

**Law Centre (NI) Policy Unit**

# policy bulletin

No.6 March 2010

## introduction

Welcome to this first policy bulletin for 2010, outlining our work over the last three months.

With a Westminster election in the spring, the year promises significant change to the policy landscape. The first months of the year have already seen some progress on a number of issues relevant to our work. A commitment to build on tribunal reform was set out in the Agreement at Hillsborough Castle earlier this month. We aim to complete our Nuffield-funded research project on tribunal reform this spring. We will then hold a conference on 23 June 2010 to create the opportunity to discuss the way forward with the reform project.

There has been progress on other fronts. In January, OFMDFM completed its consultation on an Older People's Commissioner for Northern Ireland.

DHSSPS has further developed its policy proposals in relation to new mental capacity and mental health legislation.

Economic and social rights are at the heart of the Law Centre's mission to promote social justice. 2009 ended with the publication of the Northern Ireland Office's consultation on a Bill of Rights, and we were dismayed that there is no commitment to these rights in the published document. How the discussions about a Bill of Rights develop will be a

key area of interest in 2010. We will report on our response in the next edition of this Bulletin.

As ever, please get in touch if you would like to find out more about any of the issues in this Bulletin.

**Ursula O'Hare**  
**Assistant Director (Policy & Publications)**

## social security

### ESA

In February, the Unit responded to a Social Security Advisory Committee consultation on the *Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010*. The proposed regulations provide for the movement of benefit claims from Incapacity Benefit, Income Support paid on the grounds of incapacity and Severe Disablement Allowance to Employment and Support Allowance.

The Law Centre expressed concerns that the proposals were drafted in a GB specific context. There is no evidence that Northern Ireland's particular circumstances were considered. We are also concerned by the timescale outlined with conversion scheduled to begin from October 2010, albeit with a phased start to test the conversion process. The large numbers of claimants being migrated is a significant undertaking and we are unconvinced that the timescale is realistic. We also highlighted the fact that ESA is a taxable benefit, unlike Incapacity Benefit, a factor which will lead to significant drops in income after tax.

### Housing Benefit reform

Also in February, we submitted a joint response with Housing Rights Service to the Department of Work and Pensions (DWP) consultation on *Supporting People into Work: The Next Stage of Housing Benefit Reform*. The response highlighted the ongoing negative impacts of the transfer to Local Housing Allowance that have been experienced by certain client groups locally. We put forward suggestions about how these might be tackled. We highlighted the need for local research into the impact and implementation of Local Housing Allowance. Without this, it is difficult to comment on whether there is a need to reform the scheme. The response also considered those proposed measures which DWP hopes to deliver as part of its long-term reform of the benefit system. These include:

- replacing the existing arrangement with a Transition into Work payment that would fix Housing Benefit entitlement for three months at the rate of payment immediately before the claimants moved into work;
- building on the example of the tax credit system and introducing a system of fixed period awards for Housing Benefit and linking Housing Benefit entitlement to property meeting certain standards.

## Welfare reform

The Welfare Reform Act for England, Scotland and Wales was granted Royal Assent on 12 November 2009. As we go to press, we are anticipating the publication of a Northern Ireland version. Once it is published, we hope to brief the Social Development Committee on the content of the Northern Ireland Bill. Until then, we are unclear as to which elements of the GB Act will be enacted here. The Welfare Reform Group, convened by the Law Centre, last met to consider the Bill in November.

We will continue to work with other organisations in the sector to ensure that the Bill is appropriate and effective for Northern Ireland.

Alongside Advice NI, we also met DSD Policy & Legislation branch to discuss how the principle of parity of social security provision applies in practice.

## mental health

### Law reform seminars

In February, we concluded our monthly seminar series on Mental Health and Capacity Law in Northern Ireland with a final seminar on the topic of safeguards. Dr Donny Lyons, Director, Mental Welfare Commission for Scotland, examined safeguards in law and practice in Scotland. Prof Phil Fennell, Cardiff Law School, gave an overview of safeguards in mental health and mental capacity legislation.

The Law Centre will continue to monitor the progress of the legislation.

### Impact of reform on section 75 groups

The Unit responded to the DHSSPS pre-Equality Impact Assessment (EqIA) on some of the key policy proposals in the new legislation.

We commented on the policy decision to exclude under sixteens from the scope of the Bill. We called for the deployment of specialist expertise and the provision of age appropriate services in a greater proportion of cases. We pointed out that there is not always an equality of services and support available for those who are in older people's services compared to adult mental health services.

We also commented on the importance of recognising the needs of the growing Black and Ethnic Minority community (BME) in Northern Ireland. One of the major issues in the equality screening for the Mental Health Act 2007 in England and Wales was the potential impact the new legislation would have on BME communities.

A full EqIA is expected this spring. As the policy development work is still in hand, the timing of the full EqIA needs to be carefully considered. The quality of a full EqIA would be severely limited by the lack of detail regarding key aspects of the policy proposals which will be reflected in the new Bill.

### DHSSPS Reference Group

The DHSSPS Reference Group, which is chaired by the Law Centre, has continued to meet to consider the development of proposals for the single mental capacity and mental health bill.

### Mental Health & Learning Disability Alliance

The Mental Health & Learning Disability Alliance started the year with an increased membership and a series of meetings with the political parties. In January, the Alliance met with the Chair of the Health Committee, the UUP health spokesperson and a delegation of Sinn Fein MLAs to discuss the Alliance's common cause for the new Bill. The Alliance has subsequently developed short information papers on key issues to be developed in the new legislation. These will be available early March.

If your organisation is interested in joining the Alliance, you can contact it via the Policy Unit.

## community care

### Older people

In January, we submitted a response to OFMDFM's consultation on an Older People's Commissioner. We believe the Commissioner should have a full range of powers, including being granted victim status, to ensure that the Commission is able to protect and further the rights and interests of older people as effectively as possible. We continue to work with other parties in the age sector on this campaign.

The Law Centre continues its membership of the OFMDFM Advisory Panel on Older People. The Panel is working towards its first intersectoral event in April to examine how to develop a more effective strategy for older people in Northern Ireland.

### Long term care

The research work into the Funding of Long Term Care in Northern Ireland was completed in December 2009. Rights in Community Care member organisations are currently considering how best to use this research and how to move forward as RICC to tackle this debate.

We are strongly supportive of legislation that enables protected disclosures to be made in the public interest. It is essential that individuals can make disclosures without suffering a detriment within their employment.

We recommended that the Department should reconsider the issue of consent: specifically, the best way for claimants to give their consent to the Tribunal to allow it to forward the details of their employment claim to prescribed regulators. With consent, regulators can initiate investigations and take action if necessary in the public interest. We cautioned, however, that claimants need to be fully advised about possible implications of giving their consent.

### Additional paternity pay and leave

In February, we commented on the consultation on *Additional Paternity Pay & Leave*. We welcome the Department for Employment and Learning's proposal to introduce paid paternity benefits that can be enjoyed by the partners of mothers who have chosen to go back to work before their own maternity leave expires. The proposals will give parents greater choice in making care arrangements. This has the potential to play a positive role in improving gender equality.

Last summer the Law Centre produced a paper for the Department for Employment and Learning on gaps in migrant worker provision. The paper's recommendations included an emergency fund to deal with gaps and an audit to identify legislative and policy lacuna. In February, the Law Centre and Community Foundation (NI) held a meeting with representatives from DSD, DEL, OFMDFM, DHSSPS, NIHE and Belfast City Council to look at how the recommendation on the fund can be moved forward. In the meantime, the all party Assembly Group on ethnic minority issues convened by NICEM is arranging for a motion to be put to the Assembly supporting the development of the fund. The Law Centre and Northern Ireland Human Rights Commission have both provided briefings to the all party group.

## employment

### Workplace disputes

In the last Bulletin, we reported that we had responded to the Department for Employment and Learning's consultation on reforming the system for handling workplace disputes. Since then, we have briefed key organisations within the sector on our proposed model.

In January 2010, we gave evidence to the Committee for Employment and Learning. Our evidence stressed the importance of holistic reform of the system. Committee members were particularly interested to learn about how the model for reform could ultimately result in fewer Tribunal claims by providing targeted, personalised advice at an early stage.

The Department's proposals for reform are with the Minister.

### Public interest and disclosure

In November, we responded to the Department for Employment and Learning's consultation on *Tribunals and the Public Interest* on the issue commonly referred to as whistleblowing.

## immigration

### Simplification

In November 2009, the UKBA published its (Draft) Immigration Bill 2009. This ambitious Bill is designed to consolidate and simplify several decades of immigration legislation. Much

of the content of the Bill is similar to the (Draft) Immigration and Citizenship Bill 2008, although there are some new features.

With a general election ahead, the future of the Bill is uncertain. At a question and answer session on immigration hosted at Stormont by Meg Hilier, Parliamentary Under-Secretary of State, in February 2010, it was announced that the 2009 Bill is not scheduled for its first reading before the general election. The components of the Bill that deal with reform of the Immigration Rules and the system of asylum support have, however, been subject to public consultation and we responded to these consultations.

## Immigration rules

In January 2010, we responded to a consultation looking at simplifying the immigration rules.

Provision for the exercise of discretion has always formed an essential part of immigration legislation. We therefore welcomed the proposal for the Immigration Rules to retain an element of discretion that enables the UK Borders Agency (UKBA) to make positive decisions outside the immigration rules in exceptional circumstances.

We strongly criticized the proposal to implement a points based rules system whereby points would be allocated for all types of immigration applications. We argued that protection should be premised on need and not on points. Therefore, we believe that protection applicants should be exempted from any points system.

## Reforming asylum support

UKBA has sought public opinions on reforming the asylum support process. We submitted a detailed response to this consultation, highlighting our concerns that the proposals are not adequate to keep asylum applicants, and their families, out of destitution. Our concern is that the proposals could result in fewer applicants being eligible to receive asylum support. We argued that restricting access to asylum support could be likely to place more demands on Social Services, refugee communities and local charities to intervene and provide assistance. Unfortunately, this is an issue which received scant consideration in the UKBA consultation document.

In January, as part of our work on asylum support, EMBRACE invited us to give a presentation of the key issues to the

voluntary/community sector. This proved to be a very useful opportunity to inform the sector of the likely impact of the proposed changes. In February, we were invited to speak at NICEM's human rights conference and to give an update of immigration legislation in 2009. We focused specifically on changes to the citizenship system and on the introduction of a new statutory children's duty in immigration matters. We also highlighted progressive judgments from the (then) House of Lords on the issue of private and family life for those subject to immigration control.

## Lessons from Scotland

In January we co-hosted, with OFMDFM, a seminar in the Long Gallery on *Immigration and Devolution: Lessons from Scotland*. Although immigration is a reserved matter for Westminster, Scotland has made full use of its devolved competencies in the areas of education, health and housing to respond positively to inward migration. Wanting to learn more about this innovative approach taken by another devolved administration, we invited speakers from the Scottish Executive, the Convention of Scottish Local Authorities, the Scottish Parliament and the Scottish Refugee Council. The two Junior Ministers participated in the seminar which heard about the importance of leadership in shaping the local approach to immigration matters and in developing the right policy approach to integration.

The Law centre has been asked to chair an immigration group by OFMDFM. The group will report to the Race Equality Forum chaired by junior ministers at OFMDFM. The first meeting will be held in March 2010.

## Refugee Action Group (RAG)

The Policy Unit continues to work closely with the Refugee Action Group. The RAG Immigration Detention Emergency Helpline, which is staffed by trained volunteers, continues to provide an invaluable service to immigration detainees and their families.

RAG has received funding from the Joseph Rowntree Fund to conduct some research into the practice of immigration detention in Northern Ireland. RAG is currently recruiting a researcher to undertake this project.

**All of our responses can be found at:**

[www.lawcentreni.org](http://www.lawcentreni.org)