

WELFARE REFORM ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Social security: General

Section 96: Benefit cap

470. *Section 96* provides for the amount of welfare benefits a claimant or a couple receives to be capped by reference to the average earnings of working households in Great Britain.
471. *Subsections (1) to (3)* allow for regulations to apply a cap to the total amount of welfare benefits an individual or couple receives. Where total entitlement is higher than the level of the cap, entitlement to benefits may be reduced by up to the excess.
472. *Subsection (4)* illustrates the way in which the power can be used. In particular, it enables regulations to specify how a person's total entitlement to welfare benefits is to be calculated and how the amount of any reduction should be determined. Regulations may prescribe the benefits from which a reduction can be made, make provisions for the period over which it will be determined, provide for circumstances in which the cap will not apply and make provision for its relationship with any other reductions of benefit.
473. The level of the cap will be set in regulations under *subsection (5)*, and must (as a result of *subsection (6)*) be determined by reference to the estimated average earnings of working households. Under *subsections (7) and (8)*, the Secretary of State may determine how best to estimate average weekly earnings in Great Britain after tax and National Insurance Contributions.
474. *Subsection (9)* provides that the application of the cap may not reduce any welfare benefit which falls within the legislative competence of the Scottish Parliament or the National Assembly for Wales. The same applies to any welfare benefit which is provided for by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.
475. *Subsection (10)* allows regulations to prescribe which benefits, allowances, payments or credits may be considered welfare benefits for the purposes of calculating and applying the cap, and defines other terms for the purposes of this section. *Subsection (11)* ensures that this list of welfare benefits may not include state pension credit or state retirement pensions.

Section 97: Benefit cap: supplementary

476. *Section 97* makes supplementary provision relating to the cap on welfare benefits.
477. *Subsection (1)* allows regulations under section 96 to make different provision for different purposes or cases. This may, for example, allow for the level of the cap to differ for single people and couples. *Subsections (2) and (3)* provide that any regulations under section 96 will be made by statutory instrument which will be subject to the affirmative resolution procedure in the first instance.

478. *Subsection (4)* amends SSAA 1992 to provide that the level of the cap must be reviewed each tax year to see whether it has maintained its relationship with estimated average earnings. If the Secretary of State decides that it is appropriate to change the level of the cap, this may be done through an up-rating order.
479. *Subsection (5)* inserts a new paragraph 8A into Schedule 2 of SSA 1998 so that a decision that the benefit cap applies to a particular award of benefit may not be appealed. If the benefit cap is applied incorrectly, leading to an incorrect award of benefit, then that will be appealable to the usual extent, but whether or not the benefit cap is to apply will be a matter of law.

Section 98: Claims and awards

480. *Section 98* amends section 5(1) of SSAA 1992, which makes common provision about claims for all relevant social security benefits dealt with under the Act.
481. *Subsection (2)* amends section 5(1)(d) of SSAA 1992. Section 5(1)(d) allows advance claims to benefit to be made. An advance claim may be made in a situation where a claimant does not presently but soon will meet the conditions of entitlement for a benefit. This might be used, for example, in cases where a person is working out a notice period and is shortly to become unemployed.
482. This amendment ensures that the power at section 5(1)(d) includes the power to make an advance award of benefit, where a claimant would not be entitled to benefit at the point of claim, but would become entitled at a prescribed time after the award were made. This provides for situations where a person may become entitled to a higher amount of benefit at a certain point in a benefit award, which would mean that an award became payable only at that stage. For example, a person with income above a certain level may not be entitled to income-related ESA during the assessment phase until they have completed the work capability assessment and become entitled to either the work-related activity or support components.
483. The effect of subsection (2) is that the power under section 5(1)(d) allows for a claim to be made and an award to arise at a future date where a claimant meets the conditions of entitlement at a prescribed time after the making of the award, or where other prescribed conditions are met.
484. *Subsection (3)* allows for an advance award to be reviewed if these conditions are not met. It is consequential upon the amendment made by subsection (2).
485. *Subsection (4)* amends section 5(1)(g) to allow regulations to provide for one member of a couple to make a claim for benefit on the behalf of both members jointly.
486. *Subsection (5)* amends section 5(1)(j) of SSAA 1992 to allow the Secretary of State to prescribe in regulations changes of circumstances that must be reported by claimants and others.

Section 99: Powers to require information relating to claims and awards

487. *Section 99* amends SSAA 1992 to enable regulations to require prescribed people to supply information that is or could be relevant to potential or current claims and awards of relevant benefits. New *section 5(1A)* of SSAA 1992 will ensure that the Secretary of State can make regulations to obtain information.

Examples of how this might be used are:

- using information from other Government departments to enable DWP to undertake campaigns to ensure people are aware that they could receive particular benefits;
- using information held by other Government departments, agencies and service providers that could be used to determine entitlement to, and maintain accurate assessment of a social security benefit;

- to assist in the transition from existing benefits onto the universal credit;
 - to obtain information and facilitate the localisation of benefits and services where it would be right for DWP to do so.
488. *Subsections (2), (4) and (5)* make consequential amendments resulting from these changes and repeal legislation replaced by the new section 5(1A). *Part 10* of Schedule 13 contains consequential repeals.
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Section 100: Payments to joint claimants

490. *Section 100* amends section 5 of SSAA 1992. The amendment will apply in respect of the payment of all relevant social security benefits dealt with under the Act.
491. The section inserts a new *subsection (3B)* into section 5 allowing regulations to set out the person to whom a benefit is paid where the benefit is awarded to a couple jointly. Subsection (3B) provides that the Secretary of State may determine that the couple should nominate a lead individual to receive payment of the benefit. Alternatively the Secretary of State may determine to which member of the couple the payment will be made.

Section 101: Payments on account

492. *Section 101* substitutes section 5(1)(r) of the SSAA 1992, which makes provision for payments on account of benefit.
493. In its current form, section 5(1)(r) allows the Secretary of State to make payments on account on a discretionary basis in cases where a claim cannot be made or determined immediately (because further information is needed, for example); where a claim has been made and it is impracticable for the claim or an appeal, reference, review or application on it to be determined immediately; or where an award has been made but it cannot be paid immediately (when a national or local emergency prevents claims being handled normally, for example). New *section 5(1)(r)(i)* maintains this position. Payments on account are recovered from ongoing payments of benefit, or where this is not possible, directly from the claimant.
494. The substitution will allow for a payment on account to be made in additional circumstances. New *section 5(1)(r)(ii)* provides for a payment to be made where a claimant is in need – examples of how it might be applied include where benefit has been claimed, but the first payday has not yet been reached, or where a claimant is receiving benefit, but encounters difficulty in budgeting between benefit payments for example, where there is a change in their award. Regulations will make provision for the test of need.
495. New *section 5(1)(r)(iii)* will enable the Secretary of State to make a payment on account where, subject to criteria set out in regulations, it can reasonably be expected to be recovered. These recoverable payments are intended to help towards meeting expenses which are difficult to budget for out of normal benefit income (such as a fridge or cooker breaking down and needing fixing or replacing), or for which the claimant has been unable to save, or to deal with fluctuations in expenditure throughout the year, for example where children in the household who would normally have free school meals are on summer holidays. Such payments will replace the existing social fund budgeting loans – see *section 70*.
496. Section 22 of the WRA 2009 has not been commenced. Had it been, it would have extended the range of situations in which a payment on account could be made beyond

existing section 5(1)(r) of the SSAA 1992. It would have extended making payments on account to situations similar to those that will be covered by new section 5(1)(r)(ii). As section 22 would not have provided for payments on account in those situations that will be covered by new section 5(1)(r)(iii), *subsection (2)* repeals it.

Section 102: Power to require consideration of revision before appeal

497. Section 12 of SSA 1998 makes provision for a claimant (or any other prescribed person) to appeal to the First-tier Tribunal against a decision of the Secretary of State. Although the claimant (or other person) could ask initially for the decision to be reconsidered with a view to revision (under section 9 of the Act), in practice many people do not do so and make an appeal from the outset.
498. In order to resolve more disputes with claimants through the internal reconsideration process before an appeal to the tribunal is made, *subsections (2) and (3) of section 102* amend section 12 to enable the Secretary of State to make regulations setting out the cases or circumstances in which an appeal can be made only when the Secretary of State has considered whether to revise the decision.
499. New *section 12(3B)*, which is inserted by *subsection (3)*, contains examples of how the new power might be used. In particular, regulations may provide that there is to be a right of appeal only where the Secretary of State has considered whether to revise the decision as a result of an application having been made for that purpose.
500. In certain cases, the regulation-making powers under section 12 of SSA 1998 are exercisable by a person other than the Secretary of State (for example, functions relating to child benefit and guardian's allowance are exercisable by HMRC). New *subsection (3C)*, which is also inserted by *subsection (3)*, makes it clear that in any particular case the new powers in *section 12(3A)* are to be exercisable by the person responsible for making regulations under section 12 in that case.
501. Where there is no right of appeal as a result of regulations made under the new provisions, *subsection (4)* enables provision to be made in regulations for treating any purported appeal as an application for revision.
502. *Subsection (5)* provides that regulations to be made under new *subsection 12(3A)* will be subject to the affirmative procedure.
503. *Subsection (6)* introduces *Schedule 11* which makes equivalent provision in the case of certain other appeals. These relate to vaccine damage payments, child support, the recovery of benefits, housing benefit and council tax benefit, and payments in respect of mesothelioma.
504. *Section 136(4)(b)* enables regulations made under the new provisions to be brought into force in different areas at different times, which enables a phased implementation. The new regulations under *section 12(3A)* may need to be accompanied by changes to other regulations relating to decisions and appeals. But such other regulations cannot normally be made so as to apply only to a limited area. *Subsections (7) to (9) of section 102*, therefore, enable other provisions in legislation relating to decisions and appeals, if made in connection with regulations requiring consideration of revision before appeal, to apply only in relation to a limited area.

Section 103: Supersession of decisions of former appellate bodies

505. In November 2008 the Ministry of Justice legislated to abolish the old social security appeal tribunals, the Child Support and the Social Security Commissioners and transferred their functions to the new appeals system: the First-tier Tribunal and the Upper Tribunal.
506. Under the old system, the Secretary of State, local authorities and the Child Maintenance and Enforcement Commission ("the Commission") could change

(supersede) a decision of an appeal Tribunal or a Commissioner in limited situations set out in legislation. The ability to supersede decisions of the former appeal bodies is crucial so that decision-makers can properly adjust the person's award to take account of a change of circumstances or new facts which come to light after the appeal body's decision – which may be beneficial to the individual as well as disadvantageous.

507. Whilst the legislation ensured that the Secretary of State, local authorities and the Commission could supersede decisions made under the new appeals system, the need to supersede decisions made under the old system was inadvertently overlooked. The legislation changed references to the former appeal bodies in primary and secondary legislation to references to the new appeal bodies, when it should have contained a reference to both.
508. *Section 103* introduces *Schedule 12*. This amends provisions in Acts by inserting references to the old appeals bodies. This, taken together with *subsection (2)(a)* of this section, ensures that the legislation is restored to the position that it should have been when the old appeal bodies were abolished and their functions transferred.
509. A regulation-making power is needed to correct the same errors in subordinate legislation concerning supersession decisions. It is envisaged that the regulations would, for example, insert references to the former appeals bodies in provisions relating to the cases or circumstances in which supersession decisions can be made. *Subsection (2)* enables regulations made possible by virtue of the amendments in *Schedule 12* to take effect as if they too had come into force when the old appeals bodies were abolished.

Section 104: Electronic communications

510. *Section 104* applies where regulations under SSAA 1992 or SSA 1998 require or authorise the use of electronic communications. Examples could be regulations which make provision about the manner in which a claim for benefit must be made or relevant information or evidence must be provided. Section 189(5) of SSAA 1992 and section 79(6) of SSA 1998 ensure that regulations made under those Acts may include incidental and supplementary provision.
511. This section makes it clear that these powers include, in the case of regulations to which this section applies, provision of a kind set out in sections 8(4), (5) and 9(5) of the Electronic Communications Act 2000. These cover, for example, provision as to:
- the form which electronic communications must take;
 - the conditions under which electronic communications are allowed the use of intermediaries in the transmission or authentication of electronic communications; and
 - the method of determining (and proving in legal proceedings) whether, when, where, and by whom an electronic communication was made.
512. The section also enables conditions or requirements concerning the use of electronic communications to be framed with reference to directions given by the Secretary of State.

Section 105: Recovery of benefit payments

513. *Section 105(1)* sets out provisions concerning the recovery of overpaid universal credit, JSA, ESA and the housing credit element of state pension credit (housing credit) that are inserted into the SSAA 1992.
514. New *section 71ZB* sets out the general provisions about the recovery of overpaid universal credit, JSA, ESA and the housing credit element of state pension credit.

*These notes refer to the Welfare Reform Act 2012
(c.5) which received Royal Assent on 8 March 2012*

515. *Subsection (1)* gives the Secretary of State the power to recover any amount of universal credit, JSA and ESA, which has been paid in excess of entitlement. It also gives the Secretary of State the power to recover any amount of the housing credit, which has been paid in excess of entitlement, except in circumstances that will be prescribed in regulations.
516. *Subsections (2) to (4)* make further provision about the deductions from benefits which can be made where an amount recoverable from a person under section 71ZB was paid to that person on behalf of another (for example where an amount is recoverable from a landlord).
517. *Subsection (5)* means that where another income or benefit that would affect the award of universal credit is paid late, any amount of universal credit which would not have been paid had the other income or benefit been paid on time, is treated as an overpayment and is recoverable from the universal credit recipient.
518. *Subsection (6)* allows for an amount paid to one member of an award which is made to persons jointly to be recovered from the other by any method (as listed in *subsection (7)*).
519. *Subsection (7)* provides that overpayments may be recovered by deducting from benefit, by deduction from earnings, through the courts, or by adjustment of subsequent payments of benefit.
520. New *section 71ZC* relates to recovery of overpayments under new *section 71ZB* by the method of deduction from benefit.
521. *Subsection (1)* provides that overpayments of universal credit, JSA, ESA and the housing credit can be recovered by making deductions from payments of prescribed benefits.
522. *Subsection (2)* provides that where universal credit, JSA, ESA or the housing credit is paid to a third party (for example a landlord) on the benefit claimant's behalf, overpayments of those benefits may be recovered from:
- prescribed benefits to which the third party is entitled;
 - ongoing payments of prescribed benefits to the third party being made on the benefit claimant's behalf; or
 - ongoing payments of prescribed benefits paid to the third party on other benefit claimants' behalf (for example, if a landlord has other tenants who are in receipt of universal credit or housing credit).
523. *Subsection (3)* provides that in circumstances to be prescribed in regulations, where deductions are made from payments of prescribed benefits to the third party on the claimant's behalf, the claimant's obligations to the third party will be discharged, for example the landlord would not be able to put the claimant into arrears with their rent.
524. *Subsection (4)* provides that in all cases where deductions are made from payments of prescribed benefits to the third party on other benefit claimants' behalf, the other claimants' obligations to the third party will be discharged, for example the landlord would not be able to put the other claimants into arrears with their rent.
525. New *section 71ZD* relates to the recovery of overpayments under new *section 71ZB* by deduction from earnings.
526. *Subsection (1)* allows the Secretary of State to make regulations so as to allow amounts recoverable under new section 71ZB to be recovered by deduction from earnings.
527. *Subsection (2)* allows the Secretary of State to prescribe in regulations the definition of 'earnings' for the purpose of this section.

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528. *Subsection (3)* describes the related issues for which the Secretary of State may prescribe in regulations under *subsection (1)*. These include preventing an employer from making deductions from earnings where they would take earnings below a specified level, allowing for an employer to deduct a prescribed sum from earnings in respect of the employer's administration costs, providing for a criminal offence for non-compliance with certain of the obligations under those regulations and legislating as to priorities of deductions from earnings made under these powers as against those made under other legislation.
529. New *section 71ZE* relates to recovery of overpayments under new *section 71ZB* through the courts.
530. *Subsection (1)* provides that overpayments are recoverable through the county court system for persons residing in England and Wales. *Subsection (2)* provides that overpayments are recoverable through the sheriff court system for persons residing in Scotland.
531. It is standard practice for the Secretary of State to seek to recover court costs when there is a court judgment in his favour. There is no mechanism at present however for the Secretary of State to recover any costs associated with civil recovery of overpayments in the same way as if they formed part of the overpayment debt, by deduction from benefits, or by adjustment of subsequent payments of benefit. *Subsection (3)* allows the Secretary of State to recover costs by the same method as the overpayment is recovered.
532. New *section 71ZF* relates to recovery of overpayments under new *section 71ZB* using the method of adjustment of subsequent payments of benefit.
533. It provides that the Secretary of State may prescribe in regulations that in certain circumstances, amounts paid but subsequently determined as not payable, can be treated as properly paid and be set against future payments of benefit or against certain payments to third parties.
534. New *section 71ZG* makes provision enabling the Secretary of State to recover any amount paid by way of payments on account.
535. *Section 71ZG(2)* provides that the payment on account is recoverable from the person to whom it was paid, or another prescribed person. This includes the benefit claimant and also the benefit claimant's partner or an appointee who appropriates excess benefit for their own use.
536. *Subsection (3)* allows regulations to calculate or estimate, where appropriate, the amount of a payment on account to be recovered.
537. *Subsection (4)* allows for an amount paid to one member of an award which is made to persons jointly to be regarded as paid to the other. This will ensure that the payment on account can be recovered from either of them.
538. *Subsection (5)* enables the methods of recovery set out in new *sections 71ZC to 71ZE* of the SSAA 1992 to be applied to recover payments on account in the same way as they allow for the recovery of overpayments of benefit. While the Secretary of State may choose, in many cases, to recover payments on account from ongoing payments of benefit, there will be circumstances where other methods of recovery are necessary, for example, where a payment on account is made at the beginning of a benefit claim but the claimant ceases to receive benefit before the payment has been fully repaid to the Secretary of State.
539. New *section 71ZH* relates to the recovery of payments made to people in or facing hardship.
540. *Subsection (1)* provides that the new subsection applies to hardship payments which are recoverable. This may include payments made under section 28 of this Act to universal credit claimants who are subject to a sanction or under the equivalent provisions for

JSA in section 19C of the JA 1995, inserted by section 55 of this Act. It may also apply to payments made to JSA claimants in cases where they are entitled to a prescribed rate of benefit despite not meeting the jobseeking conditions, or where their claim is yet to be determined. Any hardship payments made to claimants subject to a sanction for fraud under the listed sections of SSFA 2001 may also be covered by these provisions.

541. The amount recoverable may be determined in regulations, and may be recovered from the person the payment was made to or any other person specified in regulations. *Subsection (4)* provides that for the purposes of universal credit or joint-claim JSA a hardship payment paid to one member of a couple may be considered as paid to the other.
542. *Subsection (5)* enables the methods of recovery set out in sections 71ZC to 71ZF to be applied to hardship payments in the same way as overpayments of universal credit, JSA, ESA or the housing credit.
543. As overpayments of the housing credit will be recoverable in accordance with section 71ZB instead of section 71, *section 105(2)* makes the required consequential amendment to section 71.
544. *Section 105(3) and (4)* respectively make consequential amendments to sections 115A and 115B SSAA 1992 to ensure that the provisions relating to civil penalties apply where sums are recoverable under new section 71ZB.
545. Paragraph 9 of Schedule 1 to JA 1995 provides that regulations may provide for an income-based JSA to be payable at a prescribed rate and for a prescribed period in relation to cases where regulations under paragraph 8 provide for entitlement to JSA despite a claimant not meeting all of the jobseeking conditions, or regulations under paragraph 8A provide for a joint-claim couple to be entitled to a joint-claim JSA without both members of the couple meeting all of the conditions of entitlement in section 1(2B) of the Act, or in some circumstances without both members having to have made the claim. *Section 105(5)* amends paragraph 9 to allow the regulations to provide for the whole or part of such payments of JSA to be recoverable in prescribed circumstances.
546. *Section 105(6) and (7)* amend the SSA 1998 in two respects. Firstly, to ensure that any person from whom it is determined that an overpayment is recoverable under new sections 71ZB, 71ZG or 71ZH, has the same right of appeal against that determination as a claimant. Secondly, to provide that in respect of overpayments under section 71ZB (other than overpayments of the housing credit) and amounts recoverable under sections 71ZG and 71ZH, appeals lie only in relation to decisions as to the amount of the payment recoverable under those sections. In respect of overpayments of the housing credit, the amendments provide that appeals lie both in respect of the decision on whether the overpayment is recoverable and the amount recoverable.

Section 106: Deductions from earnings: other cases

547. *Section 106* amends sections 71, 71ZA, 75 and 78 of the SSAA 1992 to provide for the recovery of social security debt not covered by the equivalent provisions in section 105 to be recovered by deduction from earnings.

Section 71

548. New *subsection (9A)* allows regulations to provide that amounts recoverable under section 71(8) (i.e. overpayments of benefits not covered by section 71ZB) may be recovered by deduction from earnings.
549. New *subsection (9B)* allows the Secretary of State to prescribe in regulations the definition of 'earnings' for the purpose of this section.
550. New *subsection (9C)* describes the related issues for which the Secretary of State may prescribe in regulations under *subsection (9A)*. These include preventing an employer

from making deductions from earnings where they would take earnings below a specified level, allowing for an employer to deduct a prescribed sum from earnings in respect of the employer's administration costs, providing for a criminal offence for non-compliance with certain of the obligations under those regulations and legislating as to priorities of deductions from earnings made under these powers as against those made under other legislation.

Section 71ZA

551. New *subsection (2A)* is inserted into *section 71ZA* to allow for the recovery of overpaid discretionary social fund payments which are recoverable by virtue of that section to be recovered by deduction from earnings.

Section 75

552. New *subsection (8)* allows regulations to provide that overpaid housing benefit recoverable by virtue of *section 75(4)* may be recovered by deduction from earnings.
553. New *subsection (9)* allows the Secretary of State to prescribe in regulations the definition of 'earnings' for the purpose of this section.
554. New *subsection (10)* describes the related issues for which the Secretary of State may prescribe in regulations under *subsection (8)*. These include preventing an employer from making deductions from earnings where they would take earnings below a specified level, allowing for an employer to deduct a prescribed sum from earnings in respect of the employer's administration costs, providing for a criminal offence for non-compliance with certain of the obligations under those regulations and legislating as to priorities of deductions from earnings made under these powers as against those made under other legislation.

Section 78

555. New *subsection (3C)* allows regulations to provide that repayable social fund awards may be repaid by deduction from earnings.
556. New *subsection (3D)* allows the Secretary of State to prescribe in regulations the definition of 'earnings' for the purpose of this section.
557. New *subsection (3E)* provides for the same related issues for which the Secretary of State may prescribe in regulations under *section 71(9C)* to apply to those social fund amounts recoverable under *section 78(3C)*.

Section 107: Recovery of child benefit and guardian's allowance

558. *Section 107* amends *section 71(8)* of SSAA 1992. *Section 71* provides the statutory basis for dealing with overpayments of prescribed social security benefits (which include Child Benefit and Guardian's Allowance) that have occurred where a person has misrepresented or failed to disclose anything relevant to their claim and the overpaid sum would not have been paid but for that misrepresentation or failure to disclose. *Section 71(8)* of SSAA 1992 allows overpayments made in those circumstances to be recovered from future payments of prescribed benefits. The amendment in *section 107* will allow overpaid child benefit or guardian's allowance to be recovered from future payments of those benefits (but not other prescribed benefits).

Section 108: Application of Limitation Act 1980

559. *Section 9* of the Limitation Act 1980 ("the 1980 Act") imposes a time limit of six years on any "action" to recover a sum recoverable by virtue of an enactment (in England and Wales). *Section 108* amends the *section 38* of the 1980 Act (interpretation) for the avoidance of doubt; references in that Act to "action" do not include recovery under

social security and tax credits legislation by means other than proceedings in a court of law.

560. *Section 108(2) and (3)* puts beyond doubt that the Secretary of State may recover social security overpayments and social security debt (including social fund debts) under the SSAA 1992 or the SSCBA 1992, and that HMRC Commissioners may recover overpayments of tax credit under TCA 2002 and overpayments of child benefit and guardian's allowance under the SSAA 1992, by means other than court action. Accordingly it secures that the time limits do not apply, for example, to recovery by deduction from benefit.
561. *Subsection (4)* provides that this amendment is to be regarded as always having formed part of the 1980 Act but this does not apply in respect of proceedings brought before the commencement of this provision.

Section 109: Recovery of fines etc by deductions from employment and support allowance

562. The introduction of ESA by the WRA 2007 required consequential amendments to other legislation. *Section 109* corrects an error in those consequential amendments relating to deductions from benefit for the payment of fines. As a result of the error, secondary legislation which allowed deductions for fines from both the income-related and contributory elements of ESA was not supported by the primary legislation, which allowed deductions from the income-related element only. The effect of the section is to give retrospective legal authority to the secondary legislation.
563. *Subsection (1)* removes references in the Criminal Justice Act 1991 which allow deductions for fines to be taken from only the income-related element of ESA. *Subsection (2)* removes a corresponding reference in Schedule 3 to WRA 2007.
564. *Subsection (3)* provides that the repeals in subsections (1) and (2) have retrospective effect from 27 October 2008, the ESA implementation date.

Section 110: Powers to require information relating to investigations

565. Section 109B (power to require information) of the SSAA 1992 specifies from whom the Secretary of State can require information when investigating whether benefit is properly payable.
566. *Section 110* inserts new *subsection (2)(ia)* into existing section 109B(2) to add a regulation making power to prescribe persons from whom an authorised officer under existing section 109B (1) can require information. An example of how this might be used would be to require information from those who presently are asked to provide information for tax credits (for example persons providing child care).
567. *Section 110(b)* amends existing section 109B(2)(j) to include new subsection (2)(ia). Existing section 109B(2)(j) states that the persons from whom the Secretary of State may require information under section 109B(2)(a) to (i) includes their servants and agents. The amendment allows it to extend to new subsection (2)(ia).

Section 111: Time limits for legal proceedings

568. *Section 111* amends section 116(2) of the SSAA 1992 (legal proceedings). Section 116(2) permits the Secretary of State to issue a certificate allowing proceedings for a summary only offence to be commenced later than 12 months from the date an offence was committed if it is within the period of 3 months from the date on which evidence comes to the Secretary of State's knowledge, and this evidence is, in his opinion, adequate to justify a prosecution for the offence.
569. The Secretary of State will now be able to issue a certificate to extend the period when proceedings may be commenced where: a claimant is to be prosecuted for a housing

benefit or council tax offence; that benefit is administered by a local authority; and although the 12 month period after the offence was committed has expired, the date is within 3 months of the date on which evidence came to the Secretary of State's knowledge that is, in his opinion, adequate to justify a prosecution.

Section 112: Prosecution powers of local authorities

570. *Section 112* inserts a new *section 116ZA* (Local authority powers to prosecute housing benefit and council tax benefit fraud) into SSAA 1992 to restrict local authority powers to bring proceedings relating to housing benefit and council tax benefit offences following the introduction of the Single Fraud Investigation Service. The purpose of the new section is to prepare for the Single Fraud Investigation Service to assume sole responsibility for the investigation of all suspected benefit fraud.
571. New *section 116ZA(2)* provides that an authority may not bring a prosecution for suspected benefit offences unless certain circumstances apply.
572. Under new *section 116ZA(2)(a)*, where a local authority has already started an investigation in relation to a suspected fraud of housing benefit and/or council tax benefit, the authority may prosecute that offence. Where there is an existing investigation by a local authority, under *section 116ZA(2)(b)* if it applies to housing benefit, and under *section 116ZA(2)(c)*, if it applies to council tax benefit, the local authority can bring proceedings against the same person for a fraud in respect of the other benefit if necessary. These are subject to the power of the Secretary of State at new subsection (3) to direct that the local authority may not bring proceedings, even if an investigation has already started.
573. *Section 116ZA(2)* also includes a regulation-making power under *116ZA (2)(d)* to prescribe circumstances in which the local authority can bring proceedings for housing benefit or council tax benefit fraud.
574. Where the Secretary of State has given specific authorisation, new *section 116ZA(2)(e)* provides that local authorities will be allowed to prosecute fraud concerning housing benefit and council tax benefit where the Secretary of State has authorised such proceedings. New *section 116ZA(4)* allows the Secretary of State to specify a specific authority or type of authority or particular proceedings or description of proceedings in a direction under new subsection (2)(e) or (3).
575. New *section 116ZA(5)* provides that where, for the purposes of this section, the Secretary of State prescribes conditions to be fulfilled in order for a local authority to bring proceedings, the local authority may only bring proceedings if those conditions are satisfied. New *section 116ZA(6)* makes equivalent provision to that in *section 116A(4)* which provides that the Secretary of State may, in prescribed circumstances take over proceedings a local authority has commenced in relation to an alleged benefit offence. This also gives the Secretary of State a power to discontinue proceedings in prescribed circumstances, including where he withdraws his authorisation that the local authority can commence proceedings
576. New *section 116ZA(7)* makes equivalent provision to that in existing *Section 116A(5)*, which sets out, in the context of prosecutions by local authorities, the different circumstances in which a local authority must adhere to the Code for Crown Prosecutors issued by the Director of Public Prosecutions under *section 10* of the *Prosecution of Offences Act 1985*.
577. New *section 116ZA(8)* provides a regulation making power to define, for the purposes of *section 116ZA* what would constitute “an investigation in respect of benefit fraud” so as to trigger subsections (2)(a) to (c) of new *section 116ZA*.
578. New *section 116ZA(9)* makes clear that new *section 116ZA* does not extend to Scotland. This is because only the Procurator Fiscal may prosecute benefit offences in Scotland and new *section 116ZA* therefore has no application to Scottish local authorities.

579. *Subsections (3) to (6)* amend section 116A (local authority powers to prosecute benefit fraud) of SSAA 1992. Section 116A applies in the case of local authorities prosecuting benefit fraud other than housing benefit fraud or council tax benefit fraud. *Subsection (4)* inserts the word “other” after “prosecute” to clarify that the section applies to benefit fraud other than that addressed by new section 116ZA. *Subsection (5)(a) and (b)* as amended makes clear that a local authority may bring proceedings for benefit offences other than housing benefit or council tax benefit fraud, only if the Secretary of State provides for this in regulations or where the Secretary of State has directed that a local authority may bring those proceedings. *Subsection (6)* substitutes the word “withdraws” for “gives” in section 116A (4)(b) so language is consistent given the changes made to section 116A so that it applies to limit all benefit prosecutions by local authorities unless the Secretary of State prescribes or directs they may be brought.

Section 113: Penalty in respect of benefit fraud not resulting in overpayment

580. *Section 113* amends section 115A of SSAA 1992 (penalty as alternative to prosecution).
581. Existing subsection (1) of section 115A of SSAA 1992 provides for a penalty as an alternative to prosecution, in cases where the Secretary of State considers there is sufficient evidence to prosecute for benefit fraud. At present, the financial penalty may only apply if an overpayment of benefit has actually been obtained. *Subsection (2)* of this section inserts a new *section (1A)* to cover cases where a person has claimed benefit falsely but has not obtained a benefit overpayment.
582. This allows for a minimum financial penalty in all cases of false claims for benefit including where they are detected before any payment is made and therefore do not result in an overpayment of benefit.
583. *Subsections (3) to (8)* make consequential amendments in the remainder of Section 115A and in the loss of benefit provisions in SSFA 2001.

Section 114: Amount of penalty

584. *Section 114* replaces subsection (3) of section 115A of SSAA 1992 (penalty as alternative to prosecution). The purpose is to provide for a minimum financial penalty to apply to all cases of benefit fraud where a claimant is offered the penalty to avoid prosecution.
585. New *subsection (3)* provides that in the event of a fraud resulting in an overpayment, the penalty will be £350 or 50% of the amount overpaid whichever is greater up to a maximum of £2000. *Subsection (3A)* provides that, in cases where there is no overpayment, the penalty will be fixed at £350.
586. New *subsection (3B)* gives the Secretary of State the power to amend, by order, either the percentage of the amount of overpayment, or the minimum and maximum amounts that can be offered as a penalty.

Section 115: Period for withdrawal of agreement to pay penalty

587. *Section 115* amends sections 115A(5) and 115B(6) of SSAA 1992 to reduce the cooling-off period for agreeing to pay a penalty to avoid prosecution, from 28 days to 14 days. The cooling-off period is the time during which a claimant or, in section 115B, an employer, may withdraw from his or her agreement to pay the financial penalty. A withdrawal means that the penalty need not be paid, but also that the Secretary of State’s agreement not to prosecute will no longer apply.

Section 116: Civil penalties for incorrect statements and failures to disclose information

588. *Section 116* inserts new *sections 115C* (incorrect statements etc) and *115D* (failure to disclose information) into SSAA 1992. The purpose is to provide for a civil penalty

where claimants fail to disclose information that would affect benefit entitlement or the amount of benefit payable, fail without reasonable excuse, to report changes of circumstances or negligently provide incorrect information.

115C Incorrect statements etc

589. New *section 115C(1)* sets out the circumstances in which a penalty can be applied under section 115C. It applies to a person negligently giving incorrect statements or representations, or negligently giving information or evidence either in connection with a claim for, or an award of a benefit, when the person does not take reasonable steps to correct the error. The act or omission must have resulted in an overpayment of benefit which is not being dealt with through fraud action.
590. New *section 115C (2)* provides for the amount of the penalty to be prescribed in regulations. *Section 115C(2)(a)* provides that a penalty imposed under section 115C may be imposed on the person who acted negligently in the various ways set out in section 115C(1)(a). Alternatively, in the case of a claim for benefit made jointly, under *section 115C(2)(b)* the penalty may be imposed on the other member of the joint couple. This is, however, subject to the limitation in *section 115C(3)* that it cannot apply if the other member was not, and could not reasonably have been expected, to be aware that the negligent statement, representation or incorrect information had been given by the other person.
591. *Section 115C(4)* provides for the penalty to be recoverable from the person on whom it was imposed under section 115C(2). Sections 71ZC to 71ZE of SSAA inserted by section 105 provide powers to provide for different methods of recovery by way of deduction from benefit, deduction from earnings and court action. New *section 115C(5)* allows the appropriate authority referred to in new *section 115C (4)* to recover penalties by these means.
592. New *section 115C(6)* provides definitions of “appropriate authority”, “overpayment” and “relevant social security benefit” for the purposes of new sections 115C and 115D.

115D Failure to disclose information

593. New *section 115D* allows for a penalty to be imposed where a person, without reasonable excuse, fails to provide information required either in relation to a claim or an award or to notify relevant changes of circumstances (defined in new *section 115D (6)*) that affect their claim, and the person does not take reasonable steps to correct the error. Both situations must result in an overpayment being made before the penalty would be imposed. The act or omission must have resulted in an overpayment of benefit which is not being dealt with through fraud action.
594. *Subsections (1) and (2)* of new *section 115D* set out the circumstances in which a penalty under section 115D may be imposed.
595. New *section 115D(3)* provides that in the case of a joint claim where both members of the joint claim couple fail to meet requirements described in new sections 115D(1) and (2), only one penalty will be imposed for the failure.
596. New *section 115D(4)* provides that the penalty is recoverable from the person on whom it was imposed. New *section 115D(5)* has the effect that the methods by which this can be done include, as with new *section 115C*, deduction from benefit, deduction from earnings and court action.

Section 117: Benefit offences: disqualifying and sanctionable benefits

597. *Section 117* amends section 6A (meaning of “disqualifying benefit” and “sanctionable benefit”) of the SSFA 2001 for the purposes of sections 6B (loss of benefit in case of conviction, penalty or caution for benefit offence) and 7 (loss of benefit for second or subsequent conviction of benefit offence) of that Act.

598. *Subsection (2)* adds child tax credit and working tax credit to the benefits listed as a disqualifying benefit under section 6A. Benefit offences involving disqualifying benefits trigger a loss of benefit payment sanction. This sanction is applied against any benefits that are sanctionable. Sanctionable benefits are those which can be withdrawn or reduced.
599. Under section 6A, disqualifying benefits are sanctionable unless specified otherwise. *Subsection (3)* adds child tax credit and working tax credit to the list of benefits in section 6A(1) that are specified as non-sanctionable. As a result of the amendments to the TCA 2002 made by *section 120*, working tax credit will be sanctioned under that Act in appropriate cases.

Section 118: Benefit offences: period of sanction

600. *Section 118* amends the SSFA 2001. It changes the benefit payment disqualification period for the purposes of section 6B (loss of benefit in case of conviction, penalty or caution for benefit offence) of the SSFA 2001.
601. *Subsection (3)* amends the definition of “the disqualifying period” in section 6B(11) changing the length of the disqualifying period from “the period of four weeks” to “the relevant period”. *Subsection (4)* inserts a new *subsection (11A)* into section 6B to define what the relevant period is.
602. New *subsection (11A)(a)* introduces a new 3 year loss of benefit sanction where the benefit offence is a relevant offence, defined at new *subsection (14)*. Relevant offences will include serious organised fraud and serious identity fraud relating to social security.
603. New *subsection (11A)(b)* introduces a 13 week loss of benefit sanction for claimants who are convicted of a first benefit offence (presently a 4 week loss of benefit sanction).
604. New *subsection 11A(c)* retains the existing 4 week loss of benefit sanction for claimants who accept the offer of an alternative penalty rather than prosecution or are cautioned.
605. *Subsection (5)* inserts new *subsection (14)* into section 6B to provide a definition of ‘relevant offence’ which determines whether an offence falls into this category.
606. *Subsection (6)* gives the Secretary of State the power to amend, by order, the periods and amounts that are in new subsections 11A(a) to (c) and new subsections 14(b)(i) to (iii).
607. *Subsection (7)* inserts a new *subsection (1A)* into section 7 of the SSFA 2001 to ensure that convictions for relevant offences will always be dealt with under section 6B of that Act (attracting the 3 year loss of benefit sanction). This includes second and subsequent convictions which would otherwise be dealt with under section 7 of the SSFA 2001.

Section 119: Benefit offences: sanctions for repeated benefit fraud

608. *Section 119* amends section 7 (loss of benefit for second or subsequent conviction of benefit offence) of the SSFA 2001 to increase the periods of benefit payment disqualification following repeated benefit fraud. The benefit payment disqualifications will escalate according to the number of offences that have been committed, rather than according to the number of convictions. This means where there is a conviction, earlier offences counting toward escalation of the benefit payment disqualification would include offences dealt with by an agreement to pay a penalty under section 115A of SSAA 1992 (or the corresponding Northern Ireland provision) as an alternative to prosecution or dealt with by a caution.
609. *Subsection (5)* lists the conditions which must be satisfied for a payment disqualification for repeated benefit fraud to apply.
610. *Subsection (7)* inserts a new *subsection (6A)* into section 7 to define the “relevant period” of benefit payment disqualification for section 7, which will differ according to the number of repeated benefit offences committed.

611. New *subsection (6A)(a)* introduces a three year loss of benefit sanction for claimants convicted of a benefit offence preceded by two previous offences (disqualifying events). It only applies where the earliest offence occurs within five years of the second offence (which must have occurred within five years of the current offence). New *subsection (6A)(b)* introduces a 26 week period, to apply in all other cases, meaning cases where a claimant is convicted of a benefit offence preceded by one disqualifying event within five years of the current offence.
612. *Subsection (8)* inserts new *subsection (7A) and (7B)* which provide for payments and adjustments where the agreement of a person to pay a penalty under section 115A of the SSAA 1992 (or the corresponding Northern Ireland provision) is taken into account for the purposes of section 7, but at a later date the agreement is withdrawn, or it is decided that the overpayment to which the notice relates is not recoverable or due, or the amount of the overpayment to which the penalty relates is revised and there is no new agreement in relation to the revised overpayment.
613. New *subsection (8A)* inserted by *subsection (10)*, provides that where a person is convicted of more than one offence in a set of proceedings, those offences are only counted once as a disqualifying event for the purposes of section 7.
614. *Subsection (11)* inserts new *subsections (10A) and (10B)* so that the Secretary of State has the power, by order, to amend the period of the benefit payment disqualification and to provide for different periods of payment disqualification to apply according to the type of earlier disqualifying events.

Section 120: Loss of tax credits

615. *Section 120* inserts various loss of tax credit provisions into the TCA 2002. The purpose of this section is to allow a more uniform imposition of penalties following convictions for benefits and tax credits fraud. The new provisions inserted into the TCA 2002 follow the loss of benefits regime under the SSFA 2001 (as amended by sections 117, 118, 119 and 121).

36A: Loss of working tax credit in case of conviction or penalty for benefit offence

616. The combined effect of *subsections (1) and (4)* is for payment of working tax credit to be withdrawn for the disqualification period where the offender has been convicted of one or more benefit offences in any proceedings, or accepted a penalty under section 115A SSAA 1992 (“an administrative penalty”) or a caution as an alternative to prosecution. In the case of a single claim, *subsection (4)* provides that the withdrawal will apply to the offender. In the case of a joint claim the withdrawal will apply to either member of the couple. *Subsection (3)* of new *section 36A* provides that where a person is convicted of one or more benefit offences, a sanction will not apply here if they are being sanctioned under new *section 36C* for repeated benefit fraud.
617. *Subsection (5)* allows HMRC to make regulations which prescribe how working tax payments to a couple may be reduced rather than withdrawn.
618. *Subsection (6)* of new *section 36A* defines the disqualification period for the purpose of this section. The disqualification period is the amount of time the benefit can be disqualified for and the length depends on the reason why the person was disqualified. The disqualification period begins at a prescribed time after conviction or the agreement of an administrative penalty or caution. The disqualification periods are set out in *subsection (7)*. *Subsection (7)(a)* sets out the loss of benefit sanction for relevant offences defined in *subsection (5)* of section 118. This will result in a three year loss of benefit sanction, irrespective of whether it is a first, second or third offence. *Subsection (7)(b)* introduces a 13 week loss of benefit sanction for claimants who are convicted of a first benefit offence. *Subsection (7)(c)* introduces a four week loss of benefit sanction for claimants who accept the offer of an alternative penalty rather than prosecution.

619. *Subsection (8)* gives the Treasury the power to amend by order the periods of sanction that are in subsection (7)(a) to (c).

36B: Section 36A: supplementary

620. Section 36B provides for payments and adjustments to be made if necessary to take account of subsequent events such as when a conviction taken into account for the purposes of section 36A is later quashed or an agreement to pay a penalty under section 115A of the SSAA 1992 is similarly taken into account but is later withdrawn.

36C Loss of working tax credit for repeated benefit fraud

621. *Subsection (1)* of new *section 36C* lists conditions which must be satisfied for a loss of benefit sanction for repeated benefit fraud to apply. Where these are fulfilled, *subsection (3)* provides that other than for a relevant offence, working tax credit will not be paid during the disqualification period. In the case of a joint claim, this will apply to one or the other person.
622. The effect of *subsection (2)* is that persons convicted of a relevant offence defined in section 6B(14) of the Social Security Fraud Act 2001 (as inserted by subsection (5) of section 118) are subject to the three year loss of benefit sanction under section 36A, irrespective of the number of previous offences.
623. *Subsection (4)* allows HMRC to make regulations which prescribe how working tax payments to a couple may be reduced rather than withdrawn.
624. *Subsection (5)* of new *section 36C* defines the disqualification period for the purposes of this section. The disqualification period is the amount of time the benefit can be disqualified for and the length depends on the reason why the person was disqualified, and begins at a prescribed time (which will be defined in regulations). *Subsection (6)* of new *section 36C* defines what the relevant periods (time for which the benefit can be disqualified) are in relation to this. *Subsection 6(a)* of new *section 36C* introduces a three year loss of benefit sanction for claimants who are convicted of a benefit offence preceded by two previous offences (disqualifying events). It only applies where the earliest offence occurs within five years of the second offence (which must have occurred within five years of the current offence). *Subsection 6(b)* of new *section 36C* introduces a 26 week loss of benefit sanction for all other offence convictions.
625. *Subsection (8)* of new *section 36C* means that where a person is convicted of more than one offence in a set of proceedings, those offences are only counted once for the purposes of *section 36C* under the TCA 2002.
626. *Subsections (9)* and *(10)* of new *section 36C* give the Treasury the power to amend the period of sanction by order, and to specify different periods depending on previous disqualifying events.

36D Section 36C: Supplementary

627. *Section 36D* provides for payments and adjustments to be made if necessary to take account of subsequent events such as when a conviction taken into account for the purposes of section 36C is later quashed or an agreement to pay a penalty under section 115A of the SSAA 1992 is similarly taken into account but is later withdrawn.

Section 121: Cautions

628. *Section 121* amends the SSFA 2001 and the TCA 2002 to remove all references in these Acts to the consequences of accepting a caution, as DWP will no longer offer cautions to benefit fraud offenders.
629. *Subsection (2)* of the section repeals references to cautions that appear in the loss of tax credits provisions which are being inserted by the Act into the TCA 2002. Those

references are being included so that the disqualification of payment of working tax credit would apply in a case where a body with the power to prosecute a person for a benefit offence decides to administer a caution, notwithstanding DWP policy is no longer to give cautions. But the intention is to repeal the references when they are no longer required.

Section 122: Tax credit fraud: investigation

630. Sections 109A (authorisations for investigators), 109B (power to require information) and 109C (right of entry) of the SSAA 1992 provide a framework within which authorised persons can investigate whether social security benefit is properly payable.
631. As TCA 2002 is not social security legislation, tax credits are not classed as relevant social security benefits. Therefore the definition of benefit offence does not apply to them under the SSAA 1992. This means that, at present, the Secretary of State's powers to investigate do not extend to investigating whether tax credit fraud is or has been committed.
632. *Section 122* extends the Secretary of State's powers of investigation to cover investigations in respect of the commission, or suspected commission, of tax credit fraud by inserting new *subsection (9)* into section 109A (authorisations for investigators). New subsection (9) also applies to sections 109B (power to require information), 109BA (power to require electronic access to information) and 109C (right of entry). To achieve this, new subsection (9) treats TCA 2002 as relevant social security legislation and also treats child tax credit and working tax credit as relevant social security benefits in defining what is meant by benefit offence.

Section 123: Information-sharing for prevention etc of tax credit fraud

633. *Section 123* amends existing section 122B of SSAA 1992 (supply of government information for fraud prevention etc). Section 122B allows DWP to receive, from Government departments and those providing services to them, information listed in section 122B(1) for use in the prevention, detection, investigation or prosecution of offences relating to social security. The section extends section 122B(2) to include the prevention, detection, investigation or prosecution of offences relating to tax credits.
634. Section 122B(3) places certain limitations on the onward disclosure by DWP of information received under section 122B(2). *Section 123* amends section 122B(3)(b) so that DWP's ability to forward information that is being supplied for the purposes of any civil or criminal proceedings will include proceedings under TCA 2002 and to ensure that the limitations of section 122B(3) do not prevent DWP from sharing information with HMRC under the data sharing gateway being provided by *section 127*.

Section 124: Tax credit fraud: prosecution and penalties

635. Section 35 of the TCA 2002 provides a criminal offence where a person is knowingly concerned in fraudulent activity in connection with obtaining payments of tax credit.
636. Section 35 is presently triable either way, meaning it could be tried in the Magistrates' Courts or in the Crown Court. This means that even low value tax credit offences must be tried in the Crown Court where a claimant elects to be tried there.
637. The purpose of *section 124* is to provide, in certain circumstances, for tax credit offences to be summary only offences, tried before the magistrates.
638. New *section 35(2)* provides that tax credit offences involving payments of up to £20,000 will be summary only offences and tried before the magistrates. Upon conviction for this type of case, new *sections 35(3)* and *(4)* provide that the penalties applicable are a maximum of 51 weeks imprisonment for conviction in England and Wales, 6 months for conviction in Scotland or Northern Ireland and/or a fine not greater than level 5 on the standard scale. *Subsection 35(8)* provides that for England and Wales, the period of

*These notes refer to the Welfare Reform Act 2012
(c.5) which received Royal Assent on 8 March 2012*

51 weeks is to be read as 6 months until section 281(5) of the Criminal Justice Act 2003 (“the 2003 Act”) is commenced. When section 281(5) is commenced, it will increase the existing maximum terms of imprisonment for offences tried summarily only, to 51 weeks.

639. New *section 35(5)* provides that in all cases other than subsection (2), (meaning those where the payment involved exceeds £20,000), the tax credit offence provided under section 35(1) will be triable either way.
640. New *section 35(6)* sets out the penalties that will apply where a triable either way tax credit offence is convicted before either the magistrates’ Court (*section 35(6)(a)*) or the Crown Court (*section 35(6)(b)*).
641. As with subsection (3), the maximum term of imprisonment expressed in subsection (6) (a) is expressed for England and Wales by reference to a relevant provision of the 2003 Act; section 154(1) of the 2003 Act provides that the maximum term of imprisonment for summary conviction of a triable either way offence in England and Wales is to be 12 months. Section 154(1) has not yet been commenced. New *section 35(9)* therefore provides that until section 154(1) has been commenced, the 12 month maximum term of imprisonment is to be read in England and Wales as being 6 months.
642. New *section 35(7)* provides that in Scotland the maximum term of imprisonment for summary conviction of the triable either way tax credit offence is 12 months and for Northern Ireland it is 6 months. The maximum fine applicable in all three jurisdictions is the statutory maximum.
643. New *section 35(10)(a)* provides that the existing provision in section 116(1) of SSAA 1992 applies to proceedings where the tax credit offence is tried before the magistrates. This means that for tax credit offences tried before the magistrates in England and Wales, any person authorised by the Secretary of State may conduct any proceedings before a magistrates’ Court although not a barrister or solicitor.
644. New *section 35(10)(b)* applies the time limits provisions for summary only offences in section 116 to the new summary only version of the tax credit offence in section 35(2) of the TCA 2002. Section 116 provides, in principle, for a time limit of 12 months from the date an offence was committed, allowing, however, for prosecutions after that date, if they are within 3 months of the date on which evidence, adequate in the opinion of the Secretary of State to justify a prosecution, came to his attention about a benefit offence. This ensures consistent time limits operate for summary only tax credit offences as for summary only social security benefit fraud offences.
645. New *section 35(11)* provides for the equivalent of the above time limits in relation to Scotland.
646. New *section 35(12)(a)* applies section 110 of the Social Security Administration (Northern Ireland) Act 1992 to tax credit offence proceedings, where appropriate. New *section 35(12)(b)* applies the time limits provisions for summary only offences in section 110(2)(a) and (3)(a) to the new summary only version of the tax credit offence in section 35(2) of the TCA 2002. It also provides that for tax credit offences tried before the magistrates the equivalent legislative provision in Northern Ireland to section 116(1), applies in relation to allowing a person to conduct the proceedings before a magistrates’ Court although not a barrister or solicitor.

Section 125: Unauthorised disclosure of information relating to tax credit offences

647. *Section 125* makes an insertion into paragraph 1 of Part 2 of Schedule 4 to the SSAA 1992 (persons employed in social security administration or adjudication) so the scope of Part 1 of that Schedule includes the investigation or prosecution of offences relating to tax credits as well as social security benefits. Part 1 of Schedule 4 is relevant to section 123 of the SSAA 1992, which makes it an offence to disclose information

unlawfully. This helps safeguard against inappropriate disclosure of information that DWP staff receive during the course of their employment.

Section 126: Tax credits: transfer of functions etc

648. The Commissioners for Revenue and Customs Act 2005 amended the Ministers of the Crown Act 1975 such that certain functions of the HMRC Commissioners could not be transferred by an Order in Council under the 1975 Act, including those relating to the payment and management of working tax credit and child tax credit. *Section 126* removes this statutory bar in relation to tax credits. Further, it allows for an Order in Council to be made, transferring any tax credit function of the Treasury or the HMRC Commissioners to the Secretary of State, or directing that any such function shall be exercisable concurrently with the Secretary of State, or cease to be so exercisable.
649. An Order under this section may also make provision in connection with such a transfer or direction, and other provision including provision relating to the use or supply of information, combining any aspect of the payment and management of tax credits with any aspect of the administration of social security and applying social security legislation in relation to tax credits. *Subsection (5)(a)* allows new functions to be conferred on, or functions to be removed from, the Secretary of State, the Treasury, the HMRC Commissioners, a Northern Ireland Department or any other person. Under *subsection (5)(b)*, the Order may authorise the Secretary of State and the HMRC Commissioners to arrange for the HMRC Commissioners to provide services to the Secretary of State in connection with tax credits.
650. *Subsection (6)* provides that provision under *subsection (3)* may extend an offence provided for under primary or secondary legislation or extend any conduct in respect of which a civil penalty may be imposed, but may not increase the scope of punishment for which a person may be liable or the maximum amount of a penalty.
651. Any Order may also make such consequential, supplementary, incidental or transitional provision as Her Majesty considers appropriate, such as transferring property, rights or liabilities. *Subsection (9)* enables the Order to amend, repeal or revoke primary or secondary legislation.
652. *Subsection (10)* provides that a statutory instrument containing an Order under this section is subject to the negative resolution procedure.
653. *Subsection (14)* amends the Ministers of the Crown Act 1975 to remove the statutory bar referred to above.

Section 127: Information-sharing between Secretary of State and HMRC

654. *Section 127* provides for the sharing of data between the Secretary of State and the HMRC Commissioners.
655. *Subsections (1)* and *(2)* allow for information held for the purposes of HMRC functions by the Commissioners (or providers of services to them) to be supplied to the Secretary of State, a specified Northern Ireland Department or any providers of services to the Secretary of State or specified Northern Ireland Department (including, for example, those authorised to exercise the Secretary of State's functions under section 29) for use for the purposes of departmental functions.
656. *Subsections (3)* and *(4)* allow for information held by the Secretary of State or the Northern Ireland Department (or providers of services to them) for the purposes of any departmental functions to be supplied to the Commissioners (or providers of services to the Commissioners) for the purposes of HMRC functions.
657. *Subsection (7)* defines the departmental and HMRC functions for the purposes of which data may be provided and specifies the Northern Ireland Departments which are included in these provisions.

- 658. Information supplied under this section must not be passed on to another person or body without the authority of the original supplier, as a result of *subsection (5)*.
- 659. Once the information has been used for the purposes for which it has been supplied, *subsection (6)* allows this information to be used for any purposes for which information held for those purposes could be used.
- 660. *Subsection (8)* provides that the provisions in this section may apply to statutory payments, such as statutory sick pay or statutory maternity pay, as functions relating to such payments are functions relating to social security for the purposes of this section.
- 661. *Subsection (9)* ensures that the provision in this section does not limit other powers to supply information.
- 662. *Subsection (10)* amends section 3(1A) of SSA 1998 to add as a new matter information in relation to the investigation or prosecution of tax credit fraud. This means that such information can be used for any of the matters referred to in section 3(1A) (for example social security or war pensions).

Section 128: Information-sharing between Secretary of State and DPP

- 663. *Section 128* makes provision for information-sharing between the Department for Work and Pensions and the Crown Prosecution Service. This is intended to facilitate the sharing of information for the purposes of prosecution in England and Wales.

Section 129: Unlawful disclosure of information supplied under section 128

- 664. *Section 129* prevents onward disclosure by the Crown Prosecution Service of information shared under section 128, except in the circumstances specified.

Section 130: Information-sharing in relation to provision of overnight care etc

- 665. *Section 130* allows information to be used and supplied for the purpose of ensuring the correct amount of housing benefit is awarded in relation to people who are entitled to overnight care in their own homes; and for the purpose of assessing awards of benefit when a person is admitted or discharged from hospital or residential care.
- 666. Claimants of certain social security benefits have their benefit awards reassessed when they go into or are discharged from hospital or care. Claimants are already required to report such changes. This provision will allow local authority teams to use that information themselves, or supply the information to the Secretary of State, for purposes relating to the payment of benefits. Local authorities will therefore be able to inform the Secretary of State or their own teams dealing with a relevant benefit such as housing benefit and council tax benefit teams when a person has been, or is likely to be, admitted to or discharged from residential care or hospital. This will allow reassessment of benefit awards that are affected by these changes. *Subsection (2)(c)* also permits regulations to prescribe other information local authorities can supply to the Secretary of State relating to the funding regime covering a person's residential care or hospital stay as this can affect for example, their rate of personal independence payment.
- 667. People who are disabled and require an overnight carer will also be able to qualify for a higher rate of housing benefit if they have an extra room which is used by a carer or team of carers. This provision will also allow local authority housing benefit teams to use information from local authority social services teams to confirm whether a person does or may require an overnight carer; if social services are providing the carer; and confirmation that the care has been provided.
- 668. *Subsection (8)* provides that regulations made under *subsection (7)* may not prescribe any benefit which falls within the legislative competence of the Scottish Parliament.

Section 131: Information-sharing in relation to welfare services etc

669. *Section 131* replaces the information sharing gateway in section 42 of the WRA 2007 and broadens the scope of data sharing that is provided for under the existing section 42. It also extends these provisions to Scotland. It allows ‘relevant information’ to be shared between the Secretary of State, local authorities, and authorities administering housing benefit, while housing benefit continues, including their service providers and persons exercising their functions. It can be shared in relation to the provision of a welfare service, council tax and certain housing benefit purposes. It also allows the supply of relevant information in connection with the provision of assistance under arrangements made by local authorities in England or others once community care grants and crisis loans that are not alignment loans cease to be provided by the discretionary social fund (see section 70).
670. Welfare services are defined in *subsection (12)*. Welfare services include Supporting People services in England and Wales (these provide counselling, help managing day to day life, and security alarms for people who live at home); Housing Support services in Scotland (similar to Supporting People); domiciliary care in the UK (covers support such as day care, meals, and home helps for people who live at home); and residential care in the UK (provided for people who cannot manage to live independently at home). For each of these types of welfare service there is a means tested charge.
671. In addition the definition covers other types of welfare service such as assistance provided once community care grants and those crisis loans that are not alignment loans cease. Examples of further services covered are the provision of: Disability Facilities Grants; Blue Badge parking permits; Discretionary Housing Payments; or assistance to families with multiple disadvantages.
672. *Subsection (1)* will allow the Secretary of State, or a person providing services to him, to supply relevant information to the persons or bodies listed in *subsection (11)* for certain purposes relating to a welfare service or council tax. This will, for example, help local authorities decide if a person is liable to pay towards a service such as a home help or day care, and if so how much they should contribute towards its cost. It will also help local authorities assess how much a person is able to pay towards the cost of residential care. The information may also be needed for decisions on whether to provide assistance under localised schemes, such as help with council tax.
673. *Subsection (2)* allows a local authority providing welfare services (and others such as service providers) to supply relevant information to the Secretary of State (or the Secretary of State’s service providers) in certain circumstances. This information can only be supplied for a prescribed purpose. This subsection may be used, for example, to allow local authorities administering Supporting People grants to advise DWP whether a person is vulnerable and requires housing costs to be paid direct to the landlord.
674. Relevant information is defined in *subsection (12)* as information relating to any relevant social security benefit, as well as welfare services.
675. *Subsection (3)* replaces and extends the regulation-making power in section 42(2). The power may be used to enable qualifying persons (the persons listed in subsection (11)) to use information held for one purpose for other purposes, subject to those purposes being purposes relating to welfare services, council tax or housing benefit. The power may also be used to enable information to be supplied to another such person for use in the same or another circumstance relating to welfare services, council tax or housing benefit. This will be used to allow the types of information exchange that take place between local authority Supporting People teams and Housing Benefit teams. These teams may use the information to help them decide if a person is entitled to free help from Supporting People, or when making certain decisions relating to a person’s housing benefit. It may also be used for the purpose of calculating any charges for a welfare service and to help decide whether to provide assistance once certain discretionary social fund payments cease. It will also be used to help local authorities

assess whether a person is eligible for help with their council tax under any local scheme that may be available.

676. *Subsections (6) and (8)* provide that the Secretary of State must not use the power provided by subsection (3) to enable the supply for an excepted purpose of excepted information held by a Welsh body or a Scottish body. *Subsections (7) and (9)* define excepted information and excepted purposes for Wales and Scotland respectively.

Section 132: Unlawful disclosure of information

677. Section 43 of the WRA 2007 made it an offence for a person to disclose without lawful authority information supplied by virtue of section 42 of the WRA 2007. *Section 132* creates a similar unlawful disclosure provision in relation to information received by virtue of section 131.
678. *Subsection (2)* sets out to whom this section applies. Relevant persons in DWP are not covered by this new section as there is an existing unlawful disclosure provision in section 123 of the SSAA 1992 which applies to them.
679. Unauthorised disclosure is an offence subject to a fine or imprisonment or both.
680. This section complements section 123 of the SSAA 1992.

Section 133: Sections 130 to 132: supplementary

681. *Section 133* enables regulations under section 131 (data-sharing in relation to provision of overnight care etc) and section 132 (data-sharing in relation to welfare services etc) to make consequential, supplementary incidental, transitional or saving provision. It also provides a power to make different provision for different purposes, cases and areas.
682. *Subsection (4)* provides that all regulations under sections 131 and 132 will be subject to the negative resolution procedure in the Houses of Parliament.

Section 134: Information-sharing for social security or employment purposes etc

683. *Section 134* amends section 72 of the Welfare Reform and Pensions Act 1999. This section, as amended by section 34 of the WRA 2009, enables the Secretary of State to make regulations allowing certain persons, including the Department for Work and Pensions, to share social security and employment and training information with other Government Departments and their service providers, certain types of local authorities and their service providers and with persons designated by an order. Regulations can also make provisions about the use of such information and its supply by such persons.
684. *Subsection (2)* inserts the words “(specifically or by description)” into section 72(2)(b) of the Welfare Reform and Pensions Act 1999 so that it now expressly provides for a Minister of the Crown by order to designate by *description* as well as retaining the ability to specify individual organisations. Organisations such as those delivering skills, employment and training services to Jobcentre Plus customers in England, Scotland and Wales are continuously changing. The express power to designate by description makes it absolutely clear the Secretary of State does not have to continually update the designation order.
685. *Subsection (3)* amends section 72(6) and repeals section 72(6A) of the Welfare Reform and Pensions Act 1999, to remove the restrictions relating to circumstances in which information may be used and supplied by county councils in England. Subsection (6A) allows social security information to be used and supplied by County Councils in England only where they are providing support services for 13-19 year olds and young adults aged 20-24 with learning difficulties. However, County Councils in England are increasingly involved in delivering employment, skills and training services to jobseekers at a local level. The repeal will remove the requirement that information is only shared where they are providing support services for 13-19 year olds and young

*These notes refer to the Welfare Reform Act 2012
(c.5) which received Royal Assent on 8 March 2012*

adults aged 20-24 with learning difficulties, to allow the flexibility to be able to use and pass on information about persons falling outside of this group, to facilitate the provision of employment, skills and training services without having to seek written consent from customers.