

WELFARE REFORM ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Social Security

Section 1: Schemes for assisting persons to obtain employment: “work for your benefit” schemes etc.

48. This section inserts two new sections, *section 17A* (schemes for assisting persons to obtain employment: ‘work for your benefit’ schemes etc.) and *section 17B* (section 17A: supplemental) into the [Jobseekers Act 1995 \(c. 18\)](#).
49. *Section 17A(1)*, which is inserted by *subsection (2)*, enables the Secretary of State to make provision in regulations for or in connection with imposing a requirement on jobseeker’s allowance claimants to participate in schemes that are designed to assist them to obtain employment.
50. In particular, these regulations may impose a requirement on claimants to undertake work or work-related activity as part of a ‘work for your benefit’ scheme.
51. The intention is to pilot ‘work for your benefit’ schemes in limited geographical areas from 2010 in order to assess their effectiveness. This would be achieved by making regulations using the powers in section 29 (pilot schemes) of the Jobseekers Act 1995 (as amended - *see section 28*). Subsequent implementation would be subject to the outcome of the pilots and affordability.
52. *Section 17A(1)* provides for the regulations to set out the circumstances in which jobseeker’s allowance claimants are required to participate in schemes under this section. The Government intends to use these powers to require a proportion of long-term unemployed claimants who reach the end of a Flexible New Deal programme without finding work to take part in a ‘work for your benefit’ pilot scheme. The Government envisages that Jobcentre Plus personal advisers will be able to require other jobseeker’s allowance claimants to take part in a pilot scheme if the adviser considers that participation would benefit the individual concerned.
53. As well as undertaking full-time work or work-related activity it is also envisaged that participants in ‘work for your benefit’ pilot schemes will be provided with relevant employment support.
54. *Section 17A(2)* makes it clear that the regulations may require claimants to undertake work or a work-related activity during a prescribed period with a view to improving their chances of finding employment. The Government envisages that claimants may participate in ‘work for your benefit’ pilot schemes for up to six months.
55. *Section 17A(3)* defines ‘work-related activity’ as activity which would make it more likely that the participant will obtain or remain in work or be able to do so.
56. *Section 17A(4)* precludes regulations made under *subsection (1)* from applying to jobseeker’s allowance claimants who are not required to satisfy the jobseeking

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conditions. These are the conditions set out in section 1A(5)(a) to (c) of the Jobseekers Act 1995 (see *section 4(3)* – namely that a person is available for work, has a current jobseeker’s agreement, and is actively seeking employment). The Government envisages the precluded groups will include lone parents with younger children who are moved to jobseeker’s allowance after the abolition of income support (see *section 9*).

57. *Section 17A(5)* provides examples of provisions that may be included in regulations made under *section 17A(1)*.
58. *Section 17A(5)(d)* enables regulations to provide that benefit payments may be withheld or reduced where a claimant has failed to comply with the regulations and he or she does not show good cause for the failure within the period specified in regulations. If good cause is shown, benefit will continue to be paid. The Government intends that good cause for not participating in a ‘work for your benefit’ scheme will be consistent with the good cause provisions currently contained in regulations relating to jobseeker’s allowance. An example of good cause would be dealing with a domestic emergency.
59. *Subsection (6)* provides that a jobseeker’s allowance is not payable for a period specified in regulations where a claimant has failed to comply with regulations made under *section 17A*. This subsection also provides that the period specified in the regulations in respect of which a jobseeker’s allowance is not payable must be at least one week and not more than 26 weeks.
60. *Section 17A(7)* provides that the appropriate consequence if a member of a joint-claim couple fails to comply with regulations is that he or she be treated as subject to sanctions for the purpose of section 20A of the Jobseekers Act 1995. The period for which the full allowance is not payable must be at least one week and not more than 26 weeks.
61. *Subsections (8) and (9) of section 17A* make provision for claimants to receive an income-based jobseeker’s allowance even though provision made by the regulations may prevent it. This is to enable claimants who are subject to a sanction to receive hardship payments. Regulations may prescribe the rate and period of such payments and the circumstances in which they are payable. *Subsection (8)* does not apply in the case of a joint-claim jobseeker’s allowance. Provision for such payments is contained in section 20B(4) of the Jobseekers Act 1995.
62. *New section 17B*, which is also inserted in the Jobseekers Act 1995 by *subsection (2)*, contains provisions that are supplemental to *section 17A*. These provisions relate to the practical operation of schemes prescribed under *section 17A* and provide support for any contractual arrangements the Secretary of State may make regarding their delivery.
63. *Subsection (1)* enables the Secretary of State to associate himself, financially or otherwise, with any scheme falling within *section 17A(1)*. For example, ‘work for your benefit’ pilot schemes may involve contracting with non-Government organisations and providing funding for relevant work-related activity and employment support. The Secretary of State may also wish to make payments to persons participating in the schemes to cover certain expenses, such as the cost of public transport to the host organisation.
64. *Subsections (2) to (5)* allow the Scottish and the Welsh Ministers to continue to make payments to those delivering schemes (including the Secretary of State) under *section 17A*. Payments made in this way must be for facilities considered capable of supporting the training in Scotland or Wales of persons for employment. This means that Scottish and Welsh Ministers retain current powers in relation to schemes made under section 60 (special schemes for claimants for jobseeker’s allowance) of the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#). Provision is made for the repeal of section 60 in *section 55 and Part 3 of Schedule 7*.
65. *Subsection (6)* enables the Secretary of State, where necessary, to use existing powers in section 26 (status of trainees etc.) of the Employment Act 1988 to make an order dealing with the employment status of claimants participating in schemes under *section 17A*

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and detailing how any income gained while on a scheme should be treated for the purpose of other relevant legislation (for example, legislation relating to tax or National Insurance contributions). This follows the same approach as in section 60(8) of the Welfare Reform and Pensions Act 1999.

66. *Subsections (3) to (5) of section 1* make other amendments which are consequential on new *section 17A*.
67. *Subsection (3)* inserts a new subsection (4A) in section 36 (regulations and orders) of the Jobseekers Act 1995 to make it clear that regulations made under new *section 17A* may make different provision for different areas and that they may make provision only in relation to an area or areas specified in the regulations.
68. *Subsection (4)* amends Schedule 3 to the [Social Security Act 1998 \(c. 14\)](#) to provide that a decision relating to non-payment of benefit under *section 17A* may be appealed.

Section 2: Work-related activity: income support claimants and partners of claimants

69. This section amends the Social Security Administration Act 1992 by inserting *new sections 2D to 2H*.
70. *New section 2D* allows the Secretary of State to make regulations which may require a lone parent in receipt of income support, except where there is a child aged under three in the household, (*subsection (1)*), or the partner of a person receiving income support, income-based jobseeker's allowance or income-related employment and support allowance (*subsections (2) and (3)*) to undertake work-related activity, as part of their progression to work outlined in Professor Gregg's recommendations, as a condition of continuing to receive the full amount of benefit. The regulations made under this section will make provision for –
 - the circumstances in which a person is to be subject to any requirement to undertake such activity;
 - notifying a person of such a requirement;
 - prescribing the time and amount of work-related activity which a person is required to undertake;
 - detailing the circumstances in which a person is or is not to be regarded as undertaking such activity;
 - determining, in the case of a claimant in a polygamous marriage, which of the partners is required to undertake work-related activity;
 - imposing a sanction where a person required to undertake work-related activity has failed, without good cause, to comply with the requirement. The regulations will prescribe which matters are, or are not, to be taken into account when determining good cause for such failure. Where a sanction is imposed, the regulations will make provision for benefit to be reduced, and prescribe the amount and period of the reduction;
 - allowing lone parents entitled to income support to restrict the hours for which they will be required to undertake work-related activity. For example they could restrict such activities to their child's hours of schooling or formal childcare.
 - definitions for the purposes of this section and for *new sections 2E and 2F*. In particular 'work-related activity' is defined as activity which makes it more likely that the person will obtain or remain in work or be able to do so;

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- information supplied under the regulations made under this section to be taken to be information relating to social security. This will enable the exchange of information with, for example, training providers.
71. *New section 2E* relates to persons in receipt of certain benefits and to the partners of such people who are required to attend a work-focused interview under the provisions of section 2A and section 2AA of the Social Security Contributions and Benefits Act 1992. The benefits in question are income support, income-based jobseeker's allowance or an income-related employment and support allowance. The provision requires the Secretary of State, in circumstances to be specified in regulations, to provide such people with an action plan. Regulations made under this section will provide for the form, content and review and updating of action plans. Where a person is required under the provisions of *section 2D* to undertake work-related activity, the action plan will contain details of the activities which will allow that requirement to be met. The regulations will also allow a person provided with an action plan to ask for it be reconsidered, and set out the circumstances and time in which such a request may be made; the matters to be considered when deciding on reconsideration; notification of the reconsideration decision, and directions giving effect to the decision on reconsideration. In preparing any action plan the well-being of the child should be taken into account when agreeing the activities that a parent will undertake.
72. *New section 2F* allows the Secretary of State, in circumstances to be set out in regulations, to issue a direction to a person required to undertake work-related activity under *section 2D*. The direction will specify either –
- the *only* activity, in that person's case, which will be regarded as work-related activity, or
 - activity which, in that person's case, will *not* be treated as work-related activity.
73. *Section 2F(2)* provides that a person cannot be required to undertake medical or surgical treatment to meet their work-related activity requirement.
74. The regulations will provide that any direction must be reasonable, taking into account an individual's circumstances, must be included in an action plan given under *section 2E* and may be varied or brought to an end by a subsequent direction made under *section 2F(1)*. Where a direction is varied or ended by a subsequent direction, that change may have retrospective effect.
75. *New section 2G* will allow the Secretary of State to authorise staff of contracted out suppliers to carry out his functions in issuing action plans under new *section 2E* and issuing directions under new *section 2F*. In addition regulations may provide for those persons to carry out the functions of the Secretary of State in revising or superseding decisions made under those sections. However, they will not be able to make decisions about whether a person has failed to comply with a requirement to undertake work-related activity, whether that person had good cause for such a failure or whether benefit should be reduced as a result of that failure. Those decisions will remain with the Secretary of State.
76. Regulations made under new *section 2G* will further specify the extent to which a contractor and its staff may be authorised to carry out functions of the Secretary of State and the duration of the authorisation. The Secretary of State will be able to revoke the authorisation at any time, and will not be prevented from exercising any function himself. Any action or omission by the authorised person is to be treated as an action or omission of the Secretary of State, except where it relates to the exercise of the function, or where criminal proceedings are brought in respect of anything done by the authorised person.
77. *New section 2H* provides that where regulation-making powers in the Social Security Administration Act 1992 enable circumstances to be prescribed that constitute good

cause for failing to undertake mandatory activities the regulations must expressly state that availability of childcare and the claimant's physical or mental health or condition will always be considered.

78. *Subsections (3) to (5) of section 2* make minor consequential amendments to the Social Security Administration Act 1992 and the Welfare Reform and Pensions Act 1999.

Section 3: Lone parents

79. *Section 3(1)* amends section 124 of the Social Security Contributions and Benefits Act 1992 to ensure that lone parents with a child under seven are a prescribed category of person entitled to income support. *Section 3(2)* amends section 2A of the Social Security Administration Act 1992 to ensure that lone parents on income support with a child under one will not be required to take part in a work-focused interview. Further, *subsections (3) to (5)* amend sections 12, 13 and 24 of the Welfare Reform Act 2007, to ensure that lone parents on employment and support allowance with a child under one will not be required to take part in a work-focused interview, and that lone parents on employment and support allowance with a child under three will not be required to undertake work-related activity. *Section 3(4)* also contains provision that allows lone parents receiving employment and support allowance to restrict the hours they are required to undertake work-related activity. These powers will be used to enable them to restrict the activities they will undertake to their child's hours of schooling or formal childcare.

Section 4: Entitlement to jobseeker's allowance without seeking employment etc.

80. *Subsections (1) to (3)* amend the Jobseekers Act 1995 by inserting *new sections 1A and 1B* to provide entitlement to jobseeker's allowance ("modified jobseeker's allowance") for different categories of claimant including groups who would currently claim income support.
81. *New section 1A* makes provision for claimants who are not a member of a joint-claim couple. It re-states the existing basic conditions under which people who are not in remunerative work can qualify for contribution-based or income-based jobseeker's allowance if they satisfy jobseeking conditions (such as to be available for and actively seeking work.) It creates a new entitlement for people of a description provided in regulations, who are not required to meet the jobseeking conditions but meet the other basic conditions of entitlement, such as presence in Great Britain and being under pension age. This will enable the modified form of income-based jobseeker's allowance to be extended to groups who currently qualify for income support. In particular, lone parents with a child under seven are a prescribed category of person entitled to a modified jobseeker's allowance.
82. *New section 1B* ensures that the existing provision in section 3A of the Jobseekers Act 1995 (the conditions for claims by joint-claim couples) can continue to operate in the light of the amendments made to the Jobseekers Act by the *new section 1A* above. Where a person is a member of more than one couple, regulations will make provision for deciding which couple is included for the purposes of a joint claim. This would apply, for example, to someone in a polygamous marriage.
83. *Subsection (4)* introduces Schedule 1, which includes amendments to the Jobseekers Act 1995 to support these changes.

Section 5: Couples where at least one member capable of work

84. This section amends the law relating to certain claimants who are members of a couple.
85. *Subsection (1)* amends the Social Security Contributions and Benefits Act 1992 by inserting new regulation-making powers into section 124(1) of that Act (conditions for

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income support) and by inserting new subsections (6A) and (6B) (employment and support allowance).

86. *Subsection (2)* amends paragraph 6 of Schedule 1 to the Welfare Reform Act 2007 (the conditions for entitlement to income-related employment and support allowance).
87. The purpose of these provisions is to remove entitlement to income support and income-related employment and support allowance for couples where one member is capable of work. This will mean that the only route to income-related support for such couples will be through income-based jobseeker's allowance and the member of the couple who is work ready will be required to fulfil the jobseeking requirements in section 1 of the Jobseekers Act 1995.
88. Regulations will prescribe the circumstances in which a member of a couple will not be treated as being capable of work, for example, he or she has claimed or is receiving employment and support allowance or he or she is in receipt of carer's allowance.

Section 6: Statutory sick pay and employment and support allowance

89. This section amends section 20(1) of the Welfare Reform Act 2007 which prevented eligibility for employment and support allowance by those entitled to statutory sick pay. That section is amended to include a regulation-making power to allow people who are receiving statutory sick pay to claim income-related employment and support allowance, instead of income support. Currently people may receive income support in addition to statutory sick pay. In order to abolish income support, alternative provision needs to be made for this group of people.

Section 7: Transitional provision relating to sections 4 to 6

90. This section makes provision for the transition of people who move from income support to employment and support allowance or jobseeker's allowance as a result of the provisions in *sections 4 to 6*. This includes stopping awards of income support or employment and support allowance, where it is appropriate. A transitional allowance can be paid for a time and an amount prescribed in regulations.

Section 8: Parliamentary procedure: regulations imposing work-related activity requirements on lone parents of children under 7

91. *Section 8* provides that any regulations under new section 2D(1) of the Social Security Administration Act 1992, new section 18B of the Jobseekers Act 1995 and section 13 of the Welfare Reform Act 2007 which impose a requirement on a lone parent with a child under seven to undertake work-related activity and are made within 5 years of the date the Act is passed (that is, at any time before 12 November 2014) will be subject to the affirmative resolution procedure.

Section 9: Abolition of income support

92. This section provides for the abolition of income support and the repeal of its associated references when, as a result of changes made in this Act or otherwise, there are no longer any groups of people that require income support. There is scope in *subsection (4)* to provide any transitional protection necessary.
93. *Subsections (9) and (10)* provide that an order made under *section 9(2)* providing for section 124 of the Social Security Administration Act 1992 (entitlement to income support) to cease to have effect is subject to the affirmative resolution procedure. Any orders made under *section 9(4)* associated with the abolition of income support will be subject to the negative resolution procedure, except where such provision is contained within the same order as provision under *section 9(2)*. In the latter case the order would be subject to the affirmative resolution procedure.

Section 10: Power to direct claimant to undertake specific work-related activity

94. *Section 10* allows the Secretary of State to specify a work-related activity which a claimant of employment and support allowance, in the work-related activity group, must undertake as a condition of continuing to be entitled to the full amount of his allowance. Work-related activity is activity aimed at helping the claimant obtain work, remain in work or to be more likely to obtain or remain in work. This will not apply to claimants whose condition limits them to the extent that they could not reasonably be required to undertake work-related activity as a condition of receiving their benefit.
95. *Section 10* amends section 15 of the Welfare Reform Act 2007 which provides a power for the Secretary of State to direct that a specific activity in the case of an individual is not to count as work-related activity under the requirements imposed by section 13 of that Act. This is intended to stop claimants seeking to satisfy the requirement to undertake work-related activity by undertaking activity considered inappropriate for their circumstances.
96. New *subsection (1)(a)* provides that in addition to the existing power under section 13 of the Welfare Reform Act 2007, the Secretary of State can, in prescribed circumstances, direct that a specific activity is the only activity which can, in the person's case, be regarded as work-related activity. This is intended to enable the Secretary of State to require claimants to undertake a specific activity in certain circumstances. New *subsection (1A)* ensures that a claimant cannot be required to undertake medical or surgical treatment to meet their work-related activity requirement.
97. New *subsection (2)(a)* requires that any direction given to the claimant must be reasonable, having regard to the person's circumstances. New *subsection (2)(b)* requires that any direction given to the claimant under *subsection (1)* must be recorded in the claimant's action plan. Failure to undertake the specified activity without showing good cause for this within the allowed time would be sanctionable.

Section 11: Claimants dependent on drugs etc.

98. This section and *Schedule 3* make provision in relation to persons claiming jobseeker's allowance and employment support allowance who are dependent on, or have a propensity to misuse, drugs. They will be required to engage in certain activities if their condition affects their prospects of finding work. The Schedule also contains a power to extend the provisions to those who misuse alcohol.

Section 12: Conditions for contributory jobseeker's allowance

99. This section amends the contribution conditions for jobseeker's allowance. It amends the Jobseekers Act 1995 so that the first contribution condition for jobseeker's allowance is met by the claimant having paid, or being treated as having paid, at least 26 weeks of Class 1 contributions on relevant earnings at the base year's lower earnings limit (£90 per week in 2008/09) in one of the two tax years prior to the claim. Class 1 national insurance contributions are those paid on earnings from employment. Relevant earnings are those upon which contributions have been paid and which count towards establishing entitlement.
100. *Subsection (3)* introduces a regulation-making power which will be used to set out the detail of the calculation to determine whether a person has paid contributions on enough earnings to be entitled to the contributory benefit. A further regulation-making power is introduced by *subsection (5)* to allow for prescribed categories of claimants to satisfy the first contribution condition by alternative criteria. This new provision in the Jobseekers Act 1995 for jobseeker's allowance will parallel the provision in the Welfare Reform Act 2007 in respect of employment and support allowance.

Section 13: Conditions for contributory employment and support allowance

101. This section amends the contribution conditions for employment and support allowance. The section amends the Welfare Reform Act 2007 so that the number of tax years in which a person can pay national insurance contributions and qualify for employment and support allowance is reduced from three years to two. This aligns the period for employment and support allowance with that for jobseeker's allowance.
102. The section further amends the Welfare Reform Act 2007 to provide that the first contribution condition for employment and support allowance is met by the claimant having paid, or being treated as having paid at least 26 weeks of Class 1 or Class 2 contributions on relevant earnings at the base year's lower earnings limit (£90 per week in 2008/09) in one of the two tax years prior to the claim. Class 1 national insurance contributions are those paid on earnings from employment. Class 2 national insurance contributions are those paid on earnings from self-employment. Relevant earnings are those upon which contributions have been paid and which count towards establishing entitlement.
103. The section provides a regulation-making power which will be used to set out the detail of the calculation to determine whether a person has paid contributions on enough earnings to be entitled to the contributory benefit. The existing regulation-making power in the Welfare Reform Act 2007 is amended to allow for further prescribed categories of claimants, for example partners of overseas service personnel, to satisfy the first contribution condition by alternative criteria.

Section 14: Mobility component

104. *Section 14* amends the entitlement conditions to the higher rate mobility component of disability living allowance so as to allow entitlement to people with a prescribed severe visual impairment. The section amends section 73 of the Social Security Contributions and Benefits Act 1992 to set out a new category of entitlement to the higher rate mobility component for people who are severely visually impaired as prescribed in regulations. *Section 14* does not alter the existing entitlement to the higher rate mobility component of those who are blind and deaf (to the prescribed degree).

Section 15: Maternity allowance and carer's allowance

105. This section repeals sections 82 and 90 of the Social Security Contributions and Benefits Act 1992 which make provision for Adult Dependency Increases (ADIs) to be paid with maternity allowance and carer's allowance respectively, in circumstances where the claimant has an adult dependant.
106. The section will abolish the payment of ADIs for all new claims to maternity allowance and carer's allowance at the same time as they cease to be available on new claims to state pensions in 2010.
107. ADIs in payment with carer's allowance at the time of change will be phased out between 2010 and 2020. This will be in line with the arrangements for phasing out the existing ADIs paid with the state pension. Phasing out will not apply to maternity allowance as this is a short-term benefit paid for 39 weeks. Payment of ADI for existing maternity allowance claims will therefore cease when the maternity allowance entitlement ends.

Section 16: External provider social loans

108. *Section 16(1)* inserts *new sections 140ZA, 140ZB and 140ZC* into the Social Security Contributions and Benefits Act 1992.
109. *New section 140ZA* will allow the Secretary of State, with the agreement of the Treasury, to make arrangements with external providers to make loans to individuals who are receiving prescribed benefits or have prescribed needs. Arrangements under

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this section may have effect in particular areas, or throughout Great Britain. Under *subsection (9)* loans made under these arrangements are to be referred to as external provider social loans.

110. *Subsections (4) to (6)* set out matters which may be covered by the arrangements made under new *section 140ZA*. These include power for the Secretary of State to make payments to the lender. *Subsections (7) and (8)* provide for certain payments to be made out of and into the social fund.
111. *New section 140ZB* will allow the right to repayment of loans to be transferred between the Secretary of State and an external provider. So a social fund loan which is outstanding when the arrangements come into force could be transferred to the external provider. Similarly, where arrangements with an external provider cease any outstanding repayments in respect of an external provider social loan could be transferred to the Secretary of State.
112. *Section 140ZC* will require the Secretary of State to publish a report annually on the operation of arrangements under *section 140ZA*.
113. *Section 16(2)* inserts *new section 78A* into the Social Security Administration Act 1992. It is a regulation-making power which will enable the Secretary of State to collect repayments due on an external provider social loan (by way of deduction from benefit or other methods) and to pay these over to the lender, except where the regulations make other provision. The regulations may apply to the collection of repayments of equivalent loans made in Northern Ireland.

Section 17: Power to restrict availability of social fund loans

114. This section inserts into section 138 of the Social Security Contributions and Benefits Act 1992 a provision which will enable access to crisis loans or budgeting loans from the social fund to be restricted in any area in which external provider social loans are available.

Section 18: Supply of information in connection with external provider social loans

115. *Section 18* inserts a new *section 122G* into the Social Security Administration Act 1992 which allows regulations to provide for the exchange of information between the Secretary of State and an external provider with whom arrangements have been made under new *section 140ZA*, and for the use or disclosure of such information including provision for a criminal offence for unauthorised disclosure.

Section 19: Community care grants relating to specified goods or services

116. Under the existing law, successful applicants for community care grant may be provided with cash to obtain the goods or services that the award covers. At the discretion of the appropriate officer, a payment may be made to a third party to provide the goods or services. These amendments to the Social Security Contributions and Benefits Act 1992, taken with those in *section 20*, enable the Secretary of State to require that, where the goods or services are covered by arrangements the Secretary of State has made with a supplier, the award made must relate to specified goods or services and the payment would be made to the supplier. It is expected that these arrangements will involve the supply of white goods and furniture at a discounted rate.

Section 20: Community care grants: reviews and information

117. *Section 20(1) and (2)* preclude an application for review being made where goods or services have been awarded as set out in section 16. *Section 20(3)* inserts a new *section 122H* into the Social Security Administration Act 1992 which allows regulations to provide for the exchange of information between the Secretary of State and relevant suppliers and for the use or disclosure of such information, including

provision for a criminal offence for unauthorised disclosure. There is power by regulations to make exceptions to this.

Section 21: Regulations relating to information: parliamentary control

118. *Section 21* amends section 190 of the Social Security Administration Act 1992 to provide that regulations made under the new *section 122H* about the unauthorised disclosure of information in relation to external provider social loans or community care grants are subject to the affirmative procedure where the regulations create new offences or increase penalties.

Section 22: Payments on account

119. *Section 22(2)(a)* repeals section 5(1)(r) of the Social Security Administration Act 1992, which enables regulations to be made providing for the making of a payment on account of benefit where it is impracticable for a claim to be made immediately, where it is impracticable for a claim to be determined immediately or where an award of benefit has been made, but it is impracticable to pay the whole immediately. *Subsection (2)(b)* inserts a new *subsection (1B)* into section 5 of that Act. It provides a regulation-making power to allow a payment on account of benefit to be made where –
- no claim has been made or a claim has been made (including where a claim has been determined and an award made) and, in either case, a person who is or would be covered by such a claim would be in need if no payment on account was made, and
 - an award has been made but it is impracticable for the full amount of the benefit to be paid immediately.
120. The new *subsection* broadens the range of situations in which a payment on account may be made before an award has been made. It enables these payments to be made on a need basis rather than in situations where it is impracticable to make a claim, determine a claim or pay benefit. It provides the Secretary of State with improved flexibility to address short-term hardship.
121. *New subsection (1A)* of section 5 of the Social Security Administration Act 1992 effectively excludes housing benefit from the new provisions about payments on account of a benefit in *new subsections (1B) and (1C)*. Instead *new subsection (1A)* re-enacts, in similar terms, the repealed power in section 5(1)(r) for housing benefit alone.
122. The *new subsection (1C)* enables regulations to make provision about the manner in which payments on account of benefit are to be set against subsequent payments of benefit.
123. *Subsections (3) to (5)* of section 22 make consequential changes to references to section 5(1)(r) in other sections of the Social Security Administration Act 1992.

Section 23: Power to up-rate benefits following review in tax year 2009-10

124. *Section 23* temporarily modifies section 150 of the Social Security Administration Act 1992. In relation to the review of benefit levels required in the tax year ending with 5 April 2010, that section is to have effect as if it included a *subsection (2A)* which enables the Secretary of State by order to up-rate social security benefits even if the general level of prices has not increased. The power applies for a single year only.

Section 24: Loss of benefit provisions

125. Section 7 of the Social Security Fraud Act 2001 ('the 2001 Act') enables certain specified benefits to be withdrawn, or reduced payments to be made, for a period of 13 weeks (known as the disqualification period) where a person is convicted of benefit fraud on two occasions, and the second offence was committed within five years of the

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date of the first conviction. These loss of benefit provisions are commonly referred to as the 'two strikes' rule.

126. *Section 24* extends the loss of benefit provisions by introducing a similar benefit sanction for the same specified benefits to be applied following a first conviction for benefit fraud, or following a first (or subsequent) agreement to pay a penalty or acceptance of a caution.
127. Where such an offence comes to light, the offender may be prosecuted, agree to an administrative penalty as an alternative to prosecution under section 115A of the Social Security Administration Act 1992, or agree to be given a caution.
128. *Subsection (1)* inserts new *sections 6A, 6B and 6C* into the 2001 Act. *New section 6A* defines, for the purposes of *section 6B* and *section 7*, the meaning of 'disqualifying benefit' and 'sanctionable benefit'. In Northern Ireland, the references in new *section 6B* and *section 7* to 'sanctionable benefit' relate only to a war pension. This preserves the existing position under *section 7* as it stands.
129. *New section 6B* introduces the new benefit sanction to apply after the first conviction, or after any administrative penalty or caution. The combined effect of *subsections (1), (4) and (5)* is for benefit to be reduced or withdrawn for the disqualification period where the offender has –
 - been convicted of one or more benefit offences in any proceedings;
 - accepted an administrative penalty as an alternative to prosecution; or
 - agreed to be given a caution.
130. The disqualification period is defined in *subsection (11)* as a period of four weeks beginning at a prescribed time after conviction or the agreement of an administrative penalty or caution.
131. *Subsection (2) of new section 6B* sets out definitions of the terms used in *new section 6B(1)(b) and new section 6C(2), (3) and (4)*.
132. *Subsection (3) of new section 6B* provides that a sanction under the new rules will not apply where a conviction would be the second conviction for the purposes of *section 7* ('two strikes').
133. *Subsections (6) to (10) of new section 6B* provide that the amounts by which income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit are to be reduced will be prescribed in regulations. These amounts will be the same as those currently prescribed for the purposes of *section 7*.
134. *Subsection (13) of new section 6B* sets out definitions of the terms used within *new sections 6B and 6C*; in particular, 'benefit offence' is defined in such a way that the provisions will only apply to offences committed after *new section 6B* comes into force.
135. *Subsection (1) of new section 6C* provides that in the event that a conviction is quashed all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.
136. *Subsection (2)(a) of new section 6C* provides that where the person had agreed to pay an administrative penalty but has withdrawn that agreement, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.
137. *Subsection (2)(b) of new section 6C* provides that where, following an appeal or in accordance with regulations, it is decided that there was no overpayment or that it is not recoverable, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

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138. *Subsection (3) of new section 6C* provides for *subsection (4)* to apply where the person had agreed to pay an administrative penalty, but following an appeal or in accordance with regulations the amount of the overpayment is revised.
139. *Subsection (4)* provides that where there is a new penalty or caution relating to the same offence, the new disqualification period is to be reduced by the length of the old disqualification period and that in any other case the necessary adjustments are to be made to reverse the effects of the sanction.
140. *Subsection (4)(b) of new section 6C* provides that if a new agreement to pay an administrative penalty is not made then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed and the Government can proceed to prosecute the offence.
141. *Subsection (5)(b) of new section 6C* provides for convictions that result in absolute discharges, conditional discharges, or probation orders made by a court in Scotland and absolute discharges made by a court of summary jurisdiction in Scotland to count as convictions for the purposes of the new sanction.
142. *Subsection (2) of section 24* introduces *Schedule 4* which contains further amendments to the Social Security Fraud Act 2001 and related amendments to other legislation.

Section 25: Jobseeker's allowance: sanctions for violent conduct etc. in connection with claim

143. This section inserts into the Jobseekers Act 1995 two new sections, new *section 20C* (sanctions for violent conduct in connection with claim) and new *section 20D* (*section 20C* supplementary).
144. *Subsection (1) of new section 20C* makes provision for a benefit sanction of one week to be applied to jobseeker's allowance claimants who are successfully convicted of or, in England and Wales, cautioned for violent or threatening behaviour towards Jobcentre Plus or contracted out staff. In addition, for the sanction to apply it is necessary that –
- the violent conduct was towards Jobcentre Plus staff or contracted out staff at DWP providers;
 - the offence took place on the Jobcentre Plus premises or those of contracted out providers while the offender was there for the purpose of a jobseeker's allowance claim;
 - the offender is a person or a member of a joint claim couple who satisfies the conditions of receiving jobseeker's allowance.
145. *Subsection (2)* provides for (a) benefit not to be payable for a period of one week in the case where the jobseeker's allowance claim is not a joint claim even if the conditions of entitlement are satisfied; and (b) the period of any other sanction also to be extended by five weeks on the first occasion that the other sanction applies to the claimant.
146. Under *subsection (3)*, for the purposes of *subsection (2)* the reference to another sanction is to any other sanction arising as a result of the Jobseekers Act 1995 and during which jobseeker's allowance is not to be payable. It explains that the sanctions period which is to be extended by five weeks is the period of that other sanction arising out of the Jobseekers Act 1995.
147. Under *subsection (4)* for joint claim jobseeker's allowance the offender will be treated in the same way as in *subsection (2)* above, namely a sanction of one week will be applied, and that if another sanction is imposed it will be increased by five weeks in the same way.
148. *Subsection (5)* explains in relation to a joint claim jobseeker's allowance that the reference to another sanction is to any other sanction arising as a result of the Jobseekers

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Act 1995 and during which jobseeker's allowance is not to be payable. It also explains that the sanctions period which is to be extended by five weeks is the period of that other sanction arising out of the Jobseekers Act 1995.

149. *Subsection (6)* provides for regulations to set out that after a certain period the sanctions in *subsections (2) and (4)* will not apply to the claimant of jobseeker's allowance or that in certain circumstances the sanction will not apply to the claimant.
150. *Subsection (7)* makes provision for hardship payments to be made during the sanction period. This does not apply in the case of a sanction of a joint-claim jobseeker's allowance as in *subsection (4)*. Corresponding provision is made for them by section 20B(4).
151. *Subsection (8)* provides that regulations may be made for hardship payments in *subsection (7)* to be paid as follows –
 - only if the information required from the claimant has been provided;
 - payable at a reduced rate;
 - payable only for part of the week.
152. *Subsection (9)* provides that where a conviction is subsequently overturned the amount of sanctioned benefit would be repaid as if the person had never been convicted of the offence in the first place.
153. *New section 20D* sets out in *subsection (1)* the offences involving violence in England and Wales in respect of which the sanction will be applied. These are–
 - common assault or battery;
 - threats to kill, wounding with intent to do grievous bodily harm, inflicting bodily injury with or without a weapon, and assault occasioning bodily harm (under sections 16,18,20 or 47 of the Offences Against the Person Act 1861);
 - the offences of affray, fear or provocation of violence, intentional harassment, alarm or distress and harassment, alarm or distress (under sections 3, 4, 4A or 5 of the Public Order Act 1986);
 - the offence of harassment and putting people in fear of violence – (under sections 2 or 4 of the Protection from Harassment Act 1997);
 - racially or religiously aggravated assaults, public order offences or harassment (under sections 29, 31 or 32 of the Crime and Disorder Act 1998);
 - the ancillary or preparatory offences related to the offences above, namely aiding, abetting, counselling or procuring the commission of the offence, encouraging or assisting the commission of the offence, or attempting or conspiring to commit the offence.
154. *Subsection (3)* sets out that in Scotland the offences in respect of which the sanction will be applied are assault, a breach of the peace, and racially aggravated harassment under section 50A of the Criminal Law (Consolidation) Scotland Act 1995. The sanction will also be applied to the ancillary and preparatory offences in Scotland which are being art and part in the commission of the offence, inciting a person to commit the offence, or attempting or conspiring to commit the offence.
155. *Subsection (6)* explains the meaning of 'cautioned' in England and Wales only.
156. *Subsection (7)* provides for regulations to be made for requiring prescribed persons (such as the police or the prosecuting agencies) to notify the Secretary of State of any offences set out in new *section 20D* in respect of which a sanction may be applied, as in new *section 20C*.

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157. *Subsection (8)* provides for amendments to be made by regulation to *subsections (1) to (5)* by removing or adding offences.
158. *Subsection (3)* of section 20 amends section 37(1)(c) of the Jobseekers Act 1995 so that the regulation making power found in *subsection (8) of new section 20D* will be subject to the affirmative resolution procedure.
159. *Subsection (4)* makes a consequential amendment to paragraph 3(d) of Schedule 3 to the Social Security Act 1998. This will give those whose benefit is sanctioned a right of appeal about the payability of their benefit.

Section 26: Repeal of sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000

160. *Section 26* provides for the repeal of sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000. This brings to an end a pilot scheme which has been in operation in Derbyshire, Hertfordshire, Teesside and West Midlands since October 2001. In these areas benefit sanctions have been applied to offenders found to be in breach of specified community orders. The pilot scheme applies to offenders in the pilot areas who are aged between 18 and 59 and receiving jobseeker's allowance, income support or certain training allowances.

Section 27: State pension credit: pilot schemes

161. This section inserts new *section 18A* into the State Pension Credit Act 2002. It makes provision to pilot, for a period of up to twelve months, ways in which state pension credit entitlement may be calculated and paid in order to increase the numbers of eligible persons receiving benefit.
162. To achieve this, the section allows regulations to be made which would permit the payment of state pension credit without a claim being made and with modified rules concerning how the entitlement is determined.
163. *Subsection (3)* specifies that these regulations can be made in order to ascertain whether they would lead to more people who may be entitled to it claiming state pension credit, or would make it more likely that people who are entitled to state pension credit will receive it.
164. *Subsections (5) and (6)* allow for the normal rules relating to the need for a claim, and the detailed rules about the calculation of entitlement to be modified for the purposes of the pilot.
165. *Subsection (7)* provides that this does not affect a person's entitlement to other benefits, such as housing benefit, or a person's tax liabilities.
166. *Subsection (8)* allows regulations to specify who the pilot applies to.
167. To ensure people are not disadvantaged by the pilot coming to an end, *subsection (9)* makes provision to allow transitional arrangements to be made.

Section 28: Period for which pilot schemes have effect etc.

168. This section amends section 29 of the Jobseekers Act 1995 and section 19 of the Welfare Reform Act 2007 which allow for the piloting of regulations made under specified enactments relating to working-age benefits. Piloting regulations can have effect only in specified areas and in relation to specified classes of persons. Persons can be selected for participation in schemes on a sampling basis. At the moment, piloting regulations can only have an effect for a maximum of 12 months under section 29(1) of the 1995 Act and a maximum of 24 months under section 19(1) of the 2007 Act. *Subsections (1)(a) and (2)* extend and align both these time limits to 36 months. *Subsection (1)(b)* amends section 29 of the 1995 Act to mirror the language used in section 19 of the

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2007 Act so as to create consistency and to ensure that regulations which are aimed at making it more likely that persons will obtain or remain in work or be able to do so can be piloted.

Section 29: Exemption from jobseeking conditions for victims of domestic violence

169. *Section 29* inserts into Schedule 1 to the Jobseekers Act 1995 a new provision relating to those who have been victims of, or threatened with, domestic violence. The Secretary of State is required to exercise existing regulation-making powers to provide that victims of domestic violence will, for a period of 13 weeks, be able to start or continue a claim to jobseeker's allowance without: being available for employment; having entered into a jobseeker's agreement; or actively seeking employment.

Section 30: Good cause for failure to comply with regulations etc.

170. This section provides that where regulation-making powers in the Social Security Administration Act 1992, the Jobseekers Act 1995 and the Welfare Reform Act 2007 enable circumstances to be prescribed that constitute good cause for failing to undertake mandatory activities (and just cause for leaving employment), the regulations must always include the availability of childcare and the claimant's physical or mental health or condition in the list of circumstances that must be taken into account.

Section 31: Jobseeker's agreements and action plans: well-being of children

171. *Subsection (1)* inserts *new subsection (4A)* into section 9 of the Jobseeker's Act 1995 to provide that the well-being of the child should be taken into account when agreeing the activities that a parent will undertake as part of a jobseeker's agreement in order to help the parent move closer to or into work. *Subsection (2)* inserts *new subsection (5)* into section 14 of the Welfare Reform Act 2007 to make similar provision for recipients of employment and support allowance when an action plan is prepared.

Section 32: Contracting out functions under Jobseeker's Act 1995

172. This section provides a general provision to allow the contracting out of certain functions of the Secretary of State under the Jobseekers Act 1995.
173. *Subsection (2)* of *section 32* inserts *new section 20E* before section 21 of the 1995 Act. This provides for particular functions of the Secretary of State and the functions of the officers of the Secretary of State to be carried out by authorised persons.
174. *Subsection (3)* provides for regulations to enable the relevant functions to be contracted out and *subsections (5) and (6)* provide for those regulations to include the extent to which the contracting out arrangements are to apply.
175. Some types of decisions, for example failure to comply with requirements, good cause for failure, and any reductions in jobseeker's allowance are excluded and cannot be contracted out. Under these provisions any authorisation to a contractor may specify the duration for which the authorisation applies. The section also makes provision for the revocation of an authorisation and deals with the limits of any liabilities arising out of functions carried out by an authorised person.
176. *Subsection (3)* substitutes references to 'employment officers' with 'officer of the Secretary of State' in other parts of the 1995 Act so that it is aligned with the new terminology. Subsections (4) and (5) include further consequential changes.

Section 33: Attendance in connection with jobseeker's allowance: sanctions

177. This section amends section 8 of the Jobseekers Act 1995. Section 8 allows regulations to be made providing for entitlement to jobseeker's allowance (JSA) to cease for between one and five days if the claimant fails to attend a mandatory interview and subsequently makes contact with Jobcentre Plus within a prescribed period of the

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date of the mandatory interview without showing good cause for the failure to attend. Regulations set out that the prescribed period is five working days.

178. This new provision will mean that in the above circumstances, JSA entitlement will continue but will not be payable for a fixed period of at least one week and not more than two weeks .
179. In addition, regulations will provide that if a person fails to attend a mandatory interview for the second or subsequent time, a fixed sanction of two weeks will be applied whilst keeping the claim open.
180. If the person makes contact with Jobcentre Plus within the prescribed period of five working days and shows good cause in both circumstances, a sanction would not be imposed.
181. Example: If Mavis Jones fails to attend a mandatory interview on Monday and attends the Jobcentre Plus office on Wednesday of the same week but fails to demonstrate good cause for failing to attend, a sanction of the loss of a week's JSA would be imposed but Mavis's claim will remain open. If she fails to attend a mandatory interview for the second time in respect of the same claim and cannot show good cause, she would lose two weeks' JSA but her claim would remain open.
182. The usual appeal rules apply for both cases.
183. This section also amends section 8 of the 1995 Act to allow regulations to provide that if the claimant fails to make contact with Jobcentre Plus within the prescribed period of five working days from the failure to attend, his or her claim would be closed.
184. Example: If John Smith fails to attend a mandatory interview on Tuesday and makes contact with Jobcentre Plus on Wednesday the following week, his claim will be closed.

Section 34: Social security information and employment or training information

185. The new paragraph being inserted into Schedule 1 to the Jobseekers Act 1995 expands the scope of data-sharing powers under that Act to enable information sharing which is relevant for any provision in or made under the Act. It does this by providing that such information should be taken to be social security information. This is linked to the Welfare Reform and Pensions Act 1999, in which section 72 deals with data-sharing for social security purposes, between Ministers of the Crown, people carrying out functions on their behalf, or designated by a Minister of the Crown, and local authorities.
186. The new subsections being inserted into sections 2A and 2AA of the Social Security Administration Act 1992 relates to the use of that section of the Welfare Reform and Pensions Act 1999 and broadens the definition of social security information to include information not just related to work-focused interviews, but information shared for the purposes of any provision made by or under the Act, including in regulations.
187. *Subsection (4)* amends section 72 of the Welfare Reform and Pensions Act 1999, to reflect this change. The amendments allow the Secretary of State to make regulations concerning the sharing and use of employment and training information. For example, regulations could permit a person providing a training course for a jobseeker's allowance claimant pursuant to arrangements made by Jobcentre Plus to provide information to Jobcentre Plus about the claimant's record of attendance and levels of attainment.

Section 35: Persons under pensionable age to take part in work-focused interviews etc.

188. Section 2A of the Social Security Administration Act 1992 allows regulations to be made requiring a person who is under 60 years of age who is claiming any one of a number of specified benefits to take part in a work-focused interview, as a condition

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of continuing to receive the full amount of that benefit. Section 2AA of the Social Security Administration Act 1992 extends this requirement so that where the claimant has a partner, and both are under 60 years of age, they are both required to attend work-focused interviews.

189. From April 2010 the process of equalising state pension age at 65 (as provided by the Pension Act 1995) for both men and women will begin. The state pension age for women will gradually be increased over a 10 year period until it reaches 65.
190. To reflect these changes, the age at which a person will be required to take part in a work-focused interview will also increase.
191. [Section 35](#) removes the references in sections 2A and 2AA to a person being under 60 years of age, and replaces them with references to a person who has not attained pensionable age. [Subsections \(2\)\(c\) and \(3\)](#) provide a definition of when a man born before 6 April 1955 will be treated as having attained pensionable age.

[Section 36: Power to rename council tax benefit](#)

192. [Section 36](#) requires the Secretary of State by order, to rename council tax benefit as council tax rebate either generally or for particular purposes. An order made under this provision can make consequential amendments to references to council tax benefit in other legislation and documents, and could make different provisions in different areas.

[Section 37: Minor amendments](#)

193. Section 80 of the Social Security (Contributions and Benefits) Act 1992 provided that incapacity benefit, severe disablement allowance, state pension, carer's allowance, widow's benefit and bereavement benefit could be increased where a person was receiving child benefit in respect of a child, defined as a person under the age of 16, or a person under the age of 19 who was still in full time education.
194. When child tax credits were introduced in 2003, child dependency increases ceased and section 80 was repealed; however it was preserved for those cases where the increase was already in payment, until such time as the child reached the age of 16, or 19 where he or she remained in full-time education.
195. The definition of a child was amended to a person who has not attained the age of 16 from 10 April 2006 when the Child Benefit Act 2005 came into force. A new definition of 'qualifying young person' applies to a person over 16 years of age who meets certain conditions set out in the [Child Benefit \(General\) Regulations 2006 \(SI 2006 No. 223\)](#).
196. No amendments were made to change the definitions for the purposes of preserved child dependency increases, with the consequence that these may only be paid in respect of a child who has not reached the age of 16.
197. [Subsections \(1\) and \(2\) of section 37](#) will ensure that the preserved right to a child dependency increase under sections 80 and 81 of the Social Security Contributions and Benefits Act 1992 can continue for a child over 16 who meets the relevant conditions.
198. [Subsection \(3\) of section 37](#) amends section 150(2) of the Social Security Contributions and Benefits Act 1992 (interpretation of Part 10: Christmas bonus) to amend a provision of the Welfare Reform Act 2007. This resulted in entitlement to a Christmas bonus to all claimants of employment and support allowance, including income-related employment and support allowance. This did not achieve the policy intention of taking forward the existing distinction between contributory incapacity benefit and income-related income support.
199. Incapacity benefit can be increased for adult dependants aged 60 or over or who are caring for children. This applies to a spouse or civil partner aged 60 or over with care of a child or qualifying young person (the adult must be residing with or maintained by the

claimant) and an adult with care of a child (the adult must be residing with or maintained by the claimant). Section 88 of the Social Security Contributions and Benefits Act 1992 prevented more than one increase being paid to one person. Without it a person might be able to claim more than one increase on the basis that he or she has a spouse or civil partner who meets the relevant conditions and that there is another adult who also meets the relevant conditions as the carer of a child. Section 89 of the 1992 Act provides for occupational pensions to be treated as earnings, which in some cases means that an increase is not payable. Without it, the increase would become payable in some cases. Both sections 88 and 89 of the 1992 Act have been erroneously repealed by the Welfare Reform Act 2007. This means that in some circumstances people may be paid more than one increase and that some increases will be due since occupational pensions can no longer be treated as earnings. The amendment in [section 37\(4\)](#) restores the policy intention and will ensure that a person can get an increase for only one adult dependant and that occupational pensions are treated as earnings.

Part 2: Disabled people: Right to control provision of services

Section 38: Purpose of Part 2

200. This section sets out the purpose of this Part of the Act: namely to enable disabled people aged 18 or over to have greater choice and control over the way certain services are provided to or for them by defined public authorities. The section does not create a right to control. This Part of the Act contains a series of enabling powers which will allow the making of regulations that confer new rights on disabled people. These rights are together referred to in these Notes as ‘the right to control’

Section 39: Relevant services

201. *Subsections (1) and (2)* define as ‘relevant services’ the services to which regulations under this Part may relate.
202. *Subsection (3)* extends the definition of relevant services to include the provision by a relevant authority (defined in [section 40](#)) of grants or loans to a disabled person.
203. *Subsection (4)* provides that relevant services do not include ‘excluded services’. Excluded services are defined in *subsections (6) and (7)*. The excluded services are services which are already the subject of a ‘direct payments’ scheme.
204. *Subsection (5)* provides that the exclusion of community care services from the definition of relevant services is to be subject to the disapplication of that exclusion for the purpose of pilot schemes under [section 44\(4\)](#) and to the order-making power in section 48 that would enable the permanent removal of the exclusion of community care services following the evaluation of the pilots or the issuing of directions.

Section 40: Relevant authority

205. This section defines the public authorities who administer the services that could be brought within the scope of the right to control.

Section 41: Power to make provision enabling exercise of greater choice and control

206. *Subsection (1)* provides a general power for an appropriate authority (defined in [section 45](#)) to make regulations for the purpose set out in [section 38](#).
207. *Subsections (2) to (6)* give details of particular matters for which regulations under *subsection (1)* may provide. *Subsection (2)(a)* enables regulations to require an authority to inform a disabled person about the right to control and what it means to them and would enable regulations to require an authority to tell a disabled person how much money is available for their support under the relevant funding streams. *Subsection (2)*

(b) to (d) enable regulations to require an authority to work with the disabled person to agree outcomes, develop a support plan and review and revise that support plan. It also enables regulations to require an authority to ensure that services provided or commissioned by them for the disabled person are provided in a way that is consistent with the person's support plan, where this is reasonably practicable. *Subsection (2)(e)* enables regulations to require the authority to make payments to the disabled person (at his or her request) to secure provision of an equivalent service instead of providing the service itself.

208. *Subsection (3)* sets out further details of the provisions that may be included in regulations. *Paragraph (a)* provides that regulations may specify who is or is not to be treated as a disabled person for the purpose of the regulations. *Paragraph (b)* enables regulations to make provision to determine whether a public authority has exercised its discretion to provide a service to a person. The need for this power arises from the fact that the disabled person's rights to a different service or to a direct payment may depend on whether such a decision has been made. *Paragraph (c)* gives a power to prescribe the matters which a public authority should take into account when making a decision under this Part of the Act. *Paragraph (d)* gives a power to make provision about the steps this public authority must take when making a decision regarding its duties under this Part of the Act.
209. *Subsection (4)* enables regulations to allow information to be shared between authorities for the prescribed purposes of the regulations.
210. *In subsection (5), paragraph (a)* enables regulations to vary conditions attached to any grant made by a relevant authority to a disabled person where it is necessary for the operation of the right to control. *Paragraph (b)* enables regulations to vary conditions attached to any power of a relevant authority to provide financial assistance to another relevant authority in connection with the provision of relevant services. An example of this would be the variation of grant conditions in relation to a grant from a central government department to a local authority.

Section 42: Provision that may be made about direct payments

211. This section makes detailed provision about the provisions that may be included in regulations that provide for direct payments to disabled people. These regulations (which are defined as 'direct payments regulations') are made under [section 41\(2\)\(e\)](#). So they are merely a special type of regulations under [section 41](#). *Subsection (2)* provides that direct payments regulations may–
- specify when an authority is or is not required to comply with a request for a direct payment,
 - outline how the request for a direct payment can be made,
 - enable a disabled person to require an assessment of the amount of direct payment to which that person would be entitled, if that person was to request a direct payment,
 - require a mixture of direct payments and services to be made by an authority, should the disabled person request this,
 - make provision that displaces the function or obligation of the authority if a direct payment is made. Where a providing authority has made a direct payment under regulations made under [section 41](#), regulations would provide that it does not remain under a statutory obligation to provide the service or services to which the payment relates.
212. *Subsection (3)* requires direct payments regulations to provide that where a request for a direct payment places an unreasonable financial burden on an authority it will not have a duty to comply with the request.

213. *Subsection (4)* enables direct payments regulations to make provision–
- for a power to provide for authorities to make direct payments instead of providing services;
 - to prescribe conditions that the disabled person or other payee must comply with in order to receive the direct payment;
 - for authorities to terminate the making of direct payments;
 - for the authority to recover over-payments;
 - for the authority to recover payment where the individual fails to meet conditions attached to receipt of the direct payment;
 - to ensure that an authority can write off any debt arising from an overpayment;
 - for direct payments to be made to a person on behalf of the disabled person.
214. *Subsection (5)* specifies the types of conditions that regulations may require the disabled person or other payee to comply with. These conditions would be designed to secure that any direct payment was used for the purpose for which it was intended.

Section 43: Exercise of rights on behalf of persons who lack capacity

215. This section enables regulations which make provision for the right to control to be exercised on behalf of a disabled person where the person lacks mental capacity to take decisions. It defines this concept by reference to the Mental Capacity Act 2005 in relation to England and Wales and the Adults with Incapacity (Scotland) Act 2000 in relation to Scotland.

Section 44: Pilot schemes

216. *Section 44* enables the making of regulations having temporary effect and constituting pilot schemes. The duration of a pilot scheme is not to exceed 36 months, though it may be replaced by a further pilot scheme. *Subsection (4)* enables pilot schemes to apply to adult community care services. *Subsection (8)* requires the Secretary of State (or other appropriate authority) to publish a report on the operation of a pilot scheme.

Section 45: The appropriate authority by which regulations under section 41 are made

217. This section defines the appropriate authority which is to have power to make regulations under *section 41*. The Secretary of State will be the appropriate authority except in cases where the provisions to be made would be within the legislative competence of either the Scottish Parliament or the National Assembly for Wales. If the provision would be within the devolved competence of either of those bodies, powers are conferred on the Scottish Ministers and the Welsh Ministers respectively. *Paragraph (c) of section 45(2)* enables the regulation-making power in section 41 to be exercised by the Secretary of State or the Welsh Ministers where both have functions in relation to a relevant service in Wales. *Paragraph (d)* enables that power to be exercised by the Welsh Ministers in relation to other relevant services with respect to which functions are exercisable by the Welsh Minister, the First Minister for Wales or the Counsel General to the Welsh Assembly Government. *Subsections (3)* and *(4)* prevent the Secretary of State or the Welsh Ministers from modifying each other's functions when making regulations under section 41. Regulations made by the Secretary of State will require the consent of the Treasury.

Section 46: Regulations under section 41: supplementary provisions

218. *Section 46* makes supplementary provision about regulations made under *section 41*. In particular, it allows regulations to make different provision in respect of different

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circumstances. It also enables the regulations to include incidental, supplementary, consequential or saving provisions, and to amend or repeal any enactment.

Section 47: Consultation

219. This section requires proposed regulations under *section 41* to be published in draft and consulted on for a period of not less than 12 weeks.

Section 48: Power to repeal exclusion of community care services

220. *Section 48* confers an order-making power that enables the exclusion of community care services to be fully removed. In relation to England, this power is exercisable only if either of two conditions is met. One condition is that the Secretary of State has previously made a pilot scheme and has published an evaluation of that scheme. The alternative condition is that the Secretary of State has previously given directions under community care legislation that were intended to give disabled people greater choice and control.

Section 49: Regulations and orders: control by Parliament or other legislature

221. This section provides that regulations made under *section 41* or orders under *section 48* are to be subject to the affirmative resolution procedure in Parliament, the Scottish Parliament or the National Assembly for Wales.

Part 3: Child maintenance

Section 51: Disqualification for holding etc. driving licence or travel authorisation

222. Sections 39B to 39G of the Child Support Act 1991 ('the 1991 Act') (inserted by section 27 of the Child Maintenance and Other Payments Act 2008) allow the Child Maintenance and Enforcement Commission ('the Commission') to apply to a court for an order disqualifying a person, who has arrears of child maintenance which the Commission is enforcing, from holding or obtaining a travel authorisation (a passport or ID card). This disqualification could be for a period of up to two years.
223. Section 40B of the 1991 Act allows the Commission to apply to a court for an order disqualifying a person from holding a driving licence. This disqualification could also be for a period of up to two years.
224. *Section 51 and Schedule 5* amend sections 39B to 39G to allow the Commission itself to make such orders, without having to apply to a court.
225. *Subsection (2)(a) of section 51* amends section 39B so that the Commission may make a disqualification order if:
- it has sought to recover the arrears through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;
 - the whole or any part of the arrears remains unpaid; and
 - it is of the opinion that that the person has wilfully refused or culpably neglected to pay maintenance.
226. *Subsection (2)(b)* substitutes subsections (3) to (13) of section 39B with *new subsections (3) to (8)*.
227. *New subsection (3)* provides that the person against whom an order is made will be subject to disqualification for holding or obtaining a driving licence and/or travel authorisation for the period the order has effect.

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228. *New subsection (4)* requires the Commission, before making a disqualification order, to consider whether the non-resident parent requires a driving licence or travel authorisation in order to earn a living.
229. *New subsections (5) and (6)* set out that the disqualification order must specify the amount in respect of which it is made. This will be an aggregate of the amount stated in a liability order, or the amount that remains unpaid, and the costs incurred by the Commission in making the order.
230. *New subsection (7)* provides that the Commission must serve the person with a copy of the disqualification order, together with any order for costs made under *new section 39DA(1)*.
231. *New subsection (8)* defines ‘driving licence’ and ‘travel authorisation’.
232. *Section 51(3) amends* section 39C of the 1991 Act, which concerns the duration of an order made under section 39B of that Act. This states that the duration of the order may not exceed 12 months, subject to any extension by the courts under *new sections 39CA and 39CB*.
233. *Subsection (4)* inserts *new sections 39CA and 39CB*. *Section 39CA* relates to the surrender of a driving licence or travel authorisation after the Commission has made a disqualification order.
234. *Subsections (1) to (5) of new section 39CA* provide that a person subject to such an order who holds a driving licence or travel authorisation document must surrender it in a prescribed manner to a prescribed person within a period of seven days starting on the date the order has effect, or has effect again following a period of suspension. If immediately before the end of the seven day period, the person who is subject to a disqualification order has presented good reason for not surrendering his or her driving licence or travel authorisation, that person will be allowed to surrender his or her documents as soon as is practicably possible after the end of the seven day period. Regulations will set out in what circumstances a person can, or cannot, be regarded as having good reasons. If the disqualification period ends or is suspended, the person will not be required to surrender the travel authorisation document.
235. *Subsections (6) and (7)* set out that a person who refuses to surrender his or her documents to the prescribed person will be committing an offence, and liable on summary conviction to a fine (currently not exceeding level 3 on the standard scale (£1000)).
236. *Subsections (8) and (9)* set out that where a person is sentenced for non-surrender of documentation under *subsection (5)*, the court may extend the effective period of the original disqualification order. The effective period of the order, including any extension, may not exceed two years.
237. For the avoidance of doubt, *subsection (10)* sets out that ‘relevant document’ has the same meaning as in *section 39* of the 1991 Act.
238. *Subsection (11)* makes clear that, prior to the coming into force of Schedule 3 to the Road Safety Act 2006, ‘relevant document’ includes a counterpart driving licence.
239. *New section 39CB* provides a right of appeal to the magistrates’ court (or, in Scotland, the sheriff) for a person against whom an order is made to disqualify him or her from holding or obtaining a travel authorisation.
240. *Subsection (1) of section 39CB* states that the period in which a person may appeal to a magistrates’ court (or, in Scotland, the sheriff) is to be prescribed by regulations, and that period begins with the first date the person has actual notice of the order.
241. *Subsection (2)* suspends the implementation of the order until the appeal has been determined, withdrawn or discontinued.

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242. *Subsections (3) and (4)* allow the court to grant leave to appeal after the period specified in subsection (1) has expired and if other prescribed conditions are satisfied. If leave is granted, the court may suspend the order on such conditions as it thinks just.
243. *Subsection (5)* states that when an appeal is made to the court, the court will reconsider the original order, and may either affirm, vary or revoke the order.
244. *Subsection (6)* prevents a court, when hearing such an appeal, from questioning the liability order upon which an order for disqualification is made, or the maintenance calculation which is the basis of the liability order.
245. *Subsection (7)* prevents the court, when varying an order, from extending the order so that it has effect for more than two years in total.
246. Under *subsection (8)* if on appeal the court affirms or varies an order, the court can replace the amount specified in the order with an amount equal to the total of –
- the amount of arrears outstanding on the date the order is affirmed or varied;
 - the amount of costs specified in relation to the making of the order which are outstanding;
 - the amount of costs specified in relation to the appeal; and
 - if a liability order has been made since the disqualification order was made, any amount specified in the liability order which remains unpaid.
247. *Subsections (9) and (10)* lift the suspension of the order as soon as a court affirms or varies an order, unless the court considers that the suspension is justified for exceptional circumstances, or the non-resident parent has agreed to pay the amount specified in the order.
248. *Subsections (11) and (12)* provide that should the court revoke an order, it will also revoke the order for costs, unless, having regard to all the circumstances, it considers it reasonable to require the non-resident parent to pay the costs.
249. *Subsection (13)* defines ‘the court’ for the purposes of this section as –
- a magistrates’ court in relation to England and Wales;
 - the sheriff in relation to Scotland.
250. *Subsection (5) of section 51* inserts new *section 39DA* into the 1991 Act, which will allow the Commission, when making a disqualification order against a person, to make a further order requiring the person to pay an amount in respect of the Commission’s costs.
251. *Subsection (2) of new section 39DA* provides that where a person has appealed, and the court affirms or varies the disqualification order, the court shall also make an order for the amount of the costs incurred by the Commission in connection with the appeal.
252. *Subsection (3)* provides that where the court revokes a disqualification order, and it considers it reasonable in all the circumstances, it shall also make an order to require the person to pay an amount in respect of the Commission’s appeal costs.
253. *Subsection (4)* provides that any order for costs made under this section must specify the amount, which will be determined in accordance with regulations made by the Secretary of State.
254. Under *subsection (5)* the normal rules relating to the collection and enforcement of child maintenance will also apply to any amounts in respect of an order made under *section 39DA*.

255. *Subsection (6) of section 51* introduces *Schedule 5*, which contains consequential amendments to the 1991 Act and the Child Maintenance and Other Payments Act 2008.

Section 52: Report on operation of driving licence amendments

256. *Section 52* makes provision for the Commission to pilot, for a period of two years, the power to disqualify the non-resident parent from driving. *Section 52(1)* requires the Secretary of State to prepare and lay before Parliament a report on the operation of the driving licence amendments during the ‘review period’. Under *section 52(2)* the ‘review period’ is the period of 24 months beginning with the day that the amendments relating to driving licences come into force. The report must be laid before parliament within six months of the end of the review period (*section 52(3)*).
257. At the end of the review period the Secretary of State must decide whether to continue to operate the amendments providing for the administrative removal of driving licences, or whether to restore the law to the existing position (namely, the court based removal of driving licences). Under *section 52(4) and (5)* the Secretary of State may make an order providing for the amendments to continue to have effect. This order shall be subject to affirmative resolution, and must be made within 30 days from the date on which the report is laid before parliament. Under *section 52(6)*, if no order is made under *section 52(4)*, the Secretary of State may make an order reinstating the law as it would have been but for the amendments. This order is to be made using the negative resolution procedure.

Section 53: Report on operation of travel authorisation amendments

258. *Section 53* makes the power to remove a travel authorisation subject to the same piloting regime as the power to order disqualification from driving in *section 52*.

Section 54: Payments of child support maintenance

259. Section 29 of the 1991 Act provides a general power to make regulations as to the payment of child support maintenance. These regulations allow the Child Maintenance and Enforcement Commission (‘the Commission’) to specify the intervals at which payments are to be made, having regard to the circumstances and preferences indicated by the non-resident parent. Many non-resident parents prefer to pay calendar monthly, in line with when they receive earnings. Precisely matching payments to weekly liabilities may not be straightforward and may be unclear to parents.
260. *Section 54* amends section 29 of the 1991 Act, extending the provisions which may be made by regulations in relation to payments of child support maintenance. *Subsection (2)* allows for regulations making provision for determining the total amount of maintenance payments due in a reference period (a period of 52 weeks or, in some circumstances, a different period – see *subsection (3)*), and requiring payments to be made, by reference to that amount and that period, at prescribed intervals.
261. This will enable the notification of the maintenance calculation, issued to each parent to show an annual rather than weekly amount. Where the payment interval is to be monthly, the schedule of payments due will show 12 equal monthly amounts. It will therefore be much easier for the non-resident parent to see what payments are due to be made, on what date, and how they relate to the maintenance liability. This will also facilitate the making of payments by regular direct debit because the amounts will be the same each month. Annual amounts will be adjusted if a relevant change in circumstances occurs during the year, requiring a new weekly liability to be calculated.

Section 55: Child support maintenance: offences relating to information

262. *Section 55* amends section 14A of the Child Support Act 1991 (the 1991 Act), which deals with offences relating to the provision of information.

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263. Section 14A(3A) of the 1991 Act currently provides that a person commits an offence if he or she fails to notify the Child Maintenance and Enforcement Commission of a change of address. *Section 55(2)* inserts a *new subsection (3A)*, which extends this offence to a failure to report other changes of circumstances. These other changes of circumstances will be specified in regulations made under the provisions of section 14(1) of the 1991 Act.
264. Section 14A(2) of the 1991 Act provides that it is an offence for a person to knowingly make a false statement or representation or knowingly provide, or cause or allow to be provided, a document or other information which is false. *Section 55(3)* inserts *new subsections (6) to (8)* into section 14A of the 1991 Act, setting the time limit for bringing such a case to 12 months from the date the false information was provided. Currently section 127 of the Magistrates Courts Act 1980 and section 136 of the Criminal Procedure (Scotland) Act 1995 (in Scotland) limit the time in which a prosecution can be brought to 6 months. The amendment brings the time limits broadly in line with those for benefit fraud, and increases the likelihood of successful prosecutions under section 14A(2) of the 1991 Act due to the increased time in which the offence can be discovered and investigated by the prosecutor.

Part 4: Birth registration

Section 56: Registration of births

265. This section gives effect to *Schedule 6* which amends the Births and Deaths Registration Act 1953 to make provision for the joint registration of births where the parents of a child are not married to each other nor are civil partners of each other.

Part 5: General

Section 57: Consequential amendments of subordinate legislation

266. This section enables the Secretary of State to amend or revoke by way of regulations any statutory instruments made under other enactments before this Act received Royal Assent, where such amendments and revocations are necessary as a consequence of a provision of this Act (other than any provision in Part 2 of the Act). Regulations made under this power may include transitional provisions and savings, and provisions conferring discretion on any person. Regulations made under this power are subject to negative resolution procedure.

Section 58: Repeals and revocations

267. This section gives effect to the repeals and revocations in *Schedule 7*. It lists provisions in *Part 2 of Schedule 7* that will have effect on 6 April 2010. It protects the operation of article 3 of the Tax Credit Act 2002 (Commencement No. 3 and Transitional Protections and Savings) Order 2003 – (savings in relation to the abolition of child dependency increases).

Section 60: Extent

268. *Section 60* sets out the territorial extent of the Act, which is described in paragraphs 42 to 47 of these Notes.

Section 61: Commencement

269. *Section 61* provides for *sections 1 and 2, 8, 11, 23, 27 and 28, 37, 57, 59 and 60, 62 and Schedule 3* (and section 61 itself) to come into force on Royal Assent (that is, on 12 November 2009).

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270. *Sections 15 and 34, Part 2, section 58(2) and (3) and Part 2 of Schedule 7* (so far as relating to the repeals and revocations mentioned in *section 58(2)*) will come into effect at the end of two months after the date of Royal Assent.
271. The remaining provisions will be brought into force by means of commencement orders made by the Secretary of State. The orders may appoint different days for different areas and purposes and make necessary transitory, transitional or savings provisions.
272. Before making any commencement order relating to the registration of births under *Part 1 of Schedule 6*, the Secretary of State is required to consult with the Registrar General for England and Wales.