

# MEMORANDUM TO THE JOINT COMMITTEE ON HUMAN RIGHTS

## The Welfare Reform and Work Bill 2015

### A. Summary of the Bill

#### Introduction

1. Section 19 of the Human Rights Act 1998 (“the HRA 1998”) requires a Minister to make a written statement prior to Second Reading, as to the compatibility of the provisions of the Bill with the European Convention on Human Rights (“the Convention”). The purpose of this memorandum is to analyse the issues arising from the Welfare Reform and Work Bill (“the Bill”) in relation to assessing its compatibility with the Convention.

2. The provisions of the Bill are compatible with the Convention and the Minister has made a statement of compatibility under section 19(1)(a) of the HRA 1998 to the effect that in his view the provisions in the Bill are compatible with Convention rights.

### B. Policy background

3. The measures contained in the Bill implement policies outlined in the Conservative Party manifesto or which were announced in the Summer Budget on 8 July 2015. All of the policies for the measures in the Bill are based on a number of political and social considerations which include the current economic climate, ensuring that the system is fairer for taxpayers and promoting work as a vital means of tackling poverty. They support the aims of moving from a high tax, high welfare and low wage society to a lower tax, lower welfare and higher wage society and the Government's commitments to achieve full employment and achieve a more sustainable welfare system that is fairer to tax payers.

4. The Bill is underpinned by three key principles:

- that work is the best route out of poverty and being in work should always pay more than being on benefits;
- that spending on welfare should be sustainable and fair to the taxpayer whilst protecting the most vulnerable;
- that people in receipt of benefits should face the same choices as those in work and not in receipt of benefits.

### **C. Analysis by Article and clause**

5. Only provisions in the Bill which raise potential issues under the Convention are addressed in this memorandum. We refer to the Explanatory Notes published on introduction of the Bill on 9 July 2015 for further background detail on each of the clauses.

6. The main articles of the Convention that fall to be considered are Article 8, Article 1 of Protocol 1 and Article 14 in conjunction with Article 8 or Article 1 of Protocol 1.

#### **Article 8**

7. The Government does not consider that any of the provisions of the Bill interfere with Article 8. Article 8 does not impose an obligation upon the State to provide a home (*Chapman v. UK (2001) 10 BHRC 48*) or to provide benefit, nor a particular amount of benefit (*Anufrijeva v London Borough of Southwark [2003] EWCA Civ 1406*). Further, in relation to the benefit cap specifically, the Court of Appeal has held that the introduction of the cap does not breach Article 8 rights (*R (on the application of SG & Others) v. SSWP [2014] EWCA Civ 156*) setting out that it was “premature and pessimistic” to conclude that family life would not be able to continue (paragraph 100) but held that even if there had been an interference with the claimants’ family lives, the interference would be justified.

#### **Article 1 of Protocol 1**

8. The Government acknowledges that welfare benefits are possessions for the purposes of Article 1 of Protocol 1. However, Article 1 of Protocol 1 does not guarantee the right to acquire a benefit or to any amount of benefit. It is the fact of entitlement which is protected, not a particular amount of benefit (*Muller v. Austria 5849/72 (1975) 3 DR 25*). Therefore, there will be no interference with Article 1 of Protocol 1 by the measures in the Bill. It may be argued, however, that the provisions reducing social rents (clause 19) interfere with a private registered provider’s (‘PRP’) rights under Article 1 of Protocol 1 by requiring the PRPs to cut rents of their social housing by 1% per annum for 4 years (commencing 2016-2017) from a frozen 2015-16 base line.

#### Justification

9. Article 1 of Protocol 1 recognises the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest and the State is afforded a wide margin of appreciation in the sphere of economic or social policy (*Stec and Others v UK [2006] All ER (D) 215, Carson v. UK (2010) 51 EHRR 369*).

10. The rent reductions are in the public interest for the purposes of deficit reduction and consistent with the existing regime which already limits the ability of PRPs to set rents for social housing.

11. Furthermore, the provisions safeguard PRPs by giving the Regulator power to issue a direction providing that the reduction does not apply in respect of a PRP if the rent reductions threaten that provider's financial viability.

12. The Government's position is therefore that any interference is justified and proportionate.

#### **Article 14**

13. A number of clauses may result in a difference in treatment between different groups of people. This could give rise to arguments under Article 14, combined in particular with Article 1 Protocol 1 and/or Article 8. As stated above, the Government's position is that neither Article 1 Protocol 1 nor Article 8 itself is breached. However, Article 14 may be engaged where a measure falls within the ambit of another Article, even though that latter Article itself is not breached (see *Belgian Linguistic Case (1979-80)* 1EHRR 241).

14. In many cases, the claimants in question will not be in an analogous position. Where the claimants are in a comparable situation, and there is or may be less favourable treatment by virtue of any of the measures, it is lawful on the grounds that it is in accordance with the law and necessary in a democratic society in pursuance of the legitimate aim of safe-guarding the economic well-being of the country. Further, the courts have accepted (*R (on the application of Carson) v Secretary of State for Work and Pensions* [2006] 1 AC 173) that for administrative efficiency there may need to be so-called "bright-line" distinctions between different groups.

15. As stated above, the State is afforded a wide margin of appreciation in the sphere of economic or social policy (*Stec and Others v UK* [2006] All ER (D) 215, *Carson v. UK* (2010) 51 EHRR 369) and the courts will not interfere with a measure unless any interference is "manifestly without reasonable foundation" (*Humphreys v. HMRC* [2012] UKSC 18 - affirmed by the Supreme Court in *R (on the application of SG and Others) v SSWP* [2015] UKSC 16).

16. The measures in the Bill pursue a number of aims in the areas of economic and social policy. The measures create incentives to work and encourage those that can work to do so. This will help to alleviate poverty and increase the overall economic prosperity of the country. The measures also ensure fairness between working and non-working households. The

measures also aim to secure the economic well-being of the country as they will lead to a significant reduction of the deficit. The expectation is that they will ensure 8 billion of the 12 billion pounds committed to in the Government's manifesto and therefore help eliminate the deficit as is necessary to keep the economy secure and safeguard the long term prosperity of the country. This will benefit all citizens, including those affected by these measures and their families.

17. For these reasons, the Government's position is that all measures are in pursuance of legitimate aims, and are justified, proportionate and not manifestly without reasonable foundation. Further specific reasoning applicable to individual measures is set out below.

#### The reduction of the benefit cap – clauses 7 and 8

18. The Government accepts that Article 14 is engaged in relation to the benefit cap on the basis that the provisions fall within the ambit of Article 1 of Protocol 1 and arguably Article 8.

19. The cap currently has less of an impact on couples or single claimants than lone parents, with around 6 in 10 of those capped being lone parents. As the majority of lone parents are women, there may also be a greater impact on women. It should be noted that the Supreme Court has recently held, in the case of *R (on the application of SG & Others) v. SSWP [2015] UKSC 16*, that the cap does not breach Article 14 in respect of women who are lone parents. Further, the Government has given lone parents greater support to take up employment opportunities by, for example, providing 30 hours of free childcare for those with children aged three and four. Moreover, entering work is not the only way to mitigate against the effects of the cap.

20. It may be argued that the cap has a greater impact on large families and it may be argued by some that large family size might be regarded as an "other status" for the purpose of Article 14.

#### Justification

21. It is the Government's view that, to the extent any of these groups are impacted so as to engage Article 14 of the Convention (when read with either Article 1 of Protocol 1 and/or Article 8), the disproportionate impact is justified. Reducing the benefit cap is necessary to ensure the economic wellbeing of the country and ensure people are always better off in work than on benefits. Further, the measure is proportionate as exemptions and safeguards exist to protect the most vulnerable and State Pension and Pension Credit are excluded, reflecting that the policy is primarily a work incentive aimed at people of working age.

22. The aims of the reduction are, principally, to reduce the economic deficit, increase fairness between working and non-working households and increase work incentives, which are legitimate aims and, therefore, any disproportionate impact as a result of the reduction in the cap is not manifestly without reasonable foundation.

23. It is also clear that the introduction of the cap has had the effect of increasing the numbers of people in work. The Government has reviewed the cap<sup>1</sup> and the evidence shows that, since the benefit cap was first introduced, claimants subject to the cap are 41% more likely to enter work than those not capped, which demonstrates that the cap is working. Reducing the cap will encourage more claimants to enter work.

24. The cap ensures fairness between working and non-working households and reflects the broader economic situation – around 4 out of 10 households earn less than £23,000 in London, whilst around 4 out of 10 households in GB (excluding London) earn less than £20,000.

25. Although some groups may not be subject to work conditionality requirements, this is not the same as them being unable to work. For example, approximately 1.2 million of lone parents work. And the Government is introducing measures to make it easier for people to work such as free childcare and increased support to move back to work.

26. Finally, benefits paid for additional costs arising from disability, working tax credit and widow/widower's pensions are excluded from the cap, and the Government has committed to providing £800m over 5 years of discretionary housing payments to assist people to adjust to the cap. The Government's view is that these are adequate and proportionate safeguards to protect claimants.

#### Freeze of certain social security benefits for four tax years and freeze of certain tax credit amounts for four years – clauses 9 and 10

27. In relation to the benefit freeze provisions, an argument may be made that Article 14 is engaged on the basis that the provisions fall within the ambit of Article 1 of Protocol 1.

28. As is the case with all existing benefits, the effect of the freeze of certain benefits (clause 9) will mean that there will be differences of treatment between claimants based on age since pensioner benefits will not be subject to the freeze. Age is an "other status" for the purposes of Article 14 but is not a status attracting special protection.

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<sup>1</sup> <https://www.gov.uk/government/publications/benefit-cap-evaluation>

29. Claimants of Employment and Support Allowance (ESA) or Universal Credit (UC) who receive the work-related activity / limited capability for work component will be subject to the freeze whereas those in receipt of the support component will not.

30. Whilst the freeze on working age benefits, child benefit rates and tax credit rates applies equally to men and women, on an individual basis women may be more affected than men although neither group will experience cash losses.

#### Justification

31. It is the Government's view that, to the extent these groups are impacted so as to engage Article 14 of the Convention (when read with Article 1 of Protocol 1), the impact has an objective and reasonable justification. The freeze pursues the legitimate aim of protecting the economic wellbeing of the country by reducing the economic deficit and increasing work incentives. It is proportionate and not manifestly without reasonable foundation.

32. Freezing benefit rates for a limited period (4 years) will gradually increase the incentive for people to make the choice to move into work - the notional average loss from the freeze is less than the value of one hour's work at the National Living Wage. No household will see a change in their benefit income in cash terms from this policy and this impact does not account for any possible mitigating behavioural change. The overall saving to the Government by contrast will be an estimated £3.5bn per annum from 2019/20 onwards which will substantially help towards the deficit reduction. Benefit spend has been rising faster than earnings in the medium term – during the last Parliament, earnings rose 9% while most benefits rose 12% and, since the recession, Jobseeker's Allowance rose 21% compared to earnings up 11%. Eliminating the deficit and paying off the country's debts is the most effective thing for a responsible Government to do for people on low incomes who rely on public services.

33. In the current benefits system claimants are already treated differently on the basis of age. Pensioner benefits are broadly intended to provide an earnings replacement from the point at which a person retires from paid employment. Once a person starts to draw their pensioner benefits they will generally continue to do so for the remainder of their life. Conversely, where possible, working age benefit claimants who can work are expected to be able to move into the labour market and they will be better able to cope with a freeze in benefit.

34. As regards the difference in treatment between ESA/UC support group and work-related activity/limited capability for work group claimants, in order

to protect the most vulnerable disabled persons, who are least able to increase their incomes through work, the Government has not included the premia paid to disabled recipients of working-age benefits, the ESA Support Group and elements of tax credits payable to disabled persons in the freeze. Including these groups in the benefit rate freeze would undermine the foundations of the welfare state by failing to protect those who are least able to help themselves.

35. As women and ethnic minority claimants are more likely to be in receipt of benefits and tax credits, to exempt women or ethnic minorities from the freeze would undermine the legitimate aim of safe-guarding the economic well-being of the country. In addition, if individuals choose to move into employment, there will be overall benefits to lone parent households including increased life chances for children. Additionally, it is arguable that to provide preferential treatment would be unlawful.

36. In addition, the freeze is proportionate. It is time-limited to four years and there are no cash losers. There will be safeguards for the vulnerable. Pensioner benefits, premia designed to reflect the additional costs of disability (as set out above), as well as tax credit elements payable to the disabled are protected, as individuals in receipt of such payments are less able to change their position by taking up employment. Statutory payments are exempted.

#### Changes to the family and individual elements of Child Tax Credit (CTC) - clause 11

37. In relation to the CTC changes, an argument may be made that Article 14 is engaged in relation to these provisions on the basis that the provisions fall within the ambit of Article 1 of Protocol 1 and/or Article 8.

38. The overall effect of clause 11 is to limit the amount of CTC payable in relation to entitlement arising in the future. The restriction of the right to the family element of CTC will only affect persons where all the children and qualifying young persons (“QYP”) for whom they are responsible are born on or after 6 April 2017. Similarly, the limitation of the individual element to two children will only potentially impact on those families where the third or subsequent child or QYP in the family is born on or after 6 April 2017.

39. It may be argued that the measures have a greater impact on large families and it may be argued by some that large family size might be regarded as an “other status” for the purpose of Article 14.

40. It may also be argued that the changes to CTC could more likely affect women as they are more likely to claim CTC.

Justification

41. Any differential treatment of a group identified above as a result of the limitation of the child element is justified, proportionate and not manifestly without reasonable foundation. The changes are part of the wider reforms to the welfare system aimed to bring about savings on the UK's welfare spend and reduce the economic deficit. Taking into account the wide margin of appreciation for the State's administration of social security benefits, the policy is based on a number of political, economic and social considerations. These include a desire to ensure families in receipt of benefits are encouraged to make the same financial decisions as families supporting themselves solely through work, to ensure fairness for the taxpayer and to secure the economic recovery of the country.

42. Further, the measures do not apply to remove a person's existing right to CTC and the cut off date for the changes (birth dates on or after 6 April 2017) is an unavoidable bright line which the courts recognise as legitimate. The House of Lords has recognised that:

43. "Demarcation lines of this sort have to be reasonably bright lines, and the task of drawing them is .... peculiarly a legislative task and an unavoidable one."<sup>2</sup>

44. Also in *R (Animal Defenders International) v Secretary of State for Culture Media and Sport*<sup>3</sup> Lord Bingham stated<sup>4</sup> that the drawing of lines inevitably means that hard cases will arise which fall on the wrong side of the line but that does not necessarily invalidate the rule.

45. Safeguards will also be put in place to protect certain households. The Government has taken into account the position of children and qualifying young people who have a disability and have provided for a disability element which is payable in respect of every child or qualifying young person who is disabled, irrespective of birth order, reflecting the additional costs involved in caring for a disabled child or qualifying young person. Exceptions are to be provided in respect of the limitation of support of the individual element of CTC to two children or qualifying young people born on or after 6 April 2017, for exceptional circumstances.

#### Limitation of the child element for claimants of universal credit – clause 12

46. In relation to the UC child element changes, an argument may be made that Article 14 is engaged in relation to these provisions on the basis that the provisions fall within the ambit of Article 1 of Protocol 1 and/or Article 8.

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<sup>2</sup> Per Lord Walker in *R (on the application of Carson) v Secretary of State for Work and Pensions*; *R (on the application of Reynolds) v Secretary of State for Work and Pensions* [2006] 1 AC 173)

<sup>3</sup> [2008] UKHL 15

<sup>4</sup> At paragraph 33

47. Clause 12 provides that the child element within an award of universal credit will only be payable in respect of two children or qualifying young persons (QYPs) for whom the claimant is responsible, and removes the higher first child rate so as to create a flat rate payable in respect of each.

48. It may be argued that the measures have a greater impact on large families and it may be argued by some that large family size might be regarded as an “other status” for the purpose of Article 14.

49. The UC payment is made to the benefit unit but on an individual basis, women may be more affected than men. Around 90% of lone parents are women and a higher proportion of this group are in receipt of the child element of UC.

#### Justification

50. Any differential treatment of a group identified above as a result of the limitation of the child element is in pursuit of a legitimate aim, necessary and proportionate and not manifestly without reasonable foundation.

51. Taking into account the State’s wide margin of appreciation in its administration of social security benefits, the measure is in the public interest based on a number of political and social considerations. These include a desire to ensure families in receipt of benefits are encouraged to make the same financial decisions as families supporting themselves solely through work, to ensure fairness for the taxpayer, fairness of the welfare system and the economic wellbeing of the country as a whole.

52. There will be safeguards to protect certain households. For example, the additional amount to reflect the costs of caring for a disabled child or qualifying young person will be retained and appropriate exceptions to the application of the clause will be provided in regulations for exceptional circumstances. Regulations will also provide transitional protection for existing claimants where there are three or more children in the household at the time these changes come into effect.

#### Removal of the Work Related Activity Component in employment and support allowance and, in universal credit, removal of the limited capability for work element – clauses 13 and 14

53. In relation to the removal of the Work Related Activity Component in ESA and removal of the LCW element in UC, an argument may be made that Article 14 is engaged in relation to these provisions on the basis that the provisions fall within the ambit of Article 1 of Protocol 1.

54. The clauses do not affect ESA or UC claimants who have limited capability for work related activity in addition to having limited capability for

work, although both categories of persons have been assessed as having their capability for work limited by the effects of their physical or mental condition such that it is not reasonable to require them to work. It may therefore be argued that this constitutes a difference in treatment based on the extent to which a person's disabilities limit their ability to perform the prescribed activities.

#### Justification

55. The Government's position is that any differential treatment is justified, proportionate and not manifestly without reasonable foundation.

56. The measures are in pursuance of the legitimate aim of improving the incentives for people to return to work and improving the economic wellbeing of the country.

57. The Government is committed to ensuring that disabled people are able to participate fully in society, and has set out its ambition to halve the disability employment gap by finding ways to support people who are not working because of a disability or health condition to remain in, go back to or enter work for the first time. There is a large body of evidence<sup>5</sup> showing that work is generally good for physical and mental wellbeing and that, where their health condition permits, sick and disabled people should be encouraged and supported to remain in, or to re-enter work as soon as possible. These measures will encourage them to do so.

58. The measures will also deliver savings to Government that contribute to a reduction in spending on welfare, continuing to make the welfare system fair and affordable and increasing work incentives for those who can take steps towards work. Payment of an additional amount to claimants with limited capability for work above the amount to which job-seekers are entitled could act as an incentive which can prolong the length of time an individual is out of work. The measures, in conjunction with the new funding for additional practical support announced in the Budget are designed to remove these perverse incentives and help claimants with limited capability for work move closer to the labour market and, when they are ready, into work.

59. The measures are also proportionate as there are adequate safeguards in place to protect the most vulnerable households. Regulations will provide for appropriate savings and transitional protection, for example for existing claimants who are already in receipt of the additional component and those who have been in receipt of previous awards in respect of their ill-health but

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<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214326/hwwb-is-work-good-for-you.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214326/hwwb-is-work-good-for-you.pdf)

have not yet had those awards converted to ESA. There will therefore be no cash losers – current LCW claimants will not be affected by this change for as long as they continue to have LCW.

60. In addition, Disability Living Allowance (DLA) and Personal Independence Payment (PIP) provide a contribution to the extra costs incurred by having long-term ill-health or a disability; and Housing Benefit and Universal Credit, as well as discretionary housing payments where appropriate, are available to help with housing costs.

Universal credit: work-related requirements for responsible carers of a child aged 2 to 4 – clause 15

61. In relation to the change to work related requirements for responsible carers of a child aged 2 to 4, there may be an argument that Article 14 is engaged in relation to this measure on the basis that it falls within the ambit of Article 1 of Protocol 1 and/or Article 8.

62. This clause imposes increased work-related requirements on a claimant who is a responsible carer of a child aged 2, 3 or 4. The changes will apply to both lone parents and a self-nominated member of a couple; and those affected will be predominantly female and lone parents. Such claimants may seek to argue that the increase in work-related requirements discriminates against them. Claimants may also seek to argue that their family life is adversely affected by the additional work-related requirements including a requirement to look for work.

Justification

63. The Government's position is that any discrimination of the affected groups is not unlawful as it is justified, proportionate and not manifestly without reasonable foundation.

64. The main policy driver for these changes is to ensure full employment and as such the measures are within the margin of appreciation of the state in the sphere of economic and social policy. Increased numbers of the population in work is good for the economy and for those who become employed. The evidence shows that parents who have conditionality are more likely to move into work. Since conditionality was extended to those with children aged 5 or over, 100,000 more parents moved into work. Extending this to parents of younger children will enable many more households to move into work. The evidence shows that children in working households have better outcomes in academic attainment, training and future employment. Work provides a route out of poverty for families and improves children's wellbeing and life chances as fewer will grow up in workless households.

65. Safeguards will ensure the measures are proportionate. Where claimants require additional childcare, work-related requirements will be tailored to take account of an individual's circumstances and caring responsibilities. Further, the Government is providing 30 hours of free childcare for those with children aged three and four and, once in work, an additional element to the UC award is payable for childcare costs. Accordingly, any negative impact of taking up formal childcare on family income will be mitigated by increased support, increased family income as a result of employment and from the additional amount payable for childcare costs.

#### Loans for Mortgage Interest – clauses 16 to 18

66. In relation to the Loans for Mortgage Interest clauses, there be an argument that Article 14 is engaged in relation to these provisions on the basis that the provisions fall within the ambit of Article 1 of Protocol 1.

67. These clauses provide that help with mortgage interest (referred to as Support for Mortgage Interest (SMI)), which is currently paid to owner-occupiers as part of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, State Pension Credit or Universal Credit, will instead be paid to eligible claimants in the form of an interest-bearing loan which is secured over the claimant's property in favour of the Department for Work and Pensions (DWP). In the majority of cases, the loans will be repaid to the Government from the equity available when a claimant's house is sold but a claimant can also volunteer repayments, for example, if they move into work.

68. Pensioner owner-occupiers currently make up almost 50% of the SMI caseload. Therefore, such individuals may argue that the policy discriminates against them.

#### Justification

69. Any discrimination as a result of the differential treatment of pensioner owner-occupiers is not unlawful. It is proportionate and justifiable to treat claimants differently on the basis of age, as happens in the current benefits system.

70. Taking into account the wide margin of appreciation for the State's administration of social security benefits, the policy is based on a number of political and social considerations. These include the current economic climate and ensuring that the system is fairer for the taxpayer.

71. Pensioner owner-occupiers are likely to have interest only mortgages and to have received support for significant periods into their retirement. In many cases the equity that has been secured at taxpayers' expense passes

on to the claimant's heirs after their death. Transferring this benefit into a loan retains support in a sustainable way whilst providing increased fairness to the taxpayer. It will also help in reducing the deficit and thus increase the economic wellbeing of the country as savings arise by homeowners repaying the Exchequer spending, which was previously a benefit, and from the expected reduction in take up compared with the current system.

72. At the same time, the change will not affect the prime purpose of SMI i.e. protecting claimants from the threat of repossession during periods of sickness or unemployment, as the basic conditions of entitlement to SMI loans will be the same (entitlement to a qualifying benefit) and there will be no decrease in the amount of SMI which claimants can receive. Therefore vulnerable claimants will continue to receive appropriate support for times of crisis.

73. There will also be appropriate safeguards in place to mitigate against any potentially harsh impacts of the policy. For example, existing claimants will be provided with reasonable notice of the changes to ensure that they have time to consider alternative ways of meeting their mortgage costs, and they must receive financial advice before acquiring an SMI loan to ensure they fully understand its implications.

74. The provisions are therefore justified, proportionate and not manifestly without reasonable foundation.

#### **D. Other international human rights treaties**

75. This section looks at other international instruments which may be of interest to the Committee. Such instruments have no direct legal effect in domestic law and are not justiciable in our courts. However, in developing and deciding its policy for the measures in the Bill, the Government has also paid due regard to its obligations under other relevant international treaties.

##### The UN Convention on the Rights of the Child (UNCRC)

76. In relation to clauses 4 to 6 (life chances), the Government's position is that in refocusing government action from tackling the symptoms of child poverty (low income) to tackling the root causes of poverty (worklessness, poor educational attainment) its primary consideration is "the best interests of the child" in accordance with Article 3 of the UNCRC. This new direction is a more appropriate means to make a real and lasting difference to children's lives, to ensure the survival and development of the child (in accordance with Article 6) and to recognise the right of every child to an adequate standard of living (in accordance with Article 27). The Government considers that the new reporting duty will be a better means of

combating child poverty as the current targets fail to recognise the root causes of child poverty. Evidence shows that worklessness and low educational attainment are key root causes of child poverty and the reporting duty will drive Government action to improve the life chances of children. In accordance with Article 12 of the UNCRC, as part of the 2012 consultation on better measures of child poverty which informed the development of the new reporting duty, the Government took care to ensure that the views of children and young people were heard, including by working closely with the Office for the Children's Commissioner for England.

77. In relation to clauses 7 and 8 (reduction of the benefit cap), the Government notes the Supreme Court's decision in *R (on the application of SG & Others) v. SSWP [2015] UKSC 16* but, in relation to the reduction of the cap, the Government has fully considered its obligations under the UNCRC, and in particular article 3 (the duty to treat the best interests of the child as a primary consideration) and article 27 (standard of living). The Government considers that £20,000 and £23,000 is a sufficient amount for families to live on - many working households earn less than this. The best interests of children overall is to have parents in work and work remains the surest route out of poverty. Children in workless families are three times as likely to be in relative poverty, than families where at least one parent works. The cap has been proven to encourage movement into work. Evidence<sup>6</sup> shows that capped households are 41% more likely to go into work after a year than similar uncapped households so reducing the cap further will encourage more people into work. The savings afforded to the Government by reducing spending on welfare will allow the Government to protect expenditure on education, childcare and health and the improvements to the overall economic situation will have a positive impact on children and their best interests. These considerations apply equally to clauses 9 and 10 (freeze of certain social security benefits and certain tax credit amounts), clauses 11 and 12 (two child restriction in child tax credit and UC), clauses 13 and 14 (removal WRA/LCW element in ESA and UC) and clause 15 (work-related requirements in UC).

#### The UN Convention on the Elimination of Discrimination against Women (CEDAW)

78. In so far as lone parents may be more affected by provisions in the Bill, the majority of those affected are women. The current gap between male and female employment rates is 9.5%. However, by incentivising and supporting those subject to the changes to find work, female participation in the labour market will be improved.

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<sup>6</sup> <https://www.gov.uk/government/publications/benefit-cap-evaluation>

79. Further, the impact on women with children is counteracted by the additional support being provided by the Government for childcare (30 hours for those with children aged 3 or 4), flexible paternity leave and the protection of maternity rights. There is an exemption for statutory maternity pay and maternity allowance from the benefit and benefit freeze provisions, and there is support for child care costs through child tax credits, which mitigate any potentially adverse effect of clauses 9, 10, 11 and 12 on women.

#### The UN Convention on the Rights of Persons with Disabilities (UNCRPD)

80. In relation to both the benefit cap and the freeze provisions, households which include a claimant / claimants in receipt of certain benefits paid in recognition of the extra costs disability can bring, are exempt and, accordingly, will not face a freeze to their benefits as a result of provisions in the Bill or a reduction of their benefits as a result of the cap.

81. Whilst the basic rate (the “personal allowance”) of Employment Support Allowance is not exempted from the freeze or cap, this difference is justified by the fact that the personal allowance is paid in respect of an individual being unable to work (due to illness or disability) whereas the specific disability benefits are payable whether or not the individual is out of work. This is also the case in respect of the removal of the WRA/LCW component of ESA/UC.

82. The position of disabled children and qualifying young people has been further safeguarded by the creation of a new disability element in child tax credit which is not subject to the application of the limitation of the individual element of child tax credit to two children.

#### The International Covenant on the Elimination of All Forms of Racial Discrimination (CERD)

83. Some provisions of the Bill may impact more on certain ethnic minority groups as a result of the fact that these groups are more likely to claim the affected benefits. However, the effect of the changes is broadly similar across all racial groups and all ethnicities will face the same choices.

84. The Government is of the view that any greater impact on ethnic minorities does not amount to unlawful indirect discrimination because the impact has an objective and reasonable justification. Further, to exempt ethnic minority households from the provisions would undermine the legitimate aim of safe-guarding the economic well-being of the country and could amount to unjustifiable and unlawful preferential treatment.

#### The International Covenant on Economic Social and Cultural Rights (ICESCR).

85. The main purpose of the provisions in this Bill is to increase work incentives, reduce poverty and improve the overall economic wellbeing of the country. As such, all of the measures in the Bill will support progressive realisation and improve living standards as promoted by the ICESCR.