

# policy bulletin

No.17 April 2014

## Introduction

Welcome to the second policy bulletin of 2014 which gives an update on policy issues that we have been working on over the first quarter of 2014. Copies of policy responses and submissions referred to in this bulletin are available on our website at [www.lawcentreni.org](http://www.lawcentreni.org)

We are always glad to get feedback from our members so please get in touch with any of the policy team if you would like more information about any of our policy priorities:

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## Social security

### Welfare reform changes

The Welfare Reform Bill remains under wraps with the Executive and it looks increasingly unlikely that it will return to the Assembly this side of the summer recess. Meanwhile, in this month's Westminster budget, a four-year cap on social security spending was announced, starting in 2015-16. The proposal, which was subsequently approved in a

parliamentary vote, is for a cap of £119.5bn in 2015-16, rising to £126.7bn in 2018-19. The cap does not apply to spending on pensions, Jobseeker's Allowance and certain other specific items. Find out more about the budget announcements at [www.gov.uk/government/topical-events/budget-2014](http://www.gov.uk/government/topical-events/budget-2014)

Amongst other proposals in the Westminster budget is an increase in the maximum amount that can be recovered for overpayments of tax credits from 2016, from 25 to 50 per cent for those with an income of more than £20,000 per annum.

Coming the day before the budget announcement, the coalition government also published plans to provide that Universal Credit claimants will receive support of 85 per cent of childcare costs and that support for childcare costs up to the value of £2,000 per year will be available for working parents through a tax scheme. The interaction with other support for childcare means that families have a complex choice to make around where to get the best help.

### Housing Benefit and EEA nationals

On 1 April, changes to the Housing Benefit Regulations restricted entitlement to Housing Benefit for certain EEA nationals. The new regulations (Housing Benefit (Habitual Residence) Amendment Regulations (NI) 2014, mean that EEA nationals who are claiming Jobseeker's Allowance (JSA) as jobseekers will not be entitled to Housing Benefit. Certain EEA nationals who retain the status of a worker will continue to be eligible for Housing Benefit.

The new regulations follow the introduction of other measures earlier in the year (reported in the last bulletin) which restrict entitlement to JSA to those who have satisfied a three-month residence test and which limit entitlement to JSA for certain European Union migrants for a period of six months unless they can prove a genuine prospect of finding work after that period.

### Work and Pensions Review of Employment and Support Allowance and the Work Capability Assessment

In our evidence to the Work and Pensions Committee's call for evidence on Employment and Support Allowance (ESA) and the Work Capability Assessment, we highlighted the difficulties that a lack of an accessible assessment centre in Belfast presented for some claimants. The accessibility of assessment centres is a matter that the Committee had discussed in its 2011 report on Incapacity Benefit Reassessment (HC, 1015). We also raised the issue of a lack of auto-recording facilities of assessment interviews. You

can read the evidence at [www.lawcentreni.org/Publications/Policy-Responses/Work%20\\_and%20\\_Pensions%20inquiry%20into%20ESA%20and%20ECA.pdf](http://www.lawcentreni.org/Publications/Policy-Responses/Work%20_and%20_Pensions%20inquiry%20into%20ESA%20and%20ECA.pdf)

## Welfare Reform Group

In February, members of the Welfare Reform Group met with the Alliance Party to outline ongoing concerns about welfare reform. The Group also wrote to the Minister for Social Development to seek clarification on oversight mechanisms that are being considered in advance of the introduction of the Bill into the Assembly.

If your organisation is interested in the Welfare Reform Group, please contact Liz Griffith at the Law Centre ([elizabeth.griffith@lawcentreni.org](mailto:elizabeth.griffith@lawcentreni.org))

## The evidence on poverty

In March, the Law Centre contributed to a policy discussion on poverty in Northern Ireland. Hosted by the Joseph Rowntree Foundation to launch its report on Monitoring Poverty & Social Exclusion in Northern Ireland 2014, the report reveals that poverty has increased in Northern Ireland over the last five years. Read the report at: [www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-northern-ireland-2014](http://www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-northern-ireland-2014)

## Rate rebate replacement scheme

We have produced a joint response with Housing Rights Service to the Assembly Finance Committee on models for replacing rate rebates within Universal Credit – a copy of this will be available on our website in May.

# Employment law

## Work and families

As the Children and Families Act gets the Royal Assent in Westminster, Northern Ireland will soon follow suit. In Britain, the Act creates the right for mothers and fathers to share parental leave following the birth or adoption of a child from April 2015 and extends the right to request flexible working arrangements to all employees from the end of June 2014.

In our response to the Department for Employment and Learning's consultation on flexible working and shared parental leave in 2013, we supported the extension of the right to request flexible working and shared parental leave. You can read our response here: [www.lawcentreni.org/Publications/Policy-Responses/LCNI\\_Extension\\_to\\_Partental\\_Leave\\_.pdf](http://www.lawcentreni.org/Publications/Policy-Responses/LCNI_Extension_to_Partental_Leave_.pdf)

The Department has now published its response to the consultation and will be bringing a Work and Families Bill to the Assembly in the coming months to give families the same rights to paid and unpaid leave as apply in Great Britain. See: [www.delni.gov.uk/sharing-parental-rights-extending-flexibility-at-work-public-consultation.pdf](http://www.delni.gov.uk/sharing-parental-rights-extending-flexibility-at-work-public-consultation.pdf)

## Employment Law Review

The outcomes of the Department's Employment Law Review are expected this spring.

In the last Bulletin, we highlighted the TUC's concerns about the impact of the introduction in Britain of fees for bringing a case to tribunal. In a salutary warning about access to justice, tribunal statistics for GB for the last quarter of 2013 showed a 79 per cent decrease in the number of applications to tribunal for the period October to December 2013 compared to the same period the previous year.

Tribunal fees were introduced in Britain in June 2013. No such proposal was brought forward to make changes to access to employment tribunals in Northern Ireland.

The coalition government has urged caution about the new figures as they may be revised in the next publication of statistics due in June (the report is available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_datafile/289342/tribunal-stats-oct-dec-2013.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_datafile/289342/tribunal-stats-oct-dec-2013.pdf))

## Conduct of employment agencies

The Department for Employment and Learning has published a consultation paper on its review of the regulations governing the conduct of employment agencies. The regulations govern standards for agencies and provide protection for those who use the services of employment agencies and businesses. The consultation runs until 19 June 2014 and can be accessed at [www.delni.gov.uk/consultation-zone](http://www.delni.gov.uk/consultation-zone)). The Law Centre response to the consultation will be available on our website.

# Immigration and asylum

## Anti-trafficking policy

In February we gave evidence to the Justice Committee on the Trafficking & Exploitation Bill. The Committee is due to complete its scrutiny of the Bill, which has been introduced as a private members bill by Lord Morrow, by mid-April.

We welcomed provisions which would provide support to victims of trafficking. We argued that the provision for a system of 'guardianship' for trafficked children should not be confined to this small group but should be extended to other separated children including those subject to immigration control.

While we support the establishment of an independent Northern Ireland rapporteur on trafficking, whether this will be taken forward is now unclear in light of proposals in the Westminster Modern Slavery Bill for a UK-wide anti-slavery commissioner. Also unclear is the impact on the support provisions in the Morrow Bill of the promised review of the National Referral Mechanism by the Home Office.

The Department of Justice Northern Ireland is now consulting on the proposals in the draft Modern Slavery Bill. The Morrow Bill will be the legislative vehicle for carrying these proposals forward.

These include proposals to:

- consolidate a new offence of human trafficking,
- create a new slavery offence and
- try such offences in the Crown Court.

Other measures include:

- an increase in the maximum sentence for trafficking and slavery offences
- the introduction of new civil Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders, which would impose restrictions on those who have been convicted of a trafficking offence and who pose a sufficiently serious risk respectively

- extending the powers of the UK-wide Commissioner to Northern Ireland
- a new statutory duty to require authorities to report cases of potential victims to the Human Trafficking Centre, including in instances where a potential victim has not consented to being referred into the National Referral Mechanism.

The Department's consultation runs until 15 April 2014. The Law Centre's response is available on our website.

## Separated children subject to immigration control

NICCY's publication of its report on guardianship for separated children in Northern Ireland coincided with the Justice Committee's consideration of the issue in the context of the Morrow Bill. The report, *By Their Side and On Their Side*, sets out the core standards that should be upheld in supporting separated children.

The report makes a number of recommendations, including exploring further the possibility of a stand-alone service in Northern Ireland. Read it at:

[www.niccy.org/downloads/2014/Publications/Guardianship\\_reports\\_Feb\\_14/NICCY\\_Guardianship\\_main\\_report\\_-\\_Feb\\_14.pdf](http://www.niccy.org/downloads/2014/Publications/Guardianship_reports_Feb_14/NICCY_Guardianship_main_report_-_Feb_14.pdf)

## Asylum seekers and refugees

Our last Bulletin reported on the Health Committee's scrutiny of regulations on access to free healthcare for overseas visitors. The Department's draft regulations excluded provision for access to secondary health care to a small group of asylum seekers who are not receiving government support because their asylum claim has failed.

We asked the Department to close this gap for this small group of people while they remain resident in Northern Ireland. We also suggested that access to health care should be extended to primary health care so that health care could be provided at a GP surgery rather than through hospital services such as Accident & Emergency units.

We have subsequently met with the Department to discuss the regulations and expect that the regulations will return to the Health Committee this spring.

In the Republic of Ireland, the operation of the direct provision system for asylum seekers continues to attract criticism. The Law Centre spoke at a recent seminar organised by University College Dublin on our casework concerning asylum seekers who are facing removal to Dublin as the competent authority for handling their asylum claim. This follows on from our judicial review last year where we successfully challenged a decision to remove a family - living in Northern Ireland - to Dublin where they faced the threat of deportation back to their country of origin from which they had fled.

The European Court of Justice has recently ruled that where a member state provides financial assistance to asylum seekers, and while the amount of financial aid is to be determined by each member state, it must be sufficient to meet 'a dignified standard of living' (Case-79/13 Saciri)

### **Crisis fund for migrants**

In February, the Executive announced that it will establish on a permanent footing a crisis fund for migrants, asylum seekers and refugees in Northern Ireland. The fund would provide small amounts of monies to support people in times of extreme need. A small fund piloted through the Community Foundation in 2012 was shown to make a real difference to the lives of over 1,000 people from 54 different counties. The origins of the fund lie in a paper from the Law Centre in 2009 setting out the case for support in emergency situations.

## **Community care & mental health**

### **Active Ageing Strategy**

OFMDFM published a draft Active Aging Strategy in February. The strategy aims to promote positive ageing in Northern Ireland. Law Centre (NI) has been a member of the Ageing Strategy Advisory group. The consultation closes on 23 May 2014 and is available here: [www.ofmdfmni.gov.uk/age](http://www.ofmdfmni.gov.uk/age). A copy of the Law Centre's response will be available on our website.

### **Future of statutory care homes**

The Health and Social Care Board (HSCB)'s consultation on the future of statutory care home provision ended at the

beginning of March. The consultation document consisted of criteria by which statutory care homes could be assessed, against which those who scored highly were likely to stay open and those that scored poorly would be earmarked for closure.

Despite improved engagement with care home residents, families and staff from the HSCB on the current process, the Law Centre was disappointed that the criteria gave no formal recognition to the views of residents. We argued that the use of criteria in this manner was too blunt, that residents should be fully involved in the decision making process and that appropriate alternative accommodation must be available to all residents of a care home if it is to be considered for closure.

The HSCB has put back announcing the final criteria from April to the summer. We are encouraged by the obvious thought and consideration that the Board is giving to the consultation responses. You can read our response at [www.lawcentreni.org/Publications/Policy-Responses/HSCB\\_Future%20accommodation%20needs%20of%20older%20people.pdf](http://www.lawcentreni.org/Publications/Policy-Responses/HSCB_Future%20accommodation%20needs%20of%20older%20people.pdf)

### **Mental Capacity (Health, Welfare and Finance) Bill**

We are expecting DHSSPS to go out for public consultation on the draft Mental Capacity (Health, Welfare and Finance) Bill in the spring alongside its policy position on under 16s and DoJ's policy position on the criminal justice aspect of the Bill. The Law Centre is a member of both the DHSSPS and DoJ reference groups for this Bill.

The context of the consultation is interesting given the recent publication of the House of Lords post-legislative scrutiny report on the Mental Capacity Act 2005 for England and Wales (see last bulletin). Interestingly, the Select Committee which published the report was positive about the legislation itself but felt that the real failure was in the implementation of the Act.

The Committee would like to see the creation of an oversight body to ensure that the Act is imbedded into the practice of medical and care workers. The Committee also recommended that the government scrap the Deprivation of Liberty Safeguards (DoLS), added as amendments through the Mental Health Act 2007 for those who are 'voluntarily' detained but lack the capacity to consent, and develop a system that better fits with the ethos of the Act. Finally, the Committee highlighted the need to make

## Policy Submissions / briefing papers / evidence sessions

### January- March 2014

- January:** Department for Social Development: Response to Rate Rebate Reform and Universal Credit
- February:** Evidence to Justice Committee on Human Trafficking and Exploitation Bill
- March:** Response to Work and Pensions Committee Inquiry into ESA and WCA
- March:** Department of Finance and Personnel: Comments on Draft Legal Complaints and Regulation Bill (NI) 2013
- March:** DHSSPS: Response to the Future of Statutory Care Homes
- March:** Evidence to Finance and Personnel Committee on Legal Complaints and Regulation Bill

more use of independent advocates and the difficulties associated with the interface between the Act and the Mental Health Act 1983.

Unlike the Mental Capacity Act 2005, the Northern Ireland Bill will fuse Mental Health and Capacity into one piece of legislation, thus removing the interface problem associated with having separate laws.

Key parts of the Bill will include:

- protection for anybody who retains capacity to make decisions made about their health (physical and mental), welfare or finance;
- a statutory obligation to provide support to help an individual who may lack capacity to make a decision;
- the creation of lasting powers of attorney for health, welfare and finance decisions;
- a statutory right to independent advocacy;
- a unified system of safeguards to protect the rights of those who lack capacity to make healthcare decisions whether they consent or not;
- harmonisation between the rights of those in the civil and criminal justice systems.

## Social justice

### Complaints against solicitors and barristers

We produced a response to the Department of Finance and Personnel's draft bill on new arrangements for handling complaints against the legal profession. It will be available on our website in May.

## Tribunal reform

While the pace of tribunal reform in Northern Ireland may be sluggish, earlier this month the Scottish Parliament passed a Tribunals (Scotland) Bill. The Bill is intended to create a simple two-tier system for tribunals which are within the devolved competence of the Scottish authorities. It also establishes a guarantee of independence and brings the task of providing judicial leadership for tribunals under the remit of the Lord President by creating a new post of President of Scottish Tribunals.

The Bill comes against the backdrop of the abolition of the Administrative Justice and Tribunals Council (along with its specialist Scottish Committee). Many of the changes brought about by the Scottish Bill are those which were the subject of consultation in 2012/13 by the Department of Justice Northern Ireland. At that time, the Department proposed:

- the creation of a single integrated first instance tribunal;
- common judicial leadership across the tribunals under the Lord Chief Justice supported by a Presiding Tribunal Judge;
- a system for streamlining hearings and appeals as well as a statutory guarantee of independence.

The Department of Justice has announced that reform in Northern Ireland is to be delayed. We convened a meeting with Department of Justice officials and key stakeholders to explore ways of breaking this logjam.

Find out more about the Scottish Bill at: [www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx)

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