

Our ref: RH/RM/328Hind  
Date: 21 April 2017

**Department for Work and Pensions**

Minister for Employment,  
Caxton House,  
Tothill Street,  
London,  
SW1H 9NA  
ministers@dwp.gsi.gov.uk

To: Minister of State for Employment – Damian Hinds MP

Dear Minister,

**Subject: Child Tax Credit (Amendment) Regulations 2017**

I am writing to you in relation to the above regulations to set out our concerns about the potential impact of the two-child limit for tax credits and the operation of the exemption for children conceived as a result of rape in the above regulations.

The Equality and Human Rights Commission is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations. We are an independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain. We have a statutory role to advise Government on the compatibility of policy and legislation with equality and human rights law.

In making laws or policies, the Government must comply with its obligations under the Equality Act (2010) Public Sector Equality Duty, the Human Rights Act 1998, and international human rights treaties, which are binding under international law, in particular the Convention on the Rights of the Child (CRC) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

In light of these obligations, we have set out below our concerns in relation to the two-child limit for Child Tax Credits and the operation of the exemption for children conceived as a result of rape.

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## Impact of Two-Child Limit

Children have a right to adequate living standards, and international human rights instruments are clear that children's best interests should be a primary consideration in all decisions affecting them (Articles 3, 27 CRC). These are independent rights owed by the state to the children themselves, irrespective of the choices or circumstances of their parents.

In July 2016, the UN Committee on the Rights of the Child issued Concluding Observations on improving children's rights in the UK, recommending that the UK Government should, where necessary, revise the Welfare Reform and Work Act (2016), 'in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impacts of the reform on different groups of children, particularly those in vulnerable situations'<sup>1</sup>.

The Committee also called for a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, child rights impact assessment when developing laws and policies affecting children, and the establishment of accountability mechanisms for the eradication of child poverty.

The introduction of a two-child limit for Child Tax Credits is likely to impact on the living standards of children in poorer households with more than two children, and therefore may constitute a regressive measure in relation to the implementation of Articles 26 and 27 of CRC.

Analysis by the Child Poverty Action Group (CPAG) and the Institute for Public Policy Research (IPPR) found that this policy change will lower 200,000 children below the official poverty line. CPAG estimates that the biggest group affected will be working families with three children, who will miss out on up to £2,780 per year as a result of the policy change.

The impact assessment published by the Department for Work and Pension for these changes was not sufficiently detailed to support proper scrutiny of the legislation. In particular it failed to mention the Public Sector Equality Duty, how its aims would be achieved, how the potential impact will be monitored or how adverse impact identified after implementation would be tackled. There was no evidence provided to support DWP's assumption that the measures will incentivize families to only have two children if they cannot afford to have more.

The policy could also 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.

## Exemption for children conceived as a result of rape

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<sup>1</sup> UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, July 2016, Recommendation 70(d). Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-rights-child>

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The Commission is also concerned by the Child Tax Credit (Amendment) Regulations 2017 and the operation of the exemption for children conceived as a result of rape. In our view the exception raises serious issues in relation to a child and mother's right to private life under Article 8 of the European Convention on Human Rights

The exception, which purports to prevent women from being penalised requires, in our view, invasive reporting requirements of intimate details. Children who may not be aware that they were born of rape may well become aware through this process and through the creation of a record.

We consider that there has been a failure to fully consider the impact of the implementation of this exemption, including the potentially traumatic process for having eligibility assessed and the risk of re-traumatisation upon survivors of rape. This system would rely upon women, who we know from statistics are overwhelmingly unlikely to report rape to police, reporting it to Department for Work and Pensions. The approach also does not account for children born of an ongoing abusive relationship, where women may not exercise power over decisions on how many children to have – and when.

There are clear equality issues relating to the policy's effect on women, on religious groups and on young people which we would have expected to have been considered and mitigated against as part of your consideration of impact when meeting your Public Sector Equality Duty.

In March 2017, the House of Lords Secondary Legislation Scrutiny Committee also questioned whether adequate arrangements have been made for assessing entitlement to the exception for non-consensual conception, in particular regarding the availability and training of third party assessors in Scotland. Given the opposition of charities including Rape Crisis Scotland to perform the third party assessor function, we would be grateful for your views on how you see the regulations working effectively across the whole of the UK.

On these grounds, we urge you to examine our points outlined above, and to amend the Child Tax Credit (Amendment) Regulations 2017 to mitigate against these issues. I would welcome the opportunity to discuss with you the Commission's concerns regarding this policy.

Yours sincerely,



**Rebecca Hilsenrath**

Chief Executive

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