

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 4: Miscellaneous

Schedules

Schedule 5 – Minor and consequential amendments relating to Part 2

Billing authorities

339. The measure in *paragraphs 1, 8 and 11* is a minor technical amendment to primary legislation (Social Security Contributions and Benefits Act 1992, Social Security Administration Act 1992 and Local Government etc. (Scotland) Act 1994) in order to clarify and standardise references in this legislation to certain public authorities concerned with the administration of council tax benefit. It ensures that all references to relevant authorities administering council tax benefit in England and Wales are to "billing authorities" and those to relevant authorities in Scotland are to "local authorities in Scotland". *Paragraph 8* is retrospective and will be taken to have had effect from 1 April 1997, the date of coming into force of section 140A of the Social Security Administration Act 1992.

Administration of housing and council tax benefits

340. *Paragraphs 5 to 7 and 9* amend sections 139E, 139F, 139G and 140B (5A) of the Social Security Administration Act 1992, to take account of the more flexible powers of direction contained in section 39. The amendments enable the Secretary of State to require information he needs from a local authority to decide whether it had taken the action specified in the direction, in the same way as he can decide on whether specified standards have been obtained. The amendments also provide for the Secretary of State to take the same enforcement action when an authority fails to comply with a direction on actions, as he can when an authority fails to deliver on standards set down in a direction.

Services benefits

341. Local authorities who administer housing benefit and council tax benefit have discretionary powers to operate a local scheme to disregard up to the full amount, or any part of a war disablement pension and war widow's pension, which is not already subject to a statutory disregard of £10 a week. This power to disregard war disablement pensions and war widow's pensions will be provided by sections 134(8) (a) and 139(6) (a) of the Social Security Administration Act 1992. It is not subject to any limit on how much local authorities can spend.
342. The current legislation also provides at sections 134(8)(b) and 139(6)(b) of the Social Security Administration Act 1992 that the local authority may choose to disregard other income as part of their local scheme, but only where the source of that income has been prescribed by the Secretary of State. For example, this power is currently used

to disregard income of war widowers and certain war widows who are not covered by the definition of war widow's pension in the primary legislation. However, for these types of disregard the legislation provides a spending limit on the amount of prescribed income that local authorities are able to disregard.

343. *Paragraphs 3, 4, 10 and 14 of Schedule 5* relate to services benefits. *Paragraphs 3 and 4* will amend section 134(8)(a) and 139(6)(a) of the Social Security Administration Act 1992 to enable the Secretary of State to prescribe in secondary legislation which pensions are to be included within the definitions of "war disablement pension" and "war widow's pension". A "war widow's pension" is defined to include corresponding pensions payable to a widower or surviving civil partner. This ensures that war widowers and certain war widows whose entitlement for being included within a local authority discretionary scheme is currently provided through prescription by the Secretary of State is covered by the primary legislation and thereby avoids any potential indirect discrimination by these pensions being subject to a spending limit as is currently the case. The amendment also allows the Secretary of State the flexibility to add further pensions to the definitions of qualifying service pensions, without the need for further amendments to primary legislation.

Local housing allowance

344. *Paragraph 12* makes consequential changes to section 122(5) of the Housing Act 1996 as a result of the inclusion of provisions providing for referrals to rent officers and use of their determinations in the calculation of appropriate maximum housing benefit in the proposed new section 130A(3) and (4) in section 30.

Revisions of decisions and appeals

345. *Schedule 5, paragraph 13* amends Schedule 7 of the Child Support, Pensions and Social Security Act 2000.
346. The decision making process in respect of housing benefit and council tax benefit was amended in the Child Support, Pensions and Social Security Act 2000. This is set out in Schedule 7 and section 68 of the 2000 Act. An amendment is made because the relevant provision in Schedule 7 does not achieve the policy intention.
347. An overpayment comes into existence when a decision is either revised or superseded and the revised or superseded decision is less favourable. The benefit paid under the old decision, which is more than the entitlement under the new decision, is the overpayment and is recoverable. Such decisions should be capable of being revised and/or appealed. However, recent case law has precluded the former from being an option. This defeats the policy intention of changing, as quickly as possible, decisions which are wrong particularly if they are adverse to the claimant. As revision is not available, the claimant has no option but to make an appeal. The amendment rationalises the position.