

# WELFARE REFORM ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **PART 1: Employment and Support Allowance**

##### **Miscellaneous**

##### *Section 17: Income and capital: general*

109. This section enables the Secretary of State to set out in regulations how the income and capital of a claimant (and their partner) is to be calculated for the purpose of determining whether a claimant is entitled to an employment and support allowance and, if so, how much is to be payable. Regulations under this section will be based on the existing provisions for the purposes of income-related benefits (income support and income-based jobseeker's allowance) in the [Income Support \(General\) Regulations 1987 \(S.I. 1987/1967\)](#).
110. *Subsections (1) and (2)* provide regulation-making powers to prescribe how income and capital will be assessed. It is intended that the regulations will provide that income may be averaged. In averaging income for fluctuating earnings, for example, the Secretary of State may take an average for a past period and a current period and apply it to a future period, as occurs in connection with income support.
111. *Subsection (3)* provides a power to make regulations prescribing that a person is to be treated as having, or not having, certain income or capital. It also enables regulations to provide for income to be treated as capital, or vice versa. In particular, regulations could make provision about how capital holdings would be taken into account in relation to an employment support allowance. The intention is that a rate of return of £1 per week for every £250 will be applied to capital in excess of £6,000 and below the upper capital limit of £16,000. In the case of people in residential care and nursing homes this range would be between £10,000 and £16,000. Capital below this amount would not be treated as giving rise to income which is to be taken into account in the assessment. Certain types of actual income from capital will be relevant to the assessment. These are expected to be limited to income from boarders and sub-tenants in the person's own home and income from certain trusts. There would be different provision as to disregarding different types of income which is expected to follow the existing provision for income support.
112. It is also intended that existing provisions in the [Income Support \(General\) Regulations 1987 \(S.I. 1987/1967\)](#) concerning unacceptable deprivation of income or capital will be applied to an employment and support allowance. These will contain provisions which state what unacceptable deprivation is. Thus, for example, a claimant may be treated as possessing notional capital if they have disposed of the capital solely or mainly to secure or increase entitlement to an employment and support allowance. This is the same as applies for the purposes of income support and income-based jobseeker's allowance.