

Evidence to SR Extreme Poverty
Fitzpatrick, Gray, McKeever and Simpson

United Nations Special Rapporteur on extreme poverty and human rights visit to the UK

Submission of evidence

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Introduction

The potential for sufficiently severe poverty to undermine an individual's human rights is recognised by the UK judiciary:

“Human rights are the rights essential to the life and dignity of the individual in a democratic society... it is well arguable that human rights include the right to a minimum standard of living, without which many of the other rights would be a mockery.”¹

Legal academics also argue that human dignity – the “very essence” of the European Convention on Human Rights (ECHR)² and foundation of the UN human rights regime – demands protection from inhuman and degrading treatment and access to one's essential needs.³

The UK's human rights regime privileges the (mainly civil and political) rights in the ECHR above the economic and social rights protected by other treaties, hindering human rights law from fulfilling its potential to protect against poverty. The International Covenant on Economic, Social and Cultural Rights (ICESCR), European Social Charter (ESC) and other social rights instruments are likely to remain legally marginal unless incorporated into domestic law. Ultimately, parliamentary supremacy means any human rights provision or element of the “law of humanity” requiring protection from poverty⁴ can be overridden by primary legislation.

Nonetheless, the UK has undertaken to respect, protect and fulfil certain rights and should be held accountable for success or failure to do so. The Special Rapporteur's visit provides a vehicle for such accountability and, potentially, for raising the profile of social rights. Our submission draws on our collective expertise on poverty, social security, social rights and administrative justice. While reference will be made to several of our published works, we would particularly draw the Rapporteur's attention to our reports on [Social security systems based on dignity and respect](#) and [Destitution and paths to justice](#).

A. GENERAL

Our work draws on definitions of poverty from the Households Below Average Income survey⁵ – relative low income, absolute low income, combined low income/material deprivation, persistent

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¹ *Matthews v Ministry of Defence* [2003] UKHL 4 at [26] (Lord Hoffmann)

² *Pretty v United Kingdom* (app 2346/02) [2002] 35 EHRR 1 at [65]; the veracity of this statement is contested in A Williams, ‘The European Convention on Human Rights, the EU and the UK: confronting a heresy’ (2013) 24(4) *European Journal of International Law* 1157

³ C McCrudden, ‘Human dignity and judicial interpretation of human rights’ (2008) 19(4) *European Journal of International Law* 665; D Feldman, ‘Human dignity as a legal value: Part 2’ (spring 2000) *Public Law* 61

⁴ *R v Inhabitants of Eastbourne* (1803) 4 East 103, 107 (Lord Ellenborough)

⁵ Department for Work and Pensions, *Households below average income: an analysis of the UK income distribution: 1994-95 – 2016/17* (Newport: Office for National Statistics, 2018)

poverty and severe poverty – and the minimum income standard.⁶ For extreme poverty, we use the definition of destitution from the Immigration and Asylum Act 1999, the definition of hardship from the Universal Credit Regulations 2013 and Jobseeker’s Allowance Regulations 1996 and the consensual definition of destitution devised by S Fitzpatrick and others.⁷ The Northern Ireland Executive has a statutory duty to devise a strategy for the reduction of deprivation based on objective need, but has not defined objective need.⁸ The value of defining and measuring poverty has been reduced by the repeal of the targets in the Child Poverty Act 2010, following which there is no duty to reduce or eliminate poverty as defined (except in Scotland under the Child Poverty (Scotland) Act 2017). We advocate the reinstatement of these targets and the creation of a new statutory duty to protect all persons lawfully present in the UK from destitution.⁹ The latter should be based on Fitzpatrick and others’ definition of destitution, which is clearer than the current statutory definition, enjoys public endorsement and specifies that a household only able to meet its essential needs through charitable assistance is destitute.¹⁰

Poverty is associated with multiple human rights violations. The most serious is the right to protection from inhuman and degrading treatment, but this will only occur in extreme cases, normally involving street homelessness.¹¹ Others are more widespread. The UK has consistently been in breach of the right to social security in article 12 ESC and aspects of the right to social assistance (article 13 ESC).¹² The period since 2010 has seen a series of retrogressive measures in relation to the right to social security (article 9 ICESCR). This has put at risk the ability of claimants to enjoy an adequate standard of living (article 11 ICESCR), including the subsidiary rights to housing (as housing benefit may no longer cover housing costs) and food (evidenced by rising dependence on food aid).¹³

Judicial opinion is increasingly of the view that social security cuts affecting families with children are incompatible with the duty to treat the best interests of the child as a primary consideration in article 3(1) of the Convention on the Rights of the Child (UNCRC).¹⁴ The recent UK Supreme Court decision in *McLaughlin* constitutes the pinnacle of this analysis.¹⁵ The Court utilises the child’s right to social security to engage a right to bereavement benefits for the unmarried partner of the deceased, departing from the ECtHR’s analysis in *Shackell*.¹⁶ The judgment reasons that the ECtHR failed to recognise the purpose of social security for widowed parents: to benefit the children. There is widespread recognition that social security cuts represent gender-based discrimination in the

⁶ A Davis, D Hirsch, M Padley and C Shepherd, *A minimum income standard for the UK, 2008-2018: continuity and change* (York: Joseph Rowntree Foundation, 2018)

⁷ S Fitzpatrick, G Bramley, F Sosenko, J Blenkinsopp, S Johnsen, M Littlewood, G Netto and B Watts, *Destitution in the UK* (York: Joseph Rowntree Foundation, 2016)

⁸ *CAJ and Brian Gormally’s application* [2015] NIQB 59

⁹ G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

¹⁰ S Fitzpatrick, G Bramley, F Sosenko, J Blenkinsopp, S Johnsen, M Littlewood, G Netto and B Watts, *Destitution in the UK* (York: Joseph Rowntree Foundation, 2016)

¹¹ *R (on the application of Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66

¹² M Simpson, ‘Assessing the compliance of the UK social security system with the state’s obligations under the European Social Charter’ (2018) 18(4) Human Rights Law Review (forthcoming)

¹³ M Simpson, G McKeever and AM Gray, *Social security systems based on dignity and respect* (Glasgow: Equality and Human Rights Commission, 2017)

¹⁴ *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16

¹⁵ *In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)* [2018] UKSC 48 [2018] UKSC 48

¹⁶ Application no 45851/99

enjoyment of the rights to peaceful enjoyment of one's possessions and to respect for family life (articles 14 ECHR with article 8 and Protocol 1, article 1) although in most cases the discrimination has been found to be justified by the legitimate aims of the policy.¹⁷ The system of financial sanctions for non-compliance with conditions for receipt of a benefit threatens the right to an adequate standard of living, and potentially the sanctioned claimant's right to the highest attainable standard of health (article 12 ICESCR).¹⁸ While conditionality is potentially supportive of the right to work (article 6 ICESCR), the quality of employment support for some groups, the disproportionate severity of sanctions and the evidence that they can increase distance from the labour market mean it is difficult to defend the UK approach on this basis.¹⁹

A final area of concern is that of procedural and administrative justice in social security. Lack of awareness of potential entitlements, difficulty navigating the application process, poor quality assessments for disability and incapacity benefits, an under-resourced advice sector and the myth that internal reviews and tribunals can be undertaken without expert representation can act as barriers to individuals receiving benefits for which they should qualify.²⁰ A particular failing of the conditionality regime is the suspension of benefits at the point of suspicion, before a decision has been taken on whether a sanction is merited and before the opportunity to appeal to an independent arbiter. This is of questionable compliance with the right to a fair hearing in the determination of one's rights (article 14, International Covenant on Civil and Political Rights).²¹ There remains a difficulty in establishing whether provisions discriminate against particular groups with protected characteristics under equality legislation where the data collected by the government on impact or potential impact is not robust.²² Impact assessments conducted by the government for legislative proposals have often been poor and noted as such by the Social Security Advisory Committee.²³

¹⁷ *R (on the application of SG) v Secretary of State for Work and Pensions* [2015] UKSC 16; M Simpson, 'Social rights, child rights, discrimination and devolution: untangling the web' (2018) 40(1) *Journal of Social Welfare and Family Law* 3

¹⁸ G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

¹⁹ A Rees, A Whitworth and E Carter, 'Support for all in the UK work programme? Differential payments, same old problem...' (Birmingham: Third Sector Research Centre, 2013); M Adler, 'A new leviathan: benefit sanctions in the 21st century' (2016) 43(2) *Journal of Law and Society* 195; G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

²⁰ G McKeever, 'A ladder of legal participation for tribunal users' (Winter 2013) *Public Law* 575; G McKeever, 'Improving decision making in employment and support allowance' (2014) 21(1) *Journal of Social Security Law* 13; D Cowan, A Dymond, S Halliday and C Hunter 'Reconsidering mandatory reconsideration' (April 2017) *Public Law* 215; M Simpson, G McKeever and AM Gray, *Social security systems based on dignity and respect* (Glasgow: Equality and Human Rights Commission, 2017); G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

²¹ See M Adler, *Cruel, inhuman or degrading treatment? Benefit sanctions in the UK* (London: Palgrave Macmillan, 2018)

²² G McKeever, 'Balancing Rights with Responsibilities: The Case of Social Security Fraud' (2009) *Journal of Social Security Law* 16(3) 139

²³ The Social Security Advisory Committee is an independent arms-length body that advises government on social security, mainly through scrutiny of draft legislation: see <https://www.gov.uk/government/organisations/social-security-advisory-committee> and G McKeever, "Legislative scrutiny, co-ordination and the Social Security Advisory Committee: from system coherence to Scottish devolution" (2016) 23 (3) *Journal of Social Security Law* 126

We recommend that the special rapporteur include Scotland and Northern Ireland in his visit. Scotland has recently acquired devolved competences for social security and has enacted a statutory commitment to develop a system based on respect for the dignity of individuals.²⁴ It has also reinstated targets for the reduction of child poverty following their abolition at UK level.²⁵ This would be an opportune time for consideration of (1) what examples of good practice exist that might be adopted elsewhere in the UK and (2) how the Scottish Government can realise its legislative commitments. Northern Ireland has specific poverty-related issues including concentrations of deprivation, low pay, high levels of economic inactivity and the legacy of the conflict of the 1960s to 1990s. As the only part of the UK to share a land border with another EU member state, there may also be region-specific impacts associated with Brexit. Devolved funds have been invested in a four-year 'mitigations' package designed to shield claimants from some of the financial impacts of post-2012 social security reforms. The rapporteur should consider the success or otherwise of these mitigations, the lessons for other parts of the UK and the risks to future poverty alleviation measures associated with the ongoing suspension of devolved government.²⁶

The rapporteur should meet researchers, policymakers and voluntary sector organisations with expertise on poverty and social security in the devolved regions, conditionality in the social security system and destitution. The authors of this submission would be willing to advise on potential contacts and participate in any meetings.

B. AUSTERITY

Economists will be better qualified to comment on the necessity or otherwise of deficit reduction after 2010, although it seems clear that options were available that might have had less of an impact on people at the lower end of the income distribution and the economies of poorer regions.²⁷ Arguably, it is not so much the fact that spending cuts occurred as *where* they occurred that defines recent governments' philosophy.²⁸ The protection of retirement pensions and policymaker rhetoric demonstrate that economic savings were not the only driver of social security cuts during the period. Rather, policy was "deliberately intended to... promote social and economic hardship precisely to point up a perceived moral distinction between those receiving benefit and those who, because they were in work, were deemed to be more deserving."²⁹

Many post-2010 social security reforms have taken place without advance consideration of their impact on groups with protected characteristics under equality legislation.³⁰ The SSAC has noted that Treasury-driven reform "has regularly resulted in secondary legislation being presented to us

²⁴ Social Security (Scotland) Act 2018 asp 9 s1

²⁵ Child Poverty (Scotland) Act 2017 asp 7

²⁶ D Birrell and AM Gray, 'Welfare reform and devolution: issues of parity, discretion and divergence for the UK government and the devolved administrations' (2014) 34(3) *Public Money and Management* 205; M Simpson, 'The social union after the coalition: devolution, divergence and convergence' (2017) 46(2) *Journal of Social Policy* 251

²⁷ See C Beatty and S Fothergill, 'The impact of welfare reform on Scotland' in Welfare Reform Committee, *The impact of welfare reform on Scotland* (SP paper 303, Edinburgh: Scottish Parliament, 2013); C Beatty and S Fothergill, *The impact of welfare reform on Northern Ireland* (Sheffield: Centre for Economic Empowerment, 2013)

²⁸ N Ellison, 'The coalition government, public spending and social policy' in H Bochel and M Powell, *The coalition government and social policy: restructuring the welfare state* (Bristol: Policy Press, 2016)

²⁹ N Ellison, 'Public policy in practice' in G Craig (ed), *Handbook on global social justice* (Cheltenham: Edward Elgar, 2018) 280-1

³⁰ D Sands, *The impact of austerity on women* (London: Fawcett Society, 2012)

without meaningful analysis of impact or interactions with other parts of the benefit system.”³¹ The Government has sought to justify its decisions on economic grounds, the need to increase ‘fairness’ and the assertion that to reduce the incomes of the already-poor will ultimately leave them better off because of the increased stimulus to jobseeking. It is disappointing that judges considering judicial reviews of social security reforms have largely accepted that these matters are within the political judgement of the executive, even when they are empirically unsound.³²

Problems for claimants in England and Wales have been compounded by the reduction in advice provision for welfare-related problems, removed from the scope of legal aid by the Legal Aid, Sentencing and Punishment of Offender’s Act 2012. Our report evidences the perfect storm of significant and frequent social security reforms alongside cuts to advice provision.³³ In Northern Ireland, additional funding was made available for social security advice and the Rapporteur could take evidence on whether this has been sufficient to minimise negative effects.

C. UNIVERSAL CREDIT

Universal Credit does not change the fact that most recipients of working age income replacement benefits will be in poverty, exacerbated by parallel reforms including below-inflation uprating, limits on housing benefit eligibility, the household benefit cap, restrictions on eligibility for child-related benefits and the removal of disability and family related premiums. Consequently, few human rights impacts will be unique to universal credit, as distinct from the wider trajectory of social security policy. The five-week wait for a first UC payment and monthly as opposed to fortnightly payments (in England and Wales) risk compounding hardship and may represent threats to the right to an adequate standard of living (article 11 ICESCR). There is a risk to rights under article 19 CPRD and article 28 CPRD for claimants who currently receive disability premiums under legacy benefit schemes, which do not exist in UC.³⁴

Some contribution to the realisation of the right to work arguably remains in the form of an increased financial incentive offered by the UC taper, but not to the extent initially planned and not universally. Single-earner couples with children particularly benefit, with fewer gains for second earners and lone parents.³⁵ During the legislative passage of the Welfare Reform Act 2012 it was argued that a 60% taper would represent a ‘neutral’ rate, but fiscal objectives have produced the current, less favourable (to the claimant) rate of 63%.³⁶ Meanwhile, the intensification of

³¹ SSAC Annual Report 2015-16, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545870/ssac-annual-report-2015-2016.pdf. Additionally the SSAC has noted the direct impact that this has on claimants. For example, the SSAC’s advice on the likely hardship flowing from UC was not followed until four years later when serious hardship had already been suffered: SSAC Annual Report 2017-18, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730615/ssac-annual-report-2017-2018.pdf

³² See Lady Hale’s dissenting judgment in *R (on the application of SG) v Secretary of State for Work and Pensions* [2015] UKSC 16; E Humpherson, annex to letter from Andrew Dilnot to Jonathan Portes (17 September 2014) <<http://www.statisticsauthority.gov.uk/reports---correspondence/correspondence/letter-from-sir-andrew-dilnot-to-jonathan-portes-171214.pdf>> accessed 28 August 2015

³³ G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

³⁴ See *R (TP and AR) and Secretary of State for Work and Pensions* [2018] EWHC 1474

³⁵ S Adam and J Browne, *Do the UK Government’s Welfare Reforms Make Work Pay?* IFS Working Paper W13/26 (Institute for Fiscal Studies, 2013), p 17 < <https://www.ifs.org.uk/wps/wp1326.pdf> > (accessed 16 March 2018)

³⁶ Minister of State for Work and Pensions, Chris Grayling, 29 March 2011, Public Bills Committee (Bill 154), col 250–251

conditionality³⁷ is arguably unnecessary – as most unemployed and many economically inactive claimants already aspired to return to paid employment³⁸ – and can be counterproductive.³⁹ Rather, it serves to underline the pre-eminence of jobseeking as the preferred form of reciprocity in the welfare state, and the devaluation of reproductive and other forms of unpaid work,⁴⁰ in the process putting claimants at risk of destitution.

Merging means-tested benefits within UC has the potential to reduce duplication and overlap, but is unlikely to result in overall simplification, as the new benefit is extremely complex. The amount of information that is required when making a single UC claim remains significant and a diversity of circumstances must be accommodated. The continued requirement for a separate claim for council tax reduction adds unnecessary complexity and there is a risk of increased error as claimants and staff adapt.⁴¹ We would encourage the Special Rapporteur to avoid the artificial and misleading conflation of fraud and error that characterises official statistics and statutory definitions in the UK.⁴² Levels of fraud are low and it is unclear whether UC will have any significant impact.

D. NEW TECHNOLOGIES IN THE WELFARE SYSTEM

One of the authors (McKeever) has spoken to the Special Rapporteur's team on the challenges to the protection of privacy under the data matching provisions relating to social security fraud, highlighting the Information Commissioner's concerns about the powers afforded to investigators under a broad ground of suspicion. There are wider concerns over the level of discretion provided to decision-makers and their capacity to exercise discretion appropriately.⁴³ This lack of regulatory oversight is matched by a lack of legislative scrutiny of the powers devolved to departmental decision makers.⁴⁴

The National Audit Office sees digital exclusion as a problem for UC applicants and claimants and warns insufficient support is in place,⁴⁵ illustrated by the experiences of some of our destitute research participants. Difficulty with online application and claim management could arise from a lack of digital literacy, unaffordability or unreliability of an internet connection, distance from or rationed access at a public library, reluctance to carry out a sensitive activity in a public space or difficulty leaving the house because of a health problem.⁴⁶

³⁷ P Dwyer and S Wright, 'Universal credit, ubiquitous conditionality and its implications for social citizenship' (2014) 22(1) *Journal of Poverty and Social Justice* 27

³⁸ S Wright, 'On "Activation workers' perceptions": a reply to Dunn (2)' (2013) 42(4) *Journal of Social Policy* 829

³⁹ G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

⁴⁰ M Simpson, 'Renegotiating social citizenship in the devolution era' (2017) 44(4) *Journal of Law and Society* 646

⁴¹ N Harris, *Law in a Complex State: Complexity in the Law and Structure of Welfare* (Hart Publishing, 2013) 131; S Rahilly, 'Universal Credit' (2010) *Journal of Social Security Law* 18 (2) 61; P Spicker, *What's wrong with social security benefits?* (Bristol: Policy Press, 2017)

⁴² G McKeever, 'Social citizenship and social security fraud in the UK and Australia' (2012) 46(4) *Social Policy and Administration* 465

⁴³ G McKeever, "Legislative scrutiny, co-ordination and the Social Security Advisory Committee: from system coherence to Scottish devolution" (2016) 23 (3) *Journal of Social Security Law* 126

⁴⁴ G McKeever, "Legislative scrutiny, co-ordination and the Social Security Advisory Committee: from system coherence to Scottish devolution" (2016) 23 (3) *Journal of Social Security Law* 126

⁴⁵ National Audit Office, *Rolling out universal credit* (HC 1123, London: DWP, 2018)

⁴⁶ G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

E. CHILD POVERTY

Among the causes of child poverty, we would highlight the level of income replacement benefits, which largely guarantees that children in a household in which social security is the main source of income will experience poverty. At 2013-14 rates, a lone parent with two children in receipt of jobseeker's allowance and child tax credits would have had an income after housing costs of 48% of the equivalised median in a low rent area, or as low as 33% in London due to the benefit cap. The relative low income threshold, the most-used poverty indicator, is 60% of the median.⁴⁷ The coalition government argued that the child poverty target for 2010-11 was not achieved because "not enough parents moved into work, and progressed in work."⁴⁸ There may be some truth in this, but it ignores the correlation between benefit increases and poverty reduction under New Labour⁴⁹ and the reality that increased employment alone cannot be relied upon to eliminate poverty.⁵⁰

Post-2010 social security policy trends are projected to increase child poverty and deepen the poverty of already-poor children,⁵¹ with implications for various UNCRC rights. UK courts' recognition of the conflict between aspects of social security policy and the obligation to treat the best interests of the child as a primary consideration is a positive development,⁵² although we await the Government's response to the *McLaughlin* judgment. There has also been retrogression in respect of the child's right to benefit from social security (article 26) and to enjoy an adequate standard of living (article 27); in the poorest households the child's right to the highest attainable standard of health (article 24) may be put at risk.

F. 'BREXIT'

The ultimate impact of Brexit on people living in poverty will depend on the economic and political repercussions, although the Joseph Rowntree Foundation has calculated that any form of Brexit will leave the poor worse off.⁵³ The direct impact on social security will be limited because the EU does little to define minimum entitlements, only who has access to a member state's welfare systems. The potential loss of the Charter of Fundamental Rights of the European Union (CFREU) will be correspondingly limited in its impact as it only binds member states when implementing EU Law. The "political and media preoccupation with the idea that benefits attract inward migration" points to a loss of access to social security benefits for migrant workers.⁵⁴ However, since migrants' social security rights are being rolled back by the EU in any case, it is unclear what additional impact Brexit will have.⁵⁵ Harder to gauge is the opportunity cost of leaving the EU when its attention is turning to

⁴⁷ Comparison of benefit levels with equivalised median incomes in the Households Below Average Income survey

⁴⁸ Department for Work and Pensions and Department for Education, *Child poverty in the UK: the report on the 2010 target* (London: HMSO, 2012) 8

⁴⁹ R Joyce, 'Child poverty in Britain: recent trends and future prospects' (London: IFS, 2014)

⁵⁰ H Reed and J Portes, *Understanding the parental employment scenarios necessary to meet the 2020 Child Poverty Targets* (London: Social Mobility and Child Poverty Commission, 2014)

⁵¹ R Joyce, 'Child poverty in Britain: recent trends and future prospects' (London: IFS, 2014); D Ghelani and G Tonutti, *The impact of the two-child limit to child tax credits* (London: Policy in Practice, 2017)

⁵² *R (on the application of SG) v Secretary of State for Work and Pensions* [2015] UKSC 16

⁵³ JRF, *How could Brexit affect poverty in the UK?*, available at <https://www.jrf.org.uk/report/how-could-brexit-affect-poverty-uk>

⁵⁴ N Harris, 'Welfare rights, austerity and the decision to leave the EU: influences on UK social security law' (2018) 25(1) *Journal of Social Security Law* 9, 20

⁵⁵ M Simpson, 'Brexit and devolved social security in Scotland: a tale of two referenda' (2018) 25(1) *Journal of Social Security Law* 56

a possible new pillar of social rights, albeit that Clegg suggests this may have a better chance of taking flight in the UK's absence.⁵⁶

There will be specific impacts on the social rights of cross-border workers, likely to fall particularly heavily on Northern Ireland given the fluidity of movement across the UK's only land border with the EU and the direct impact on the removal of the EU framework on rights affecting work and financial security.⁵⁷ There remains a lack of clarity over cross-border workers' existing social security entitlements, including the right to export and aggregate social security and tax benefits to the 'other' jurisdiction. While agreement may be reached on the operation of EU social security co-ordination rules, there is a risk that cross-border workers in Northern Ireland may be left with social security rules that allow them to only access work or services within the UK. This has been highlighted by a Northern Ireland Tribunal of Commissioners' decision where the refusal by HMRC to allow a Northern Ireland claimant to export benefit payments from the UK to pay for services in the Republic of Ireland was found to be in breach of the claimant's Treaty rights.⁵⁸ Northern Ireland has also been one of the main beneficiaries of EU structural funds among the UK regions,⁵⁹ while the Scottish Government has been vocal in its concerns about the economic impact of tighter restrictions on economic immigration.⁶⁰

⁵⁶ D Clegg, 'Brexit, the UK labour market and lessons for social Europe' in B Vanhercke, S Sabato and D Bouget (eds), *Social policy in the European Union: the state of play 2017* (Brussels: ETUI, 2018); see also G McKeever and M Simpson, 'Worlds of welfare collide: implementing a European unemployment benefit system in the UK' (2017) 19(4) *European Journal of Social Security* 21

⁵⁷ G McKeever, 'Brexit, the Irish border and social security rights' (2018) 25(1) *Journal of Social Security Law* 34

⁵⁸ *NB v HMRC (TC)* NIComm 47

⁵⁹ D Birrell and AM Gray, 'Devolution: the social, political and policy implications of Brexit for Scotland, Wales and Northern Ireland' (2017) 46(4) *Journal of Social Policy* 765

⁶⁰ M Simpson, 'Brexit and devolved social security in Scotland: a tale of two referenda' (2018) 25(1) *Journal of Social Security Law* 56