

WELFARE REFORM ACT (NORTHERN IRELAND) 2007

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Welfare Reform Act (Northern Ireland) 2007. They have been prepared by the Department for Social Development in order to assist the reader in understanding the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section (or Schedule) does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Act makes provision for Northern Ireland corresponding to provision contained in the Welfare Reform Act 2007 (c. 5). It is part of the ongoing process of welfare reform and modernisation of the benefits system.
4. Part 1 of the Act makes provision for the employment and support allowance which will replace incapacity benefit and income support on grounds of incapacity. The replacement benefit will have a new benefit structure, incorporating both a contributory allowance and an income-related allowance.
5. Part 2 of the Act relates to housing benefit. In particular, it makes provision for the introduction of a local housing allowance across the private rented sector and changes to the design and administration of housing benefit.
6. The Act also makes provision for the sharing of social security information and functions, for example, to support joint working arrangements. It also includes provision in relation to overpayment recovery and benefit fraud and provides for a number of miscellaneous matters relating to benefits.
- 7.

CONSULTATION

8. As part of a UK-wide consultation, the Department issued the Welfare Reform Green Paper, "*A new deal for welfare: Empowering people to work*"¹ in January 2006. The Consultation Report² was published in June 2006 and the Act takes forward those proposals.

OPTIONS CONSIDERED

¹[http://www.dsdni.gov.uk/index/consultations/archived\)_consultations2/a_new_deal_for_welfare_empowering_people_to_work.htm](http://www.dsdni.gov.uk/index/consultations/archived)_consultations2/a_new_deal_for_welfare_empowering_people_to_work.htm)

²http://www.dsdni.gov.uk/empowering_people_to_work__response_report.pdf

9. Full details of all of the options considered are detailed in the overall Regulatory Impact Assessment for the Act³.
10. For example, having consulted the public and evaluated the options, the option to roll out Pathways to Work and replace incapacity benefits with the employment and support allowance was considered the best option to ensure the correct balance of rights and responsibilities and to complement the Pathways to Work programme.
11. Also, the option of a local housing allowance paid to tenants restructures the benefit support for people on low incomes by moving to a more simple and transparent way of calculating housing costs met by housing benefit. It was considered that this option provides substantial long-term benefits for tenants with regard to better work incentives and increased personal responsibility.

OVERVIEW

12. The Act contains 61 sections and 8 Schedules:
13. Part 1 - Employment and support allowance
14. - Entitlement
15. - Assessments relating to entitlement
16. - Conditionality
17. - Miscellaneous
18. - General
19. Part 2 - Housing Benefit
20. Part 3 - Social Security Administration: general
21. - Sharing of social security information
22. - Overpayment recovery
23. - Benefit fraud
24. Part 4 - Miscellaneous
25. - Benefits for bereaved persons
26. - Disability living allowance: age conditions
27. - Social fund
28. - Compensation for pneumoconiosis etc.
29. - Other
30. Part 5 - General

COMMENTARY ON SECTIONS

PART 1: Employment and support allowance

Entitlement

³http://www.dsdni.gov.uk/index/publications/social_security_and_pensions.htm

Section 1: Employment and support allowance

Section 1 sets out the entitlement conditions of the employment and support allowance. This introduces a new benefit structure with both an income-related allowance and a contributory allowance within the same benefit, similar to a jobseeker's allowance. In addition to satisfying the basic conditions of entitlement, a person will need to satisfy either the national insurance contribution-based tests or the income-related tests in order to be entitled to employment and support allowance. The contribution-based tests will be the same, in substance, as apply now for incapacity benefit. The income-related tests will be the same, in substance, as apply now for the purposes of income support.

There will be an alternative to the National Insurance contribution tests for those who were under 20 years old when their period of limited capability for work began (or under 25 years old in certain circumstances). If they had limited capability for work for the preceding 196 days and satisfy other conditions, they would not have to satisfy the contribution conditions to get entitlement to the contributory allowance. This is to ensure that young people, who may not have had the opportunity to build up a sufficient contribution record, would not be excluded from the non means-tested allowance. Again, this is similar to the provisions for young people currently on incapacity benefit, as set out in section 30A of the Contributions and Benefits Act.

A person also has to satisfy the basic conditions mentioned (see *subsection (3)*). One of those basic conditions is that the person has limited capability for work and the meaning of this phrase is set out at *subsection (4)*. Further provision about the test to assess whether a person's capability for work is limited by their physical or mental condition and the limitation is such that it is not reasonable to require him to work is made in *section 8*.

Section 2: Amount of contributory allowance

Section 3: Deductions from contributory allowance: supplementary

Sections 2 and 3 set out how the amount of contributory employment and support allowance will be calculated. *Section 2(1)(a)* provides that the calculation is begun by taking such amount as may be prescribed. It is expected that this amount will be age-related in the assessment phase and based on the levels of contribution-based jobseeker's allowance, but that it will be universal for all ages once the assessment phase is complete.

Once the assessment phase has been completed (the length of which will be determined by regulations, with a proposed length of 13 weeks) a "work-related activity component" or a "support component" will also be added on top of the prescribed amount. Regulations may disapply the requirement to wait until the end of the assessment phase to become entitled to a work-related activity component or support component. A person will be entitled to a support component if he has limited capability for work-related activity (see *section 9*). A person will be entitled to a work-related activity component if he does not have limited capability for work-related activity.

Sums may be deducted from the amount of contributory allowance in respect of certain payments. Regulations will prescribe the same deductions as those which are currently taken into account for the purposes of incapacity benefit. If these payments were over a certain amount, it is intended that the amount of employment and support allowance payable could be reduced by a certain proportion. For example, currently an amount equal to 50 per cent. of certain pension payments over £85 per week is deducted from the amount of incapacity

benefit payable. In addition, deductions are also made in respect of local councillors' allowances. This is set out in sections 30DD and 30E of the Contributions and Benefits Act.

Section 4: Amount of income-related allowance

Section 4 provides for the calculation of the amount of an income-related employment and support allowance. Entitlement is based on rules similar to those which apply for income support, which the income-related allowance will replace for people with a health condition or a disability.

The amount of the income-related allowance is the "applicable amount", if the claimant has no income, or the difference between the claimant's income and applicable amount, if the claimant has income. The applicable amount is the weekly amount a person would receive if he had no income at all. Applicable amounts can vary, for example, dependent on whether the claimant has a partner. Like the contributory allowance, there is a proposed assessment phase of 13 weeks after which the amount of the work-related activity component or, if the claimant satisfies the relevant test, the support component will be included in the applicable amount.

Subsection (2)(a) provides the power to prescribe amounts to be part of the applicable amount. This includes, for example, where the claimant is an owner-occupier with housing costs. It is intended that additional amounts will be prescribed in respect of those costs, such as mortgage interest, ground rent or service charges. These are similar to the arrangements which currently apply to income support. The power will also allow for other additions to be made in future without the need for further primary legislation.

In addition to housing costs the power could also be used to include certain premiums. It is intended to pay an equivalent to the enhanced disability premium, severe disability premium and the carer premium using the same rules as for income support.

Subsection (3) provides the power to prescribe nil as an applicable amount. For example, paragraphs 7 and 8 of Schedule 7 to the Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459) currently prescribe a nil amount for the purposes of income support in relation to certain prisoners and to members of religious orders who are fully maintained by their order. The intention is that such people will be treated in the same way for the purposes of income-related employment and support allowance.

For both the contributory and income-related allowance, *sections 2 and 4* provide for entitlement to the work-related activity and support components to be backdated if, where the regulations provide, the assessment phase is extended (*section 24(2)*). For example, it is intended that this should be done where it has not been possible to complete the medical assessment process within the proposed 13 week period of the assessment phase. In such cases, if the claimant is subsequently determined to have limited capability for work, entitlement to the relevant work-related activity or support component will be backdated so that the claimant will receive the relevant work-related activity component or support component as if the assessment phase had ended at the end of week 13 of entitlement to an employment and support allowance.

Regulations under *sections 2(4) and 4(6)* will provide that, in certain circumstances, where a person was previously entitled to employment and support allowance, the condition of entitlement to the work-related activity component and support component that the assessment phase must have ended shall be disapplied. This will mean that a claimant may be entitled to the work-related activity or support component immediately he becomes entitled to an employment and support allowance.

Section 5: Advance award of income-related allowance

Section 5 provides for the situation where a person, due to having income exceeding the applicable amount, is not entitled to an income-related employment and support allowance in the assessment phase, but may become entitled to an income-related allowance when, at the end of the assessment phase, he becomes entitled to either the work-related activity component or the support component. This section modifies section 5(1) of the Administration Act to enable regulations to be made to deal with this situation. Such a case may arise because a person has an income above the applicable amount during the assessment phase (which would mean that the claim would normally be rejected) but, when the applicable amount includes the work-related activity or support component, his income is less than the applicable amount. Regulations will be able to provide that such a person can make a claim and that an award of employment and support allowance could arise at a future date, provided that certain conditions were satisfied.

Section 6: Amount payable where claimant entitled to both forms of allowance

Section 6 provides for cases in which a person is entitled to both a contributory allowance and an income-related allowance. In this section the amount calculated in accordance with *section 2(1)* (amount of contributory allowance) is called the “personal rate”. If the person has no income and his personal rate is higher than his applicable amount (for the purposes of income-related allowance), he will get the personal rate. If the claimant has no income and his applicable amount exceeds his personal rate, he will get his personal rate, plus an additional amount of income-related allowance equal to the excess. If the person has an income, the amount payable will be the greater of his personal allowance and the amount by which his applicable amount exceeds his income.

Section 7: Exclusion of payments below prescribed minimum

Section 7 contains a power equivalent to that in section 130(3) of the Contributions and Benefits Act. The intention is that employment and support allowance will not be paid if entitlement is below 10 pence, unless payment is combined with payment of another benefit.

Assessments relating to entitlement

Section 8: Limited capability for work

Section 8 provides powers to set out the system for determining “limited capability for work” in regulations. Limited capability for work is one of the conditions of entitlement a claimant must satisfy before he can be eligible for an employment and support allowance (*see section 1(3)*). *Section 1(4)* defines limited capability for work. *Section 8* provides powers to specify the type of test that will be used to determine whether or not a claimant has limited capability for work. The test will assess a claimant’s ability to carry out specified activities. The specific activities, and the extent to which a person’s capability to perform them must be limited, will be contained in regulations.

Regulations under *section 8* may make provision about the manner in which the assessment of a person’s capability for work will be performed (including providing for a medical examination to be carried out if required). Regulations may also provide for a claimant to be treated as not having limited capability for work if he fails, without good cause, to provide requested information or evidence related to his claim, or to provide it in the manner requested or if he fails without good cause to attend for, or submit to, a medical examination

he is called to attend as part of the assessment process. *Section 8* is similar to sections 167A and 167C of the Contributions and Benefits Act.

The assessment process used to determine benefit entitlement will be carried out, wherever possible, during the first 13 weeks of a claim. *Subsection (5)* provides regulation making powers that will allow a claimant to be treated as having limited capability for work until the time when his capability for work is actually tested and determined. These powers may be used, for example, so that a claimant can be entitled to an employment and support allowance during the assessment phase, on the basis of medical certificates from his general practitioner, up until the point when the assessment of his capability for work is actually completed.

Section 9: Limited capability for work-related activity

Section 9 refers to claimants whose physical or mental conditions are so severely disabling that it is unreasonable to require them to engage in work-related activity or to participate in work-focused interviews as a condition of receiving the full amount of employment and support allowance. A claimant of this description will have “limited capability for work-related activity”. A claimant who demonstrates limited capability for work-related activity will be a member of the “support group” (referred to in *sections 11 and 12* and defined in *section 24(4)*). A claimant with limited capability for work-related activity will be entitled to receive a support component in addition to the basic allowance of employment and support allowance (*see sections 2 and 4*).

A claimant who is a member of the support group will not be subject to any requirements imposed by regulations under *sections 11, 12 and 13* to attend work-focused health-related assessments, participate in work-focused interviews or undertake work-related activity.

Section 9 provides regulation making powers that are similar to the powers provided under *section 8*. Regulations will make provision about the assessment of a person’s capability for work-related activity and about how the assessment will be performed (including providing for a medical examination to be carried out if one is considered necessary). Regulations will also provide for a claimant to be treated as being capable of work-related activity if he fails, without good cause, to comply with requests for information or evidence related to his claim, or to provide it in the manner requested or if he refuses without good cause to attend for, or submit to, a medical examination where one is required.

Section 10: Report

Section 10 requires the Department to lay before the Assembly an annual independent report on the operation of the assessments under *sections 8 and 9* for the first five years after these sections come into operation.

Conditionality

Section 11: Work-focused health-related assessments

Section 11 provides that regulations may make provision for imposing on claimants who are entitled to an employment and support allowance, but not so severely disabled as to be unable to engage in work-related activity, a requirement to take part in one or more work-focused health-related assessments.

The work-focused health-related assessment will be carried out by a health-care professional approved by the Department, and it is intended that, where possible, it will follow directly on from the assessments under *sections 8 and 9* so that the claimant is only required to attend

one appointment. Where it appears to the health-care professional carrying out the *section 8 and 9* assessments that the claimant is likely to be a member of the support group, the work-focused health-related assessment is likely to be deferred at that time, pending the outcome of the Department's decision regarding his capability for work-related activity. The assessment will provide additional information about the claimant's residual functional capability (what the claimant can still do despite the disabling condition) and information about health interventions that would improve their functional capability.

The advice from the work-focused health-related assessment will be made available to the claimant and to Personal Advisers to support actions to be taken during the main phase of the benefit.

The nature and content of the work-focused health-related assessment and report will be set out in regulations. *Subsections (2)(f) and (3)* enable regulations to be made which have the effect of providing that if a claimant fails, without good cause, to take part in the assessment, the amount of employment and support allowance payable to him may be reduced. *Subsections 2(g) and (h)* allow regulations to set out what is to constitute, or be taken into account in determining, good cause.

Section 12: Work-focused interviews

Section 12 provides for work-focused interviews, which are intended to assist claimants in moving closer to the labour market. Regulations under *subsection (1)* will provide for certain claimants who are entitled to the work-related activity component to be required to participate in work-focused interviews. *Subsection (5)* sets out that regulations must provide that requirements to participate in work-focused interviews will cease if the claimant becomes a member of the support group.

It is intended that there will also be a work-focused interview during the assessment phase which will be for the first 13 weeks of entitlement to an employment and support allowance. This interview would have the purpose of, where appropriate, explaining the benefit and conditionality regime to the claimant and helping him think about what activities he may want to do to help him to return to work. It is intended that regulations will allow interviews to be deferred for those with serious health conditions who may be in the support group after medical assessment.

Claimants will be provided with the date and time of their work-focused interview. Regulations will provide that if the claimant cannot attend the work-focused interview, in certain circumstances it would be able to be moved and take place at another date or time.

Subsection (2)(f), (g), (h) and (i) enables regulations to deal with situations where a claimant has not attended or not fully participated in a work-focused interview. Anyone failing to take part in a work-focused interview would have an opportunity to show he had good cause for his failure to take part in the interview, in a similar way as provided under the current legislation relating to incapacity benefit and work-focused interviews. A non-exhaustive list of the matters to be taken into account in deciding if a claimant can show good cause will be set out in regulations under *subsection (2)(h) and (i)*.

As well as attending a work-focused interview, claimants will normally be expected to participate fully in the interview. Regulations may require claimants to provide certain relevant information (such as about their existing skills) and to participate in discussions about their employability and the steps that could be taken to help them move into work or closer to the labour market. Additionally, it is intended that where work-related activity

becomes mandatory for certain claimants in receipt of the work-related activity component, regulations will require them to discuss the relevant work-related activity that they had undertaken.

If the claimant fails to participate fully in a work-focused interview and cannot show good cause for that failure within the permitted time, the amount of employment and support allowance he is entitled to would be reduced. Regulations under *subsection (4)* will set out the amounts of the reductions.

Regulations under *subsection (6)* will provide for waivers and deferrals of work-focused interviews. The circumstances in which a deferral may be granted will be related to a claimant's health condition or other circumstances, such as transport difficulties. A waiver would mean that the requirement on a claimant to take part in a work-focused interview would be considered as not having applied and therefore a sanction could not be imposed.

Section 13: Work-related activity

Work-related activity is activity that helps a claimant obtain work, remain in work or to be more likely to obtain work or remain in work. As set out in the Welfare Reform Green Paper, it is intended that claimants who are entitled to the work-related activity component will be subject to a requirement to participate in work-related activity. This requirement will apply for a set period of time once the assessment phase has been completed. *Subsection (5)* sets out that regulations must provide that requirements to undertake work-related activity will cease if the claimant becomes a member of the support group.

Regulations under this section may specify the amount of work-related activity a person is required at any time to undertake. This might be exercised so as to provide for a specified number of activities per set period of time and this would be reviewed at a work-focused interview taking place within a subsequent set period of time.

Regulations will set out how matters will be taken into account when determining whether a claimant has met the requirement to undertake work-related activity or whether he had good cause for not doing so.

As for the provisions relating to work-focused interviews under *section 12*, a failure to meet the requirement under regulations to undertake work-related activity and a failure to show good cause for this within the allowed time would attract reductions in the amount of an employment and support allowance the person was entitled to for a fixed period.

Waivers for work-related activity are provided for by regulations under *subsection (6)*. Such regulations may provide that a requirement on a claimant to participate in work-related activity is to be considered as not having applied and therefore a sanction could not be imposed.

Section 14: Action plans in connection with work-focused interviews

Section 14 provides that at work-focused interviews, a written action plan will be developed.

Regulations under *subsections (1) and (2)* may provide that the action plan should include a summary of the discussion that took place during the work-focused interview. In a situation where participation in work-related activity is not required under regulations, the action plan would include possible steps a claimant could consider taking to assist him in returning to work.

Where appropriate, it is intended that the action plan would include steps that, if the claimant undertook them, would satisfy the work-related activity requirement under *section 13*.

It is not intended that the claimant will be required by regulations to undertake specific steps in the action plan, even when participation in work-related activity was required. A claimant could still satisfy the work-related activity requirement by undertaking other activity.

Regulations under *subsection (4)* may provide that a claimant should be able to ask for his action plan to be reconsidered. This would be in order to resolve situations where a claimant believed the steps included were, or had become, inappropriate or that other steps, not agreed at the work-focused interview, should be included. The action plan would then be reconsidered in a set period of time. It is not intended, in a situation where a claimant asks for a reconsideration of the action plan, that requirements under regulations to undertake work-related activity would be waived or deferred.

Section 15: Directions about work-related activity

Section 15 provides a power for the Department or the Department for Employment and Learning to direct that a specific activity in the case of an individual is not to count as work-related activity. This is intended to stop a claimant seeking to satisfy the requirement to undertake work-related activity by undertaking activity that is considered inappropriate for his circumstances.

Section 16: Contracting out

Section 16 has the effect of allowing contracted providers in the private and voluntary sectors (“providers”) to exercise functions of the Department or the Department for Employment and Learning relating to conditionality. Providers will not be permitted to exercise functions relating to “excluded decisions” which are listed in *subsection (3)*.

Subsection (1) provides that the Department or the Department for Employment and Learning can authorise providers to undertake certain functions (*sections 12, 14 and 15*) relating to work-focused interviews, action plans and directions relating to work-related activity.

Subsection (2) provides for regulations to be made that allow the Department or the Department for Employment and Learning to authorise provider organisations to undertake certain functions under regulations made under *sections 11 to 15* and providers to undertake functions relating to certain conditionality decisions.

Subsection (5) makes it clear that where authorisation is given for providers to undertake a function the authorisation may only apply to part of that function.

Subsection (7)(b) provides that authorisations granted under or by virtue of *section 16* can be revoked and *subsection (7)(c)* provides that giving authorisation to a provider does not preclude the related function from being undertaken by the Department or the Department for Employment and Learning.

Subsections (8) and (9) establish that, where a function is undertaken by a provider, that function is treated as if it had been undertaken by the Department or the Department for Employment and Learning. This will not apply for the purposes of the operation of a provider - for example a contractor would be treated as performing work-focused interviews for the purposes of being paid for them. It also establishes that responsibility lies with the provider in respect of any criminal proceedings brought because of his actions.

Subsection (10) ensures that any decision made by a provider has effect as a decision under Article 9 of the Social Security (Northern Ireland) Order 1998. This ensures that such decisions fit into the decision-making and appeals legislation.

Subsection (11) establishes that where authorisation for a function is revoked and the provider is therefore unable to perform the functions which he is contracted for, the contract can be treated as repudiated.

Miscellaneous

Section 17: Income and capital: general

Section 17 enables the Department to set out in regulations how the income and capital of a claimant (and his partner) is to be calculated for the purpose of determining whether a claimant is entitled to an employment and support allowance and, if so, how much is to be payable. Regulations under this section will be based on the existing provisions for the purposes of income-related benefits.

Subsections (1) and (2) provide regulation-making powers to prescribe how income and capital will be assessed. It is intended that the regulations will provide that income may be averaged. In averaging income for fluctuating earnings, for example, the Department may take an average for a past period and a current period and apply it to a future period, as occurs in connection with income support.

Subsection (3) provides a power to make regulations prescribing that a person is to be treated as having, or not having, certain income or capital. It also enables regulations to provide for income to be treated as capital, or vice versa. In particular, regulations could make provision about how capital holdings would be taken into account in relation to an employment and support allowance. The intention is that a rate of return of £1 per week for every £250 will be applied to capital in excess of £6,000 and below the upper capital limit of £16,000. In the case of persons in residential care and nursing homes this range will be between £10,000 and £16,000. Capital below this amount will not be treated as giving rise to income which is to be taken into account in the assessment. Certain types of actual income from capital will be relevant to the assessment. These are expected to be limited to income from boarders and sub-tenants in the person's own home and income from certain trusts. There will be different provision as to disregarding different types of income which is expected to follow the existing provision for income support.

It is also intended that existing provisions for income support concerning unacceptable deprivation of income or capital will be applied to an employment and support allowance.

Section 18: Disqualification

Section 18 provides that in certain circumstances, similar to those in section 167E of the Contributions and Benefits Act, a person can be disqualified from receiving an employment and support allowance for a period of up to six weeks. This may be because a person is limited in his capability for work because of his own misconduct, because he remains a person who has limited capability for work through failure, without good cause, to follow medical advice, or because he fails, without good cause, to observe specified rules of behaviour. Regulations will specify the circumstances and the matters which are to be taken into account when making such a decision, including the considerations to be taken into account in deciding whether or not the person concerned had good cause for the failure.

Subsection (4) provides that unless regulations specify otherwise, a person shall be disqualified for receiving contributory employment and support allowance for any period where he is undergoing imprisonment or detention in legal custody, or is absent from Northern Ireland. This is similar to section 113(1) of the Contributions and Benefits Act which currently applies to incapacity benefit and will allow such a person to continue to be entitled to employment and support allowance whilst disqualified from payment. This is because once the period of disqualification has ended it is intended that awards will be resumed where it is appropriate to do so without the need to re-claim.

Section 19: Pilot schemes

Section 19 provides for pilot schemes having effect for a specified period not exceeding 24 months and *subsection (7)* provides that one pilot scheme can be replaced by another pilot scheme which is the same or similar.

Pilot schemes can apply to any regulations under the Administration Act which relate to the employment and support allowance as well as to any regulations under this Part of the Act, apart from regulations under:

Section 3 - deductions from contributory allowance;

Section 8 - limited capability for work; and

Section 9 - limited capability for work-related activity.

It is intended to roll out full conditionality linked to participation in work-related activity as resources allow. It is envisaged that in time pilot schemes may operate to explore different variations of the conditionality regime in order to understand what works best to help employment and support allowance claimants to return to work.

Subsection (3) provides that pilot schemes may only be put in place for the purpose of ascertaining whether their provisions will facilitate or encourage claimants to obtain or remain in work. *Subsection (5)* provides that a pilot scheme may apply to different geographical areas, types of claimant or persons selected to meet certain criteria.

Section 20: Relationship with statutory payments

Section 20 provides for the interaction of an employment and support allowance with statutory payments paid by employers, namely statutory sick pay, statutory maternity pay, statutory adoption pay and additional statutory paternity pay.

Subsection (1) provides that a person is not entitled to an employment and support allowance at the same time as statutory sick pay.

Subsection (2) provides that a contributory employment and support allowance is not payable at the same time as statutory maternity pay, except as regulations may provide.

Subsections (4) and (6) make similar provision in the case of statutory adoption pay and additional statutory paternity pay.

Subsections (3), (5) and (7) contain regulation-making powers to provide for the circumstances in which statutory maternity pay, statutory adoption pay and additional statutory paternity pay respectively may be paid at the same time as a contributory employment and support allowance.

Section 21: Deemed entitlement for other purposes

Where specified legislation leads to a loss of entitlement *section 21* enables regulations to be made so that a person can be treated as still entitled to employment and support allowance in order to retain his rights and obligations. This is similar to provisions which currently apply to incapacity benefit.

Section 23: Recovery of sums in respect of maintenance

Section 23 provides the Department with powers to make regulations so that payments can be recovered from a person who should be paying maintenance to his spouse or civil partner but is not doing so when the spouse or civil partner is receiving income-related employment and support allowance. These payments may be made to the Department. Similar provisions relate to income support (*section 101* of the Administration Act) and income-based jobseeker's allowance (*Article 25* of the Jobseekers Order).

Subsection (3) states that the regulations under *subsection (1)* may make provision about matters relevant to the determining of an application for such an order, the enforcement of such orders, and the rights of the Department in respect of such orders.

General

Section 26: Assembly control

Section 26 provides that certain regulations under *sections 2 and 4*, the first regulations under *section 13* and regulations providing for a pilot scheme (*section 19*) are subject to the confirmatory resolution procedure in the Assembly. Other regulations under this Part are subject to the negative resolution procedure.

Section 27: General financial arrangements

Section 27 explains that payments of contributory employment and support allowance will be funded from the National Insurance Fund and payments of income-related employment and support allowance will be funded out of the Consolidated Fund. It also provides for the repayment to those funds of any sums recovered in connection with payments of employment and support allowance.

PART 2: Housing benefit

Section 30: Local housing allowance

Section 30 provides for powers for a new way of calculating maximum housing benefit, known as local housing allowance, across the private rented sector.

The main secondary legislation dealing with housing benefit (referred to as “the housing benefit rules”) is contained in the Housing Benefit Regulations and the Housing Benefit (SPC) Regulations.

Under the current housing benefit rules for claimants in the private rented sector, the maximum amount of benefit that can be paid is the “appropriate maximum housing benefit”, subject to reductions to take account of income. The appropriate maximum housing benefit is the weekly amount of rent eligible to be met by housing benefit, less deductions made in relation to non-dependants. The eligible rent is determined by establishing whether the rent charged is considered appropriate for the particular area, property and the claimant's particular needs. The Housing Executive decides whether rents are appropriate for the particular area or property and the claimant's particular needs using a system of “rent

restrictions”. Any charges included within the rent that are ineligible for housing benefit purposes, such as for the costs of fuel Acts or meals, must also be deducted.

The local housing allowance replaces the existing rent restrictions by providing a new way to determine the maximum amount of housing benefit payable. Non-dependant deductions and reductions to take account of higher incomes will still apply. Any given claimant would be eligible, as a maximum, to the local housing allowance rate that applies according to the number and mix of occupiers, and the area in which the claimant lives. The detailed rules on how the local housing allowance is set will be in regulations, as is the case under the current housing benefit rules.

Section 30 provides for powers that are more specifically appropriate for the local housing allowance approach to the determination of a claimant’s maximum housing benefit.

Subsection (1) removes section 129(4) of the Contributions and Benefits Act, which requires regulations to be made setting out how a claimant’s appropriate maximum housing benefit should be determined in any case. This provision will be replaced by a new section 129A(2).

Subsection (2) inserts the new section 129A into the Contributions and Benefits Act which provides for the determination of a claimant’s appropriate maximum housing benefit and enables regulations to provide that claimants may have their appropriate maximum housing benefit calculated by reference to Housing Executive determinations. These could be property specific determinations as now, or the generic determinations required under the local housing allowance, which apply to properties of a certain size in a particular area.

Section 129A(4) introduces an additional “treat as liable” power solely for the purpose of calculating the appropriate maximum housing benefit. This provides a more specifically appropriate power centred on the local housing allowance approach, providing for a claimant’s housing benefit to exceed his rent liability if the appropriate local housing allowance is higher than his actual rent liability. Equivalent provision is made by subsection (5) for claimants who are “treated” as having a rent liability under regulations made under section 133(2)(j) of the Contributions and Benefits Act (e.g. because it is their partner who has the actual liability). This provides for their housing benefit to exceed their deemed liability, if the appropriate local housing allowance is higher than their deemed liability.

Section 30(3) provides for a power to prescribe when the Housing Executive must review a housing benefit award. This allows for the Housing Executive to apply a new local housing allowance rate each year to ensure that a claimant’s award is updated.

Section 31: Loss of housing benefit following eviction for anti-social behaviour, etc

The intention is that this measure will not be introduced until piloting of the sanction in England has been fully evaluated.

Section 31(1) inserts sections 129B to 129F into the Contributions and Benefits Act. Section 129B provides for the reduction, or non-payment, of housing benefit where the following conditions are met:

- a relevant order for possession of the claimant’s home has been made by a court on grounds relating to anti-social or criminal behaviour. The relevant orders are set out in section 129C.
- the claimant has ceased to live in that home as a result of that order.

- the claimant has failed to comply without good cause, with a warning notice from the Housing Executive about improving his behaviour (section 129B(2)).
- the claimant satisfies the conditions for entitlement to housing benefit.

It is intended that once a person has satisfied the first two conditions, the Housing Executive will make an attempt to engage with him, if it has not already, with the aim of ending, or preventing repetition of, his anti-social behaviour through the provision of rehabilitation. Where the person refuses to co-operate, the Housing Executive will have the option of using this sanction to encourage him to co-operate with the rehabilitation.

Section 129B(3) provides a power to prescribe the rate of benefit reduction and the circumstances in which it is payable. The intention is to reduce housing benefit by 10 per cent. for the first 4 weeks, followed by 20 per cent. for a further 4 weeks and then 100 per cent. for either a period of up to 5 years beginning with the date of the possession order (section 129B(6)) or until the Housing Executive considers that the sanction should no longer apply (section 129B(5)). Examples of circumstances where the Housing Executive might consider the sanction is no longer appropriate are where the person has begun co-operating with rehabilitation, where rehabilitation services are no longer available or where the person has, or his family have, become particularly vulnerable. It is intended that a lower rate of reduction will apply to those considered to be in hardship. This could include households where someone is seriously ill or pregnant and households with children or which include those with caring responsibilities.

The sanction, having been brought to an end by the Housing Executive can be restarted if the person fails to comply with a further warning notice. If the person stops co-operating with rehabilitation, a further warning can be issued or further action specified. If this is not complied with, without good cause, the sanction will start to run again (section 129B(5)).

Only one sanction can be applied in relation to a relevant order for possession, albeit the sanction can stop and start up to the date 5 years after the original possession order was made (section 129B(7)).

Section 129C sets out the relevant orders for possession. All the orders for possession specified in subsection (1) are made on grounds of behaviour causing a nuisance or annoyance to neighbours or criminal behaviour. It does not matter if the possession is made purely on those grounds or on those grounds coupled with other grounds (section 129C(2)).

The relevant orders for possession specified can be stayed or suspended with conditions attached. Those conditions may relate to behaviour and the payment of rent and rent arrears. If a relevant possession order is made and stayed or suspended with behaviour conditions, the sanction can only be applied if the order takes effect as a result of the breach of those behaviour conditions (section 129C(3) to (5)).

Section 129D(1) provides a power to prescribe circumstances in which benefit not paid due to the application of the sanction can be paid to the claimant. An example of such circumstances would be where a claimant has made a successful application for the relevant order for possession to be set aside.

Section 129D(2) provides a power to vary the definition of relevant orders for possession.

Section 129D(3) provides a power to prescribe the matters which should be taken into account when deciding whether or not a person has good cause, and circumstances in which a

person is, or is not, to be regarded as having good cause, for not complying with a warning notice.

Section 129E makes provision for cases where the claimant is a member of a couple. Subsection (2) provides that where both members of a couple lived in a dwelling to which a relevant order for possession relates and left the dwelling as a result, housing benefit could be subject to a future sanction should either member of that couple fail to comply with a warning notice. If only one member of the couple resided in a dwelling to which a relevant order for possession relates the sanction is not to apply (section 129E(3)).

Section 129F(1) allows the Department, by regulations, to require courts to notify it when a relevant order for possession is made and provide relevant details of the order, and also enables the Department to require similar information to that required from a court from others who may be aware of the making of a relevant order for possession. Such people could include, for instance, the landlord. The intention is to place the obligation on the courts in the first instance.

Section 129F(2) enables the Department to provide information obtained under section 129F(1) to the Housing Executive, which will provide rehabilitation services, or to a person authorised by the Housing Executive to provide those services. It also allows the Department to provide information it holds relating to housing benefit to the Housing Executive or service providers.

Section 129F(3) provides for the Department to require, by regulations, relevant information for purposes relating to the administration of housing benefit to be provided by the Housing Executive (providing rehabilitation services) or a person authorised by the Housing Executive to provide those services. Information could include whether a person has satisfied some or all of the conditions of sections 129B(1) or (2).

Section 129F(4) allows the Department to require, by regulations, that relevant information may be shared within the Housing Executive or with other persons (in their roles of administering housing benefit and providing rehabilitation services) for purposes relating to the administration of housing benefit.

Section 129F(5) allows the Department to require, by regulations, that relevant information be shared within the Housing Executive or with other persons (in their roles of administering housing benefit and providing rehabilitation services) for purposes relating to the provision of rehabilitation services.

Section 129F(6) defines relevant information. The manner in which relevant information is to be supplied may be prescribed by the Department (section 129F(7)).

Section 31(2) provides that any regulations made under subsection 129B(3), relating to the rate of the benefit reduction, and regulations made under subsection 129D(2), relating to varying what constitutes a relevant order for possession, would be subject to the confirmatory procedure in the Assembly.

Section 31(3) limits the possible duration of the powers in this section by bringing the provisions of *section 31* to an end on 31 December 2010. Further primary legislation would be required to allow the scheme (or any replacement scheme) to operate after that date.

Section 31(3) is a safeguard to prevent anything done under *section 31* from having effect after 31 December 2010.

Section 32: Housing benefit for persons taking up employment

Section 33: Section 32: supplemental

Section 34: Interpretation

The housing benefit extended payment scheme provides access to a four week run-on of benefit in certain circumstances, after a qualifying person starts work or increases his hours/wages of current employment. There are two parallel schemes:

- for persons going off either income support or income-based jobseeker's allowance; and
- for persons leaving either incapacity benefit or severe disablement allowance.

Generally the four week extended payment will be at the same rate of benefit as the person was receiving in the week before he took up work. This is intended to bridge the gap between leaving benefits and the first pay packet.

In order to be entitled to an extended payment a number of criteria need to be satisfied, which are set out in secondary legislation. For example:

- the claimant or partner must have been entitled to and in receipt of the relevant qualifying benefit for 26 weeks immediately before taking up work or increasing hours/wages of current employment; and
- the claimant or partner must be entitled to housing benefit in the week before employment commenced.

Under the current scheme, a claimant's housing benefit award is ended when he moves off the qualifying benefit and meets the other criteria to enable payment of the extended payment. A new claim must be made in order to obtain any in-work entitlement to housing benefit.

These sections provide for a simpler method of making extended payments and remove the need for those who receive extended payments to submit a new claim for any in-work housing benefit. The move to employment (and entitlement to an extended payment) would be treated like a change of circumstances in a continuing award.

The current extended payment provisions are set out in regulations primarily made under powers in sections 129(2) and (4) of the Contributions and Benefits Act. The detailed rules are in regulations 70, 71, 75 and 76 of, and Schedules 8 and 9 to, the Housing Benefit Regulations and regulations 50, 51 and 56 of, and Schedule 8 to, the Housing Benefit (SPC) Regulations.

Section 32 is designed to recast the underpinning powers for extended payments.

Subsections (1) and (2) provide for the basic underpinning entitlement conditions for extended payments of housing benefit, namely that a person entitled to housing benefit would be entitled to such a payment for a prescribed length of time when his own or his partner's entitlement to one of a number of prescribed benefits ends, in prescribed circumstances, and certain prescribed conditions are satisfied (e.g. he is liable to make payments for the dwelling he occupies as his home). The detailed rules are expected to remain the same or similar to the current scheme, and will remain in secondary legislation to provide the flexibility to keep these under review. The length of the extended payment period is likely to be four weeks as it is now.

Subsections (3) and (6) provide for the extended payment conditions of entitlement to take precedence over normal entitlement rules, in calculating the amount of housing benefit during the prescribed extended payment period.

Subsection (4) clarifies that where a person meets the qualifying conditions for an extended payment, there would be no need to make a separate claim for the extended payment. (There would still be a requirement for certain notifications to be made).

As now, the method of calculating the extended payment will be contained in regulations, which are provided for by *subsection (5)*. It is intended that the amount of the extended payment would be the higher of the out-of-work entitlement or the in-work entitlement. The effect of this is to ensure that the claimant is entitled to at least the amount of housing benefit he was receiving before he started work or increased his income from work, during the extended payment period.

Subsection (7) provides that regulations can prescribe how the entitlement under *subsection (2)* interacts with an entitlement of housing benefit, whether the housing benefit entitlement is claimed by the extended payment claimant or his partner. For example, regulations made under this provision could provide that the out-of-work award would continue during the extended payment period and what happens when the prescribed extended payment period finishes. If the claimant is part of a couple, regulations can provide whether the calculation of the extended payment will be based upon the claimants or the partner's housing benefit entitlement and how a partner's housing benefit entitlement will be treated when an extended payment is in payment.

Subsection (9) enables the Department to make special provision in regulations for a person who was not entitled to housing benefit when he stopped being entitled to any of the qualifying benefits, but had been so entitled until a week before he took up employment.

Section 33 supports those arrangements by providing in *subsections (1) and (2)* that the Department can prescribe by regulations any modifications to the housing benefit provisions contained in the Administration Act, or subordinate legislation made in pursuance of that Act, which it considers are required in relation to extended payments. The intention is that the secondary legislation under these subsections will avoid disrupting the normal method of benefit payment, and where appropriate, will complement the payment provisions under the new local housing allowance arrangements.

Subsections (4) to (11) relate to the proposed regulation-making powers, and ensure consistency with existing regulation-making powers in relation to housing benefit.

Subsection (12) provides that payments under *section 32* are classed as housing benefit, for example for cross-references in other legislation. For example, Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, which provides the revisions and appeals mechanism for housing benefit, would also apply to payments under *section 32*.

Section 34 provides specific details on the interpretation of terms used in *sections 32 and 33*, thereby clarifying specific terms and ensuring consistency with established legislation.

Section 35: Payment of housing benefit

Currently under *section 126* of the Administration Act, and the housing benefit rules, housing benefit in the social sector must take the form of a rent rebate where the Housing Executive is the landlord. In other cases, it must take the form of a rent allowance. Both rent rebates and

rent allowances can be paid by way of rebate to, or by payment to, the claimant (which includes someone on his behalf), or by a combination of rebate and payment. Where the Housing Executive is the landlord it has an effective choice as to the manner of payment. Where the Housing Executive is not the landlord it cannot rebate the claimant's rent account and has to pay the claimant or someone on his behalf (such as a landlord, or a third party). Regulations set out the circumstances in which payment must or may be made to someone other than the claimant.

Section 35 replaces section 126(2) of the Administration Act with new subsections (2), (2A) and (2B) to allow for regulations to be made specifying the manner in which payment must be made. This would, for example, enable secondary legislation to prescribe when payment is to be made directly to the claimant, or to someone on his behalf or in respect of the liability the claimant has; or by rebating the claimant's rent account; or by a combination of these methods. This will ensure that the Department could ensure that payments were made to claimants, even where the Housing Executive was the landlord.

Section 36: Directions by Department

Under the present powers, when the Department receives a report under section 128C of the Administration Act, it may invite the Housing Executive to consider the report and respond setting out its proposals for improving performance or remedying failings. *Section 36(2)* amends section 128D(2) of that Act to allow the Department to require the Housing Executive to submit its proposals for improvement. *Subsection (3)* further enables the Department to specify the information (and the format and timescales for the information) it requires from the Housing Executive, to fully inform a decision on possible directions. This would not prevent the Housing Executive submitting other information it thinks relevant to the Department's considerations. To ensure that sufficient time is given to the Housing Executive to consider its response, the Department would be required to give the Housing Executive not less than one month to respond and could extend this, for example, where there were reasonable grounds for doing so following a request from the Housing Executive.

Subsection (4) allows the Department to also take into account any other relevant information it thought appropriate. This might include, for example, past statistical trends, or evidence of the Housing Executive's commitment to, and success in, the delivery of improvement. It also provides the Department with the power to direct the Housing Executive to take any action the Department thought necessary or expedient to improve the Housing Executive's performance and the timescales within which it must do so. The current powers, which allow the Department to specify the standards it expects the Housing Executive to attain and the timescales within which the Department expects it to attain them, remain by virtue of new subsection (3A). Where there are serious concerns in respect of a benefits administration matter, but a standard cannot be specified, the provision in the new subsection (3B) enables the Department to give a direction on that matter. The power allows it, for example, to require the Housing Executive to draw up a counter fraud strategy policy for benefits where none existed, or to review and make detailed proposals for improving a particular operational process about which there were serious concerns.

Subsection (5) is a consequential change to take into account the change in *subsection (4)* and allows the Department to continue to make recommendations to the Housing Executive about the actions it could take to attain the standards set out in a direction.

Subsection (6) places a requirement on the Department, before giving a direction, to give the Housing Executive an opportunity to make representations about the directions to it. However, *subsection (6)* permits the Department to issue directions without consulting the Housing Executive about their content if the Department considered it a matter of urgency. In such an urgent case, the Department is required to inform the Housing Executive in writing of its reasons for not inviting representations from it before giving the directions.

Subsection (7) inserts a new section 128DA into the Administration Act, enabling the Department to vary or revoke a direction when it thinks it necessary to do so. It would be able to do so where it had received representations from the Housing Executive; to rectify an omission or error; or where there had been a material change of circumstances. For example, it might vary or end a direction where a change in legislation means that the direction was no longer relevant or needed to be changed in a material aspect. This subsection also requires the Department to write to the Housing Executive giving its reasons for making the variation and offer it the opportunity to make representations about the proposed variation.

PART 3: Social security administration: General

Sharing of social security information

Section 38: Social security information

Section 38 inserts a new section 5B into the Administration Act to provide for the use by a “relevant authority” of social security information in connection with the administration and promotion of claims for benefit and amends section 5A of that Act which deals with the receipt by relevant authorities of claims for benefit and the collection and verification of evidence relating to claims. These measures support joint working arrangements and are intended to improve the take-up and delivery of benefits and other services administered by the Department and relevant authorities.

Currently section 5A of the Administration Act allows regulations to be made which enable the Department and relevant authorities administering housing benefit to perform certain functions on behalf of one another. It enables claims for prescribed benefits administered by the Department to be made to a relevant authority, and claims for housing benefit to be made to the Department. It also allows the Department and relevant authorities to collect and forward information and evidence for each other’s respective benefits as prescribed. Current powers do not expressly permit relevant authorities to verify claims-related evidence and information on behalf of other relevant authorities.

Specific provisions in the Contributions and Benefits Act impose a duty on authorities administering housing benefit to promote the take up of housing benefit. *Section 38*, through the inclusion of a new section 5B in the Administration Act, enables relevant authorities to promote the take up of benefits administered by the Department. For example, the new section will enable a relevant authority to use information obtained on a claim for housing benefit to pre-populate a claim form for pension credit (which is administered by the Department). This partly completed form could then be submitted to the claimant to encourage him to apply for pension credit.

New section 5B(1) enables a relevant authority to use for a relevant purpose, any social security information which it holds. Subsection (3) clarifies that a relevant purpose is activity intended to encourage a claim which is made or could be made for a specified benefit. This power broadens the boundaries governing authorities’ use of the information that it holds.

The Department has existing powers under section 3 of the Social Security Act 1998 to use information that it holds for one of its functions for another of its functions.

New section 5B(2) allows regulations to specify the procedure to be followed by a relevant authority where it receives information and evidence that has already been used or verified and forwarded by another relevant authority. The purpose of this provision is to reduce claims processing times and the incidences of duplicate requests for information. Regulations under section 5B could ensure that information and evidence that has already been used by the Department, for example, must, subject to certain safeguards, be accepted as correct by the receiving authority for purposes connected with another benefit claim. Without this provision, receiving authorities could opt to continue as before by requesting and verifying the evidence from scratch, thereby duplicating information requests.

Section 5B defines the term “social security information” as covering information relating to social security (including child support and war pensions data), and also evidence obtained in connection with any claims or awards relating to these areas and clarifies that a “specified benefit” (in respect of which this section applies) is to be prescribed in regulations, to provide maximum flexibility in developing these provisions.

Section 39: Information relating to certain benefits

Since April 2003, support services, which assist vulnerable persons to live independently, have been managed by the Housing Executive under the Supporting People programme. Those in receipt of certain income-related benefits automatically qualify under the Supporting People means-test to receive assistance with charges for these services. The Act will enable the Department to confirm to the Housing Executive Supporting People team whether a person is in receipt of one of these benefits, without the Supporting People team having first to obtain that person’s consent. It would also enable the Supporting People team to provide certain information to assist with the administration of housing benefit, for example to help identify where it would be appropriate to make payments of housing benefit to the landlord rather than to a claimant. These information exchanges would only be permissible for limited purposes. If a person is a certain person within the Supporting People team or a Supporting People service provider, he would commit a criminal offence if he discloses, without lawful authority, information supplied to him by virtue of one of these powers.

The Supporting People team administers grants paid by the Housing Executive to provide welfare services. These services provide support to assist vulnerable groups in society, including the elderly, people suffering from substance abuse and people with mental health or learning difficulties, to live in the community. Article 4 of the HSS Order provides a power by which these grants can be paid.

Article 6 of that Order allows information relating to income support and income-based jobseeker’s allowance administered by the Department to be supplied to the Supporting People team for purposes connected with applying a grant made under Article 4 towards housing support services. Article 7 of that Order creates an offence concerning disclosure without, lawful authority, of information which was supplied by virtue of Article 6.

Article 6 of the HSS Order enables the supply of information by the Department to the Supporting People team of the Housing Executive. There is presently no power for information to be supplied by the Supporting People team to the Department. *Subsection (1)* would enable a two-way supply of information between the Department and the Supporting

People team. Specifically, the subsection would enable the Supporting People team to contact the Department when it receives an application for support services. In common with what presently occurs, this subsection would enable the Department to confirm whether a certain income-related benefit (including the new income-related employment and support allowance) is in payment. This information would be used by the Supporting People team to determine whether the claimant meets the means test in determining the amount of assistance with service charges for the support services. Similarly, the subsection would enable the Department to inform the Supporting People team when payment of a certain income-related benefit (and hence automatic entitlement to full support) ceased.

As grants to support welfare services could in future be made under powers in addition to Article 4 of the HSS Order, to support any shift in funding arrangements, *subsection (1)* creates a freestanding provision that would enable the supply of information concerning grant paid under a relevant statutory provision specified by order under *subsection (7)*.

Subsection (2) will enable certain information held for prescribed purposes by the Supporting People team or by housing benefit teams to be supplied to the other teams for prescribed purposes. The prescribed purposes are limited either to a purpose relating to housing benefit or to a purpose relating to welfare services (*subsection (8)*). This provision would be used, for example, to enable housing benefit teams to consider information relating to the vulnerability of a claimant or the probity of a landlord when considering whether to pay housing benefit to the claimant or to the landlord. For example, in considering whether a payment of housing benefit should be made to the claimant or to the landlord knowing whether the claimant is receiving Supporting People assistance because of a disability and, if so, whether that disability may indicate a level of vulnerability, would contribute to the decision-making process.

Certain information supplied to the Supporting People team could be passed to the welfare service providers when required under *subsection (5)*. This mirrors the provision currently in Article 6(3) of the HSS Order.

The information sharing powers provided for within *this section* and the offence of unlawful disclosure in *section 40* replace those contained in Articles 6 and 7 of the HSS Order, which are omitted.

Section 40: Unlawful disclosure of certain information

Article 7 of the HSS Order makes it an offence for a person to disclose without lawful authority information supplied by virtue of Article 6 of that Order. *Section 40* will create a similar unlawful disclosure provision in relation to information received by virtue of *section 39*.

Subsection (2) sets out that the Supporting People team and those providing welfare services are included within the provision of this section. Relevant persons in the Department are not covered by this provision as there is an existing unlawful disclosure provision which applies to them (section 117 of the Administration Act).

This section complements section 117 of the Administration Act and *subsections (3) to (5)* of this section follow the wording of that section.

Overpayment recovery

Section 41: Recovery of overpaid benefit

A Social Security Commissioner in Great Britain decided that benefit overpayments caused by errors made in the direct credit transfer system can be recovered only where a decision to revise the award and a decision that the overpayment is recoverable are made at the same time.

Section 41 amends section 69 of the Administration Act to ensure that overpayments of benefit are recoverable where a decision to revise the award and a decision that the overpayment is recoverable are made separately.

Benefit fraud

Sections 42 and 43: Housing Executive powers to investigate and prosecute benefit fraud

At present, section 104A of the Administration Act allows the Housing Executive to investigate fraud against housing benefit. However, significant doubt has arisen as to whether this allows it to investigate fraud in connection with benefits administered by the Department. In particular, the doubt exists where benefit entitlement means that a claimant automatically satisfies some eligibility conditions to housing benefit. This reduces the scope for effective joint working between the Housing Executive and the Department to investigate and prosecute fraud cases that involve more than one benefit.

Most cases of benefit fraud will continue to be investigated by the Department. However, the Act provides the Housing Executive with clear powers to investigate and prosecute offences in relation to benefits, where they already have power to investigate and prosecute offences concerning housing benefit.

Section 42 sets out the scope of the new provisions which give the Housing Executive a wider power to investigate benefit fraud and extends its powers permitting it to obtain information from persons such as employers, pension providers, financial service companies, utilities and educational organisations.

This brings the investigative powers of the Housing Executive generally into line with those available to the Department and allows the Housing Executive to obtain information relating to other social security benefits in addition to housing benefit. However, the Housing Executive will not be able to obtain information about the circumstances of accidents or injuries giving rise to claims for benefit, because such a power would be unnecessary for the investigation of benefit fraud. The measures will not add to the list of persons who may be required to provide information.

Subsection (3) gives the Department power to prescribe in regulations that certain conditions must be satisfied in order for the Housing Executive to make use of these powers. These “prescribed conditions” enable the Department to limit the powers in a way that ensures that only certain benefit offences may be investigated and to provide safeguards against misuse.

Section 43 creates a new power for the Housing Executive to prosecute offences concerning “relevant social security benefits” as defined in section 115CA of the Administration Act, by inserting a new section 110A into that Act.

Subsection (3) of new section 110A gives the Department power to prescribe in regulations that certain conditions must be satisfied before the Housing Executive can prosecute offences against the additional benefits. These conditions allow safeguards to be put in place to ensure

that the Housing Executive's powers are not misused and permit the Department to prevent the prosecution in certain cases on an individual basis.

Section 44: Housing Executive functions relating to benefit: information

Section 44 provides for a number of changes to the information sharing provisions contained in the Administration Act by giving the Housing Executive access to information relating to benefit offences as well as allowing the Department to obtain information from the Housing Executive relating to those offences. These changes are of a consequential nature, in that they are necessary to allow the new investigation and prosecution powers to function effectively.

Currently, section 116C of the Administration Act permits the Department to disclose information to the Housing Executive for purposes relating to the administration of, and offences against, housing benefit. Restricted in such a way, the Housing Executive will not have access to information and evidence held by the Department relating to benefit offences. *Subsection (1)* amends section 116C so as to allow the Department to disclose to the Housing Executive information relating to benefit fraud investigations and prosecutions. This extension applies to the investigation and prosecution of benefit offences only, and does not extend its power to supply information to the Housing Executive for administrative purposes more generally. This information may include details about the award and payment of benefits as well as copies of claim forms and other signed declarations.

Section 116D of the Administration Act allows the Department to require the Housing Executive to provide it with certain information relating to social security. *Subsection (2)* amends section 116D so as to permit the Department to require the Housing Executive to provide information it had obtained during the investigation or prosecution of a benefit offence.

Subsection (3) makes a consequential amendment to section 119A(8) of the Administration Act so that it reflects the provisions of section 116D as amended by *subsection (2)*.

Section 45: Loss of benefit for commission of benefit offences

Section 45(1) amends section 6 of the Social Security Fraud Act (Northern Ireland) 2001, which enables benefit entitlement to be removed or reduced where a person is convicted of benefit fraud twice and the second offence was committed within three years of the date of conviction for the first offence. This amendment will extend the period between the date of conviction in the earlier proceedings and the date of commission of the offence in the later proceedings from three to five years. This will have the effect that a person's benefit may be withdrawn or reduced if he commits a benefit offence, of which he is later convicted, within five years of a conviction for a previous benefit offence.

Subsection (2) provides that this amendment should be disregarded when considering whether an offence committed before the date that this section comes into operation was committed within the relevant period. Where an offence was committed before the date this section comes into operation the relevant period will remain three years.

Part 4: Miscellaneous

Benefits for bereaved persons

Section 46: Widowed mother's allowance

Broadly, in order to be entitled to widowed mother's allowance, a widow must be entitled to child benefit in respect of a child. A widow is entitled to child benefit in respect of a child if

the child is living with her or the child is not living with her but she makes contributions to the cost of providing for the child at a rate which is not less than the rate of child benefit payable in respect of the child.

At present, section 37 of the Contributions and Benefits Act provides that, where a widow is entitled to child benefit in respect of a child who is not living with her, she is not entitled to widowed mother's allowance unless she also makes additional contributions to the cost of providing for the child at a rate which is not less than the rate of guardian's allowance. *Section 46* removes this requirement.

Section 47: Widowed parent's allowance

Section 47 amends section 39A of the Contributions and Benefits Act in respect of widowed parent's allowance in the same way that *section 46* amends the provisions about widowed mother's allowance.

Disability living allowance: age conditions

Section 48: Care component of disability living allowance: persons under the age of 16

Section 48 amends section 72 of the Contributions and Benefits Act, which sets out the entitlement conditions to the care component of disability living allowance (section 72(1)). The entitlement conditions are modified in the case of claims for a period in which the claimant is under the age of 16 (section 72(6)). This section removes subsection (6) and replaces it with new subsections (1A) and (2A). The new subsections apply the same modifications to the standard entitlement conditions for the care component (in section 72(1)) but only if a person is under the age of 16 on the date on which the award would begin and only in relation to any period up to and including the day before a person reaches the age of 16. Consequential amendments are also made.

Section 49: Mobility component of disability living allowance: persons under the age of 16

Section 49 amends section 73 of the Contributions and Benefits Act, which sets out the entitlement conditions to the mobility component of disability living allowance (section 73(1)). The entitlement conditions are modified in the case of claims for a period in which the claimant is under the age of 16 (section 73(4)). This section removes subsection (4) and replaces it with new subsections (4A) and (9A). The new subsections apply the same modifications to the standard entitlement conditions for the mobility component (in section 73(1)) but only if a person is under the age of 16 on the date on which the award would begin and only in relation to any period up to and including the day before a person reaches the age of 16. Consequential amendments are also made.

Social fund

Section 50: Matters to which regard must be had in awarding budgeting loans

Section 136 of the Contributions and Benefits Act provides for payments to be made out of the social fund in the form of budgeting loans, crisis loans and community care grants to give help to people on low incomes.

“Appropriate officers” determine applications for social fund payments in accordance with the provisions in primary legislation, principally section 136 of the Contributions and Benefits Act, and directions and guidance issued by the Department. Section 136(1) sets out factors relevant to decisions on crisis loans and community care grants and section 136(1A)

does the same for budgeting loans. The system of decision-making in respect of budgeting loans has been simplified with the consequence that some of the provisions in section 136(1A) are unnecessary. Section 50 removes them. The possibility that a third party may meet the need under consideration will no longer be one of the factors relevant to decisions on budgeting loans (see section 136(1)(c) and (1A)(b)). The reference in section 136(1A) to budgeting loan criteria other than the applicant's personal circumstances which may be specified by the Department in directions are removed, as the directions no longer contain such criteria.

Section 51: Allocations from the social fund

Under section 147 of the Administration Act the Department allocates money out of which social fund payments may be made under section 134(1)(b) of the Contributions and Benefits Act.

The money available is limited. There is one budget for loans and one for grants. The budgets are currently allocated to offices for the purpose of making payments of loans and grants to the customers in their geographical area. The intention is that there should be flexibility as to how allocations are made and, in particular, it should be clear that it is open to the Department to make a single allocation from which loans may be made. The amendments to section 147 by *section 51* will give that clarity and flexibility.

Compensation for pneumoconiosis etc.

Section 52: Relevant employer

The conditions of entitlement to a payment in the case of a person suffering from a disease to which the Pneumoconiosis Order applies are set out in Article 3(3) of that Order. One of the conditions of entitlement is that every person by whom the person suffering from the disease was employed at any time during the period which he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement ("relevant employers") have ceased to carry on business. If there are no relevant employers, a payment is made.

Section 52 inserts a definition of "relevant employer" as set out in Schedule 6 which would allow a claim to be made where the employment was a long time in the past or only lasted for a short period of time.

Section 53: Dependant

A "dependant" of a person who, immediately before his death, suffered from a relevant disease can bring a claim under the Pneumoconiosis Order. Article 5 of that Order sets out the meaning of a "dependant" and sets out an order of priority for determining which dependant may bring a claim in each case.

Section 53 amends that Article so that a person who was living with a sufferer as if husband and wife and a person who was living with a sufferer as if they were civil partners are included within the meaning of "dependant".

Other

Section 54: Power to stop payment of allowances to care home residents

Section 54(1) replaces subsection (2) of section 67 of the Contributions and Benefits Act with new subsections (2) to (6).

New subsection (2) confers a power to make regulations providing for circumstances in which payment of attendance allowance may be withdrawn from those resident in a care home where any of the costs of any qualifying services provided in that home are borne out of public or local funds under a specified enactment.

New subsections (3) to (6) define what is meant by a “care home”, “qualifying services” and an “enactment”.

Subsection (2) replaces subsection (8) of section 72 of the Contributions and Benefits Act with new subsections (8) to (12).

New subsections (8) to (12) confer power to provide by regulations for circumstances in which payment of the care component of disability living allowance may be withdrawn from those resident in a care home.

Section 55: Medical examinations

Section 55 allows the Department and the eligible member of an appeal tribunal to refer a person to a health care professional for medical examination and report, rather than only allowing a referral to a medical practitioner. Such a reference can be made where considered necessary for the purpose of providing the Department with information for use in making a decision on entitlement to benefit or to aid the appeal tribunal’s determination of an appeal and allows the eligible member of an appeal tribunal to specify the description of health care professional to whom a person is to be referred.

SCHEDULES

Schedule 1 - Employment and support allowance: additional conditions

Part 1 describes the conditions of entitlement to a contributory employment and support allowance relating to National Insurance contributions. These are, in substance, the same as those that exist in relation to incapacity benefit now.

Part 2 provides for certain additional conditions for entitlement to an income-related employment and support allowance. These are similar, though not identical, to the conditions of entitlement that currently apply to income support. For example, as well as there being no entitlement if income exceeds the applicable amount, *paragraph 6(1)(b) and (2)* provide that there is no entitlement to an income-related allowance if the claimant and his partner together have capital assets in excess of a limit set out in regulations, which is expected to be £16,000, i.e. the same as that which applies for the purposes of income support.

Section 1(3) provides that there is no entitlement to either a contributory allowance or an income-related allowance if the claimant is entitled to income support or any type of jobseeker’s allowance. *Paragraph 6(1)(c) and (d)* provides that there is no entitlement to an income-related employment and support allowance where the claimant is entitled to state pension credit or the claimant’s partner is entitled to income support, state pension credit or an income-based jobseeker’s allowance. This is to ensure that only one income-related benefit is paid to a household at any one time in order to prevent duplicate provision from public funds.

The Schedule further provides that there is no entitlement to an income-related employment and support allowance where a claimant or his partner is in full time paid (remunerative)

work, as is the case with income support. Regulations will determine what amounts to remunerative work.

The Schedule also provides that there is no entitlement to an income-related allowance where a claimant is receiving education (*paragraph 6(1)(g)*). However, the Department may set out in regulations when a person is or is not to be treated as receiving education. The Department may also disapply this condition so that, for example, certain disabled young people or disabled students may be entitled to an employment and support allowance (*paragraph 6(4)*).

Paragraph 6(7) provides a power for *paragraph 6* to be modified where the claimant is a member of a polygamous marriage. This includes modifications in respect of how benefit, income and capital in respect of the second and any subsequent spouse will be aggregated for the purposes of determining entitlement to an employment and support allowance. It is intended that the modifications made in respect of an employment and support allowance would be based on the income support rules relating to polygamous marriages.

Schedule 2 - Employment and support allowance: supplementary provision

This Schedule contains additional provisions in respect of the employment and support allowance. *Paragraph 1* confers powers to provide by regulations for claimants to be treated as having (or not having) limited capability for work, as well as to require capability for work to be determined afresh (or for the first time in the case of a person being treated as having limited capability for work, but who has never actually undergone a determination of capability for work). *Paragraph 9* makes equivalent provision in relation to limited capability for work-related activity.

Paragraph 2 provides that a person is not entitled to an employment and support allowance for a certain number of days at the beginning of a period of limited capability for work. It is intended that claimants will be required to wait for three days at the beginning of a period of limited capability for work, before becoming entitled to an employment and support allowance (as now under incapacity benefit). *Paragraph 2* also allows that regulations may disapply the waiting days requirement to ensure that the claimant would not have a break in benefit entitlement where, for example, he was previously entitled to another benefit, such as jobseeker's allowance.

Paragraph 4 provides for periods of limited capability for work to be linked together and treated as one period of limited capability for work. Where periods are linked, regulations can provide that a condition relating to an employment and support allowance that was satisfied in the earlier period of limited capability for work can be treated as satisfied in the later period of limited capability for work.

This Schedule also provides for regulations to prescribe circumstances where people are entitled to an employment and support allowance where they are not in Northern Ireland (for example, where they live abroad or are employed on a ship or oil rig) (*paragraphs 5 to 8*) and other additional matters.

Schedule 3 - Consequential amendments relating to Part 1

Paragraph 1 amends the Education Reform (Northern Ireland) Order 1989 so that for the purposes of qualifying for remission of any charges otherwise payable families receiving income-related employment and support allowance are treated the same as those receiving income support or income-based jobseeker's allowance.

Paragraph 2 amends the Child Support (Northern Ireland) Order 1991 so that an income-related employment and support allowance will be treated the same way as income support and income-based jobseeker's allowance for the purposes of applications, reduced benefit decisions and fees under both the old child support scheme and the modified scheme introduced by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and calculation of child support maintenance in the old scheme.

Paragraph 3 amends the Contributions and Benefits Act so that earnings factors will be calculated the same way for an employment and support allowance as jobseeker's allowance for the purpose of satisfying the contributions conditions, and also so that an employment and support allowance recipient of either the support component or the work-related activity component will be entitled to a Christmas Bonus. It also makes a number of consequential amendments to that Act.

Paragraph 4 amends the Administration Act so that an employment and support allowance will be subject to the usual provisions that relate to other benefits in respect of claims and overpayments and makes other consequential changes. It also makes provision for the annual up-rating of the rates of an employment and support allowance.

Paragraph 4(10) inserts a reference to income-related employment and support allowance into section 100 of the Administration Act thus ensuring that the offence provided for in that section applies to those in receipt of income-related employment and support allowance. The offence provided for in section 100 currently applies to those in receipt of income support on the grounds of incapacity.

Paragraph 4(20) inserts a new section 139C into the Administration Act which makes provision, like that in relation to other benefits set out in sections 139, 139A and 139B of that Act, which sets out the circumstances such as the annual up-rating of benefits, where the level of a person's employment and support allowance changes without a decision being made by the Department to supersede the decision on the award.

Paragraph 4(21) inserts a new section 140B into the Administration Act to provide for implementation of increases in employment and support allowance due to attainment of particular ages without a decision being made by the Department to supersede the decision on the award.

Paragraph 5 amends the Children (Northern Ireland) Order 1995 so that people receiving income-related employment and support allowance will be exempted from liability to contribute towards the costs of maintaining their children in care, services and assistance provided to children in need and their families and other provision and support.

Paragraph 6 makes consequential amendments to the Jobseekers (Northern Ireland) Order 1995. In particular it amends Article 3 of the Order to provide that one of the conditions of entitlement to a jobseeker's allowance is that the claimant does not have limited capability for work instead of the current condition that the claimant "is capable of work". Further amendments make it clear that the question of whether a person has or does not have limited capability for work is to be determined in accordance with the provisions of Part 1 of this Act.

Paragraph 7 amends the Road Traffic (Northern Ireland) Order 1995 so that people receiving income-related employment and support allowance will be reimbursed the costs of obtaining a medical certificate for the exemption from having to wear a seat belt on medical grounds.

Paragraph 8 amends the Pensions (Northern Ireland) Order 1995 to include the Welfare Reform Act (Northern Ireland) 2007 in the list of enactments to which the rules for determining pensionable age apply for the purposes of the definition in *section 1(6)*.

Paragraph 9 amends the Industrial Tribunals (Northern Ireland) Order 1996 so that income-related employment and support allowance could be recouped from certain awards made by industrial tribunals.

Paragraph 10 makes consequential amendments to the Social Security (Northern Ireland) Order 1998. In particular, the amendments apply the provisions relating to the making of benefit decisions by the Department, the supersession and revision of decisions, and the right of appeal in relation to an employment and support allowance.

Paragraph 11 amends the Immigration and Asylum Act 1999 so that people could not receive income-related employment and support allowance whilst subject to immigration control.

Paragraph 12 amends the Welfare Reform and Pensions (Northern Ireland) Order 1999 so that the powers enabling the Department to share certain information in connection with the administration of benefits will apply to information relating to an employment and support allowance.

Paragraph 13 amends the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 so that the provisions relating to penalties for breaching a community order will apply to income-related employment and support allowance.

Paragraph 14 amends the Social Security Fraud Act (Northern Ireland) 2001. In particular, the amendments apply the provisions relating to the loss of benefit for the commission of offences and the provision of benefit for the families of those who have lost entitlement due to benefit offences to employment and support allowance.

Schedule 4 - Transition relating to Part 1

Schedule 4 provides for transitional arrangements for those people who are on existing benefits. Existing benefits are incapacity benefit (which includes transitional awards of incapacity benefit), severe disablement allowance and income support (on grounds of incapacity or disability).

Paragraph 1 provides a general transitional power, allowing the Department to make such provision, by regulations, as it considers necessary or expedient in connection with the coming into operation of Part 1 or the transition to employment and support allowance. The remaining paragraphs of this Schedule provide specific powers relating to the transition to the new allowance.

Paragraphs 2 to 4 provide for regulations to specify when a claim can be treated as a claim for an existing benefit and when a claim can be treated as a claim for an employment and support allowance. Regulations may make provision that a claim for an existing benefit made before the day that the provisions in respect of an employment and support allowance come into effect can be treated as a claim for an employment and support allowance.

Regulations may provide that, after the appointed day (i.e. the day on which the provisions about an employment and support allowance take effect), existing benefits cannot be claimed and an employment and support allowance is claimed instead. *Paragraph 3(c)* enables regulations to provide for a claim to an employment and support allowance to be treated as a

claim for existing benefit. This power may be used, for example, when someone's benefit is backdated to a period before the appointed day.

Paragraphs 5 and 6 relate to claims that are made by those who had previously been entitled to an existing benefit, who subsequently ceased to be entitled to that benefit, but who could have returned to benefit because they would have been covered by linking rules. It covers those cases where the claimant's original claim was for an existing benefit, but the subsequent claim is made after the provisions in relation to employment and support allowance have come into operation. Regulations may provide that these cases may be awarded an employment and support allowance on terms which match wholly or partly the terms of the existing benefit.

Paragraph 7 provides for regulations to make provision for the migration of existing claimants onto an employment and support allowance. Regulations could prescribe the timing, conditions, kind and amount of any such entitlement to an employment and support allowance in such cases. Regulations could also make provision for determining whether a claimant has limited capability for work-related activity (i.e. that they would be entitled to the support component of an employment and support allowance). *Paragraphs 8 and 9* provide for regulations to make provision for the conditions of continuing entitlement, or for reviewing or terminating such awards.

Schedule 5 - Minor and consequential amendments relating to Part 2

Paragraphs 2 to 4 amend the Administration Act to take account of the more flexible powers of direction provided for in *section 36*. The amendments enable the Department to require information it needs from the Housing Executive to decide whether it has taken the action specified in the direction, in the same way as it already decides whether specified standards have been obtained. The amendments also provide for the Department to take the same enforcement action when the Housing Executive fails to comply with a direction on actions, as it can when the Housing Executive fails to deliver on standards set down in a direction.

Paragraph 6 amends Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 which provides for the revision and appeals process in respect of housing benefit. The amendment makes it clear that an overpayment decision under or by virtue of section 73 of the Administration Act can be revised, if appropriate.

Schedule 6 - Schedule to be inserted in the Pneumoconiosis Order

Schedule 6 inserts the Schedule in the Pneumoconiosis Order which defines a "relevant employer" as any person by whom the person was employed in a prescribed occupation at any time during the period he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement.

The following periods of employment would be disregarded for the purposes of determining whether there is a relevant employer:

- those that ended more than 20 years before the date on which the employee's claim for industrial injuries disablement benefit was determined (or, in the case of a claim from a dependant, where such a date does not exist, from the date of the death of the sufferer); and
- in cases of diffuse mesothelioma, any employment which began not more than 15 years before that date.

A person is not a relevant employer if, disregarding the periods of employment mentioned in the previous paragraph, the period during which he employed the person suffering from the disease:

- did not exceed 12 months; and
- did not exceed 5 years in total and does not represent more than 25 per cent. of the total period during which the person was employed in a prescribed occupation (or 7 years and not more than 20 per cent. of the total period employed in a prescribed occupation).

Schedule 7 - Minor and consequential amendments relating to Part 4

Schedule 7 makes provision for minor and consequential amendments to the Contributions and Benefits Act, the Administration Act, the Deregulation and Contracting Out (Northern Ireland) Order 1996 and the Social Security (Northern Ireland) Order 1998 which arise from the provisions of Part 4 of the Act.

DEFINITIONS

- * *the Administration Act* means the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
- * *the Contributions and Benefits Act* means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)
- * *the Department* means the Department for Social Development
- * *the Housing Benefit Regulations* means the Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405)
- * *the Housing Benefit (SPC) Regulations* means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 406)
- * *the Housing Executive* means the Northern Ireland Housing Executive
- * *the HSS Order* means the Housing Support Services (Northern Ireland) Order 2002 (S.I. 2002/3154 (N.I. 8))
- * *the Pneumoconiosis Order* means the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979

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