

**Welfare Reform and Work Bill**  
**Report Stage: Clauses 11, 12, 13, and 14**  
**House of Lords**  
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## **1. Introduction**

The Equality and Human Rights Commission welcomes the aim of the Welfare Reform and Work Bill to encourage and help more people to work, where they are able to. However, we have concerns that some of the measures in the Bill could exacerbate, rather than reduce, existing inequalities and that they may undermine progress towards fulfilment of the UK's obligations under national and international human rights law.

The Commission has already raised its concerns that the impact assessments and human rights memorandum which accompany the Bill do not fully assess the effect of the Bill on equality and human rights. This may make it difficult for Parliamentarians to properly consider the Bill's implications.

This briefing supports:

- Amendment 35 to Clause 11
- Amendments 36, 37 and 38 to Clause 12
- Amendment 41 to Clause 13
- Amendment 44 to Clause 14.

## **2. Clauses 11 and 12**

Amendments 35, 36, 37 and 38

### **Commission's recommendation**

Support Amendments 35, 36, 37 and 38.

### **Explanation**

Clauses 11 and 12 propose to limit entitlement to child tax credits (CTC) or the child element of universal credit (UC) to the first two children in a household. Parents will not be able to claim for any third (or subsequent) child born on or after 6 April 2017. If the child is disabled, parents will be able to claim the Disabled Child Element of CTC, but not the additional child element.

These Amendments would exempt certain groups from being subject to the limits in Clauses 11 and 12.

## Our analysis

We are concerned that Clauses 11 and 12 will have a detrimental effect on the living standards of low-income families with more than two children. Children have a right to adequate living standards, and international human rights instruments are clear that children<sup>1</sup>'s best interests should be a primary consideration in all decisions affecting them<sup>2</sup>. While retention of the Disabled Child Element for third or subsequent children is welcome, introducing a two-child limit for CTC or UC is not, in our analysis, in the best interests of any child. Children's right to adequate living standards applies whatever the actions of their parents. The Bill's impact assessment, *Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element*<sup>3</sup> suggests that the proposal should incentivise families to have only two children if they cannot afford to have more, but no evidence (e.g. research on previous similar policy initiatives in the UK or overseas) is provided to support this assumption.

Further, there may be a particularly negative impact upon certain children. The Equality Act 2010 contains a duty (the Public Sector Equality Duty (PSED)), which requires those carrying out public functions, including Government departments and Ministers of the Crown, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations when carrying out their functions. This duty applies throughout the policy-making process, from the development of options and draft proposals through to legislation and implementation. To be most effective, Government departments should analyse the equality implications of a policy proposal at a formative stage, so that the assessment can inform policy development and the content of legislation. This will also ensure Parliamentarians have the information they need in order to scrutinise and debate Bills. A failure to analyse the equality implications of a proposal at an appropriate stage may mean the Government misses opportunities to tackle discrimination and alleviate disadvantage.

The impact assessment fails to demonstrate proper consideration of the effect of Clauses 11 and 12 on any of the three aims of the PSED. Nor is it clear how the impact of the proposals will be monitored and what action will be taken if adverse impact is identified during implementation.

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<sup>1</sup> Article 27 of the Convention on the Rights of the Child  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>2</sup> Article 3 Ibid

<sup>3</sup> <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf>

The impact assessment notes that people in ethnic minority households may be more likely to be affected by this policy than others. However, the Government has provided no further information about which ethnic minority communities are most likely to be affected; nor has it explained how this disproportionate adverse impact is justified or could be mitigated.

The impact assessment makes no reference at all to the protected characteristic of religion or belief, but in our analysis the policy could have a disproportionately adverse impact on some religious groups, in particular those for whom family planning may be against their religious teachings. This may mean that children in some religious communities are more likely to be brought up in poverty.

### **3. Clauses 13 and 14**

Amendments 41 and 44

#### **Commission's recommendation**

Support Amendments 41 and 44.

#### **Explanation**

Clause 13 proposes to lower the level of Employment and Support Allowance (ESA) available to future claimants placed in the Work Related Activity Group (WRAG) to that of Job Seekers Allowance.

Clause 14 proposes to abolish the "limited capability for work element" of Universal Credit.

These Amendments would mean that the proposed changes to ESA, and its equivalent in Universal Credit (UC), for new claimants would not go ahead.

#### **Our analysis**

The Commission is concerned that the proposal to reduce ESA WRAG and the "limited capability for work element" of UC by £30 per week, will cause unnecessary hardship and anxiety to people who have been independently assessed and found unfit for work.

The measure is likely to have a disproportionately adverse impact on disabled people. ESA is the main benefit for people who are unable to

work because of illness or disability. In November 2014, nearly half of the 490,000 ESA claimants in Britain placed in the WRAG were suffering from mental and behavioural conditions (a further 529,000 ESA claimants were in the assessment phase). The number of ESA claimants in the WRAG is expected to increase to 537,000 by 2019-20.<sup>4</sup>

In its impact assessment, the Government states that it wishes to remove the 'incentives' that '*discourage claimants with potential to work from making the most of opportunities to help them move closer to the labour market*'<sup>5</sup>. However, for those people unable to work because of disability, lowering the rate of benefits available will not encourage them to move closer to the labour market. It will, however, lower their standard of living. The mitigation set out in the Government's impact assessment is that '*someone moving into work could, by working around 4-5 hours a week at National Living Wage, recoup the notional loss of the Work-Related Activity component or Limited Capability for Work element*'<sup>6</sup>. However, this will not be an option open to those who are unable to work because of disability.

The barriers to disabled people's access to employment are well documented. Our recent review of equality and human rights, *Is Britain Fairer?*,<sup>7</sup> revealed a significant difference in unemployment rates between disabled people and non-disabled people (11.1% of disabled people were unemployed compared to 6.4% of non-disabled people in 2013) and that between 2008 and 2013, unemployment rates increased more for disabled people than non-disabled people.

In the Commission's analysis, the barriers to finding suitable employment facing a person who has already been assessed as unfit for work are significant<sup>8</sup> and the suggestion that such employment could be found easily does not reflect the lived experience of many working age disabled people. As such, the Commission recommends that Parliamentarians vote in support of Amendments 41 and 44 to Clauses 13 and 14.

## **About the Equality and Human Rights Commission**

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to

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<sup>4</sup> House of Commons Library (16 July 2015) Briefing Paper Number 07252, p83, see note 67

<sup>5</sup> <http://www.parliament.uk/documents/impact-assessments/IA15-006B.pdf>

<sup>6</sup> Ibid

<sup>7</sup> [http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Final-reports/revise/EHRC\\_IBF\\_MainReport\\_acc.pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Final-reports/revise/EHRC_IBF_MainReport_acc.pdf) p37

<sup>8</sup> <http://www.equalityhumanrights.com/publication/research-report-88-barriers-employment-and-unfair-treatment-work-quantitative-analysis-disabled>

encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution.

Find out more about the Commission's work at:

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