

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1: Employment and Support Allowance

Entitlement

Section 1: Employment and support allowance

49. This section sets out the entitlement conditions of the employment and support allowance. This introduces a new benefit structure with both an income-related allowance and a contributory allowance within the same benefit, similar to a jobseeker's allowance (except that there will be no time limits for either strand). In addition to satisfying the basic conditions of entitlement, a person will need to satisfy either the National Insurance contribution-based tests or the income-related tests in order to be entitled to an employment and support allowance. The contribution-based tests will be the same, in substance, as apply now for incapacity benefit. The income-related tests will be the same, in substance, as apply now for the purposes of income support.
50. There will be an alternative to the usual National Insurance contribution tests for those who were under 20 years old when their period of limited capability for work began (or under 25 years old in certain circumstances). If they had had limited capability for work for the preceding 196 days and satisfy other conditions, they would not have to satisfy the contribution conditions to get entitlement to the contributory allowance. This is to ensure that young people, who may not have had the opportunity to build up a sufficient contribution record, will not be excluded from the non means-tested allowance. Again, this is similar to the provisions for young people currently in incapacity benefit, as set out in the Social Security Contributions and Benefits Act 1992, section 30A.
51. A person also has to satisfy the basic conditions (see *subsection (3)*). One of those basic conditions is that the person has limited capability for work and the meaning of this phrase is set out at *subsection (4)*. Further provision about the test to assess whether a person's capability for work is limited by his physical or mental condition and the limitation is such that it is not reasonable to require him to work is made in section 8.

Section 2: Amount of contributory allowance and; Section 3: Deductions from contributory allowance: supplementary

52. *Sections 2 and 3* set out how the amount of contributory employment and support allowance will be calculated. *Subsection (1)(a)* of section 2 provides that the calculation is begun by taking such amount as may be prescribed. It is expected that this amount will be age-related in the assessment phase and based on the levels of contribution-based jobseeker's allowance, but that it will be universal for all ages once the assessment phase is complete.
53. Once the assessment phase has been completed (the length of which will be determined by regulations, with a proposed length of 13 weeks) a 'work-related activity component' or a 'support component' will also be added on top of the prescribed amount.

Regulations may disapply the requirement to wait until the end of the assessment phase to become entitled a work-related activity component or support component. A person will be entitled to a support component if he or she has limited capability for work-related activity (see section 9). A person will be entitled to a work-related activity component if he or she does not have limited capability for work-related activity.

54. Sums may be deducted from the amount of contributory allowance in respect of certain payments. It is intended that regulations would prescribe the same deductions as those which are taken into account for the purposes of incapacity benefit currently. If these payments were over a certain amount, it is intended that the amount of employment and support allowance payable could be reduced by a certain proportion. For example currently an amount equal to 50 per cent of certain pension payments over £85 per week is deducted from the amount of incapacity benefit payable. In addition, deductions are also made in respect of local councillors' allowances. This is set out in the Social Security Contributions and Benefits Act 1992, sections 30DD and 30E.

Section 4: Amount of income-related allowance

55. This section provides for the calculation of the amount of an income-related employment and support allowance. Entitlement is based on rules similar to those which apply for income support, which the income-related allowance will replace for people with a health condition or a disability.
56. This section provides that the amount of the income-related allowance is the “applicable amount”, if the claimant has no income, or the difference between the claimant’s income and applicable amount, if the claimant has income. An applicable amount is the weekly amount a person would receive if they had no income at all. For example a single person claiming income support aged over 25 years old who is not entitled to any of the available premiums would be entitled to income support of £59.15 per week (April 2007 rate) but this would be reduced to £49.15 if they had an income of £10 per week. Applicable amounts can vary; for example, dependent on whether the claimant has a partner. Like the contributory allowance, there is a proposed assessment phase of 13 weeks. After the assessment phase, the amount of the work-related activity component or, if the claimant satisfies the relevant test, the support component will be included in the applicable amount.
57. *Subsection (2)(a)* provides the power to prescribe amounts to be part of the applicable amount. This includes, for example, where the claimant is an owner-occupier with housing costs. It is intended that additional amounts will be prescribed in respect of those costs, such as mortgage interest, ground rent or service charges. These are similar to the arrangements which currently apply to income support. The power would also allow for other additions to be made in future without the need for further primary legislation.
58. In addition to housing costs the power could also be used to include certain premiums. It is intended to pay an equivalent to the enhanced disability premium, severe disability premium and the carer premium using the same rules as for income support. In April 2007 the rate of the enhanced disability premium was £12.30 for a single person and £17.75 for a couple; the severe disability premium was £48.45 for a single person and £96.90 for a couple. The carer premium was worth £27.15 per week.
59. It is not intended to use the powers under this section to make any provision for children, as provision will be made by child tax credits, which are administered by Her Majesty’s Revenue and Customs.
60. *Subsection (3)* provides the power to prescribe nil as an applicable amount. For example, paragraphs 7 and 8 of Schedule 7 to the [Income Support \(General\) Regulations 1987 \(S.I. 1987/1967\)](#) currently prescribe a nil amount for the purposes of income support in relation to certain prisoners and to members of religious orders who are fully

maintained by their order. The policy intention is that such people will be treated in the same way for the purposes of income-related employment and support allowance.

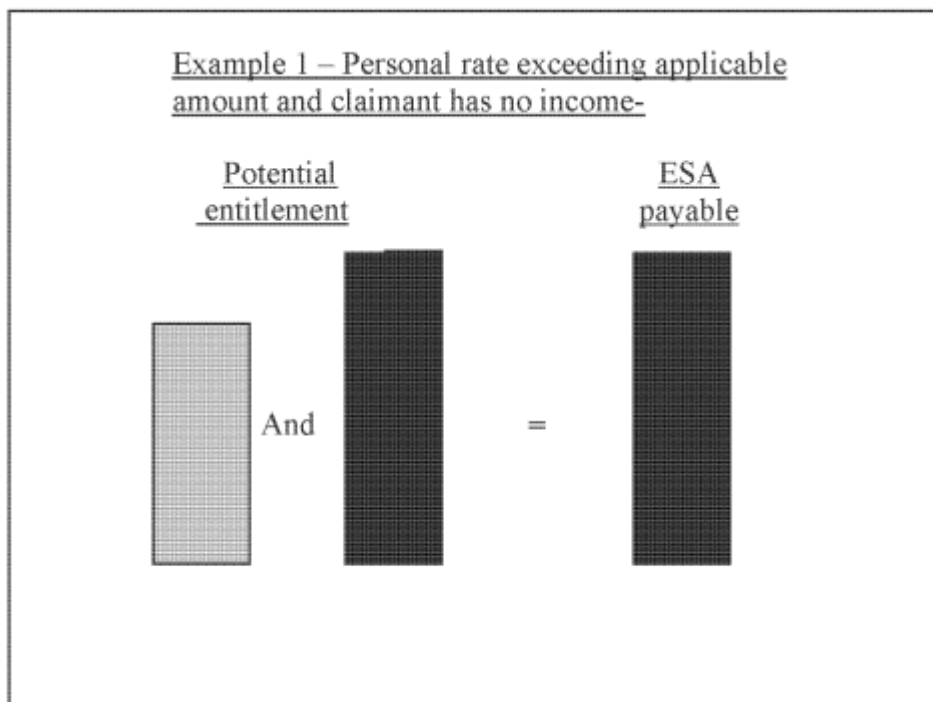
61. For both the contributory and income-related allowance, sections 2 and 4 provide for entitlement to the work-related activity and support components to be backdated if, where the regulations provide, the assessment phase is extended (section 24(2)). For example, it is intended that this should be done where it has not been possible to complete the medical assessment process within the proposed standard 13 week period of the assessment phase. In such cases if the claimant is subsequently determined to have limited capability for work, then entitlement to the relevant work-related activity or support component will be backdated so that the claimant will receive the relevant work-related activity component or support component as if the assessment phase had ended at the end of week 13 of entitlement to an employment and support allowance.
62. Regulations made under sections 2(4) and 4(6) are expected to provide that, in certain circumstances, where a person was previously entitled to employment and support allowance then the condition of entitlement to the work-related activity component and support component that the assessment phase must have ended shall be disappplied. This will mean that a claimant may be entitled to the work-related activity or support component immediately they become entitled to an employment and support allowance.

Section 5: Advance award of income-related allowance

63. This section provides for the situation where a person, due to having income exceeding the applicable amount, is not entitled to an income-related employment and support allowance in the assessment phase, but may become entitled to an income-related allowance when, at the end of the assessment phase, they become entitled to either the work-related activity component or the support component. The section modifies section 5(1) of the Social Security Administration Act 1992 so as to enable regulations to be made to deal with this situation. Such a case may arise because a person has an income above the applicable amount during the assessment phase (which would mean that the claim would normally be rejected) but, when the applicable amount includes the work-related activity or support component, their income is less than the applicable amount. Regulations will be able to provide that such a person can make a claim and that an award of employment and support allowance could arise at a future date, provided that certain conditions were satisfied.

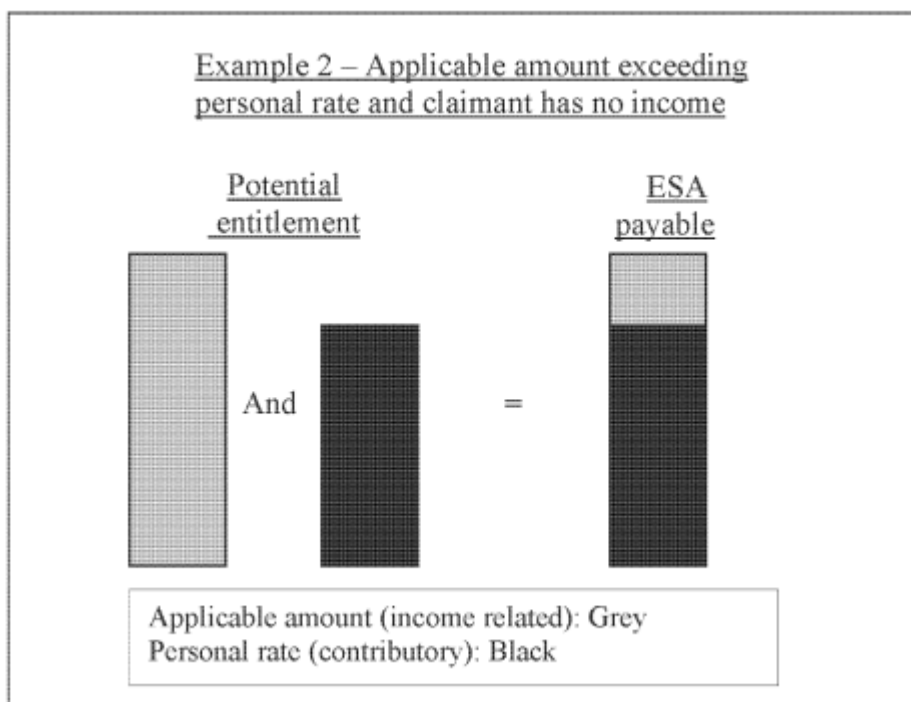
Section 6: Amount payable where claimants entitled to both forms of allowance

64. This section provides for cases in which a person is entitled to both a contributory allowance and an income-related allowance. In this section the amount calculated in accordance with section 2(1) (amount of contributory allowance) is called the “personal rate”. If the person has no income and their personal rate is higher than their applicable amount (for the purposes of income-related allowance), they get the personal rate. If the claimant has no income and their applicable amount exceeds their personal rate, they will get their personal rate, plus an additional amount of income-related allowance equal to the excess. If the person has an income, the amount payable will be the greater of his personal allowance and the amount by which his applicable amount exceeds his income.
65. Below there are some illustrations to show how this would work in the case of a person with no income. The applicable amount (which is relevant to the income-related allowance) is illustrated in grey. The personal rate (which is relevant to the contributory allowance) is illustrated in black.



Applicable amount (income related): Grey

Personal rate (contributory): Black



Section 7: Exclusion of payments below prescribed minimum

66. This section contains a power equivalent to the power in section 134(4) of the Social Security Contributions and Benefits Act 1992. The intention is that employment and support allowance will not be paid if entitlement is below 10 pence, unless payment is combined with payment of another benefit.

Assessments relating to entitlement

Section 8: Limited capability for work

67. This section provides powers to set out the system for determining “limited capability for work” in regulations. Limited capability for work is one of the conditions of entitlement a claimant must satisfy before he can be eligible for an employment and support allowance (see section 1(3)). Section 1(4) defines limited capability for work. Section 8 provides powers to specify the type of test that will be used to determine whether or not a claimant has limited capability for work. The test will assess a claimant’s ability to carry out specified activities. The specific activities, and the extent to which a person’s capability to perform them must be limited, will be contained in regulations.
68. Regulations under section 8 may make provision about the manner in which the assessment of a person’s capability for work will be performed (including providing for a medical examination to be carried out if required). Regulations may also provide for a claimant to be treated as not having limited capability for work if he fails, without good cause, to provide requested information or evidence related to his claim, or to provide it in the manner requested or if he fails without good cause to attend for or submit to a medical examination he is called to attend as part of the assessment process. Section 8 is similar to sections 171A and 171C of the Social Security Contributions and Benefits Act 1992.
69. The assessment process used to determine benefit entitlement will be carried out, wherever possible, during the first 13 weeks of a claim. *Subsection (5)* provides regulation making powers that will allow a claimant to be treated as having limited capability for work until the time when his capability for work is actually tested and determined. These powers may be used, for example, so that a claimant can be entitled to an employment and support allowance during the assessment phase, on the basis of medical certificates from his general practitioner, up until the point when the assessment of his capability for work is actually completed.

Section 9: Limited capability for work-related activity

70. This section refers to claimants whose physical or mental conditions are so severely disabling that it is unreasonable to require them to engage in work-related activity or to participate in work-focused interviews as a condition of receiving the full amount of employment and support allowance. A claimant of this description will have “limited capability for work-related activity”. A claimant who demonstrates limited capability for work-related activity will be a member of the “support group” (referred to in sections 11 and 12 and defined in section 24(4)). A claimant with limited capability for work-related activity will be entitled to receive a support component in addition to the basic allowance of employment and support allowance (see sections 2 and 4).
71. A claimant who is a member of the support group will not be subject to any requirements imposed by regulations under sections 11, 12 and 13 to attend work-focused health-related assessments, participate in work-focused interviews or undertake work-related activity.
72. *Section 9* provides regulation making powers that are similar to the powers provided under section 8. Regulations will make provision about the assessment of a person’s capability for work-related activity and about how the assessment will be performed (including providing for a medical examination to be carried out if one is considered necessary). Regulations will also provide for a claimant to be treated as being capable of work-related activity if he fails, without good cause, to comply with requests for information or evidence related to his claim, or to provide it in the manner requested or if he refuses without good cause to attend for or submit to a medical examination where one is required.

Section 10: Report

73. This section requires the Secretary of State to lay before Parliament an annual independent report on the operation of the assessments in sections 8 and 9, for the first five years after these sections come into effect.

Conditionality

Section 11: Work-focused health-related assessments

74. This section provides that regulations may make provision for imposing on claimants who are entitled to an employment and support allowance, but not so severely disabled as to be unable to engage in work-related activity, a requirement to take part in one or more work-focused health-related assessments.
75. The work-focused health-related assessment will be carried out by a health-care professional. Section 11(8) lists different types of regulated health care professions, together with a regulation-making power to add other regulated professions. Members of these professions, will, if they are approved by the Secretary of State, be health care professionals for the purposes of section 11. It is intended that, where possible, the work-focused health-related assessment will follow directly on from the assessments under sections 8 and 9 so that the claimant is only required to attend one appointment. Where it appears to the health-care professional carrying out the section 8 and 9 assessments that the claimant is likely to be a member of the support group, the work-focused health-related assessment is likely to be deferred at that time, pending the outcome of the Secretary of State's decision regarding his capability for work-related activity. The assessment will provide additional information about the claimant's residual functional capability – what the claimant can still do despite the disabling condition – and information about health interventions that would improve their functional capability.
76. The advice from the work-focused health-related assessment will be made available to the claimant and to Personal Advisers, to support actions to be taken during the main phase of the benefit.
77. The nature and content of the work-focused health-related assessment and report will be set out in regulations. *Subsections (2)(f) and (3)* enable regulations to be made which have the effect of providing that if a claimant fails, without good cause, to take part in the assessment, the amount of employment and support allowance payable to him may be reduced. *Subsections 2(g) and (h)* allow regulations to set out what is to constitute, or be taken into account in determining, good cause.

Section 12: Work-focused interviews

78. This section provides for work-focused interviews, which are intended to assist claimants in moving closer to the labour market. Claimants, other than those who are members of the support group, may be made subject to a requirement to attend and participate in work-focused interviews by regulations.
79. Regulations under section 12(1) would provide for certain claimants who are entitled to the work-related activity component to be required to participate in work-focused interviews. *Subsection (5)* sets out that regulations must provide that requirements to participate in work-focused interviews will cease if the claimant becomes a member of the support group.
80. It is intended that there would also be a work-focused interview during the assessment phase which would be for the first 13 weeks of entitlement to an employment and support allowance. This interview would have the purpose of, where appropriate, explaining the benefit and conditionality regime to the claimant and helping them think about what activities they may want to do to help them to return to work. It is

intended that regulations will allow interviews to be deferred for those with serious health conditions who may be in the support group after medical assessment.

81. Claimants would be provided with the date and time of their work-focused interview. Regulations would provide that if the claimant cannot attend the work-focused interview, then in certain circumstances it would be able to be moved and take place at another date or time.
82. *Subsections (2)(f), (2)(g), (2)(h) and (2)(i)* enable regulations to deal with situations where a claimant has not attended or not fully participated in a work-focused interview. Anyone failing to take part in a work-focused interview would have an opportunity to show they had good cause for their failure to take part in the work-focused interview, in a similar way as provided under the current legislation relating to incapacity benefit and work-focused interviews (the [Social Security \(Incapacity Benefit Work-focused Interviews\) Regulations 2003 \(S.I. 2003/2439\)](#)). A non-exhaustive list of the matters to be taken into account in deciding if a claimant can show good cause will be set out in regulations under *subsections (2)(h) and (2)(i)*.
83. As well as attending a work-focused interview, claimants would normally be expected to participate fully in the interview. Regulations are likely to provide that claimants are required to provide certain relevant information (such as about their existing skills) and to participate in discussions about their employability and the steps that could be taken to help them move into work or closer to the labour market. Additionally it is intended that where work-related activity becomes mandatory for certain claimants in receipt of the work-related activity component, regulations would require a claimant to discuss the relevant work-related activity that they had undertaken.
84. If the claimant fails to participate fully in a work-focused interview as required in regulations and cannot show good cause for that failure within the permitted time, then the amount of employment and support allowance that they are entitled to would be reduced. Regulations under *subsection (4)* would set out the amounts of the reductions.
85. Regulations under *subsection (6)* would provide for waivers and deferrals of work-focused interviews. The circumstances in which a deferral may be granted will be related to a claimant's health condition or other circumstances, such as transport difficulties (there will be some similarities to the [Social Security \(Incapacity Benefit Work-focused Interviews\) Regulations 2003 \(S.I. 2003/2439\)](#)). A waiver would mean that the requirement on a claimant to take part in a work-focused interview would be considered as not having applied and therefore a sanction could not be imposed.

Section 13: Work-related activity

86. This section provides for mandatory work-related activity, which is intended to assist claimants in moving closer to the labour market. Work-related activity is activity that helps a claimant obtain work, remain in work or to be more likely to obtain work or remain in work. As set out in the Welfare Reform Green Paper, it is intended that, as resources permit, claimants who are entitled to the work-related activity component would be subject to a requirement to participate in work-related activity. This requirement would apply for a set period of time once the assessment phase has been completed. *Subsection (5)* sets out that regulations must provide that requirements to undertake work-related activity will cease if the claimant becomes a member of the support group.
87. Regulations under this section may specify the amount of work-related activity a person is required at any time to undertake. This might be exercised so as to provide for a specified number of activities per set period of time and this would be reviewed at a work-focused interview taking place within a subsequent set period of time.
88. Work-related activity might include such activities as:
 - work tasters;

- programmes to manage health in work;
 - jobsearch assistance; and
 - programmes to assist in stabilising a person's life.
89. Regulations would set out how matters would be taken into account when determining whether a claimant has met the requirement to undertake work-related activity or whether they had good cause for not doing so.
90. As for the provisions relating to work-focused interviews under section 12, a failure to meet the requirement under regulations to undertake work-related activity and a failure to show good cause for this within the allowed time would attract reductions in the amount of an employment and support allowance the person was entitled to for a fixed period.
91. Waivers for work-related activity are provided for by regulations under *subsection (6)*. Such regulations may provide that a requirement on a claimant to participate in work-related activity is to be considered as not having applied and therefore a sanction could not be imposed.

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

92. This section provides that at work-focused interviews, a written action plan will be developed.
93. Regulations made under *subsections (1) and (2)* are expected to provide that the action plan should include a summary of the discussion that took place during the work-focused interview. In a situation where participation in work-related activity is not required under regulations, then the action plan would include possible steps a claimant could consider taking to assist them in returning to work.
94. Where appropriate, it is intended that the action plan would include steps that, if the claimant undertook them, would satisfy the work-related activity requirement under section 13.
95. It is not intended that the claimant would be required by regulations to undertake specific steps in the action plan, even when participation in work-related activity was required. A claimant could still satisfy the work-related activity requirement by undertaking other activity.
96. Regulations provided for under *subsection (4)* are likely to provide that a claimant should be able to ask for their action plan to be reconsidered. This would be in order to resolve situations where a claimant believed the steps included were, or had become, inappropriate or that other steps, not agreed at the work-focused interview, should be included. The action plan would then be reconsidered in a set period of time. It is not intended, in a situation where a claimant asks for a reconsideration of the action plan, that requirements under regulations to undertake work-related activity would be waived or deferred.

Section 15: Directions about work related activity

97. *Section 15* 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. This is intended to stop claimants seeking to satisfy the requirement to undertake work-related activity by undertaking activity that is considered inappropriate for their circumstances.

Section 16: Contracting out

98. This section has the effect of allowing contracted providers in the private and voluntary sectors (“providers”) to exercise functions of the Secretary of State relating to conditionality.
99. It is envisaged that the conditionality regime within employment and support allowance will, when employment and support allowance is introduced, be similar to Pathways to Work that is currently being operated by Jobcentre Plus in 40 per cent of Great Britain. The Government has announced that providers will be contracted to deliver some aspects of Pathways to Work to the rest of Great Britain as it is rolled out. It is intended to put similar arrangements in place for the purposes of employment and support allowance. It is intended that providers will be contracted to provide back to work support to claimants. In addition these organisations may take on responsibility for providing the work-focused interviews.
100. *Subsection (1)* provides that the Secretary of State can authorise providers to undertake certain functions conferred on him by primary legislation (sections 12, 14 and 15) relating to work-focused interviews, action plans and directions relating to work-related activity.
101. *Subsection (2)* allows regulations to be made that allow the Secretary of State to authorise provider organisations to undertake certain of his functions under regulations made under sections 11 to 15. The Secretary of State cannot authorise provider organisations to undertake decisions to which subsection (3) applies (“excluded decisions”).
102. *Subsection (2)* also provides that regulations may be made authorising provider organisations to undertake functions relating to conditionality decisions e.g. revisions and supersessions of conditionality decisions in line with existing decision making processes and legislation. Again, the Secretary of State cannot authorise provider organisations to exercise these functions in relation to excluded decisions.
103. *Subsection (3)* contains a list of excluded decisions. Excluded decisions will be any decision as to whether a person has failed to comply with a conditionality requirement under sections 11 (work-focused health-related assessments), 12 (work-focused interviews) or 13 (work-related activity); decisions as to whether a person had good cause for not complying with the conditionality requirement; and decisions about the reduction in benefit as a result of a person failing to comply with a conditionality requirement.
104. *Subsection (5)* makes it clear that where authorisation is given for providers to undertake a function then authorisation may only apply to part of that function.
105. *Subsection (7)(b)* provides that authorisations granted under or by virtue of section 16 can be revoked and *subsection (7)(c)* provides that giving authorisation to a provider does not preclude the related function from being undertaken by another person, for example the Secretary of State.
106. *Subsections (8) and (9)* establish that, where a function is undertaken by a provider, that function is treated as if it had been undertaken by the Secretary of State. This would not apply for the purposes of the operation of a provider – for example a contractor would be treated as performing work-focused interviews for the purposes of being paid for them. It also establishes that responsibility lies with the provider in respect of any criminal proceedings brought because of their actions.
107. *Subsection (10)* ensures that any decision made by a private or voluntary sector organisation by virtue of section 16 has effect as a decision of the Secretary of State under section 8 of the Social Security Act 1998. This ensures that such decisions fit into the decisions and appeals legislation in the Social Security Act 1998.

108. *Subsection (11)* establishes that where authorisation for a function is revoked by the Secretary of State and the provider is therefore unable to perform the functions which they are contracted for, the contract can be treated as repudiated by the Secretary of State.

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.

Section 18: Disqualification

113. [Section 18](#) provides that in certain circumstances, similar to those which exist now at section 171E of the Social Security Contributions and Benefits Act 1992, a person can be disqualified from receiving an employment and support allowance for a period of up to six weeks. This may be because someone is limited in their capability for work because of their own misconduct, because they remain someone who has limited capability for work through failure, without good cause, to follow medical advice, or because they fail, without good cause, to observe specified rules of behaviour. The regulations will specify the circumstances and the matters which are to be taken into account when making such a decision, including the considerations to be taken into account in deciding whether or not the person concerned had good cause for the failure.

114. *Subsection (4)* of this section provides that unless regulations specify otherwise, a person shall be disqualified for receiving contributory employment and support allowance for any period where he is undergoing imprisonment or detention in legal custody, or is absent from Great Britain. This is similar to section 113(1) of the Social Security Contributions and Benefits Act 1992 which applies to incapacity benefit currently.
115. This provision with a range of regulations will allow such a person to continue to be entitled to employment and support allowance whilst disqualified from payment. This is because once the period of disqualification has ended it is intended that awards will be resumed where it is appropriate to do so without the need to re-claim.

Section 19: Pilot schemes

116. This section provides for pilot schemes to operate in relation to any regulations under Part 1 of the Act excluding certain sections identified below. A “pilot scheme” means a set of regulations made under *subsection (1)*.
117. Pilot schemes may only have effect for a specified period which must not exceed 24 months. *Subsection (7)* provides that one pilot scheme can be replaced by another pilot scheme which is the same or similar.
118. Pilot schemes can apply to any regulations under the Social Security Administration Act 1992 which relate to the employment and support allowance as well as to any regulations under Part 1 of this Act, apart from regulations under:
- Section 3 – deductions from contributory allowance;
 - Section 8 – limited capability for work; and
 - Section 9 – limited capability for work-related activity.
119. It is intended to roll out full conditionality linked to participation in work related activity as resources allow. It is envisaged that in time pilot schemes may operate to explore different variations of the conditionality regime in order to understand what works best to help employment and support allowance claimants to work.
120. *Subsection (3)* provides that pilot schemes may only be put in place for the purpose of ascertaining whether their provisions will facilitate or encourage claimants to obtain or remain in work. *Subsection (5)* provides that a pilot scheme may apply to different geographical areas, types of claimant or persons selected to meet certain criteria.

Section 20: Relationship with statutory payments

121. *Section 20* provides for the interaction of an employment and support allowance with statutory payments paid by employers, namely statutory sick pay, statutory maternity pay, statutory adoption pay and additional statutory paternity pay.
122. *Subsection (1)* provides that a person is not entitled to an employment and support allowance at the same time as statutory sick pay.
123. *Subsection (2)* provides that a contributory employment and support allowance is not payable at the same time as statutory maternity pay, except as regulations may provide.
124. *Subsection (4)* makes similar provision in the case of statutory adoption pay.
125. *Subsection (6)* makes similar provision in the case of additional statutory paternity pay.
126. *Subsections (3),(5) and (7)* contain regulation-making powers to provide for the circumstances in which statutory maternity pay, statutory adoption pay and additional statutory paternity pay respectively may be paid at the same time as a contributory employment and support allowance.

Section 21: Deemed entitlement for other purposes

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

Section 22: Supplementary Provisions

128. This section provides that the provisions set out in Schedule 2 have effect (discussed below).

Section 23: Recovery of sums in respect of maintenance

129. This provides the Secretary of State with powers, to make regulations so that payments can be recovered from people who should be paying maintenance to their spouse or civil partner but are not doing so, when the spouse or civil partner is receiving income-related employment and support allowance. These payments may be made to the Secretary of State. Similar provisions relate to income support (s106 of the Social Security Administration Act 1992) and income-based jobseeker's allowance (s23 of the Jobseekers Act 1995).
130. *Subsection (3)* states that the regulations under *subsection (1)* may make provision about matters relevant to the determining of an application for such an order, the enforcement of such orders, and the rights of the Secretary of State in respect of such orders.

General

Section 25: Regulations

131. This section makes additional provision about the regulation-making powers under this Part.
132. *Subsection (6)* provides that regulations under sections 11, 12, 13, 14 or 15 may make provision which applies only in relation to an area or areas specified in the regulations.

Section 26: Parliamentary control:

133. This section provides that certain regulations to be made under provisions in sections 2 (amount of contributory allowance) and 4 (amount of income-related allowance), the first regulations under section 13 (work-related activity) and regulations providing for a pilot scheme (section 19) must be subject to the affirmative resolution procedure in the Houses of Parliament. *Subsection (2)* provides that all other regulations under Part 1 are subject to the negative resolution procedure.

Section 27: Financial provisions relating to Part 1

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

Section 28: Consequential amendments relating to Part 1

135. This section provides for the consequential amendments set out in Schedule 3. *Subsection (2)* enables regulations to make provision consequential on this Part amending, repealing or revoking any provision of earlier legislation.

*These notes refer to the Welfare Reform Act 2007
(c.5) which received Royal Assent on 3rd May 2007*

Section 29: Transition relating to Part 1

136. This section provides that the provisions in Schedule 4 relating to transitional arrangements for those currently on incapacity benefit have effect (discussed below).