secretary of State to request advice from the Commission and to have regard to that advice when developing the UK Child Poverty Strategy.⁶⁰

54 Work and Pensions Committee’s oral evidence session on 9 February

55 Social Fund localisation Impact Assessment, p1

56 Government response to the DWP call for evidence on Local support to replace Community Care Grants and Crisis Loans for living expenses in England was published on 23 June 2011.

57 Clause 140, Schedule 13, para. 8(2), repealing s. 14 of the Child Poverty Act 2010.

58 New s. 8B(1) Child Poverty Act 2010, as inserted by Schedule 13, Part 1, para. 2 of the Bill.

59 New s. 8B(5) Child Poverty Act 2010, as inserted by Schedule 13, Part 1, para. 2 of the Bill.

60 Schedule 13, Part 2, para. 6, repealing sections 10(1)–(3) Child Poverty Act 2010.

1.85 The Government says that the aim of these changes to the Child Poverty Act 2010 is to “improve the accountability of Government in relation to eradicating child poverty, thus helping to meet UK obligations under the International Covenant on Economic and Social Rights, and the UN Convention on the Rights of the Child.”⁶¹ The new Commission will provide independent expert scrutiny of the Government’s strategy for meeting the 2020 targets, and the removal of its advisory functions, the Government argues, will also improve ministerial accountability.⁶²

1.86 We welcome the Government’s avowed intention of improving ministerial accountability for the eradication of child poverty. Improving political accountability for progress towards the eradication of child poverty is in keeping with our view that in a parliamentary democracy it is the democratic branches of the state that should have primary responsibility for economic and social policy.

1.87 We are concerned, however, that the changes to the mechanisms of accountability in the Child Poverty Act 2010 may have the opposite effect to that which is intended, by reducing ministerial accountability to Parliament. We are particularly concerned by the removal of the requirement for the Secretary of State to provide an annual report to Parliament detailing progress towards the child poverty targets and towards implementing both the UK and devolved child poverty strategies. We acknowledge that Parliament will still be provided with annual reports assessing the progress made towards reducing child poverty in the UK, from the Social Mobility and Child Poverty Commission, but we are concerned that such reports to Parliament from independent commissions do not provide the same opportunity for holding a minister to account as a report to Parliament from the minister. In practice, such reports by expert bodies often do not lead to any questions being asked of the relevant Minister or any debate in Parliament.

1.88 Any change to the legal framework which has the potential to diminish ministerial accountability to Parliament for the reduction of child poverty requires the most careful scrutiny, particularly at a time when there is growing evidence that child poverty will in fact increase in the coming years and that the targets set by the 2010 Act are therefore increasingly unlikely to be met. We therefore recommend that the Bill be amended to require the Secretary of State to respond to the Commission’s annual report to Parliament by way of a statement, and that the Government commit to providing an opportunity for Parliament to debate the Commission’s report and the Minister’s statement in response.

Other human rights issues

(1) Contracting out

1.89 In relation to the functions which the Bill allows the Secretary of State to contract out, the Minister has indicated the Government’s view that these are functions of a public nature. In a case where it is alleged that a contractor has acted contrary to the Human Rights Act, the Bill requires claims to be brought against the Secretary of State. **The previous Committee expressed concern that, where contractors are providing services**

61 Letter from the Minister, xxx, at para. 93.

62 Ibid., para. 94.

which amount to a public function for the purposes of the HRA 1998, individuals should be able to exercise remedies against them directly, as Parliament intended.

1.90 We have reported on a number of occasions on the scope of the Human Rights Act 1998 and the circumstances in which private sector entities, performing a public function, will be subject to the duty to act in a Convention-compatible way.⁶³ **Legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament’s original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA.**

(2) Conditionality and drug and alcohol addiction

1.91 The Bill provides for the repeal of certain provisions of the Welfare Reform Act 2009, which created powers to compel certain actions in relation to welfare claimants thought to be abusing drugs or alcohol. The predecessor Committee expressed significant concerns that these powers could lead to a disproportionate interference with the right to respect for private life and physical integrity (as protected by Article 8 ECHR), and were likely to deter individuals from seeking treatment for drug or alcohol addiction or drive drug and alcohol addicted people further into poverty.

1.92 The Minister informed the Committee that there are no current plans to use these mechanisms to mandate claimants to undertake drug testing or treatment. We very much welcome this assurance.

(3) Information sharing

1.93 The Bill introduces various measures designed to simplify the sharing of information in relation to taxation and the administration of welfare benefits. The sharing of personal information provided by a person for one purpose (for example, medical information necessary to perform an assessment of their eligibility for benefits or information about education and work history or income, savings or capital) for another purpose engages the right to respect for personal information protected by Article 8 ECHR. The provisions in the Bill are very broad and would allow any information gathered by HMRC in connection with its functions to be shared with the Secretary of State—or any contractor working for the Secretary of State—for the purposes of their functions (or vice versa). Information can then be transmitted to third parties, but only with the consent of the body who initially held the information (i.e. the Secretary of State or HMRC).

1.94 The Minister clarified that the criminal offence of unauthorised disclosure of information in section 123 of the Social Security Administration Act will continue to apply. Strict data-sharing protocols and access controls are already in place in relation to data-sharing between the Departments under existing provisions. Memoranda of understanding and contracts are reviewed periodically and include full details of how any data must be stored and disposed of. The Department retains the right to test all aspects of data security

⁶³ See Ninth Report of Session 2006–07, *Meaning of Public Authority under the Human Rights Act*, HL Paper 77/HC 410, Seventh Report of Session 2007–08, *Meaning of Public Authority under the Human Rights Act*, HL Paper 39/HC 382.

and handling in order to secure compliance with both the Data Protection Act 1998 and the ECHR. These include a memorandum of understanding to which all local authorities must sign up. The Information Commissioner's Office comments have been fully taken into account. **We welcome these assurances regarding the operation of the information-sharing regime.**

Conclusions and recommendations

The purposes and effect of the Bill

1. We commend the Government's aim to support more people, and in particular people who might otherwise be disadvantaged in the employment market, into work as the most effective route out of poverty. This aim is consistent with many international human rights instruments which recognise the right to work and the right to an adequate standard of living. We therefore welcome the Bill as a potentially human rights enhancing measure. (Paragraph 1.8)

Information provided by the Government

2. We remind departments of the examples of best practice by those departments which have provided us with detailed human rights memoranda accompanying Government Bills. This is not merely a matter of preference by this Committee. The principle of subsidiarity, which the Government rightly seeks to strengthen during its Chairmanship of the Council of Europe, requires the Government and Parliament to fulfil their responsibility for implementing human rights in the national legal system. The provision of detailed human rights memoranda to Parliament is an important means of demonstrating the Government's fulfilment of that responsibility. It also facilitates Parliament in fulfilling its responsibility in that regard. We also remind the Government that, as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny. (Paragraph 1.11)
3. We call on the Government to improve its capacity to conduct equality impact assessments, in particular to go beyond piecemeal analysis of each measure by assessing the proposed provisions as a whole, including their cumulative impact on individuals and groups, from an equality perspective. (Paragraph 1.15)
4. For the reasons we set out below we have concerns that the proposals may be implemented in a way which could lead to a risk of incompatibility with Convention rights. We reiterate our previous recommendation that, where the Government's view on compatibility relies on safeguards to be provided in secondary legislation, we recommend that draft Regulations are published together with the Bill. At the very least, the Government should describe in the explanatory material accompanying the Bill the nature of the safeguards it proposes to provide. (Paragraph 1.17)
5. We call upon the Government better to monitor the post-legislative impact of the measures in the Bill, and of legislative provisions of this kind generally, with particular attention to the risks of destitution, discrimination and retrogression highlighted below. (Paragraph 1.19)

Relevant human rights standards

6. In our view, in any parliamentary democracy it is the democratic branches of the State, that is, the Government and Parliament, which should have primary responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority. (Paragraph 1.22)
7. We are disappointed by the Government's failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP. The legal effect of these human rights obligations in the UK is different in kind from the legal effect of Convention rights, which are given effect in our national legal system under the Human Rights Act, but they are nevertheless binding obligations in international law and the Government should be able to demonstrate that they have considered the compatibility of legislative proposals with those obligations. We have commended a number of human rights memoranda from departments in the past which have done precisely that. (Paragraph 1.35)
8. We remind departments of this Committee's expectation in this respect, which is explicitly referred to in the Cabinet Office Guide to Legislative Procedure. (Paragraph 1.35)
9. We also remind the Government of the "clear commitment" given by the Minister of State for Education, Sarah Teather, to the House of Commons on 6 December 2010, "that the Government will give due consideration to the UNCRC articles when making new policy and legislation", and, in so doing, will always consider the recommendations of the UN Committee on the Rights of the Child. (Paragraph 1.36)

Significant human rights issues

10. The ECHR does not preclude individual member states from setting conditionality requirements in respect of work. However, there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR if the individual concerned was genuinely incapable of work. The absence of more detail about the proposed system of hardship payments, and the lack of publicly available statistics on the number of applications for hardship support under existing regimes, means that we are not in a position to assess the degree of risk. We urge the Government to give careful consideration to this risk, to take steps to establish an appropriate hardship regime, train staff to ensure sensitivity to this issue and carefully monitor the impact of the sanctions regime on people with particular characteristics. (Paragraph 1.45)
11. For the reasons set out below, we remain concerned that these proposals may be implemented in a way which could lead to a discriminatory impact and may not demonstrate a reasonable relationship of proportionality between the means employed and the legitimate aim that is sought to be realised. We consider that changes to welfare support designed to meet the right to social security and the right to an adequate standard of living should be supported by evidence. We recommend

that the changes should be closely monitored to understand the implications of the proposals for individual rights, including the right to respect for an adequate standard of living, and the right to enjoyment of those rights without discrimination. (Paragraph 1.48)

12. This may call into question the objective justification for the disparate impact, and at the very least suggests the need for close scrutiny to ensure that Article 14 is not breached. (Paragraph 1.52)
13. We believe that close monitoring of the impact of this change is essential, in order to ensure that it is proportionate, and to take mitigating action if necessary. (Paragraph 1.55)
14. The disproportionate impact on larger households is said to be justified because it promotes fairness with similar-sized households which are just outside entitlement to benefit. This is undoubtedly a legitimate aim. There is no Strasbourg case law on this specific issue. An alternative approach to increasing fairness is to compare like with like—that is to calculate the level of the cap based on earnings of families with children, rather than all households. We ask the Government whether they have carried out an assessment of these approaches with a view to comparing their proportionality. (Paragraph 1.59)
15. However, we are concerned that some disabled people who do not get DLA (especially with the tightened criteria of the new PIP regime) may be forced to move, and will face disparate impact in terms of extensive disruption regarding adaptations and caring/support networks. We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the cap. (Paragraph 1.61)
16. We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions. (Paragraph 1.66)
17. In light of this uncertainty, and taking into account the discussion above of potential discrimination in relation to disabled people, we are not satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of PIPs on the right of disabled people to independent living. (Paragraph 1.71)
18. We welcome the Government's willingness to listen to concerns raised about the proposal to withdraw the mobility component of PIP from residential care home residents, including in particular its impact on the right of disabled people to independent living, and its decision to table an amendment to the Bill to remove this provision. (Paragraph 1.73)
19. We welcome this intention, which is in keeping with the Government's avowed commitment to the "social model" of disability (as opposed to the outdated "medical model"). This approach recognises that the obstacles to disabled people's inclusion in society are not their physical condition but the environmental, social and attitudinal barriers to their full participation. The UNCRDP is entirely premised on this social model of disability. (Paragraph 1.74)

20. We believe that amending the Bill to ensure that the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by disabled claimants would make it less likely that the Bill will lead to incompatibilities with the UK's obligations under the UNCRDP. We further recommend a trial period for the new assessment process and a report to Parliament on the implementation of the new testing system, to ensure that the impact of the new assessment process is fully assessed and analysed in light of its operation in practice. (Paragraph 1.75)
21. A report from the Department of Work and Pensions, prior to the Bill's introduction of tighter conditionality sanctions, identified the need further to consider the impact of the JSA conditionality regime on lone parents and the effect of any loss of benefit on them and their children. We endorse this recommendation for detailed research and monitoring of the impact conditionality regime on lone parents. (Paragraph 1.79)
22. We are concerned that the cumulative impact of the Bill's provisions may lead to retrogression which is not justified by the factors set out in the General Comments of the UN Committees. We recommend that the Government consider what safeguards can be introduced to minimize this risk. For example, the Bill could be amended to allow payments intended for children to be labelled as such and be paid to the main carer. (Paragraph 1.82)

Other human rights issues

23. The previous Committee expressed concern that, where contractors are providing services which amount to a public function for the purposes of the HRA 1998, individuals should be able to exercise remedies against them directly, as Parliament intended. (Paragraph 1.89)
24. Legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA. (Paragraph 1.90)
25. The Minister informed the Committee that there are no current plans to use these mechanisms to mandate claimants to undertake drug testing or treatment. We very much welcome this assurance. (Paragraph 1.92)
26. We welcome these assurances regarding the operation of the information-sharing regime. (Paragraph 1.94)

Formal Minutes

Tuesday 6 December 2011

Members present:

Dr Hywel Francis MP, in the Chair

Baroness Berridge

Mr Dominic Raab

Lord Bowness

Lord Dubs

Lord Morris of Handsworth

Draft Report, *Legislative Scrutiny: Welfare Reform Bill*, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.94 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twenty-first Report of the Committee to each House.

Ordered, That the Chair make the Report to the House of Commons and that Lord Bowness make the Report to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

Written evidence reported and ordered to be published on 11 October and 6 December was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 13 December at 2.00 pm

Declaration of Lords Interests

No members present declared interests relevant to this Report.

A full list of members' interests can be found in the Register of Lords' Interests:
<http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm>

List of written evidence

- 1 Letter to the Chair, from Mr A Fisher, 17 October 2010 p 35
- 2 Letter from the Chair, to Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 20 July 2011 p 36
- 3 Letter to the Chair, from Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 26 September 2011 p 45

Written Evidence

1. Letter to the Chair, from Mr A. Fisher, of 17 October 2010

I am writing to you with a concern I have over the current proposals within the 2010 Welfare Bill; namely that the Coalition government are looking to encompass an element of a United States style ‘Welfare to Work’ programme and its likely impact upon Human Rights.

In particular I am very concerned that should an individual find themselves without work for an extended period (through no fault of their own other than economic conditions outside their control) and claiming one of current main benefits i.e. Job Seekers Allowance and/or Housing Benefits, they will be forced to undertake community type activities in order to continue to receive benefits.

As I am sure you are aware Article 4 (ii)—Servitude of the European Convention on Human Rights (ECHR) protects European citizens from the effects of Forced Labour; namely where people are forced to work against their will by the threat of destitution, detention, violence or other extreme hardship to themselves or their family. Clearly to make a so-called ‘work for your dole’ programme effective there has to be an element of compulsion. Therefore if an individual refuses to participate and the Department of Work & Pensions (DWP) threatens to reduce or stop any or all parts of their benefits; then the DWP has broken ECHR legislation. The simple threat of stopping benefits for not participating in the programme would in my understanding be enough to have invalidated Article 4 (ii).

There are a number of exemptions to Article 4 (ii) namely, during a state of emergency, work enacted in lieu of a custodial sentence, military conscription and work, which is part of normal civic duty. The Coalition government may try and claim that any such programme would sit within the final of the four exemptions. However no ‘reasonable person’ could argue that this is the case, given you do not see the elderly or teenagers scrubbing graffiti off town centre buildings up and down the land. Alternatively perhaps the government intends to change the law to criminalize the unemployed, by making it a criminal offence to be out of work!

My concern is that rather than putting in place significant programmes of retraining or re-skilling of the long-term jobless, it will be seen as politically expedient and cheaper to just leave them in a suspended state of permanent ‘feudal serfdom’ to the British tax payers. Any such ‘work for your dole’ programme clearly has to be voluntary and not compulsory. Any Welfare Act moving forward which forces the unemployed to undertake community type, street cleaning, tidying of parks and or graffiti removal for a period of say 30–40 hrs per week in return for their JSA or Housing Benefit would be illegal under not only the minimum wage legislation, but more significantly Article 4 (ii) of the ECHR.

17 October 2010

2. Letter from the Chair, to Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 20 July 2011

The Joint Committee on Human Rights is scrutinising the Welfare Reform Bill for its compatibility with the UK's human rights obligations. We are grateful to your officials for agreeing to meet with us earlier in the year to discuss the work of the Committee and its likely approach to the Bill. A number of issues which arise in connection with our work on this Bill are also relevant to our ongoing inquiry on the right of independent living for disabled people.

We would be grateful if you could provide us with some further information on the Government's views on the compatibility of the Bill's proposals with the human rights obligations of the UK.

a) Explanatory Notes

The Committee has encouraged Government Departments to produce freestanding human rights memoranda dealing with the compatibility of legislative proposals with the wider human rights obligations of the UK, outside the ECHR and highlighting any measures which the Government considers may enhance the protection of human rights in practice.

1. I would be grateful if you could explain whether the Government has conducted any analysis of the proposals in the Bill for their compatibility with international human rights law, including, in particular, the obligations of the UK under a) the International Covenant on Economic, Social and Cultural Rights; and b) the UN Convention on the Rights of Persons with Disabilities.

2. I would be grateful if you could provide us with a copy of that analysis.

On a number of previous occasions, our predecessor Committee explained that Explanatory Notes which are very broadly based make it difficult for us to understand the Government's reasoning which supports the Minister's statement of compatibility under Section 19 HRA 1998. While we welcome the broad statement of the Government's position in the Explanatory Notes accompanying the Bill, we would be grateful if you could provide us with some more detailed explanations of the analysis provided.

3. Please provide a further explanation of the Government's view that statutory changes to conditions of entitlement to statutory benefits do not engage Article 1, Protocol 1 ECHR.

4. The Government considers that, if Article 1, Protocol 1 ECHR is engaged, the measures in the Bill are proportionate to the legitimate aim of securing the economic well-being of the country. The Explanatory Notes do not provide a full analysis of the Government's views on these measures, but refer to "relevant" considerations. We would be grateful for a fuller explanation of the Government's view on the

compatibility of these proposals with Article 1, Protocol 1 ECHR (see paragraphs 694—695).

b) Delegated Powers and draft Regulations

Our predecessor Committee recommended on a number of occasions that where safeguards proposed in a Bill are designed to secure the protection of individual rights, those safeguards should be set out in the Bill or at the least produced in draft Regulations at the time the Bill is passed, to allow for full parliamentary scrutiny of the human rights impact of particular provisions. For example, in the Explanatory Notes accompanying the Bill, the Government explains that the ability to make exceptions to the benefits cap will be relevant to the issue of the proportionality of that measure. This issue has been a prominent feature of parliamentary debate, particularly in connection with the issue of whether the cap could operate to increase homelessness or whether the cap could have a discriminatory impact on particular households, including disabled people.

5. I would be grateful if you could explain whether the Government intends to make any draft Regulations available during the debate on the Bill.

6. If not, please explain how Parliament will have a full opportunity to consider the human rights impact of these proposals without full information on the relevant safeguards proposed. Specifically, please explain how Parliamentarians might raise human rights concerns about particular measures, when the draft Regulations will not be subject to line-by-line consideration.

During Report Stage in the House of Commons, the House considered a number of amendments which would have required certain provisions of the Bill to be subject to affirmative rather than negative procedure, including some of the detailed arrangements for the operation of Universal Credit and the Personal Independence Payment. In debate, the Minister indicated that the Government was still considering this issue. We note that the Delegated Powers and Regulatory Reform Committee expressed concerns that significant parts of this Bill will currently be determined in Regulations subject to the negative procedure, including the scope of requirements which the Secretary of State may impose on individual claimants and the operation of the hardship arrangements which will apply in relation to sanctions imposed.¹ In the past, our predecessor Committees have expressed concern where detail and safeguards which are relevant to the human rights impact of welfare reform measures are included in delegated legislation subject only to the negative procedure.²

7. I would be grateful if you could, as a courtesy, provide me with a copy of the Government's response to the Seventeenth Report of the Delegated Powers and Regulatory Reform Committee as soon as it is available.

1 <http://www.publications.parliament.uk/pa/ld201012/ldselect/lddelreg/182/18202.htm>

2 <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrightts/78/7804.htm#a3>(See for example, paragraph 1.21).

c) Equality and impact assessments

We have seen the number of detailed equality impact statements which have been produced by the Department in relation to specific proposals in the Bill. We note that in the introductory memoranda to the Impact Assessments, the Government explains that the impact assessments have been designed to take into account changes to the public sector equality duty in the Equality Act 2010. We note that these impact assessments were not available until after the Bill had had its second reading in the House of Commons.

The EHRC and a number of NGOs have been critical about the scope of the impact assessments produced. For example, the EHRC has raised concerns about the lack of a cumulative impact assessment of the proposals in the Bill on groups bearing each or multiple of the protected characteristics in the Equality Act 2010. They have published their legal advice on the impacts of the Bill. This is an issue which has also been raised in evidence in our independent living inquiry.

8. Please explain why the equality impact assessments produced were not available in time for the introduction of the Bill.

9. Did the Government consult with the EHRC during the preparation of the equality impact assessments accompanying the Bill? If not, has the Government met with the EHRC to discuss their concerns about the scope of the equality impact assessments?

10. Please provide us with the Government's response to the concerns raised by the EHRC that the equality impact assessments prepared do not meet the public sector equality duty in the Equality Act 2010.

11. In light of the number of policy factors yet to be determined in the Bill (see above), is the Government satisfied that these equality impact assessments provide a full picture of the likely impact of the proposals in the Bill?

12. Has the Government conducted an assessment of the likely cumulative impacts of the proposals in the Bill? (Please provide the Government's response to the concern raised during debates in the House of Commons, that, without a cumulative assessment of the impact of the policies in the Bill on people who share protected characteristics (particularly women and disabled people), Parliament will not necessarily have a full picture of whether the Bill will operate in a discriminatory manner.)

13. Please confirm whether human rights memoranda and/or equality impact assessments will be produced to accompany regulations made under the Bill, in particular with regard to any regulations connected to eligibility for benefits, conditionality and the imposition of sanctions and the operation of hardship payments.

d) Monitoring implementation of the proposals in the Bill

Our predecessor Committee, in its Report on the Welfare Reform Bill 2009, noted that while the proposed reforms to welfare could operate in a manner which was compatible with human rights standards, a lot would depend on how the scheme was operated in

practice, including how the detail of the scheme was set in further regulations. That Committee called on the Government to keep the scheme under review, including monitoring how the scheme engaged the human rights of claimants. The Bill already provides for the Secretary of State to report to Parliament on the operation of the assessment process to be introduced in connection with the Personal Independence Payment. During Report Stage in the House of Commons, the Minister for Disabled People, Maria Miller MP, indicated that the Government was still considering how best to monitor the impact of other measures in the Bill, including the impact of housing benefit reforms:

We want to ensure proper and accurate monitoring of the impact of the introduction of our policies. Indeed, we have put that in place for the work capability assessment and our reform of DLA. (HC Deb 13 June 2011, Col 600)

14. I would be grateful if the Government could outline the measures which it proposes to take to monitor the impact of the proposals in the Bill after they are implemented, including discriminatory impact on people and groups of people with the characteristics protected by the Equality Act 2010.

Clause 59 repeals provisions relating to drug dependence introduced in the Welfare Reform Act 2009. The predecessor JCHR criticised these provisions during the passage of the Act, expressing particular concern that requiring claimants to undergo treatment or testing could interfere with their right to respect for private life (Article 8 ECHR).

15. Please confirm that conditionality either in a claimant commitment or in a work-related or work preparation requirement will not extend to a requirement on claimants to undertake drugs testing or treatment (similar to the provision envisaged in Section 11, Welfare Reform Act 2009).

e) Contracting out

A number of clauses in the Bill provide powers for the Secretary of State to delegate power to implement the measures in the Bill to “authorised persons”. It is unclear from the drafting in the Bill whether the Government intends “authorised persons” will be performing public functions for the purposes of the HRA 1998. On the one hand, the provisions in the Bill make clear that authorised persons’ acts or omissions should be treated as if they were performed or omitted by the Secretary of State. On the other hand, the Bill exempts anything done for the “purposes of so much of any contract between the authorised person and the Secretary of State as relates to the exercise of the function.”

16. In relation to each of the clauses in the Bill which provide for the Secretary of State to contract out certain of his functions in relation to welfare reform, please explain whether the Government considers the authorised person will be performing a “public function” for the purposes of Section 6 of the Human Rights Act 1998?

17. If not, please explain against which public body an individual who wished to rely on the Human Rights Act 1998 could claim.

f) An adequate standard of living, destitution and poverty

The Explanatory Notes accompanying the Bill express the Government's categorical view that none of the provisions in the Bill will create a risk that any claimant will fall into destitution or poverty which meets the standard identified by the House of Lords in *Limbuela* that engages the right to be free from inhuman and degrading treatment (Article 3) ECHR. Principally, the Government explains that:

- a. the most severe sanctions will not apply to claimants who face significant barriers to work;
- b. there will be a hardship regime in place to protect vulnerable claimants and their families;
- c. “[i]n relation to the proposal to introduce an entitlement to work for certain benefits, “other means of support will be available where necessary to ensure compliance with Article 3”; and
- d. in relation to the closure of the social fund and other discretionary forms of assistance (such as community care grants and crisis loans), these will be replaced by local authority measures.

Much of the detail of the impact of these proposals will be determined in secondary legislation, including, importantly the operation of proposed hardship safeguards.

18. I would be grateful if you could provide a fuller explanation of the information provided by the Government on the likely compliance with Article 3 ECHR of the proposals in the Bill, including fuller information on the safeguards outlined in the Explanatory Notes (see Explanatory Notes, para 705). In particular:

- a. **please explain the Government's view that the imposition of a sanction leading to a reduction in benefit will not be “treatment” for the purposes of Article 3 ECHR;**
- b. **please provide further information on how the proposed hardship regime will operate;**
- c. **please explain what “other means of support will be available where necessary to ensure compliance with Article 3”; and**
- d. **please explain how the Government's understanding of these measures and the power to make payments on account has informed the Government's understanding of the likely compatibility of the operation of these measures with Article 3 ECHR. (We understand that the measures which are intended to replace discretionary social fund payments are not yet settled.)**

19. In light of the relevance of the operation of the hardship regimes proposed in the Bill for the impact of the Bill in practice on the rights of individual claimants, I would be grateful if the Government could provide us with further information on the operation of the existing hardship regime which operates in connection with sanctions

associated with other benefits. In particular, I would be grateful if you could provide us with annual statistics on the number of applications made for support under the hardship regime (and the overall number of cases where sanctions have been imposed); and how many of those applications have been successful.

g) Universal Credit

A number of specific questions were raised in the House of Commons about the operation of Universal Credit in order to better ascertain whether there is a risk that these provisions will operate in a way which may lead to discrimination. These included:

- a. whether the proposal to time-limit contributory elements of Employment Support Allowance (and the equivalent Universal Credit) may have a discriminatory impact on disabled people and women when calculation of eligibility for means-tested elements of the allowance may depend on the income of a family carer or a primary earner;
- b. whether the calculation of eligibility for Employment Support Allowance (and the equivalent Universal Credit) by reference to household income will have a discriminatory effect on disabled people and particularly on disabled women;
- c. whether the absence of information on the availability of support for childcare creates a risk that it is impossible to assess whether the provisions in the Bill might operate in a manner which has a discriminatory impact on low-income working families and particularly women in low-income working families;
- d. whether the proposed cap on housing benefit (and the housing element of Universal Credit) will have a discriminatory impact on disabled people;
- e. whether the proposed cap on Universal Credit may have a discriminatory impact on disabled people;
- f. whether the imposition of either of these caps is likely to lead to an increased likelihood of homelessness and whether appropriate safeguards are in place to protect vulnerable people from destitution; and
- g. whether the proposal to pay Universal Credit directly to one person per household has the potential to undermine the independence of disabled people.

The Government has provided detailed policy responses to each of these concerns during debates. We have asked more detailed questions about the impact assessments conducted by the Government in this correspondence. **We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the Universal Credit to have a discriminatory impact on people or groups with protected characteristics (including women and disabled people).**

h) Personal Independence Payments

A number of issues have been raised during debate in the House of Commons and in written evidence to our inquiry on the right of independent living for disabled people about the removal of Disability Living Allowance (DLA) and the operation of the Personal Independence Payment. These include:

- a. what steps has the Government taken to involve disabled people and disabled peoples' organisations in the development of its proposals for PIP, as required by Article 4 of the UN Convention on the Rights of Persons with Disabilities;
- b. whether the proposal to remove the mobility element of PIP (currently DLA) for disabled people in residential care will undermine the ability of the UK to meet its obligations under the UN Convention on the Rights of People with Disabilities (Clause 83);
- c. how will support for carers be determined after the implementation of the PIP;
- d. whether the application of regular assessments of eligibility for PIP will be applied in a way which interferes with the right of disabled people to respect for private life and personal integrity; (A number of concerns have been raised about the impact of regular assessment on the health of disabled people when considered in connection with the costs associated with regular assessment of those with long-term or permanent impairments.)
- e. how disabled children will secure support to ensure that they can secure their rights under the UN Convention on the Rights of Persons with Disabilities (children will not receive PIP); and
- f. whether the proposed change to the qualifying period (which will require disabled people to illustrate that they have been affected by a disability for 6 months and are expected to continue to be disabled by that impairment for a further six months) could leave disabled people without support, create further risks to health and undermine the ability of the UK to meet its obligations under the UN Convention on the Rights of Persons with Disabilities.

The Government has provided detailed policy responses to each of these concerns during debates. We have asked more detailed questions about the impact assessments conducted by the Government in this correspondence. **We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the PIP to have an adverse impact on disabled people. In particular, could you set out the Government's response to criticism that certain aspects of PIP could have a retrogressive impact on the rights of disabled people which could be inconsistent with the UK's obligations under the UN Convention on the Rights of Persons with Disabilities.**

i) The right to a fair hearing (Article 6 ECHR)

In the Explanatory Notes accompanying the Bill, the Government explains that “there will (as now) be a right to appeal against any decision to apply a benefit sanction as a consequence of a failure to meet a work-related or connected requirement (Explanatory Notes, paragraph 708).

20. I would be grateful if you would confirm that the imposition of any sanction under Bill will be subject to appeal. If so, please explain why Clauses 126, 27, 46, 49 and 54 need not be amended to provide that the relevant Regulations should provide for an appeal to the first tier tribunal in connection with the imposition of any sanction associated with Universal Credit, Employment Support Allowance or Job Seeker’s Allowance.

21. I would be grateful if you could provide us with annual statistics on the number of sanctions decisions subject to appeal, including the number of appeals which are successful and the number of appeals which are rejected.

Clause 100 is designed to reinstate a rule which existed prior to the abolition of the specialist social security appeal tribunal. This would allow the Secretary of State to change or “supercede” a decision of the tribunal in limited circumstances. The Explanatory Notes explain that this change would be to take into account changes of circumstance and could be beneficial or detrimental to the claimant. The Explanatory Notes explain why the Government considers that this proposal is compatible with Article 1, Protocol 1 ECHR. They do not however address the application of Article 6 ECHR. Article 6 ECHR and the right to a hearing by an independent and impartial tribunal applies to the decisions taken in connection with eligibility for benefits. Article 6 ECHR generally requires a determination by the relevant tribunal to be final and not subject to administrative revision in order to satisfy the requirement for a fair hearing.

22. Please provide a fuller explanation of the Government’s view that the provisions in Clause 100 which reinstate the power of the Secretary of State in connection with the supersession of tribunal decisions is compatible with Article 6 ECHR.

i) The right to respect for private life (Article 8 ECHR): Information sharing

Clauses 123–128 of the Bill introduce various measures designed to simplify the sharing of information in relation to taxation and the administration of welfare benefits. The sharing of personal information provided by a person for one purpose (for example, medical information necessary to perform an assessment of their eligibility for benefits or information about education and work history or income, savings or capital) for another purpose engages the right to respect for personal information protected by Article 8 ECHR.

The Government expresses its view that these provisions “will be exercised compatibly with Article 8”. Where Article 8 is engaged the Government considers that the provisions will operate proportionately to the legitimate aim of safeguarding the economic well-being

of the country and the protection of health. The Explanatory Notes provide no explanation of the Government's reasons for this view.³

23. Please provide a more detailed explanation of the Government's view that the proposed information sharing gateways in Clauses 123–128 of the Bill will operate in a manner which is compatible with Article 8 ECHR. In particular, please provide details of any relevant safeguards which will be in place to ensure that the information shared between public authorities and private contractors will be handled in a manner which is compatible with the Data Protection Act 1998 and Article 8 ECHR.

24. Has the Government consulted with the Information Commissioner about the scope of the information sharing gateways proposed in Clauses 123–128 of the Bill?

k) Child Poverty: The Social Mobility and Child Poverty Commission

Our predecessor Committee welcomed the introduction of the Child Poverty Act 2010 as a positive measure designed to help meet the UK's obligations to secure an adequate standard of living for children. Clause 135 makes provision for the creation of a Social Mobility and Child Poverty Commission and was introduced as a Government amendment during House of Commons Committee Stage.

25. We would be grateful if the Government could provide an explanation of how it considers the Social Mobility and Child Poverty Commission will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

26. Please also explain how the other changes in the Bill to the Child Poverty Act 2010—including the removal of the duty on the Secretary of State to report to Parliament—will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

l) Reservations to the UN Convention on the Rights of Persons with Disabilities: Capacity and Benefits Nominees

On ratifying the UN Convention on the Rights of Persons with Disabilities, the UK entered a number of reservations. A number of these were criticised by the predecessor JCHR. However, the predecessor JCHR accepted that a reservation on ratification was necessary in connection with Article 13 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (Access to Justice) in connection with a deficiency in the law, which failed to provide an opportunity for review in connection with the appointment and conduct of benefits appointees. At the time, the then Government reassured the JCHR that it intended to resolve this inconsistency and remove the reservation. The JCHR welcomed this undertaking and regretted the delay at that time (two Welfare Reform Bills had been considered during the process of ratification).

In the draft Report to the UN on the Convention, the Government explains:

³ EN, paras 715–717.

The Government has therefore been developing a proportionate system of review to address this issue. Disabled people have been involved in the design and pilot. Design work will be completed in July 2011. Once the system is introduced consideration will be given to removing this reservation (see paragraph 79).

27. I would be grateful if you could provide us with an update on the Government's position on the UK reservation to Article 13 UNCRPD. In particular:

- a. please provide further information on the progress of the design and piloting of the proposed system of review;
- b. if "design work" is due to be completed in 2011, please provide a target timetable for legislating to introduce a review mechanism which is compatible with Article 13 CRPD;
- c. in the light of this timetable, is there any prospect that these reforms may be introduced as late amendments to the Welfare Reform Bill?
- d. if not, can the Government explain why the timescale for design of the relevant procedures have been so lengthy as to preclude their introduction in this Welfare Reform Bill?
- e. After the introduction of legislation on this issue, does the Government intend to remove the UK reservation to Article 13 UNCRPD? If not, please provide an explanation.

We would be grateful for a response by 5 September 2011, in order to allow the Committee to consider its views in advance of the Bill's Committee Stage in the House of Lords. I would also be grateful if you could provide me with a Word version of your response to aid with publication.

20 July 2011

3. Letter to the Chair, from Rt Hon Iain Duncan Smith MP, Secretary of State for Work and Pensions, 26 September 2011

Thank you for your letter dated 20 July 2011 requesting further explanation of the Government's view that the proposals in the Bill are compatible with the UK's human rights obligations. The attached paper sets out the Government's response to the Committee's questions.

I would like to thank the Committee for agreeing to extend the proposed deadline for reply.

26 September 2011

Response to Welfare Reform Bill letter, 20 July 2011

(Q 1) I would be grateful if you could explain whether the Government has conducted any analysis of the proposals in the Bill for their compatibility with international human rights law, including, in particular, the obligations of the UK under a) the International Covenant on Economic, Social and Cultural Rights; and b) the UN Convention on the Rights of Persons with Disabilities.

(Q 2) I would be grateful if you could provide us with a copy of that analysis.

1. The Government has conducted a full analysis of the proposals in the Bill for their compatibility with our obligations under the European Convention on Human Rights (this is summarised in the explanatory notes). It is also content that the proposals in the Bill are compatible with our wider international human rights obligations, insofar as these are relevant, including the International Covenant on Economic Social and Cultural Rights and the UN Convention on the Rights of Persons with Disabilities. The Government is committed to protecting the rights of disabled people, and the report that will be submitted to the United Nations on the implementation of the Convention later this year will set out the steps being taken. The Government does not consider that the proposals raise any particular issues in respect of these wider obligations such as to merit a detailed analysis.

(Q 3) Please provide a further explanation of the Government's view that statutory changes to conditions of entitlement to statutory benefits do not engage Article 1, Protocol 1 ECHR.

(Q 4) The Government considers that, if Article 1 Protocol 1 ECHR is engaged, the measures in the Bill are proportionate to the legitimate aim of securing the economic well-being of the country. The Explanatory Notes do not provide a full analysis of the Government's views on these measures, but refer to "relevant considerations. We would be grateful for a fuller explanation of the Government's view on the compatibility of these proposals with Article 1 Protocol 1 (see paragraphs 694–695 of the Explanatory Notes).

2. Article 1 Protocol 1 does not confer a right to receive social security benefit, nor does it guarantee a right to a particular amount of benefit (*Stec & Others v UK*, application number 65731/01 and 65900/01). The Government therefore considers that there will be no interference with Article 1 Protocol 1 where the State changes the conditions of entitlement to a benefit or introduces a new benefit. However, the Government has also considered the justifications for and proportionality of the relevant measures.

Entitlement to universal credit

3. The Government considers that in cases where a person applies for universal credit, but does not meet one or more of the entitlement conditions and is therefore not entitled to universal credit, no issue can arise under Article 1 Protocol 1 because the person does not have any property right.

4. Equally, the Government considers that in cases where a person (1) applies for universal credit; (2) meets the conditions of entitlement and is therefore awarded the benefit; (3)

subsequently no longer meets one or more of the conditions and is therefore disentitled, the person no longer has any property right and there is therefore no possession for the purposes of Article 1 Protocol 1. Where a person has met the conditions of entitlement and is awarded benefit, the possession in the benefit for the purposes of Article 1 Protocol 1 must be limited to the right to the benefit for as long as the statutory conditions of entitlement are met.

5. The changes are in any event justifiable. A re-design of the benefits and tax credits systems which aims to create greater incentives to work and earn money, and allows income to be subject to a more generous taper which will mean that a claimant will keep more of their benefits despite working and earning money, clearly meets a legitimate aim.

6. Any change to an existing claimant's amount of benefit will be a proportionate measure. Universal credit has been designed to provide an appropriate structure of support for people with no or low incomes both in and out of work. The central aim is to smooth the transition into work by reducing the support a person received at a consistent rate as their earnings increase.

7. The provisions in clause 37 and Schedule 6¹ are sufficient to ensure that the Department for Work and Pensions can design transitional protection for existing claimants in a way which allows for sufficient notice to be given to claimants of any change, particularly significant change. This measure will help to ensure that the impact of any changes in benefit levels on particular individuals is proportionate.

Condition relating to entitlement to work

8. Clauses 60–62 amend the Jobseekers Act 1995, the Welfare Reform Act 2007 and the Social Security Contributions and Benefits Act 1992. They make provision for 'entitlement to work' to be introduced as a condition of entitlement for claimants of contributory employment and support allowance (ESA (C)), contributions based jobseekers allowance (JSA (C)), maternity allowance and statutory payments.

9. These amendments make provision such that claimants will be required to have an entitlement to work as a condition of entitlement to these benefits and statutory payments. For benefits, this requirement must be met at the point of claim. It will not operate to remove benefit that is already in payment.

10. This proposal will operate to ensure that those who may have been working illegally are not entitled to benefits or payments based on their illegal employment and the National Insurance contributions that may have been paid by them in that employment. The amendment is made only to legislation which applies to non means tested benefits and payments which are accessed by virtue of the person actually being in work, or having recently worked.

11. Section 115 of the Immigration and Asylum Act 1999 makes provision for access to means tested benefits to be limited in relation to those who have no right to be in or work in Great Britain. This takes effect by way of regulations which are specific to each of the

¹ References to clauses in the Welfare Reform Bill are to version HL Bill 75, as brought from the Commons. We note that references to the Bill in the Committee's letter are to the earlier version, Bill 197.

means tested benefits. There is currently no equivalent provision which relates to non means tested benefits or payments, or benefits based on National Insurance contributions, on the premise that those with no entitlement to work will not have been working. However, the Government is aware that those with no entitlement to work are able to access such benefits or payments as there is no legislative bar on them doing so. This proposal seeks to address this lacuna.

Period of entitlement to contributory employment and support allowance

12. Clause 51 amends the Welfare Reform Act 2007 to restrict entitlement to ESA(C) to 365 days for those in the work-related activity group. The clause details how the 365 days are calculated with reference to the period over which entitlement has arisen. It further makes provision for claimants to re-qualify for further periods of entitlement if they meet the conditions of entitlement in the future. This reform does not apply to those in the most disabled of the ESA claimant group; the support group. Any claimant who loses entitlement to ESA(C) as a consequence of this provision will be able to access income-related ESA, and in due course, universal credit, if they meet the applicable means tests.

13. The effect of the provision in question will be to put ESA(C) on a similar footing to JSA(C), where entitlement is limited to six months, and will be consistent with the approach taken to other contribution based benefits and statutory payments administered by the Department for Work and Pensions, all of which are time-limited.

14. The legislation will make provision for the calculation of the year's limit and this will be applied to all claimants (both new and existing), with the exception of those in the support group whose needs are such that it is appropriate that the State continue to provide support indefinitely. Claimants will be made aware of the detail of the proposals at the earliest appropriate time and will accordingly have time to adapt and prepare themselves for the forthcoming change in position.

15. Further, the change supports the Government's aim of engaging claimants in the process of recovery and return to work, ensuring that those who need the support of the State receive it, and those who need less support are helped to move towards and prepare for a return to the workplace. Time limiting ESA(C) will encourage claimants to make use of the back to work support that is offered to them, so as to increase their chances of finding appropriate work.

16. The measure is also justified given the significant cost to the public purse of paying ESA(C). The practical effect of the proposal to time limit will be limited to people who have capital or income above a certain level, such that they will not be able to access means tested benefits. At the expiry of entitlement to ESA(C) claimants can continue to receive income-related ESA if appropriate in their circumstances, providing that they also satisfy the means test. This enables the Government to direct public funds at those most in need of them.

Condition relating to youth

17. Clause 52 makes amendments to the Welfare Reform Act 2007 in relation to ESA claimed on the grounds of youth ('ESA(Y)'). The existing provisions allow for a person

under 20, or in certain circumstances, 25, to be able to access ESA without meeting the National Insurance conditions, or the means test, and allows them to remain on the benefit indefinitely.

18. This clause provides for there to be no new claims to ESA(Y) after the commencement of these provisions. Further, existing awards for claimants in the work-related activity group will be time limited by virtue of clause 51 which is dealt with above. Existing claimants in the support group will continue to be entitled to ESA(Y).

19. It is justifiable to treat young people the same as older claimants. Young people will be able to access ESA(C) on the basis of their own NI contributions if available, and if not will be able to access income-related ESA should they meet the means test. This ensures that the public purse continues to support those with limited funds who are less able to help themselves.

Entitlement of lone parents

20. Income support is the main income-replacement benefit for lone parents. Before November 2008, lone parents with a youngest child up to the age of 16 could claim income support as a lone parent. Since then, this threshold age has been reduced first to 12, then to 10 and, on 25 October 2010, to 7.

21. The Government announced in the budget that income support would no longer be available to lone parents with a child of 5 or over.

22. Clause 57 will amend section 3(1) of the Welfare Reform Act 2009 so that, when it is brought into force, any regulations setting out the prescribed categories of person who are entitled to income support must include lone parents with a child under the age of 5. This will enable existing regulations to be amended so that lone parents with a child of 5 or 6 are no longer entitled to income support solely on grounds of being a lone parent.

23. Most lone parents are expected to claim JSA once the threshold age for the end of entitlement to income support reduces to 5 and will be required to meet JSA conditionality—which means that they will be expected to be available for and actively seeking employment, and otherwise comply with requirements imposed on them in relation to their JSA award.

24. The Government considers that it is reasonable to expect claimants to be available for and actively seeking work once their child is in full-time education, in return for financial support. Further, the change is expected to lead to greater employment of lone parents which will have a positive effect on child poverty. The change is proportionate to that aim. In particular, there is a wide range of flexibilities and support available to lone parents claiming JSA to help ensure that any requirements imposed on them are not disproportionate and will take account of the lone parent's role as the main carer for their child.

Personal independence payment

25. The Bill makes provision for the introduction of a new benefit, to be known as personal independence payment (“PIP”). This benefit will in due course replace disability living allowance. The new benefit is to be a non-taxable, non-contributory benefit, designed to contribute towards the additional costs associated with long-term disability and be focused on those with the highest need.

26. It is intended to be a dynamic benefit, taking account of changes in individual circumstances and the impact of disabilities to a greater degree than is presently possible within the disability living allowance structure. The benefit will better reflect 21st century attitudes towards disability and developments in equality legislation. It is justifiable for this kind of support to be focused on those individuals who are most affected by their impairment. The assessment process will ensure that these individuals are identified in a fair, transparent, consistent and evidence-based manner. Claimants will also be given clear notice of the timetable for the introduction of PIP and the eventual cessation of disability living allowance.

27. The changes are justifiable, in terms of supporting those most affected by disability, and introducing a fairer, more consistent and evidence-based assessment system to identify such individuals.

Benefit cap

28. Clauses 93 and 94 allow for a cap on the total amount of benefit received from the State (from central Government and local authorities). There is a power to provide for exceptions from such a cap. The intention is to use this power to exempt households where a member of the household is working above a certain level, has a disability and is entitled to disability living allowance, PIP or constant attendance allowance, or is a war widow or widower.

29. The reason for having a cap is to balance the interests of benefit claimants with the interests of taxpayers. The Government believes that the effect of the cap is proportionate, taking into account: (1) the amount of the cap and the fact it will be based on average household earnings; (2) the fact that claimants will be notified of the cap and given time to adjust their spending to accommodate their new levels of benefit; and (3) the fact the cap will affect relatively few households and that those affected will already have a substantial income from benefits.

Recovery of benefit payments

30. The amendments to the Social Security Administration Act 1992 made by clause 102 allow for the recovery of any amount of universal credit, JSA and ESA that has been paid in excess of entitlement and prescribe the methods by which those overpayments may be recovered. The prescribed methods of recovery in each case are by offsetting against, or deduction from, other benefits, by court action or by deduction from earnings.

31. The Government considers that the strengthened measures it is putting in place for recovery of excess payments are justified and proportionate. In the present time of constrained public finances it is essential to ensure recovery of overpaid benefits in all appropriate circumstances. It is important also to preserve the appearance of fairness so

that the public can see that limited public funds are being focused on those who have a proper legal entitlement to those monies.

32. In order to identify proportionately and transparently the cases where it is appropriate to pursue recovery in such cases, the Department for Work and Pensions plans to issue a code of practice which will set out the principles it will apply in deciding when to seek recovery. This will enable proper account to be given to the circumstances of the debtor, and the nature and reasons for the overpayment.

(Q 5) I would be grateful if you could explain whether the Government intends to make any draft Regulations available during the debate on the Bill.

(Q 6) If not, please explain how Parliament will have a full opportunity to consider the human rights impact of these proposals without full information on the relevant safeguards proposed. Specifically, please explain how Parliamentarians might raise human rights concerns about particular measures, when the draft Regulations will not be subject to line-by-line consideration.

33. Illustrative draft regulations will be provided in relation to some parts of the Bill during the Lords Committee stage. In all areas, we will provide notes on how regulation-making powers will be used, as we did during the Commons stages of the Bill.

34. Regulations subject to the affirmative procedure must be laid before Parliament in draft, and are subject to debate and approval by Parliament. Regulations subject to the negative procedure may be prayed against by any Member of Parliament and a debate must then be tabled. Parliamentarians will be able to raise any human rights concerns during such debates.

(Q 7) I would be grateful if you could, as a courtesy, provide me with a copy of the Government's response to the Seventeenth Report of the Delegated Powers and Regulatory Reform Committee as soon it is available.

35. The response is attached.

(Q 8) Please explain why the equality impact assessments produced were not available in time for the introduction of the Bill.

36. There is no formal requirement to publish equality impact assessments for a particular stage in the legislative process. They were published after introduction in order to ensure that they were as up-to-date as possible in advance of the Commons Committee stage, the first point of the parliamentary process where a Bill is subject to detailed scrutiny.

(Q 9) Did the Government consult with the EHRC during the preparation of the equality impact assessments accompanying the Bill? If not, has the Government met with the EHRC to discuss their concerns about the scope of the equality impact assessments?

37. Officials from the Department for Work and Pensions met with the EHRC on 5th July 2011 to discuss various concerns and questions relating to the Welfare Reform Bill equality impact assessments.

38. The Welfare Reform Bill equality impact assessments were based on the Department for Work and Pensions' equality impact assessment tool which is designed to help to ensure that the needs of people with protected characteristics are taken into account when changing, developing or implementing a policy or service. This tool has been discussed with EHRC and informed by EHRC guidance.

(Q 10) Please provide us with the Government's response to the concerns raised by the EHRC that the equality impact assessments prepared do not meet the public sector equality duty in the Equality Act 2010.

39. There has been no formal written response to concerns raised by the EHRC. However, the EHRC's concerns were discussed at the meeting with officials on 5th July and the issues discharged. Specific concerns that were raised are addressed in questions 12 and 13 below.

(Q 11) In light of the number of policy factors yet to be determined in the Bill (see above), is the Government satisfied that these equality impact assessments provide a full picture of the likely impact of the proposals in the Bill?

40. Yes. Equality impact assessments are part of an ongoing, iterative process. The Department for Work and Pensions will update the assessments with the equality related analysis that informs the continuing development of the policies and how they are implemented. Once these policies are implemented the Department will continue to monitor their impact and review decisions accordingly.

(Q 12) Has the Government conducted an assessment of the likely cumulative impacts of the proposals in the Bill? (Please provide the Government's response to the concern raised during debates in the House of Commons that, without a cumulative assessment of the impact of the policies in the Bill on people who share protected characteristics (particularly women and disabled people), Parliament will not necessarily have a full picture of whether the Bill will operate in a discriminatory manner.)

41. The proposals in the Bill impact on a wide variety of groups in different ways. A single overall cumulative equality impact assessment has not been produced, for the reasons as set out in paragraphs 3 to 5 of the impact assessment cover note (<http://www.dwp.gov.uk/docs/wr2011-ia-cover-note.pdf>):

1) The scale of policy change provided for by the Welfare Reform Bill is significant, and is planned to take place over an extended period, beginning in 2011–12 with changes to lone parent obligations, and ending in 2017–18 with the completion of the transition to universal credit. Therefore the impacts build-up over a substantial period of time, and at a different rate for the various measures. To provide a single summary accurately taking account of the different timings would be analytically complex and extremely challenging. To simplify would risk providing a set of misleading impacts.

2) Moreover the changes to social security benefits and tax credits contained in the Bill take place in a wider context of fiscal change. The impact assessments therefore do not account for wider changes that would impact on households over the period, for example, the aim to increase income tax personal allowances to £10,000.

3) Collectively these factors substantially limit the extent to which a cumulative impact assessment would provide an accurate analysis of the impacts of the Bill as a whole. Moreover, an amalgamated assessment is likely to obscure the impacts of individual policies rather than aid the understanding of those considering the Welfare Reform Bill in Parliament and the wider public.

(Q 13) Please confirm whether the human rights memoranda and/ or equality impact assessments will be produced to accompany regulations made under the Bill, in particular with regard to any regulations connected to eligibility for benefits, conditionality and the imposition of sanctions and the operation of hardship payments.

42. It is envisaged that further equality impact assessments will be prepared during the implementation of the Welfare Reform Bill, including in relation to benefit eligibility, conditionality, sanctions and hardship payments. For Lords Committee, we will update equality impact assessments where there have been significant policy announcements made since the original assessments were published.

43. There is no requirement to produce a human rights memorandum to accompany regulations. Where regulations are subject to the affirmative resolution procedure, a statement on their compatibility with the ECHR will be included in the Explanatory Memorandum to the regulations.

(Q 14) I would be grateful if the Government could outline the measures which it proposes to take to monitor the impact of the proposals in the Bill after they are implemented, including discriminatory impact on people and groups of people with the characteristics protected by the Equality Act 2010.

44. The detailed evaluation plans for post-implementation are still being developed, however the Department for Work and Pensions is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups. Specifically (as set out in the “monitoring and evaluation” sections of the equality impact assessments—<http://www.dwp.gov.uk/policy/welfare%2Dreform/legislation%2Dand%2Dkey%2Ddocuments/welfare%2Dreform%2Dbill%2D2011/impact%2Dassessments%2Dand%2Dequality/>):

1)The Department will use administrative datasets to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups.

2) The Department will use survey data (for example the Family Resources Survey and Labour Force Survey) to assess trends in the incomes of the protected groups and in the employment outcomes.

3) The Department will use qualitative research and feedback from stakeholder groups to assess whether there are unintended consequences for the protected groups, and whether the policy is resulting in adverse consequences for particular groups.

4) The Department will utilise feedback from Departmental employee networks and internal management information. For example we will monitor the level of appeals and complaints in order to assess the broader impact of the policy.

5) The Department will draw on broader Departmental research where appropriate, as well as any research commissioned specifically as part of the evaluation of the measure.

(Q 15) Please confirm that conditionality either in a claimant commitment or in a work-related or work preparation requirement will not extend to a requirement on claimants to undertake drugs testing or treatment (similar to the provisions envisaged in section 11, Welfare Reform Act 2009).

45. The Government can confirm that there are no current plans to use these mechanisms to mandate claimants to undertake drug testing or treatment. Section 11 of the Welfare Reform Act 2009 is being repealed by the Bill (see clause 59). We will keep under review alternative approaches which might encourage claimants to address addiction. Any proposals that are taken forward will be compatible with the ECHR, in particular with Article 8.

(Q 16) In relation to each of the clauses in the Bill which provide for the Secretary of State to contract out certain of his functions in relation to welfare reform, please explain whether the Government considers the authorised person will be performing a “public function” for the purposes of section 6 of the Human Rights Act 1998?

(Q 17) If not, please explain against which public body an individual who wished to rely on the Human Rights Act 1998 could claim.

46. Clause 29 allows for the Secretary of State to contract out his functions under clauses 13 to 25 (clause 49 inserts new section 6L into the Jobseekers Act 1995 and clause 56 inserts new section 11K into the Welfare Reform Act 2007. These new sections mirror clause 29, which relates to universal credit, and apply to JSA and ESA, respectively, as contributory benefits once universal credit is introduced). Clauses 13 to 25 relate to the claimant commitment (that claimants must accept as a condition of entitlement to universal credit under clause 4(1)(e)), and the work-related requirements that may be imposed on claimants as part of the conditionality regime. Clause 29(4) makes it clear that anything done, or not done, by the contractor in carrying out the Secretary of State’s functions is to be treated as done, or not done, by the Secretary of State, save for anything that concerns the actual contract between the Secretary of State and the contractor to carry out the function or in relation to criminal proceedings against the contractor.

47. The Government’s view is that the functions under clauses 13–25 are of a public nature. This applies whether they are exercised by the Secretary of State or by another person authorised under clause 29. In a case where it is alleged that a contractor has acted contrary to the Human Rights Act, a person may bring a claim against the Secretary of State.

(Q 18) I would be grateful if you could provide a fuller explanation of the information provided by the Government on the likely compliance with Article 3 ECHR of the proposals in the Bill, including fuller information on the safeguards outlined in the Explanatory notes (see Explanatory Notes para 705). In particular:

a. please explain the Government’s view that the imposition of a sanction leading to a reduction in benefit will not be “treatment” for the purposes of Article 3 ECHR;

48. The Department considers that the reduction of a universal credit award where a claimant has failed to comply with mandatory requirements does not amount to “treatment”. In the case of *Secretary of State for the Home Department v Limbuela, Tesema and Adam* [2004] EWCA Civ540 the House of Lords stressed that the Article does not oblige a State to provide any minimum standard of social support for those in need: it does not require the State to provide a home or a minimum level of financial assistance to all within its care.

49. The conditions which were recognised in *Limbuela* as capable of giving rise to ‘treatment’ do not arise in the context of benefit sanctions. A sanction will only apply where: (1) claimants have clearly had explained and set out for them the reasonable requirements that they must meet, and that underpin their entitlement to receive benefit; (2) the consequences of failing to meet the requirements are made absolutely clear to claimants; (3) there is no legal restriction on claimants’ ability to seek work and therefore support themselves; (4) a sanction is as a result of a claimant’s own voluntary actions and only imposed where a claimant has no good reason for failing to comply with a requirement.

b. please provide further information on how the proposed hardship regime will operate;

50. We are currently reviewing the system of hardship payments, including options to ensure that any hardship regime does not undermine the deterrent effect of sanctions.

c. please explain what “other means of support will be available where necessary to ensure compliance with Article 3”;

51. The explanatory notes to the Bill state: “*In relation to the proposal to introduce a condition of entitlement to work for certain benefits [clauses 60–62], other means of support will be available where necessary to ensure compliance with Article 3*”. Support may be available under section 95 of the Immigration and Asylum Act 1999 if the person makes a claim for asylum and would otherwise be destitute, and also under section 4 of the 1999 Act for failed asylum seekers who are destitute and face recognised barriers to return to their home country. Alternatively, if a claim for asylum has not been made then limited support may be available from Local Authorities, by virtue of section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989.

d. please explain how the Government’s understanding of these measures and the power to make payments on account has informed the Government’s understanding of the likely compatibility of the operation of these measures with Article 3 ECHR. (We understand that the measures are intended to replace discretionary social fund payments are not yet settled).

52. The Government does not consider that powers to make payments on account will be directly relevant to claimants who are subject to a sanction or to those who are not entitled to benefits because they do not have an entitlement to work in the UK.

53. Payments on account are currently made by virtue of regulations made under powers in section 5(1)(r) of the Social Security Administration Act 1992. They are made on a discretionary basis in cases where a claim for benefit cannot be made or determined immediately; where a claim has been made and it is impracticable for the claim to be determined immediately; or where an award has been made but it cannot be paid immediately.

54. Clause 98 of the Bill substitutes a new section 5(1)(r) into the Social Security Administration Act. The substituted section 5(1)(r) provides expanded powers to make payments on account. The intention is to use these powers to provide for advances of benefit in two ways: (1) short term advances which will replace both interim payments made currently (see paragraph 53 above) and crisis loans for benefit alignment purposes; and (2) budgeting advances which will replace budgeting loans for universal credit claimants. Budgeting loans and crisis loans are part of the discretionary social fund, and will cease to exist once section 138(1)(b) of the Social Security Contributions and Benefits Act 1992 is repealed in respect of such loans by clause 69(1) of the Bill.

55. Short term advances may be made where a claimant is receiving benefit, but has difficulties with budgeting between payments because of a change to their award amount, or where a claimant's first pay day has not yet been reached. The purpose of budgeting advances will be to help towards meeting expenses that are difficult to budget for out of normal benefit income, or for which the claimant has been unable to save, or to deal with fluctuations in expenditure throughout the year.

(Q 19) In light of the relevance of the operation of the hardship regimes proposed in the Bill for the impact of the Bill in practice on the rights of individual claimants, I would be grateful if the Government could provide us with further information on the operation of the existing hardship regime which operates in connection with sanctions associated with other benefits. In particular, I would be grateful if you could provide us with annual statistics on the number of applications made for support under the hardship regime (and the overall number of case where sanctions have been imposed); and how many of those applications have been successful.

56. Under current income-based JSA rules (set out in the Jobseekers Regulations 1996, Part IX), claimants can receive hardship payments (effectively a reduced payment of income-based JSA) if they are subject to a sanction for failing to meet labour market related conditions, and they meet certain criteria (e.g. that they would suffer hardship if payments were not made).

57. Certain claimants, often referred to as “vulnerable” can receive hardship payments from the date that the sanction applies, but all other claimants can only receive hardship payments from the 15th day of the sanction.

58. Currently, single claimants who are sanctioned are not paid any JSA (their personal amount plus any premiums, in combination; this is known as their applicable amount). Hardship payments are a claimant's applicable amount minus 40% of their personal amount (or 20% in cases where a claimant, or a member of their family, is pregnant or seriously ill).

59. In a joint JSA claim, when one member is sanctioned, payment of the JSA award is reduced to an amount equivalent to a single person's personal amount plus any premiums. If eligible for hardship the joint claim can receive full rate of benefit minus 40/20% of the applicable single person's personal amount.

60. The same provisions apply for those on JSA who are sanctioned as a result of benefit fraud, except in the case of a joint claim. In a joint claim case, where one of the joint claimants is not involved in the fraud and is not subject to a sanction for breaching conditionality requirements, JSA remains payable but only to that person and at a single person rate. Alternatively if the couple is in hardship, joint-claim JSA hardship payments may be paid. Where both of the joint claimants were involved in the fraud or one committed benefit fraud and the other breached JSA conditionality requirements, if the couple is in hardship, joint claim JSA hardship payments may be paid.

61. Where a person receiving an income-related benefit other than JSA is sanctioned as a result of benefit fraud, the existing system provides for benefit to remain in payment but reduced by an amount equivalent to 20% or 40% of the single person's applicable amount, depending on the person's circumstances.

62. There are no publicly available statistics on the number of applications for hardship support.

(g) We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the Universal Credit to have a discriminatory impact on people or groups with protected characteristics (including women and disabled people).

63. The equality impact assessments for universal credit, the household benefit cap and other measures in the Bill looked at the potential for adverse impacts on individuals with protected characteristics. The Government will take account of additional points that have been raised as equality impact assessments are updated. However, the Government believes that the changes it is proposing are compatible with its human rights related obligations.

64. The combination of higher disregards and a lower taper in universal credit should provide families with more flexibility to balance work and caring responsibilities. universal credit will also provide greater stability of income and consistency of support, and so will significantly reduce the risks associated with moving into work. These changes will be of benefit to both women and men.

65. Universal credit will significantly change the pattern of entitlements to benefit, with women and families with children more likely to see increases in their benefit income than single males. This will particularly benefit the poorest households, who will receive the vast majority of the gains from universal credit. A package of transitional protection will ensure that there will be no cash losers as a direct result of the move to universal credit, where circumstances remain the same.

66. Under universal credit, work-focussed support will be tailored to the needs of the individual to help them find suitable work and ensure that they are not excluded from the

labour market. As a result of our current reforms, we are offering employment support to more lone parents, who are predominately female, and aim to promote more equality of opportunity between men and women in accessing labour market opportunities and helping with a move back into the labour market. Helping lone parents move into work means that they are able to enjoy the wider advantages that come from working that are experienced by the rest of the working population. This could also help them and their families to move out of poverty.

67. Disabled people should also gain as a result of improved work incentives and smoother transitions into work. For example, the single taper and higher disregards for households with a disabled adult should support disabled people to work a few hours (especially those with fluctuating capacity to work, for example, because of mental health problems).

(h) We would be grateful if you would like to add anything to the Government's earlier responses to concerns raised during the House of Commons debates (or by NGOs and others) about the potential for the operation of the PIP to have an adverse impact on disabled people. In particular, could you set out the Government's response to criticism that certain aspects of PIP could have a retrogressive impact on the rights of disabled people which could be inconsistent with the UK's obligations under the UN Convention on the Rights of Persons with Disabilities.

68. PIP is intended to target resources on the people that need it most, taking into account the whole range of services available to, and balancing the various needs of, disabled people. In doing so, the Government believes that the changes are compliant with the UK's obligations under the Convention.

69. The new assessment for PIP, which the Government is currently developing, is intended to be fairer than that of disability living allowance, taking more holistic account of the impact of disability. It will do this by considering a range of activities and not basing entitlement on meeting single criteria, as in disability living allowance. In doing so the Government wants to ensure that it considers all impairment types equally, unlike disability living allowance which often fails to take full account of the impact of mental, cognitive and sensory impairments. For example, the assessment will consider an individual's ability to communicate, ensuring we better assess the effect of impairments of hearing, speech and language comprehension. Meanwhile, entitlement to the mobility component will be based not only on physical ability to get around but will also consider an individual's ability to plan and follow a journey.

(Q 20) I would be grateful if you would confirm that the imposition of any sanction under the Bill will be subject to appeal. If so, please explain why clauses 126, 27, 46, 49 and 54 need not be amended to provide that the relevant Regulations should provide for an appeal to the first tier tribunal in connection with the imposition of any sanction associated with Universal Credit, Employment Support Allowance or Jobseeker's Allowance.

70. Claimants will have a right of appeal to the First-tier Tribunal against a decision to reduce their benefit award amount in accordance with a sanction.

71. Clauses 26, 27, 46 and 54 (which include provision about the imposition of sanctions under JSA, universal credit and JSA and ESA as contributory benefits following the introduction of universal credit), do not need to include provision about appeal rights because sections 8 to 12 of Social Security Act 1998 set out the appeals structure, and already apply to JSA and ESA, and will, by virtue of amendments made in the Bill, also apply to universal credit.

72. Section 8 of the Social Security Act 1998 makes general provision for decisions by the Secretary of State on a claim. Paragraph (1)(a) provides that it shall be for the Secretary of State to decide any claim for a relevant benefit (which includes JSA and ESA). Paragraph 45 of Schedule 2 to the Bill amends section 8 of the Social Security Act 1998 to add universal credit to the list of relevant benefits. Sections 9 and 10 allow for the revision and supersession of decisions made under section 8, in accordance with regulations. Section 12 provides for appeals against decisions made by the Secretary of State under sections 8 and 10. Section 12(1)(a) of the Social Security Act 1998 provides that any decision of the Secretary of State made under section 8 or 10 which is made on a claim for, or an award of a relevant benefit, and does not fall within Schedule 2 (decisions against which no appeal lies) is appealable to the First-tier Tribunal. A decision to reduce an award in accordance with the provisions contained in clauses 26, 27, 46 and 54 will be a supersession decision made under section 10 on an award of a relevant benefit, and will therefore be appealable.

(Q 21) I would be grateful if you could provide us with annual statistics on the number of sanctions decisions subject to appeal, including the number of appeals which are successful and the number of appeals which are rejected.

73. In 2010–11 there were 594,500 conditionality-related JSA sanctions and 164,700 JSA disallowances (where claimants had failed to meet the conditions of entitlement of actively seeking and being available for work; had failed to attend an interview or had failed to agree their jobseeker's agreement), and 15,780 appeals against such JSA sanction and disallowance decisions.

74. The Secretary of State's original decision was upheld in approximately 87% of cases. It is important to note that when a decision is overturned, it does not necessarily mean that the original decision was incorrect based on the available evidence at the time it was made. There are many factors that can affect the outcome of an appeal, for example, a common reason for a decision being overturned is additional evidence being provided that was not available to the original decision maker.

75. If a claimant on income support because they are a lone parent, or on ESA and in the work-related activity group fails to attend or participate in a mandatory work-focused interview without good cause, a sanction is applied. In 2010–11, there were 9,280 sanctions applied in relation to ESA claimants, and 76,400 sanctions applied to lone parents on income support. Data on appeals against ESA and income support sanctions and data on the number of sanctions applied to income support claimants outside the lone parent regime is not publicly available.

(Q 22) Please provide a fuller explanation of the Government's view that the provisions in clause 100 which reinstate the power of the Secretary of State in connection with the supersession of tribunal decisions is compatible with Article 6 ECHR.

76. The effect of clause 100 is to re-instate references that existed before 2008 to ensure that the legislation concerning supercessions is consistent. Currently, the legislation makes provision for a decision maker to supercede decisions of the First-tier Tribunal or the Upper Tribunal, but (as the result of a drafting error in the Transfer of Tribunal Functions Order 2008 made under the Tribunals, Courts and Enforcement Act 2007) makes no reference to decisions made by the appeal bodies that were abolished in 2008.

77. Taking social security cases as the example, a “superseding” decision made under section 10 of the Social Security Act 1998 (decisions superseding earlier decisions) would itself carry appeal rights in accordance with the provisions of section 12 of that Act (appeal to the First-tier Tribunal). This, therefore, ensures that the powers in section 10, including as they would be amended by clause 100, can be exercised compatibly with ECHR Article 6.

78. Similar provision for appeals is made in relation to housing benefit and council tax supercession decisions (see paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 and in the case of child support (see section 20 of Child Support Act 1991).

(Q 23) Please provide a more detailed explanation of the Government’s view that the proposed information sharing gateways in clauses 123–128² of the Bill will operate in a manner which is compatible with Article 8 ECHR. In particular, please provide details of any relevant safeguards which will be in place to ensure that the information shared between public authorities and private contractors will be handled in a manner which is compatible with the Data Protection Act 1998 and Article 8 ECHR.

Clause 124

79. The measures set out in Clause 124 will consolidate and simplify a number of existing gateways between HMRC and the Department for Work and Pensions. Relevant repeals are set out in Part 13 of Schedule 14 to the Bill. The criminal offence of unauthorised disclosure of information in section 123 of the Social Security Administration Act will continue to apply.

80. To strengthen existing protections for shared information, the new gateway in clause 124 will be permissive and will replace certain mandatory gateways. As a result, both Departments will have to assess the risk and necessity of any requests to share information and any onward disclosure of shared information will have to be authorised by the originating Department.

81. Strict data sharing protocols and access controls are already in place in relation to data-sharing between the Departments under existing provisions. These have been drawn up having regard to the need to comply with data protection requirements and human rights law. Work is already in hand to develop these, and where necessary strengthen them, so as to operate effectively in relation to universal credit and the new gateway. The relevant privacy impact assessments will also be updated, where necessary.

² Clauses 123 to 128 in the version of the Bill as amended in Public Bill Committee (Bill 197), are now numbered as clauses 124–129 in the House of Lords version (HL Bill 75).

82. Both Departments routinely share information with third parties who provide services to them under contract. The provisions contained in clause 124 will extend to those service providers but the permission of the originating Department must first be obtained to any information-sharing with them. Contracts will be put in place to state that service providers are acting on behalf of Department for Work and Pensions and/or the Commissioners of HMRC. As such the service providers are effectively carrying out Departmental functions and are required to take on the same responsibilities of those Departments. This, therefore, means that the statutory duty of confidentiality and the criminal sanction also attaches to any information that is shared with them. In order to achieve the assurance that both Departments require under this gateway (clause 124) the contracts will also contain full details of how any data must be stored and disposed of and other specific requirements with which the service provider must comply in order to secure compliance with both the Data Protection Act 1998 and the ECHR.

83. To provide practical assurance that information will be safeguarded, a memorandum of understanding will be drawn up and signed by all relevant parties. This will detail: (1) the information to be shared; (2) how it may be used; (3) how it will be stored; (4) retention periods and secure disposal or decommissioning procedure, and provide for controlled access to the data. The memorandum of understanding will also state whether any onward disclosure is to be permitted and, if so, for what purpose and with whom, and the security arrangements and standards required for the process. Service providers will be expected to have similar clauses in contracts with any private contractors who provide a service to them or exercise functions on their behalf.

84. Memoranda of understanding and contracts are reviewed periodically in collaboration with service providers and the Department retains the right to test all aspects of data security and handling carried out on the part of service providers during the course of the contract. This may include provision of assurance certificates, providing up-to-date documentation at regular periods to show that standards are being maintained and personal inspection or audit of the data security arrangements.

Clauses 125 to 128

85. The information gateways provided for in clauses 125 and 126 are required in order to make it easier for individuals to receive certain welfare services or help with housing costs. Currently individuals have to provide detailed financial information to different parts of government each time they apply for a benefit or service. Normally such information can only be shared where the person has consented. Having a legal gateway allowing such data to be reused for a number of different beneficial purposes will ensure the individual can access certain benefits and services more easily. The majority of individuals affected will be people who are disabled, elderly or vulnerable and they often find the application process for benefits and services more difficult than other claimants.

86. The measures in clause 127 provide that any person who misuses data that is shared under clause 126 will be guilty of an offence, and the measures in clause 128 are supplementary provisions that apply to clauses 125 and 126.

87. The Department for Work and Pensions already has an established process in relation to setting up new data sharing arrangements. A detailed implementation plan will be

designed and agreed with local authorities before any data sharing under these provisions takes place. We will test these where appropriate, in order to identify the precise amount of data that needs to be shared, and the method by which it will be transferred. Detailed guidance will be provided to staff who will be implementing the new provisions. This will include advice relating to safeguards, retention and storage, onward disclosure etc. A privacy impact assessment will be produced, setting out the proposed arrangements. The requirements of the Data Protection Act 1998 will be adhered to, for example, a privacy notice will be produced to ensure that when individuals supply their data in the first instance they will be advised that if they subsequently apply for one of the other prescribed benefits or services their data may be re-used for that new purpose.

88. Information is already routinely shared between the Department for Work and Pensions and local authorities in relation to the administration of housing and council tax benefit. A number of measures are in place in order to ensure data is safeguarded. These include a memorandum of understanding which all local authorities must sign up to; access to data being given only to accredited staff; regular checks to make sure staff only access data in accordance with the memorandum of understanding; and secure electronic networks for the transfer of data. The Department for Work and Pensions intends to apply such measures to any new data sharing arrangements under the provisions in clauses 125-126.

89. Local authorities are expected to ensure that they have similar protections in contracts with any private contractors that are providing service to them or exercising functions on their behalf. In any supply or use of information under any of these provisions, a public authority has to act compatibly with Convention rights and in accordance with the requirements of the Data Protection Act 1998, in particular, compliance with the first and third Data Protection Principles.

90. There is at present no policy intent for the Department for Work and Pensions to disclose data to private contractors under clauses 125 and 126. However, should a situation arise in the future where this is required, data will only be supplied where there is a contract in place setting out the minimum security requirement that the contractor must adhere to with respect to data provided by the Department. For example, this will include ensuring that their staff receive training on data protection issues, are made aware of the criminal offence provisions which relate to the data sharing and to ensure that there is restricted access to data supplied by the Department.

(Q 24) Has the Government consulted with the Information Commissioner about the scope of the information sharing gateways proposed in clauses 123–128 of the Bill?

91. The Department for Work and Pensions consults with the Information Commissioner on data protection matters and, in establishing protocols to protect personal information, has had regard to all relevant guidance from him.

92. The Department for Work and Pensions holds regular meetings with the Information Commissioner's Office to discuss data sharing issues in relation to the use of social security information. These meetings provide an opportunity to review our security measures on a regular basis. In addition, the Information Commissioner's Office was invited to comment specifically on these measures and clauses, as part of a consultation exercise earlier in the

year. They did respond and their comments have been fully taken into account. Further discussions will take place with the Information Commissioner's Office once the Department for Work and Pensions has developed more detailed plans for implementing the new measures.

(Q 25) We would be grateful if the Government could provide an explanation of how it considers the Social Mobility and Child Poverty Commission will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

93. The new Social Mobility and Child Poverty Commission will have an extended remit which will include social mobility as well as child poverty. The Commission will produce independent annual reports assessing progress towards reducing child poverty and increasing social mobility, and towards meeting the child poverty targets and implementing the UK's child poverty strategies. The Commission will provide independent expert scrutiny of the strategy which the Government has developed to meet the 2020 target set out in the Child Poverty Act 2010. This will improve the accountability of Government in relation to eradicating child poverty, thus helping to meet UK obligations under the International Covenant on Economic and Social Rights, and the UN Convention on Rights of the Child.

(Q 26) Please also explain how the other changes in the Bill to the Child Poverty Act 2010—including the removal of the duty on the Secretary of State to report to Parliament—will help meet the UK's obligations under the International Covenant on Economic and Social Rights and the UN Convention on the Rights of the Child to secure an adequate standard of living for children and their families.

94. The duty to report is now an obligation of the Commission, rather than the relevant Secretary of State, to provide independent expert scrutiny of the child poverty strategy. The three key changes to the Child Poverty Act 2010 are:

- 1) The expansion of the remit of the Commission, so that it can consider social mobility and the root causes of poverty;
- 2) Moving the requirement to produce an annual progress report from the Secretary of State to the Commission, therefore improving ministerial accountability; and
- 3) The removal of the Commission's advisory functions, therefore improving ministerial accountability.

95. These three changes will ensure there is a better framework in place for driving action towards the 2020 targets, and will create a more effective Commission that can assist the Government in its goal of reducing child poverty.

(Q 27) I would be grateful if you could provide us with an update on the Government's position on the UK reservation to Article 13 UNCPRD. In particular:

b. please provide further information on the progress of the design and piloting of the proposed system of review;

c. if “design work” is due to be completed in 2011, please provide a target timetable for legislating to introduce a review mechanism which is compatible with Article 13 CRPD;

d. in the light of this timetable, is there any prospect that these reforms may be introduced as late amendments to the Welfare Reform Bill?

e. if not, can the Government explain why the timescale for design of the relevant procedures have been so lengthy as to preclude their introduction in this Welfare Reform Bill?

f. After the introduction of legislation on this issue, does the Government intend to remove the UK reservation to Article 13 UNCRPD? If not, please provide an explanation.

96. The UK Government ratified the UN Convention on the Rights of Persons with Disabilities on 8 June 2009 and the Convention came into effect on 8 July 2009.

97. On ratification the UK entered a reservation in relation to paragraph 4 of Article 12 (Equal Recognition Before the Law) (not Article 13 as referred to in the Committee's letter).

98. Article 12.4 reads as follows:

States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

99. The UK's reservation to this provision states:

The United Kingdom's arrangements, whereby the Secretary of State may appoint a person to exercise rights in relation to social security claims and payments on behalf of an individual who is for the time being unable to act, are not at present subject to the safeguard of regular review, as required by Article 12.4 of the Convention and the UK reserves the right to apply those arrangements. The UK is therefore working towards a proportionate system of review.

100. A reservation was necessary because no review process was in place in relation to benefit appointments under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968).

101. Work to design and test a suitable review process has been taken forward by the Pension and Disability Carers Service. There was initial consultation with representatives of Equality 2025 (a non-departmental public body whose members have a disability, and which offers strategic advice to Ministers and senior Government officials on issues affecting disabled people) and a small stakeholder group which included representatives from Age UK and local government social care, and with members of the PDCS Advisory Forum (which comprises 22 organisations representing a broad range of claimants including pensioners, disabled claimants of all ages, and carers).

102. An equality impact assessment for the proposed review process was published in September 2011 and can be viewed at:

<http://www.dwp.gov.uk/publications/impact%2Dassessments/equality%2Dimpact%2Dassessments/2011/>

103. A business test was undertaken from October 2010 to January 2011. This was designed to test the effectiveness and efficiency of different communication methods as well as providing a review of the existing appointee arrangements in the individual cases selected. The results showed that the most appropriate review method was postal.

104. The postal review method involves sending a form to the appointee which first reminds them of their responsibilities as an appointee e.g. that they must always act in the best interests of the benefit customer, must tell the Department for Work and Pensions if the claimant becomes capable of managing their own affairs, report any changes in the claimant's circumstances, pay care home fees, not take a fee from the benefit for acting as an appointee; it then asks specific questions about the claimant's capabilities; finally, it asks the appointee to sign a declaration that he has met and will continue to meet his responsibilities. A failure to reply or to answer in a way which raises concerns may result in the appointment being revoked.

105. The postal method reflects the requirement to introduce a proportionate system of review. In developing the review system we have been mindful of balancing the need for the system to be as robust as possible but without being too onerous for the customer or the Department.

106. For claimants, we want a system that offers adequate safeguards but avoids being overly intrusive. The Department is keen to avoid damaging the implicit covenant of trust that is established by the Secretary of State's approval of an appointeeship. This is particularly important where it is a parent/child relationship. A heavy-handed approach could actually result in existing appointees choosing to relinquish their appointments, or could deter new appointees from coming forward.

107. The proportionate approach ensures that the system is deliverable. There are currently around 725,000 appointees—and this number is growing—and so this necessitates a light-touch approach, with appropriate follow up activity as required.

108. The Department recognise that within these constraints it cannot develop a system that will eliminate all potential for financial abuse. The approach has therefore been to ensure that the role and responsibility of appointees is made as clear as it could be; and that

the new review system acts as a deterrent to them acting otherwise by letting them know that at some point in time we would review that role.

109. The Department for Work and Pensions plans to begin to introduce the review process from this autumn. However, the review process is subject to a final strategic confirmatory decision by the Department. This decision will not be made until November and we will write to the Committee again at that stage to confirm the latest situation as regards introduction of the new process.

110. The new review process does not require legislation because regulation 33(2)(a) of the Claims and Payments Regulations (SI 1987/1968) already contains an unlimited discretion for the Secretary of State to revoke a person's appointment as an appointee. No changes to regulations are required, still less any new provision in the Welfare Reform Bill.

111. The Government is satisfied that what is being put in place meets the requirements of Article 12.4 and accordingly will remove the reservation once the new review process is fully operational.

26 September 2011

List of Reports from the Committee during the current Parliament

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704