



Championing Children and Young People in England

Office of the Children's Commissioner:

**A Child Rights Impact Assessment of the
Welfare Reform Bill**

January 2012

Office of the Children's Commissioner

The Office of the Children's Commissioner is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children always to operate from the child's perspective.

Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.

The Office of the Children's Commissioner has a statutory duty to highlight where we believe vulnerable children are not being treated appropriately in accordance with duties established under international and domestic legislation.

Introduction

This paper presents the Office of the Children's Commissioner's child rights impact assessment of the Welfare Reform Bill. The purpose of such an assessment is to identify the likely impact of draft legislative provisions on the promotion and realisation of children's rights. We assess the Bill against the rights set out in the United Nations Convention on the Rights of the Child (UNCRC); the Human Rights Act 1998, which incorporates provisions of the European Convention on Human Rights (ECHR) into domestic law; and other international human rights obligations. We also have regard to the interpretative comments of the UN Committee on the Rights of the Child (CRC), and case-law and comments of domestic and international courts and treaty bodies.

The UK is a state party to the UNCRC and in December 2010 Children's Minister Sarah Teather committed that the Government would give 'due regard' to the UNCRC when making new policy and legislation and, in so doing, will always consider the recommendations of the CRC.¹ The key UNCRC rights engaged by the Bill are:

- Article 2:** The right to enjoy all human rights, without discrimination
- Article 3:** That the best interests of the child must be a primary consideration
- Article 6:** The right to life and to develop "to the maximum extent possible"
- Article 9:** The right for children not to be separated from their parents against their will
- Article 12:** The right for children to participate and express their views
- Article 16:** The right to private and family life
- Article 19:** The right to protection from child maltreatment
- Article 23:** The right for disabled children to enjoy a "full and decent life", and their right to "special care" and assistance
- Article 24:** The right to enjoy "the highest attainable standard of health"
- Article 26:** The right to benefit from social security

¹ Department for Education, Written Ministerial Statement, *Publication of the Independent Review of the Children's Commissioner*, 6 December 2011, CM 7981.

Article 27: The right to a standard of living adequate for the child's development

Article 28: The right to education

Article 4 of the UNCRC states that the Government must take “all appropriate legislative, administrative and other measures” to ensure the realisation of rights protected under the UNCRC, and must also apply “the maximum extent of their available resources” to this purpose.

All UNCRC rights should be read in the context of the four general principles of the UNCRC: non-discrimination; the best interests of the child being a primary consideration; the right to survival and development to the maximum extent possible; and the right for the child's views to be heard and given respect.

General Comments

In this paper we highlight our primary concerns regarding the potential impact of the Welfare Reform Bill on children's rights; it is not intended to be an exhaustive assessment of the Bill's impact. In particular, we focus upon identifiable groups of children whose rights may, or are likely to, be, breached by the implementation of the Bill. Our assessment is intended to aid Government in ensuring compliance with children's rights obligations when drafting regulations to implement the Bill's provisions, as well as decision-makers dealing with individual claims for social security.

In assessing the impact upon children of the Welfare Reform Bill it should be recalled that children – in particular those aged 0-15 – are unable to take advantage of the incentives that the Bill intends to provide to take up work, move to cheaper accommodation, comply with conditions in claimant commitments, etc. Children are both particularly vulnerable to the effects of poverty and/or reduction in family benefit income and powerless to influence these circumstances. Children are, in domestic law and international human rights law including the UNCRC, rights-holders and their rights are independent of those of their parents or carers. In the context of welfare reform this is underlined by Article 26 UNCRC, under which children have a direct right to apply for social security benefits.² The failure of parents or carers to comply with conditions on benefits or take up the incentives offered in the Bill does not affect the Government's children's rights obligations, including the requirements to provide social security and an adequate standard of living for all children.

The Bill's provisions should also be seen in the context of other reforms including those to legal aid in the Legal Aid, Sentencing and Punishment of Offenders Bill. Advice in relation to welfare benefits and legal representation before tribunals in benefits cases is excluded from the scope of civil legal aid by this Bill, except in 'exceptional cases'. We are concerned that this will result in non-payment or underpayment of benefits in meritorious cases, and have supported amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill that would restore such cases to scope for children and for adults with dependent children.³

When considering the impact of the Welfare Reform Bill upon children's rights it is also important to emphasise the levels of poverty and vulnerability common among children whose families are in receipt of welfare benefits. Benefit levels have for some years been consistently below the poverty line (60% of median income) and the Minimum Income Standards.⁴ This has a serious impact on the rights of children.⁵

² E/CN/4/1989/48, pp75-78; R Hodgkin and P Newell, Implementation Handbook for the Convention on the Rights of the Child, p379.

³ See letter from the Children's Commissioner to the Secretary of State for Justice, 6 January 2011, available from www.childrenscommissioner.gov.uk.

⁴ See Joseph Rowntree Foundation, *Monitoring Poverty and Social Exclusion 2011*, note at p39: *MIS asks focus groups to negotiate budgets that are then verified by subject experts. The budgets are very detailed,*

For a couple with two children, or a lone parent with an infant, levels of means-tested benefits do cover more of the MIS [Minimum Income Standard], around 60 per cent, but still not all. For both of these family types, most household goods and services and any kind of social or cultural participation are only affordable by going below the minimum standard for a combination of food, fuel, clothing, transport and personal goods and services.

going to the level of individual items in order to arrive at an overall cost. These items are grouped into the following categories – food, alcohol, clothing, water rates, household insurance, household goods and other housing goods (grouped together as household goods and services), personal goods and services, travel costs and social and cultural participation.

⁵ Ibid, p35.

1. Benefit Cap (clauses 94 and 95)

Effect of clauses

Clause 94 provides for regulations to be made that can set a maximum amount of welfare benefits to which any single person or couple can be entitled – the ‘benefit cap’. Under sub-clause (6) this is to be determined by reference to estimated average earnings – the amount which, in the opinion of the Secretary of State, represents at any time the average weekly earnings of a working household in Great Britain after deductions in respect of tax and National Insurance. Clause 95 provides that the regulations will be subject to the affirmative resolution procedure, and that no appeal shall lie against a decision to apply the benefit cap in accordance with the regulations.

The proposed total benefit caps are **£26,000** per annum for a family household and £18,200 for a single person. The family cap applies regardless of the number of children or other dependents in the family; larger families will therefore be particularly affected. Over 80% of households likely to be affected by the cap will include three or more children.⁶ The Children’s Society has produced research showing that 75% of people affected by the cap will be children - 210,000 children in all – and that children are nine times more likely than adults to be affected.⁷ The degree of effect will depend upon the number of children in the family and other factors including housing costs. Notably, child benefit is included within the cap.

The Department for Work and Pensions (DWP) Equality Impact Assessment (EIA) for this provision assesses its effects as subject to a number of variables but foresees homelessness, diversion of living cost benefits to housing costs, and migration within the UK amongst them:

The cap is likely to affect where different family types will be able to live. Housing Benefit may no longer cover housing costs and some households may go into rent arrears. This will require expense and effort by landlords and the courts to evict and seek to recoup rent arrears. Some households are likely to present as homeless, and may as a result need to move into more expensive temporary accommodation, at a cost to the local authority. It is not possible to quantify these costs because they are based on behavioural changes which are difficult to assess robustly.

...

At lower percentiles of the market, the cap will still make some parts of the country unaffordable on Housing Benefit alone for larger households receiving benefit and it is difficult to accurately predict what will happen to the affected households, as it depends on

⁶ Department for Work and Pensions, *Household Benefit Cap: Equality Impact Assessment*, October 2011.

⁷ The Children’s Society, *The distributional impact of the benefit cap*, September 2011.

households' behavioural responses and on the availability of accommodation. The impact on those affected will be that they will need to make a choice between a number of options including starting work, reducing their non-rent expenditure, making up any shortfall in Housing Benefit using a proportion of their other income or moving to cheaper accommodation or area. The Government is looking at ways of easing the transition for families and providing assistance in hard cases.

All these effects should be viewed in conjunction with other provisions of the Bill, in particular those relating to housing benefit (clause 68) and the proposed loss of the Social Fund (cl 69-72), in addition to other changes already applied – for example, as of April 2011 Local Housing Allowance (LHA) rates (relevant to private sector tenants) are already set by reference to the 30th rather than, as previously, the 50th percentile of private rents, and fixed cash caps now apply depending on the size of the property.

Likely outcomes

The likely outcomes of this measure about which OCC is concerned include:

An increase in child poverty, with associated poor health, educational and other outcomes. Institute for Fiscal Studies research for the Family and Parenting Institute shows an increase in absolute poverty rates in 2013-14 'concentrated among households with four or more children'; these families will also see the highest fall in median income in that year. The research states that '[t]his is likely to be driven by the imposition of a cap on the total amount of benefits that can be received at £500 a week.'⁸

In order to stay in their homes, parents who cannot or do not find work will have to divert large amounts of their living cost benefits – non-housing elements of Universal Credit plus child benefit, etc – to their housing costs. The diversion of large proportions of living cost benefits to pay for accommodation – that is, to make up the shortfall – is likely to have a serious impact upon children's health and wellbeing. For families already living in poverty, it is likely to result in money that would ordinarily have been spent on necessities for children's health and wellbeing: heating, warm clothing, nutrition, etc, being diverted to housing costs.⁹

Children losing their home as a result of it becoming unaffordable. The Children's Society has suggested that over 82,000 children could lose their homes as a result of this

⁸ Family and Parenting Institute, *The Impact of Austerity Measures on Households with Children*, Jan 2012, pp8-9.

⁹ See End Child Poverty, *Child Poverty Map of the UK*, Jan 2012, pp7-8: *At below 60 per cent of the median [income], material deprivation becomes a more and more apparent problem, and families struggle to meet basic needs like food, heating, transport, clothing and the extra costs of schooling like equipment and trips./ The poverty line means that, after housing costs, all the household bills and spending needs will need to be met by around £12 or less per family member per day. For many families, especially those reliant on out of work benefits, it can be substantially less.*

measure.¹⁰ The loss of the family home is likely to have a severe impact on children's emotional and physical wellbeing. Under current homelessness legislation families becoming homeless due to the benefit cap should be rehoused by the local authority; however, as the EIA highlights, this may be in temporary accommodation which is often of poor quality. Further, there are safeguarding concerns in relation to families in temporary accommodation, often at some distance from support networks and living transient lifestyles. Children from homeless and transient families are more likely to go missing from education.¹¹ The number of households accepted by local authorities as homeless in 2010 is already 13% higher than in 2010.¹² If private rents become unaffordable this is likely to put considerable pressure on the social rented sector such that insufficient decent housing is available for the number of families requiring it.

The Government highlight the potential for families to move to cheaper areas in order to obtain affordable accommodation; however, a homeless family applying to a different local authority may be refused accommodation on the grounds of their lack of local connection. Further, there is no guarantee of availability of accommodation in cheaper areas; as large numbers of families seek to move to certain local authorities – for example, on the outskirts of cities – this is likely to put pressure on capacity and drive up private rents in these areas.

Effect upon children of in-country migration: Where a family does decide to move to a different area in order to find affordable accommodation, this could result in the loss of support from extended family and other support networks; disruption to education; loss of contact with friends for children; and disruption to medical provision. There are particular safeguarding concerns around children who go missing from education due to a failure to complete a transition to a school in their new area,¹³ and/or who are 'at risk' or have a child protection plan where social services may not be notified of their move and children could therefore 'drop off the map'. In addition to these individual effects, there is likely to be pressure on local authority, education and health services in 'cheaper' authorities due to migration of families.

Incentivising family breakdown: The benefit cap could provide an incentive to family breakdown for some families for whom establishment as two separate households would allow for a greater overall amount of benefit income. For example, a couple with five children could receive up to £26,000p.a. under the cap but if the father were to set up home separately he could receive Universal Credit separately up to the single person's cap while the mother remained eligible for benefits up to the £26,000p.a. maximum). The strain of poverty and possible homelessness may also risk children's wellbeing both directly and indirectly through heightened risks of parental abuse and marital/relationship breakdown.

Disproportionate impact on children from some BME groups: Children from some

¹⁰ The Children's Society, n7 above.

¹¹ DCSF, *Working Together to Safeguard Children*, 2010, paras 11.103-11.110.

¹² Shelter press release, 8 December 2011.

¹³ DCSF, n11 above.

BME groups are more likely to live in larger family units and also more likely to be in receipt of benefits and are therefore disproportionately affected by the household benefit cap.¹⁴ Nearly three-quarters of children of Bangladeshi origin (a group who are likely to be particularly affected by this provision) already grow up in poverty.¹⁵

Disproportionate impact on disabled children and children of disabled parents: while households in which a person is in receipt of Disability Living Allowance (DLA)/Constant Attendance Allowance/Attendance Allowance will be exempt from the cap, children and adults can be substantially disabled yet not eligible for any of these benefits. The DWP have forecast that about half of capped households will contain a person who is disabled under the Disability Discrimination Act definition. Childcare for disabled children is more expensive and harder to access,¹⁶ making it more difficult for their parents/carers to return to work. 29% of families with a disabled adult, 28% of those with a disabled child, and 38% of families with a disabled child and a disabled adult, already live below the poverty line.¹⁷

Disproportionate impact on children living with kinship carers: kinship carers who take over the care of children due to family crisis (for example, the illness or imprisonment of a primary carer) have a higher rate of larger family units and will therefore be disproportionately affected by the household benefit cap. These carers provide continuity of care within the extended family to children who may already have suffered a traumatic event such as the death, serious illness or imprisonment of a parent. If kinship carers can no longer afford to provide such care and remain in their home due to the benefit cap the children may instead end up in state care resulting in a loss of contact with family and further serious effects upon their emotional wellbeing.¹⁸

Impact on children's rights

Children's rights to social security are guaranteed under **Article 26 UNCRC**, which mandates States Parties to take the necessary measures to achieve the full realisation of these rights in accordance with national law. Applications for social security should, where appropriate, be granted 'taking into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child.' The child's independent right to apply for social security is envisaged by the Article.

The CRC has often expressed concern that even in highly developed nations, the poorest

¹⁴ DWP, n6 above, paras 23-24; and see FPI, n8 above.

¹⁵ Equality and Human Rights Commission, *How Fair is Britain? Equality, human rights and good relations in 2010, The First Triennial Review*, 2011, p651.

¹⁶ See memorandum given in evidence to the Public Bill Committee by Every Disabled Child Matters (WR 33).

¹⁷ EHRC, n15 above, p651.

¹⁸ See memorandum given in evidence to the Public Bill Committee by the Kinship Care Alliance (WR 37).

and most vulnerable children are insufficiently protected by social security, and has begun to raise concerns regarding regional and socio-economic inequality in relation to access to social security in such states.¹⁹

The right to social security is also guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment on the right to social security, said:²⁰

Benefits for families are crucial for realizing the rights of children and adult dependents to protection under articles 9 and 10 of the Covenant [right to social security and protection of families and children]. In providing the benefits, the State party should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child or adult dependent, as well as any other consideration relevant to an application for benefits made by or on behalf of the child or adult dependent. Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.

The imposition of the benefit cap will undermine the right of affected children to social security and, in particular, the inclusion of child benefit and elements of universal credit paid in respect of children within the cap is contrary to the notion of children as rights-holders.

The right to social security under the UNCRC and the ICESCR must be guaranteed without discrimination on prohibited grounds. In addition to the grounds listed in Article 2 UNCRC which include, inter alia, race, religion and disability, the CRC has identified grounds including being the child of a single parent, children living in poverty/extreme poverty, and the unequal distribution of national wealth. Family size is, in our view, an analogous ground. The CRC has emphasised that the non-discrimination imperative is not dependent on budgetary constraints and also the need for positive discrimination in favour of vulnerable groups, for example in relation to budgetary allocations.

The CESCR General Comment also highlights the principle of non-retrogression:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine

¹⁹ See e.g. Sweden CRC/C/15/Add.248, para 4.

²⁰ ICESCR, Gen Comment No 19 *The Right to Social Security*, E/C.12/GC/19, 4 Feb 2008.

participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.

The imposition of the household benefit cap, in our view, risks unjustified discrimination in the enjoyment of the right to social security by children from larger families; children from BME groups with a higher rate of large family size; and disabled children and children of disabled parents/carers, where the disabled person is not eligible for exempting disability benefits, in breach of **Article 2 UNCRC**. Viewing the child as the holder of the right to social security both makes plain the discriminatory effect of the cap (eg on family size grounds) and counters the argument that parents can find work in order to avoid the imposition of the cap, since children are powerless to affect this.

Further, the universal imposition of the cap without regard to the individual circumstances of children means that the best interests of children cannot be a primary consideration in taking the decision to impose the cap on an affected family, which in our view is contrary to **Article 3 UNCRC**. The CRC has criticised the fact that the best interests principle appears not be reflected in our legislation on social security in both its sets of Concluding Observations on the UK; the Bill does nothing to remedy this.²¹ Article 3 UNCRC refers not only to the best interests of the child but also the duty to ‘ensure the child such protection and care as is necessary for his or her well-being’ through ‘all appropriate legislative and administrative measures’. The CRC has referred frequently to failures adequately to provide for particular groups of vulnerable children.

Under **Article 27 UNCRC**, children are guaranteed the right to an standard of living adequate for their physical, mental, spiritual, moral and social development. States Parties are mandated, ‘in case of need’, to ‘provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing’ under Article 27(3). The CRC has said that “rights to housing of children are interrelated to and interdependent with nearly every other right contained in the Convention”; and have described the right to housing as a “right to live somewhere in security, peace and dignity....”.²² The CRC has urged States Parties to implement systematic strategies to reduce poverty in early childhood and combat its possible effects on wellbeing. Material assistance and support programmes should be included in the means employed.²³ It has expressed concern where assistance to families was insufficient to prevent eviction, “which often further deteriorates the living conditions of children”.²⁴

We believe that the household benefit cap is likely to have a substantial negative impact

²¹ CRC/C/15/Add.34, para 11 and CRC/C/15/Add.188, paras 25 and 26.

²² Statement to Habitat II conference, CRC/C/50, pp 79 and 77.

²³ CRC, Gen Comment no 7, *Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1, 20 September 2006.

²⁴ Latvia, CRC/C/LVA/CO/2, para 48.

on the enjoyment of Article 27 rights for a considerable number of children, in particular those from the groups highlighted above. As a result, it is likely to impact upon the enjoyment of other rights including those to maximum development, health, education, family life, protection from maltreatment and particular rights of disabled children.²⁵

The right to an adequate standard of living is also guaranteed by **Article 11 ICESCR** which includes the right to “the continuous improvement of living conditions”. We believe that the imposition of the household benefit cap risks retrogression in relation to this right and that under Article 27 UNCRC in relation to substantially affected children. Further, there is a discriminatory impact in relation to the particularly affected groups highlighted above.

In general, the fact that children under 16 are not given their own independent rights to social security under the Bill – contrary to **Article 26 UNCRC** – also has the result that the Bill does not respect children’s rights to be heard in all decisions affecting them under **Article 12 UNCRC**. This effect is compounded in relation to the benefit cap since there are to be no rights of appeal against the imposition of the cap.

²⁵ Articles 6, 24, 28, 16, 19 and 3 UNCRC. As to this effect see, for example, End Child Poverty, *Health consequences of poverty for children*, 2008.

2. Housing benefit: determination of appropriate maximum (clause 68)

Effect of clause

Housing benefit is one of the benefits that will be absorbed into Universal Credit. Clause 68 of the Bill (housing benefit: determination of appropriate maximum) will allow regulations to be passed that will set Local Housing Allowance (LHA) rates (relevant to private sector tenants) by reference to the lower of the 30th percentile of local private sector rents or the Consumer Price Index, whichever is the lower. As of April 2011 LHA rates are already set by reference to the 30th rather than, as previously, the 50th percentile of private rents, and fixed cash caps now apply depending on the size of the property. Further, these regulations will penalise under-occupation in the social rented sector (ie, where a person's home has more bedrooms than are deemed necessary for the number of occupants) with benefit reductions.

Likely outcomes

An increase in child poverty, with associated poor health, educational and other outcomes; children losing their home as a result of it becoming unaffordable; and effects upon children of in-country migration. The changes to housing benefit under clause 68 will allow appropriate maximum housing benefit (AMHB) rates to be set by reference to the Consumer Price Index (CPI) where this is *lower* than the rise to the 30th percentile of local private sector rents. This will therefore result in increasing unaffordability of rents. The effects of this provision should be viewed alongside those for the Household Benefit Cap, detailed above. It is likely to have similar outcomes in relation to unaffordability of rents; diversion of living cost benefits to pay rent; homelessness; and family migration to cheaper local authority areas.

The switch to CPI-linked uprating of benefits has been highlighted as a cause of child poverty:²⁶

The government's changes to the benefit system will impact the level of child poverty. Projections from the Institute for Fiscal Studies (IFS) (Child and Working-Age Poverty from 2010 to 2020, available at <http://bit.ly/q11es5>) suggest that in the short run, relative child poverty is forecast to remain broadly constant between 2009/10 and 2012/13. By contrast, absolute child poverty is forecast to rise. This is because income at the bottom is expected to fall over the period, but so is income at the middle. In the longer term, the introduction of Universal Credit will reduce both absolute and relative poverty. However, the switch from RPI- to CPI- indexation of means-tested benefits would more than offset the impact on poverty of Universal Credit. As a result, absolute and relative child poverty are forecast to be 23 per cent and 24 per cent in 2020/21 respectively, compared to the targets of 5 per cent and 10 per cent in the 2010 Child Poverty Act.

²⁶ Joseph Rowntree Foundation, n4 above, p35.

We are further concerned that the 'under-occupation' penalty, which we understand may be a 15% reduction in housing benefit for one 'unoccupied' room and 25% for two 'unoccupied rooms', will result in loss of children's family homes, where they may have lived all their lives. The DWP's impact assessment states that 670,000 tenants are likely to lose an average of £13 per week, with 30,000 of these losing an average of £34 per week.²⁷ We note that children are expected to share bedrooms – when aged 9 or under with another child of the household of either gender and when aged 15 or under with another child of the household of the same gender. Penalties could therefore apply simply because children each have their own bedroom in a family home.

Disproportionate impact on particular groups. Such penalties are likely to have a particular impact on disabled children, where spare rooms may be needed for equipment storage and/or overnight carers, unless they are excluded from the Bill. We understand that the DWP's intention is to make provision for overnight carers where this is required; however, the EIA says that there will be provision for a bedroom for overnight carers for 'the claimant or their partner', but does not mention carers for children.²⁸ Children waiting for an adoptive family, where a spare room is required for adoption, will also be affected, as will children whose care is shared by separated parents, 16 and 17 year olds who have moved out of home but still return for periods of time, and children for whom kinship carers provide overnight care some of the time – unless these groups are exempted from the penalty. Children who are forced to move, or whose kinship carers or non-resident parent is forced to move, to a cheaper area by this measure may also suffer the loss of frequent contact and support from non-resident family members.²⁹

Safeguarding implications of under-occupation penalty. In addition to safeguarding concerns regarding children forced to move area by rent unaffordability (see above under benefit cap), we are concerned at the safeguarding implications of the possibility that families may take in lodgers to avoid under-occupation penalties.

Refuge accommodation for children fleeing domestic violence. We are particularly concerned at the potential impact of clause 68 on children living in domestic violence refuges, where rents tend to be higher: Refuge have stated that 'the cap should be based on actual cost and set at a rate that is high enough to meet the additional costs required to provide specialist refuge accommodation'; they highlight that '[d]ue to the nature of [their] services, refuges are often in more expensive residential areas and need to be close to amenities' and have warned of the risk of closure of refuges if costs cannot be met.³⁰ We understand that the DWP's intention is to continue to make provision for families in these circumstances reflecting the higher costs involved. We welcome this as it is essential for the protection of children's rights to allow children fleeing domestic violence to continue to be accommodated in this specialist accommodation and to prevent closure of refuges, and further to prevent a disproportionate impact on children in refuges' standard of living through the diversion of living cost benefits to meet the costs of such accommodation.

²⁷ DWP, *Impact assessment: under-occupation of social housing*, February 2011.

²⁸ *Ibid*, para 8.

²⁹ See further evidence submitted to the Public Bill Committee by the National Housing Federation (WR 12).

³⁰ Refuge, *Housing Benefit Reform – Supported Housing*, October 2011.

Impact on children's rights

As with the household benefit cap, we believe that the changes to housing benefit in the Bill may have a substantial impact upon children's enjoyment of their rights to social security and to an adequate standard of living under the UNCRC and ICESCR and therefore upon a range of other rights.

Our observations regarding the household benefit cap regarding **Articles 2, 3, 12, 26 and 27 UNCRC** and **Article 11 ICESCR** above also apply in relation to the changes to housing benefit. Further, if special provision were not made to prevent refuge accommodation becoming unaffordable for children and/or unavailable due to refuge closure this would, we believe, breach **Article 19 UNCRC** which states that the Government must take *all appropriate* legislative, administrative and other measures to protect children from domestic abuse.

3. Universal Credit (Clauses 1-12)

Effect of clauses

Universal credit (UC) is a working-age benefit that will replace a range of other benefits including income support; income-based jobseeker's allowance; income-related employment and support allowance; housing benefit; child tax credit and working tax credit. Budgeting loans (under the Social Fund – see below at section 5) will be replaced by advances of UC in cases of need. Other benefits – notably child benefit, council tax benefit and disability living allowance – are not included within UC. Children are generally ineligible to claim UC although regulations may prescribe a minimum age for claims under 18 in prescribed cases under clause 3 of the Bill. Awards of UC are made up of a standard allowance (different for a single person or a couple) plus additional sums for responsibility for children and young people; housing costs; and other particular needs or circumstances. Amounts are deducted in relation to earned and unearned income. Clause 10, which provides for the calculation of the sum awarded under 'responsibility for children and young persons' states that an amount will be awarded for each child or 'qualifying young person'; and may make provision for the inclusion of an additional amount if such a child or 'qualifying young person' is disabled. 'Qualifying young person' is not defined in the Bill but will be in regulations. Clause 12, regarding 'other particular needs or circumstances', provides that these can include the fact that a claimant has limited capability for work or for work and work related activity, and that a claimant has regular and substantial caring responsibilities for a severely disabled person.

UC will be paid in a single monthly payment: for couples, who under the Bill claim jointly, this could go into a joint bank account or otherwise to a nominated member of the couple.³¹ Recipients must accept a 'claimant commitment' which will set out the claimant's responsibilities in relation to conditionality (see below under 'conditionality').

DWP's intention is that 'transitional protection' will apply to current claimants until there is a 'change' in their circumstances.³² While transitional protection applies there will be no cash reduction in the level of benefit paid to a claimant. However, since the household benefit cap and changes to housing benefit will already have been implemented by the time this is introduced this protection will apply to an already reduced level of benefit for many claimants. Further, the cash protection amount (added to notional benefit to avoid cash reduction under transitional protection) will not be uprated over time with the rest of the entitlement and will cease if the award of UC ends or has to be reassessed for a change in circumstances. 'Change in circumstances' for these purposes has not yet been

³¹ Department for Work and Pensions, *Universal Credit Policy Briefing Note 2: The payment proposal*, 2011.

³² Department for Work and Pensions, *Universal Credit Policy Briefing Note 6: Transitional protection*, 2011.

fully defined. It is expected to include starting or leaving work. It is unclear whether it will include, for example, having another child or becoming disabled.

Likely outcomes

We welcome the lessening of 'cliff edges' under Universal Credit, removing disincentives to enter into work for, for example, a small number of hours, from benefit claimants as this has the potential to allow parents/carers to increase their family income through work. We note however that UC has been criticised for increasing the high marginal tax rates of some low income households, thus compromising its work incentive effect.³³ Further, some 'cliff edges' will remain under UC – in particular, we are concerned that the use of an income-based cut-off point for **free school meals** for school-age children will create a cliff edge for families with children of this age. For this reason – and in light of the substantial benefits of healthy school meals for educational and health outcomes³⁴ – we support the extension of free school meals to all children whose families are in receipt of Universal Credit.

We are also concerned that some aspects of the UC system will worsen outcomes for some children:

Single payment to nominated individual likely to worsen outcomes for children. If the UC payment is made to the individual who is not the main carer for the children then evidence shows that it is less likely to be spent on children's needs.³⁵ Payment to an individual within a couple makes it more difficult for the other member of the couple to act as a check upon over-spending or diversion of income away from children. In situations where the perpetrator of domestic violence or abuse is nominated as the recipient of UC the other partner will find it even more difficult to remove him/herself and the children of the family from the abusive situation because of a lack of financial autonomy, and the abusive partner will gain even more power over his/her victims through financial control. In situations of relationship breakdown where one partner leaves the family home, the partner with care of the children may be left without UC while a new claim is made and it is imperative that delay is avoided in order that children are provided for. The situation of parents with shared care of children should also be catered for.

Finally, the 'lump sum' single monthly payment is likely to render children more vulnerable in the case of administrative error resulting in late payment or non-payment.

³³ See Joseph Rowntree Foundation, n4 above, p37.

³⁴ See, for example, Pelot and James, *Healthy School Meals and Educational Outcomes*, Institute for Social and Economic Research, 2009.

³⁵ The Children's Society, *Splitting and Tapering of Universal Credit Payments*, 2011, citing J Goode et al, *Distribution of income within families receiving benefits*, Policy Studies Institute, 1998.

Disproportionate impact on disabled children. The EIA for UC states that there will be two levels of payment available to disabled children (amounts below are per week):³⁶

The higher rate will be based on the child being eligible for the highest rate of the DLA care component (and widened to include children who are registered blind). The lower rate will be based on the child being eligible for the other rates of DLA and would be less than now (£26.75 instead of £53.84) to mirror the limited capability for work element for adults.

It is unclear why provision for disabled children is intended to mirror that for disabled adults since children under 16 are not expected to increase their income by finding work. The most disabled children would only experience a loss of 75p per week under UC (they are currently eligible for £75.25pw of additional child tax credit and will be eligible for £74.50pw under intended rates of severe disability addition). However, as outlined in the EIA above, other disabled children will lose £27.09pw. The Government estimates this change will affect around 100,000 disabled children. Due to care needs and difficulty of accessing affordable and suitable childcare for disabled children parents/carers are less able to mitigate the effects of this loss by accessing more earned income. Large numbers of disabled children are already living in straitened circumstances: a survey by Contact a Family in 2010 found that 23% of families with disabled children are going without heating and 14% are going without food. Almost 90% said financial worries had a detrimental impact on their family life.³⁷

Disproportionate impact on children of disabled lone parents. The Children's Society have highlighted the effect upon children of the abolition of the Severe Disability Premium (SDP) and Enhanced Disability Premium through the introduction of UC. This results in a loss of up to £69.50pw for affected people.³⁸ SDP (£55.30pw) is paid to disabled adults with no adult carer in the household. Up to 25,000 lone parents currently receive SDP. Some disabled lone parents will be partly compensated by the planned uprating of the higher disability addition to UC from £32.35pw to £74.50pw. However, we remain concerned that this change may encourage children of disabled lone parents to take on more caring responsibilities because formal care becomes unaffordable, in addition to the financial impact upon children whose lone parent has little or no access to non-benefit income.

Impact on children's rights

The payment of UC for families to a single nominated bank account, which may not be that of the main carer for children, highlights the lack of respect for children as holders of individual rights to social security under **Article 26 UNCRC** in UK legislation.

³⁶ DWP, *Welfare Reform Bill Universal Credit Equality Impact Assessment*, Nov 2011, para 36.

³⁷ Contact a Family, *Counting the Costs*, 2010, cited in Every Disabled Child Matters, *Second reading briefing on Welfare Reform Bill*, July 2011.

³⁸ The Children's Society, *Cuts to support for young carers under the Universal Credit*, 2011.

In hindering the ability of children living with domestic abuse to escape an abusive situation due to the lack of financial autonomy of their non-abusive parent, the Universal Credit provisions fail to take all appropriate legislative measures to protect children from domestic abuse and we therefore believe they fail to fulfil the requirements of **Article 19 UNCRC**.

We believe that the lowering of support rates for disabled children (other than the most disabled children) under UC is likely to be in breach of **Article 3 UNCRC** in that the best interests of the child are unlikely to have been a primary consideration in the application of this policy; and that the plans would discriminate against disabled children in this group in the enjoyment of their rights to an adequate standard of living under **Article 27 UNCRC** in breach of **Article 2 UNCRC**, in addition to being retrogressive in relation to their Article 27 rights.

Further, **Article 28(1) of the UN Convention on the Rights of Disabled Persons (UNCPRD)** provides that:

States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.'

We believe the lowering of support will similarly be in breach of this Article and in particular its requirement for 'continuous improvement of living conditions'.

In relation to children of disabled lone parents, we believe that if the proposed lowering of support for disabled lone parents is implemented this will constitute unjustified discrimination against children in this group in their right to an adequate standard of living under **Article 27 UNCRC**. If children have to take up caring responsibilities for parents as a result of this measure this could also impact upon other rights e.g. the rights to education and health under Articles 28 and 24 UNCRC.

4. Conditionality, sanctions and recoverability of benefits (clauses 13-28, and 103-119)

Effect of clauses

In order to be eligible for Universal Credit under clause 3 of the Bill a person must accept a claimant commitment (clause 4). Most claimants will be made subject to one or more 'work-related requirements'. These can include attending work-focused interviews; work preparation (e.g. participating in training, attending a skills assessment, or undertaking work experience or a work placement); work search (taking all reasonable action and any particular action specified by the Secretary of State to obtain paid work or better-paid/more paid work; and work availability (being able and willing immediately to take up paid work or better-paid/more paid work).

Claimants who cannot be made subject to any work-related requirements include those with limited capacity for work and work-related activity; with regular and substantial caring responsibilities for a severely disabled person; responsible carers for a child under 1 (in the case of a couple, one member will be nominated by the couple as the responsible carer) or other categories of person specified in regulations. Responsible carers of children aged 1 to at least 3 and other prescribed categories of person may only be made subject to work-focused interviews. Claimants not in these categories but with limited capabilities for work of a prescribed description may be made subject to a work preparation requirement and a work-focused interview requirement. Other claimants can be made subject to all four work-related requirements.

Section 31 of the Welfare Reform Act 2009 currently requires, in relation to jobseeker's allowance and employment and support allowance, that agreements/plans are drawn up taking into account the impact on the wellbeing of any child affected by them, so far as is practicable. There is no similar requirement for claimant commitments in the Bill. While clause 24 makes provision for the Secretary of state not to impose the relevant work-related requirements on claimants in circumstances specified in regulations, there is nothing on the face of the clauses about the needs of children and/or the availability and affordability of childcare. This is of particular concern in relation to the following groups of children:

- Children aged 3-4 whose responsible carers are required to carry out work preparation which could include substantial time commitment for training, work experience and/or work placement, etc.
- Children aged 5+ who are at school where work-related requirements may require their main carer's attendance outside school hours.

- Disabled children whose main carer is not deemed to have regular and substantial caring responsibilities for a severely disabled person.

The DWP briefing note on *Conditionality under Universal Credit: the work search and work availability requirements*³⁹ states that lone parent claimants of a child between 5 and 12 or an older child with exceptional care needs will be able to restrict their work search and availability to work which fits with hours their child is in school; provides reasonable time to take and collect their child from school; and takes into account their child's care needs, including whether childcare is available and affordable, particularly during the school holidays. Analogous arrangements will be made for couples with a child under 13 and separated couples with shared care. Carers for a disabled child aged 5+ who do not meet the criteria to be placed in the group subject to no work related requirements 'may have their work search and work availability requirements limited to jobs that would not interfere with their caring responsibilities'. Disputes can be referred to another employment officer for review.

Failure to comply with these requirements for no good reason is sanctionable under clauses 26 and 27 with a reduction in the level of UC. Less serious sanctions will operate for up to 26 weeks or until a condition imposed by the Secretary of State is complied with. More serious sanctions can operate for up to three years. Hardship payments – which may be recoverable or dependent on requirements or conditions being met by the claimant – can be paid under clause 28 to claimants subject to sanctions who would otherwise be in hardship.

We understand that only the adult component of Universal Credit will be sanctionable; however, significant reduction in or loss of this component will substantially affect household income and therefore children's living standards (unless hardship payments make up the shortfall).

Clause 105 provides that the Limitation Act 1980 shall not apply to the recovery of overpaid benefits; as a result of this provision recovery can take place from the date of the coming into force of that Act. Under clauses 102-104 recovery can take place by deduction from earnings or from future benefits and under clause 104 this can include child benefit and guardian's allowance. Further, unlike the current situation, recovery can take place even if the overpayment was the result of DWP administrative error rather than a claimant's failure to disclose a relevant fact or misrepresentation of their circumstances.

³⁹ DWP, Universal Credit Policy Briefing Note 12, *Conditionality under Universal Credit: the work search and work availability requirements*, October 2011.

Clauses 110 and 111 allow for civil penalties for benefit offences not resulting in an overpayment, as an alternative to prosecution. The penalty level will be set at £350; where there is an overpayment the maximum will be £2000. Clauses 115 and 116 set new sanctions for benefit fraud: serious organised fraud and serious identity fraud relating to social security will be subject to a 3 year loss of benefit sanction. First offenders (currently subject to a 4 week loss of benefit sanction) will now be subject to 13 weeks. A second offence/set of offences within 5 years will result in a 26 week sanction. A third offence/set of offences within a further 5 years will result in a 3 year sanction.

Clause 114 provides for civil penalties for negligent errors in benefit claims or failure to provide information or evidence in accordance with requirements without reasonable excuse, where this results in an overpayment.

Likely outcomes

If sanctions are imposed upon claimants with children in the household the likely outcome is hardship. While clause 28 makes provision for hardship payments we have four concerns: what will qualify as hardship; levels of hardship payments; whether these will be recoverable; and how long they will take to be paid. If hardship payments are not made; are made in the form of loans; are insufficient in quantity; or are delayed, this is likely to put children at risk of losing their home through rent arrears, and to otherwise substantially compromise their standard of living and potentially their health.

Impact on children's rights

A child's independent rights to social security and to an adequate standard of living under the UNCRC should never be affected by the imposition of benefit sanctions upon his or her parent or carer. The drafting of **Article 26 UNCRC** which specifically envisages that children can apply for benefits in their own right, makes this clear. In our view, it is insufficient that sanctions will only affect the adult component of UC since withdrawal or reduction of this will have a substantial effect upon household income and therefore upon the child's standard of living.

If substantial benefit sanctions are applied so that housing becomes inevitably unaffordable, resulting in the eviction of a family, then this would be likely to be in violation of **Article 8 ECHR**. A failure to consider the interests of the children in applying the sanction would also constitute a violation of their Article 8 rights. Hardship payments in the form of loans would be unlikely to mitigate this breach since it is difficult to see how they could be repaid. Further, no decision to impose a benefit sanction upon a claimant with

dependent children should be made without consideration of the best interests of the children as a primary consideration in order to comply with **Article 3 UNCRC**.

If a benefit sanction is imposed, hardship payments should be available automatically when children are in the household and should be sufficient to guarantee housing affordability without the diversion of substantial amounts of living cost benefits to rent, in order that children's rights to social security and to an adequate standard of living under **Articles 26 and 27 UNCRC** are respected. Sufficient hardship payments should be paid immediately upon the sanction being applied, should not be dependent upon an application by the claimant, and should subsist for as long as the sanction is applied. They should not be repayable (that is, should not take the form of loans).

Further, we are concerned that sanctions should never be imposed on the main carers of children under clauses 26 and 27 of the Bill unless available, affordable childcare is available that will allow them to take up offers of work or training or attend interviews, etc. Childcare in the UK is amongst the most expensive in the world.⁴⁰ We welcome the assurances in the *Conditionality DWP* briefing note but await the publication of regulations and guidance to decision-makers in order to assess the protection for children therein. In addition to the considerations in the briefing note, the availability and affordability of childcare for parents of younger children made subject to work-related requirements should also be assessed and particular problems regarding the availability and affordability of childcare for disabled children should be acknowledged.

⁴⁰ *UK Children's Commissioners' Midterm Report to the UK State Party on the UN Convention on the Rights of the Child: The Evidence*, November 2011, p35.

5. Social Fund (clauses 69-72)

Effect of clauses

Clauses 69-72 of the Bill allows for the abolition of the Social Fund, which provides essential funding for cases of emergency hardship – for example, due to illness or fleeing domestic violence. Community care grants are paid from the Fund for essential items of furniture, cooking equipment, etc. 254,000 community care grants were made in 2010/2011 with the average amount of grant being £466.⁴¹ Crisis loans (which are interest free) are paid where there is an immediate threat to the health and safety of an applicant and/or their family to cover living expenses. In 2010/11 2.7 million awards were made with the average amount being £83. One type of crisis loan – alignment loans – cover living expenses where there has been a delay in processing a benefit claim. Alignment loans will be replaced by payments on account under clause 72 of the Bill. However, other crisis loans and community care grants will cease, with money to be paid instead to local authorities. However, this money will not be ring-fenced and no duty will be placed on local authorities to distribute it to people in crisis.

Likely outcomes

The Social Fund provides a necessary last source of financial help for people with no savings and no access to other forms of income or credit – other than perhaps exploitation by very high interest credit providers that will exacerbate their financial problems. The devolution of these funds without a statutory duty upon local authorities to provide grants and loans to people in crisis and without ring-fencing may result in the monies being absorbed into other local authority budgets.

Children and families experiencing crisis or requiring emergency provision due to, for example, relationship breakdown; illness; flood or fire; etc may therefore have no recourse to emergency funds and would therefore suffer severe hardship as a result. We are particularly concerned at potential effects upon the health of children as a result of lack of cooking or refrigeration equipment or emergency monies for necessities.

Due to the lack of availability of other credit, families may have recourse to high-cost credit providers, including pay-day loans; pawnbrokers; 'home credit' collected on the doorstep; and sub-prime retail credit, and even to illegal money-lenders.⁴² The Office of Fair Trading have reported that approximately £7bn was lent by high-cost credit providers in 2008.⁴³ The use of such lenders is likely to result in increased debt and enforcement action and to compromise the safety and welfare of children. Further, parents may be less

⁴¹ DWP, *Annual report by the Secretary of State on the social fund*, 2011.

⁴² Barnardo's, *A vicious cycle: the heavy burden of credit on low-income families*, December 2011, p9.

⁴³ Office of Fair Trading, *High cost credit review – Annex E*, 2010.

likely to remove children from the home of an abusive partner if such help is not available, meaning that children continue to suffer abuse.

Impact on children's rights

The standards for violation of Article 3 ECHR in 'destitution' cases are high: for example, in the context of asylum support:⁴⁴

Treatment is inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being. As in all article 3 cases, the treatment, to be proscribed, must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life.

The special vulnerability of children is relevant to article 3 standards.⁴⁵ Children under 16 are, per se, unable to support themselves. If, therefore, local authorities fail to provide an equivalent to the Social Fund and this results in a child not being provided with 'the most basic necessities of life' in circumstances where their parent/carer has no other means to provide for them, this could constitute treatment by the state contrary to Article 3.

Further, failure to ensure crisis support to prevent hardship would result in failure to meet the UK's obligations under **Article 27 UNCRC** to ensure to children an adequate standard of living and is likely also to result in breaches of their right to enjoyment of the highest attainable standard of health under **Article 24 UNCRC**.

In its Concluding Observations on the UK in 2008, the CRC said that the Government should 'intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing' and that it 'is concerned that many families lack appropriate assistance in the performance of their child-rearing responsibilities, and notably those families in a crisis situation due to poverty'.⁴⁶

In failing to guarantee that crisis support is available for children fleeing an abusive home with their parent/carer, the clauses abolishing the Social Fund fail to take all appropriate legislative measures to protect children from domestic abuse and we therefore believe they are in breach of **Article 19 UNCRC**.

⁴⁴ *R (Limbuela) v SSHD* [2005] UKHL 66, para 7.

⁴⁵ See for example *E v UK* (2003) 36 EHRR 519, para 99 and *Re E (A child) (A) (Northern Ireland)* [2008] UKHL 66, para 9.

⁴⁶ CRC/C/GBR/CO/4, paras 65 and 44.

6. Child support maintenance (clauses 134-138)

Effect of clauses

Clauses 134-138 attempt to encourage parents to come to a voluntary arrangement regarding payment of child maintenance by requiring them to 'take reasonable steps' before the Child Maintenance and Enforcement Commission will make a maintenance calculation. Further, the CMEC will only collect maintenance if the non-resident parent agrees or if it is satisfied that the non-resident parent is unlikely to make payments.

Likely outcomes

We are concerned that these changes may result in delays to collection, and non-payment, of maintenance resulting in hardship for children. A recent survey of members of Gingerbread, the single parents' charity, found that 67% of those asked said they used child maintenance payments for food for the children; 73% for clothes for the children and 50% for school costs, most frequently school uniforms.⁴⁷ Gingerbread-commissioned analysis showed that for the lowest income single parents child maintenance made up 20% of their household income; and that among families receiving child maintenance, one in five of those whose income without it was below the poverty line is lifted above the line by receiving it.⁴⁸

Impact on children's rights

Article 27(4) UNCRC requires states to:

...take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad.

These provisions should therefore be applied in a way that does not frustrate the timely collection of maintenance; children and resident parents/carers should not be left to suffer hardship before CMEC will be satisfied that non-resident parents are unlikely to pay. The definition of 'reasonable steps' should therefore take account of the need for timely collection and payment of maintenance and the circumstances of relationship breakdown. A request by the resident parent for a voluntary arrangement which is refused or not responded to by the non-resident parent, or lack of knowledge of the location of the non-resident parent, should be sufficient to constitute 'reasonable steps' and a statement by the resident parent to this effect should be sufficient evidence, at least pending further

⁴⁷ Gingerbread, *Missing a trick? The role of child maintenance in tackling child poverty in single parent households*, October 2011, p1.

⁴⁸ Ibid.

investigation. All decisions should be taken with the best interests of the child being a primary consideration in order to comply with **Article 3 UNCRC**.

If the new procedure impedes the recovery of maintenance then this will be in breach of Article 27 and will also have impacts on other rights due to the effects of hardship – in particular the rights to health and education under **Articles 24 and 28 UNCRC**.

7. Social mobility and Child Poverty Commission (clause 140 and Schedule 13)

Effect of clauses

The Child Poverty Act 2010 established four legal targets on child poverty for the Government and required it to publish regular Child Poverty Strategies, establishing a Child Poverty Commission to provide the Government with advice on the development and implementation of those strategies. The Bill would replace the Child Poverty Commission (which has not yet been brought into existence) with a Social Mobility and Child Poverty Commission. We are concerned that under para 5 of Schedule 13 to the Bill, the Minister will now be able to change the definition of 'persistent poverty' (and thus the persistent poverty target – one of the four legal targets in the 2010 Act) without the consent of the Commission. We are similarly concerned that under para 6 of Schedule 13 advice from the Commission will no longer have to be taken into account when developing the Child Poverty Strategy. Further, under para 8 of Schedule 13 the Government will no longer have to lay annual progress reports before Parliament on progress in meeting the child poverty targets and implementation of the Child Poverty Strategy.

Likely outcomes

We are concerned that these measures weaken the Child Poverty Act and will undermine its ability to encourage cross-governmental focus on reducing unacceptably high levels of child poverty. This is likely to result in continued severe hardship for children living in poverty, affecting a range of outcomes including health, education and safeguarding.

31% of children in England are living in poverty after housing costs.⁴⁹ In 2008-09, 13% of children in England were living in severe poverty.⁵⁰

Impact on children's rights

The CRC in 2008 emphasised the importance of an adequate standard of living for health and recommended under **Article 27 UNCRC** that the UK:⁵¹

- a) *Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement;*
- b) *Give priority in this legislation and in the follow-up actions to those children and their families in most need of support;*
- c) *When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support*

⁴⁹ DWP, *Households Below Average Income* 2011.

⁵⁰ NPI, *Severe Child Poverty: Nationally and Locally*, Save the Children, 2011.

⁵¹ *Ibid*, para 65.

programmes for children, particularly with regard to nutrition, clothing and housing.

Article 4 UNCRC further provides that States Parties shall take ‘all appropriate legislative, administrative, and other measures’ to implement children’s economic, social and cultural rights ‘to the maximum extent of their available resources’.

We therefore believe that, as the four UK Children’s Commissioners recommended in our mid-term report to the Government on the UNCRC, in order to comply with Articles 4 and 27 UNCRC the Government should not dilute the Child Poverty Act and should fully implement the Child Poverty Strategy, particularly addressing those in persistent and/or severe poverty, and that data should be collected to ensure that persistent and severe child poverty can be monitored.⁵²

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⁵² *UK Children’s Commissioners’ Mid-Term Report to the UK State Party on the UN Convention on the Rights of the Child*, Nov 2011, p10.