

# WELFARE REFORM ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### PART 4: Miscellaneous

##### Schedules

##### *Schedule 1 – Employment and support allowance: additional conditions*

294. *Part 1* of this Schedule describes the conditions of entitlement to a contributory employment and support allowance relating to national insurance contributions. These are, in substance, the same as those that exist in relation to incapacity benefit now.
295. *Part 2* of this Schedule provides for certain additional conditions for entitlement to an income-related employment and support allowance. These are similar, though not identical, to the conditions of entitlement that currently apply to income support. For example, as well as there being no entitlement if income exceeds the applicable amount, *paragraph 6(1)(b) and (2)* of the Schedule provide that there is no entitlement to an income-related allowance if the claimant and their partner together have capital assets in excess of a limit set out in regulations, which is expected to be £16,000, i.e. the same as that which applies for the purposes of income support.
296. *Section 1(3)* provides that there is no entitlement to either a contributory allowance or an income-related allowance if the claimant is entitled to income support or any type of jobseeker's allowance. *Paragraphs 6(1)(c) and (d)* of this Schedule provide that there is no entitlement to an income-related employment and support allowance where the claimant is entitled to state pension credit or the claimant's partner is entitled to income support, state pension credit or an income-based jobseeker's allowance. This is to ensure that only one income-related benefit is paid to a household at any one time in order to prevent duplicate provision from public funds.
297. The Schedule further provides that there is no entitlement to an income-related employment and support allowance where a claimant or their partner is in paid (remunerative) work, as is the case with income support. Regulations will determine what amounts to remunerative work.
298. The Schedule also provides that there is no entitlement to an income-related allowance where a claimant is receiving education (*paragraph 6(1)(g)*). The Secretary of State may set out in regulations when a person is or is not to be treated as receiving education. The Secretary of State may also disapply this condition, so that, for example, certain disabled young people or disabled students may be entitled to an employment and support allowance (*paragraph 6(4)*).
299. *Paragraph 6(7)* provides a power for paragraph 6 of Schedule 1 to be modified where the claimant is a member of a polygamous marriage. This includes modifications in respect of how benefit, income and capital in respect of the second and any subsequent spouse will be aggregated for the purposes of determining entitlement to an employment and support allowance. It is intended that the modifications made in respect of an

employment and support allowance would be based on the income support rules relating to polygamous marriages.

### ***Schedule 2 – Employment and support allowance: supplementary provision***

300. This Schedule contains additional provisions in respect of the employment and support allowance. *Paragraph 1* confers powers to provide by regulations for claimants to be treated as having (or not having) limited capability for work, as well as to require capability for work to be determined afresh (or for the first time in the case of a person being treated as having limited capability for work, but who has never actually undergone an determination of capability for work). *Paragraph 9* makes equivalent provision for treating claimants as having (or not having) limited capability for work-related activity, as well as making equivalent provision for determining capability for work-related activity afresh (or for the first time for claimants being treated as having limited capability for work-related activity, but who have never actually undergone such a determination).
301. *Paragraph 2* provides that a person is not entitled to an employment and support allowance for a certain number of days at the beginning of a period of limited capability for work. It is intended that claimants will be required to wait for three days at the beginning of a period of limited capability for work, before becoming entitled to an employment and support allowance (as now under incapacity benefit). Paragraph 2 allows for exceptions whereby the waiting days do not need to be served, for example, where someone was previously entitled to another benefit, such as jobseeker's allowance, regulations may disapply the waiting days requirement to ensure that the claimant would not have a break in benefit entitlement.
302. *Paragraph 4* of this Schedule provides for periods of limited capability for work to be linked together and treated as one period of limited capability for work. Where periods are linked in this way then regulations can provide that a condition relating to an employment and support allowance that was satisfied in the earlier period of limited capability for work can be treated as satisfied in the later period of limited capability for work.
303. The Schedule also provides for regulations to prescribe circumstances where people are entitled to an employment and support allowance where they are not in Great Britain (for example, where they live abroad or are employed on a ship or oil rig) (*paragraphs 5 to 8*) and other additional matters.

### ***Schedule 3 – Consequential amendments relating to Part 1***

304. *Paragraph 1* amends the Social Work (Scotland) Act 1968 so that people in Scotland receiving income-related employment and support allowance will be exempted from liability to contribute towards the cost of their children being in care.
305. *Paragraph 2* amends the Education (Scotland) Act 1980 so that for the purposes of qualifying for free school meals families receiving income-related employment and support allowance in Scotland are treated the same as those receiving income support or income-based jobseeker's allowance.
306. *Paragraph 3* amends the Transport Act 1982 so that people receiving income-related employment and support allowance will be reimbursed the costs of obtaining a medical certificate for the exemption from having to wear a seat belt on medical grounds.
307. *Paragraph 4* amends the Legal Aid (Scotland) Act 1986 so that recipients of income-related employment and support allowance in Scotland will have the same entitlements to free legal advice and assistance as people receiving income support and income-based jobseeker's allowance.
308. *Paragraph 5* amends the Income and Corporation Taxes Act 1988 so that payments of sums in respect of maintenance made under section 23 will be treated the same way

for tax liability purposes as other payments made under corresponding provisions for income support and jobseeker's allowance.

309. *Paragraph 6* amends the Children Act 1989 so that in England and Wales people receiving income-related employment and support allowance will be exempted from liability to contribute towards the costs of maintaining their children in care, services and assistance provided to children in need and their families and other provision and support.
310. *Paragraph 7* amends the Child Support Act 1991 so that an income-related employment and support allowance will be treated the same way as income-based jobseeker's allowance and income support for the purposes of applications, reduced benefit decisions and fees under both the old child support scheme and the modified scheme introduced by the Child Support, Pensions and Social Security Act 2000 and calculation of child support maintenance in the old scheme.
311. *Paragraph 8* amends the Criminal Justice Act 1991 so that the Secretary of State will be able to make regulations enabling fines or compensation orders imposed on an offender entitled to an income-related employment and support allowance to be deducted from that benefit.
312. *Paragraph 9* amends the Social Security Contributions and Benefits Act 1992 so that earnings factors will be calculated the same way for an employment and support allowance as jobseeker's allowance for the purpose of satisfying the contributions conditions, and also so that an employment and support allowance recipient of either the support component or the work-related activity component will be entitled to a Christmas Bonus. The paragraph also makes a number of other consequential amendments to the Act.
313. *Paragraph 10* amends the Social Security Administration Act 1992 so that an employment and support allowance will be subject to the usual provisions that relate to other benefits in respect of claims and overpayments and makes other consequential changes. It also makes provision about the annual up-rating of the rates of an employment and support allowance.
314. *Paragraph 10(10)* inserts a reference to income-related employment and support allowance into section 105 of the Social Security Administration Act 1992 thus ensuring that the offence provided for in that section applies to those in receipt of income-related employment and support allowance. The offence provided for in section 105 currently applies to those in receipt of income support on the grounds of incapacity.
315. *Paragraph 10(23)* inserts a new section 159C into the Social Security Administration Act 1992 which makes provision, like that in relation to other benefits set out in sections 159, 159A and 159B of that Act, which sets out the circumstances, such as the annual up-rating of benefits, where the level of a person's employment and support allowance changes without a decision being made by the Secretary of State to supersede the decision on their award.
316. *Paragraph 10(24)* inserts a new section, section 160B, into the Social Security Administration Act 1992 to provide for implementation of increases in employment and support allowance due to attainment of particular ages, without a decision being made by the Secretary of State to supersede the decision on their award.
317. *Paragraph 11* amends the Local Government Finance Act 1992 so that in England and Wales and in Scotland arrears of unpaid council tax can be recovered by deductions from employment and support allowance.
318. *Paragraph 12* makes consequential amendments to the Jobseekers Act 1995. In particular it amends section 1 of the Act to provide that one of the conditions of entitlement to a jobseeker's allowance is that the claimant does not have limited capability for work instead of the current condition that the claimant "is capable of

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work". Further amendments make it clear that the question of whether a person has or does not have limited capability for work is to be determined in accordance with the provisions of Part 1 of this Act.

319. *Paragraph 13* amends the Pensions Act 1995 to include the Welfare Reform Act 2007 in the list of enactments to which the rules for determining pensionable age apply for the purposes of the definition in section 1(6).
320. *Paragraph 14* amends the Children (Scotland) Act 1995 so that in Scotland people receiving income-related employment and support allowance will be exempted from liability to repay financial assistance provided to children or their families.
321. *Paragraph 15* amends the Employment Tribunals Act 1996 so that income-related employment and support allowance can be recouped from certain awards made by employment tribunals.
322. *Paragraph 16* amends the Education Act 1996 so that in England and Wales people receiving income-related employment and support allowance will be entitled to free school meals, milk and the remission of other charges.
323. *Paragraph 17* makes consequential amendments to the Social Security Act 1998. In particular, the amendments apply the provisions relating to the making of benefit decisions by the Secretary of State, the supersession and revision of decisions, and the rights to independent appeal to an employment and support allowance.
324. *Paragraph 18* amends the Welfare Reform and Pensions Act 1999 so that the powers enabling the Secretary of State to share certain information with local authorities and others in connection with the administration of benefits will apply to information relating to an employment and support allowance.
325. *Paragraph 19* amends the Immigration and Asylum Act 1999 so that people could not receive income-related employment and support allowance whilst subject to immigration control.
326. *Paragraph 20* amends the Child Support, Pensions and Social Security Act 2000 so that the provisions relating to penalties for breaching a community order will apply to income-related employment and support allowance.
327. *Paragraph 21* amends the Local Government Act 2000 so that the provisions on data sharing where a grant for welfare services is or will be paid to the benefit recipient would apply to income-related employment and support allowance.
328. *Paragraph 22* amends the Adults with Incapacity (Scotland) Act 2000 so that in Scotland employment and support allowance will be exempted from the matters to be managed on behalf of a person incapable of managing their own affairs.
329. *Paragraph 23* amends the Social Security Fraud Act 2001. In particular, the amendments apply the provisions relating to the loss of benefit for the commission of offences and the provision of benefit for the families of those who have lost entitlement due to benefit offences to employment and support allowance.
330. *Paragraph 24* amends the Income Tax (Earnings and Pensions) Act 2003 so that a contributory employment and support allowance is treated the same way for tax purposes as incapacity benefit.

***Schedule 4 - Transition relating to Part 1***

331. This Schedule provides for transitional arrangements for those people who are on existing benefits. Existing benefits are incapacity benefit (which includes transitional awards of incapacity benefit), severe disablement allowance and income support (where appropriate).

332. *Paragraph 1* provides a general transitional power, allowing the Secretary of State to make such provision, by regulations, as he considers necessary or expedient in connection with the coming into force of Part 1 or the transition to employment and support allowance. The remaining paragraphs of this Schedule provide specific powers relating to the transition to the new allowance.
333. *Paragraphs 2 to 4* provide for regulations to specify when a claim can be treated as a claim for an existing benefit and when a claim can be treated as a claim for an employment and support allowance. Regulations may make provisions that a claim for an existing benefit made before the day that the provisions in respect of an employment and support allowance come into effect can be treated as a claim for an employment and support allowance.
334. Regulations may provide that, after the appointed day (i.e. the day on which the provisions about an employment and support allowance take effect), existing benefits cannot be claimed and an employment and support allowance is claimed instead. *Paragraph 3(c)* enables regulations to provide for a claim to an employment and support allowance to be treated as a claim for existing benefit. This power may be used, for example, when someone's benefit is backdated to a period before the appointed day.
335. *Paragraphs 5 and 6* relate to claims that are made by those who had previously been entitled to an existing benefit, who subsequently ceased to be entitled to that benefit, but who could have returned to benefit because they would have been covered by linking rules. It covers those cases where the claimant's original claim was for an existing benefit, but their subsequent claim is made after the provisions in relation to employment and support allowance have come into force. Regulations may provide that these cases may be awarded an employment and support allowance on terms which match wholly or partly the terms of the existing benefit.
336. *Paragraph 7* provides for regulations to make provision for the migration of existing claimants onto an employment and support allowance. Regulations could prescribe the timing, conditions, kind and amount of any such entitlement to an employment and support allowance in such cases. Regulations could also make provision for determining whether a claimant has limited capability for work-related activity (i.e. that they would be entitled to the support component of an employment and support allowance). *Paragraph 8* provides for regulations to make provisions for the conditions of continuing entitlement, or for reviewing or terminating such awards.
337. *Paragraph 9* provides for regulations to make provision for claimants entitled to a transitional allowance immediately before reaching pensionable age to be treated as having satisfied the conditions for entitlement to state pension in the Contributions and Benefits Act.
338. *Paragraph 10* provides for regulations which can modify the effect of section 150 of the Contributions and Benefits Act in relation to up-rating of incapacity benefit or severe disablement allowance in relation to tax years after the appointed day.

### ***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.

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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.

***Schedule 6 – Schedule to be inserted in the Pneumoconiosis etc. (Workers’ Compensation) Act 1979***

348. Please see the explanation under section 58 above.

***Schedule 7 – Minor and consequential amendments relating to Part 4***

349. **Schedule 7** makes provision for minor and consequential amendments to the Vaccine Damage Payments Act 1979, the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 and the Social Security Act 1998 which arise from the provisions of Part 4 of the Act.