

# 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.

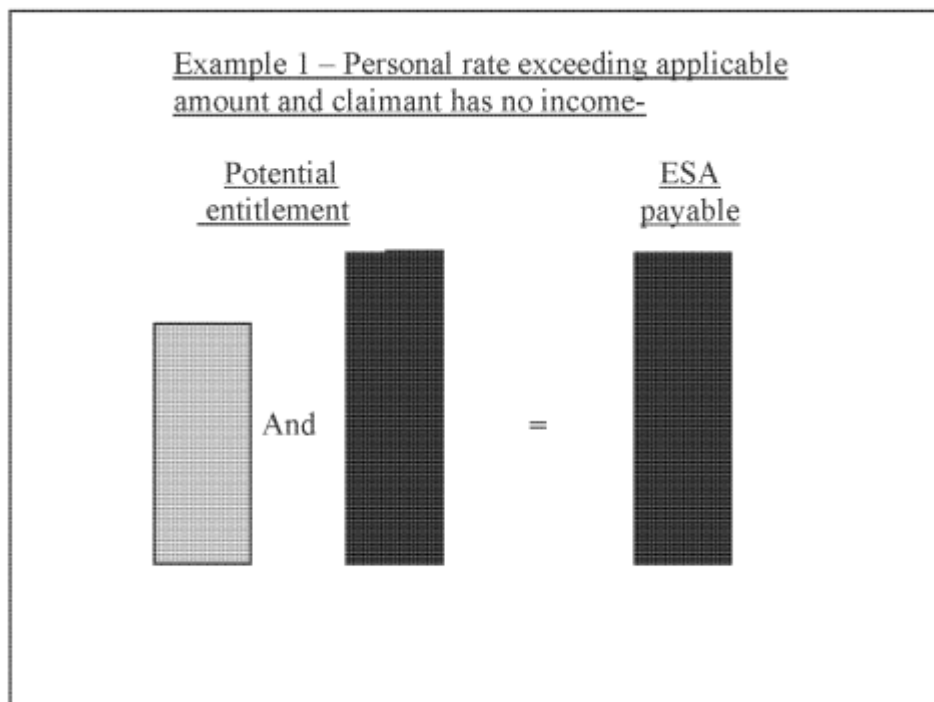
61. For both the contributory and income-related allowance, sections 2 and 4 provide for entitlement to the work-related activity and support components to be backdated if, where the regulations provide, the assessment phase is extended (section 24(2)). For example, it is intended that this should be 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 disapplied. 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.

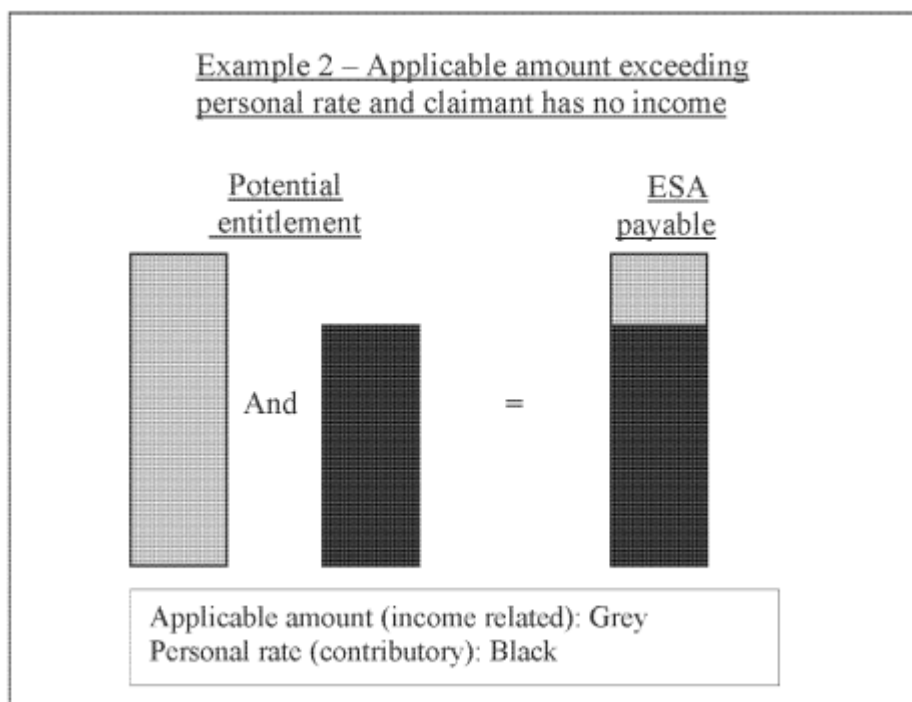
### ***Section 6: Amount payable where claimants entitled to both forms of allowance***

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.

**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).

**PART 2: Housing benefit and council tax benefit**

**Section 30: Local housing allowance**

137. The provisions in section 30 provide for powers that will facilitate the national roll out of a new way of calculating maximum housing benefit, known as the local housing allowance, across the private rented sector. A version of the local housing allowance scheme is currently operating for private sector tenants in 18 local authority areas.
138. The main secondary legislation dealing with housing benefit (referred to here as the housing benefit rules) is contained in the [Housing Benefit Regulations 2006 \(S.I. No. 213\)](#), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) [Regulations 2006 \(S.I. No. 214\)](#) the [Rent Officers \(Housing Benefit Functions\) Order 1997 \(S.I. No.1984\)](#) and the parallel [Rent Officers \(Housing Benefit Functions\) \(Scotland\) Order 1997 \(S.I. No.1995\)](#).
139. Under the current housing benefit rules for claimants in the private rented sector, the maximum amount of benefit that can be paid is the "Appropriate Maximum Housing Benefit", subject to reductions to take account of income. The Appropriate Maximum Housing Benefit is the weekly amount of rent eligible to be met by housing benefit, less deductions made in relation to non-dependants. The eligible rent is determined by establishing whether the rent charged is considered appropriate for the particular area, property and the claimant's particular needs. Local authorities are required to refer each individual case (with some exceptions) to the rent officer service<sup>1</sup>. Rent officers decide whether rents are appropriate for the particular area or property and the claimant's particular needs using a system of 'rent restrictions' set out in The Rent Officers Orders. Rent officers must also deduct any charges included within the rent that are ineligible for housing benefit purposes, such as for the costs of fuel bills or meals.
140. The local housing allowance replaces the existing rent restrictions by providing a new way to determine the maximum amount of housing benefit payable. Non-dependant deductions and reductions to take account of higher incomes will still apply. Any given claimant will be eligible, as a maximum, to the local housing allowance rate that applies according to the number and mix of occupiers, and the area in which the claimant lives. The detailed rules on how the local housing allowance is set are in secondary legislation, as is the case under the current housing benefit rules. There will still be a need for rent officers to collect market evidence and consider geographical areas. However, rather than determining referrals on individual cases, they will make 'generic' determinations establishing the local housing allowance rates for different sized properties within the geographic areas they have identified.
141. [Section 30](#) provides for powers that are more specifically appropriate for the local housing allowance approach to the determination of a claimant's maximum housing benefit. This will facilitate the roll out of the local housing allowance nationally across the private rented sector.
142. *Subsection (1)* of section 30 removes section 130(4) of the Social Security Contributions and Benefits Act 1992, which requires regulations to be made setting out how a claimant's Appropriate Maximum Housing Benefit should be determined in any case. This provision is replaced by the new 130A (2). *Subsection (2)* of section 30 introduces a new section, 130A, into the Social Security Contributions and Benefits Act 1992.

---

<sup>1</sup> Rent officer service is used here as shorthand for the role of rent officers. In England rent officers form an executive agency "The Rent Service" within the Department for Work and Pensions. In Scotland the Rent Registration Service is part of the Scottish Executive and in Wales the rent officers are located within the Housing Executive Directorate of the Welsh in the National Assembly Government.



143. The new section 130A (1) provides that a claimant's Appropriate Maximum Housing Benefit must be determined in accordance with this section.
144. *Subsections (2) and (3)* enable regulations to provide that claimants may have their Appropriate Maximum Housing Benefit calculated by reference to rent officer determinations. These could be property specific determinations, or the generic determinations required under the local housing allowance, which apply to properties of a certain size in a particular area.
145. *Subsection (4)* enables regulations to be made requiring local authorities to refer certain cases to rent officers for property specific determinations. This will be necessary for cases that are exempt from the local housing allowance.
146. *Subsection (5)* introduces an additional "treat as liable" power solely for the purpose of calculating the Appropriate Maximum Housing Benefit. This provides a more specifically appropriate power centred on the local housing allowance approach, providing for a claimant's housing benefit to exceed their rent liability if the appropriate local housing allowance is higher than their actual rent liability. Equivalent provision is made by *subsection (6)* for claimants who are 'treated' as having a rent liability under regulations made under section 137(2) (j) (e.g. because it is their partner who has the actual liability). This provides for their housing benefit to exceed their deemed liability, if the appropriate local housing allowance is higher than their deemed liability.
147. *Subsection (3)* of section 30 provides for a power to prescribe when local authorities must review a Housing Benefit award. Under the local housing allowance, this allows for the local authority to apply a new local housing allowance rate each year to ensure that a claimant's award is updated.

***Section 31: Loss of housing benefit following eviction for anti-social behaviour, etc***

148. *Subsection (1)* of section 31 will insert sections 130B to 130G in the Social Security Contributions and Benefits Act 1992. Section 130B will provide for the reduction, or non-payment, of housing benefit where certain conditions are met. The first condition is that a relevant order for possession of the claimant's (to be known as the "former occupier") home has been made by a court on grounds relating to anti-social or criminal behaviour. The relevant orders are set out in section 130C. The second condition is that he has ceased to live in that home as a result of that order.
149. The third condition will operate slightly differently depending on the territory concerned. In England and Wales, the third condition is that the claimant has failed to comply, without good cause, with a warning notice issued to him by a local authority with a view to improving his behaviour (section 130B(2)). In Scotland, the third condition is that the claimant has failed to comply with a requirement by a local authority to take specified action, without good cause, having been warned that such a failure would affect the amount of Housing Benefit payable to him (section 130B(3)) and the authority has recommended that the claimant's benefit be so affected. The final condition is that the claimant satisfies the conditions for entitlement to Housing Benefit.
150. It is intended that once a person has satisfied the first two conditions, the relevant local authority will make an attempt to engage with him, if it has not already, with the aim of ending, or preventing repetition of, his anti-social behaviour through the provision of rehabilitation. Where the person refuses to co-operate, the local authority will have the option of using this sanction to encourage him to co-operate with the rehabilitation.
151. Section 130B (4) will provide a power to prescribe the rate of benefit reduction and the circumstances in which it is payable. The intention is to reduce Housing Benefit by 10% for the first 4 weeks, followed by 20% for a further 4 weeks and then 100% for either a period of up to 5 years beginning with the date of the possession order (section 130B(8)) or until the local authority considers that the sanction should no longer apply (section 130B(6)). Examples of circumstances where the local authority

might consider the sanction is no longer appropriate are where the person has begun co-operating with rehabilitation, where rehabilitation services are no longer available or where the person has, or his family have, become particularly vulnerable. It is intended that a lower rate of reduction will apply to those considered to be in hardship. This could include households where someone is seriously ill or pregnant and households with children or which include those with caring responsibilities.

152. The sanction, having been brought to an end by a local authority can be restarted if the person fails to comply with a further warning notice or, in Scotland, fails to comply with a further requirement and the authority recommends it should apply. So, if the person stops co-operating with rehabilitation, a further warning can be issued or further action specified. If this is not complied with, without good cause, the sanction will start to run again (sections 130B(6) and (7)).
153. Only one sanction can be applied in relation to a relevant order for possession, albeit the sanction can stop and start up to the date 5 years after the original possession order was made (section 130B(9)).
154. Section 130B(10) will define a local authority for the purpose of this section by reference to existing legislation.
155. Section 130C will set out the relevant orders for possession. All the orders for possession specified in subsections (1) and (2) are made on grounds of behaviour causing a nuisance or annoyance to neighbours or criminal behaviour. It does not matter if the possession is made purely on those grounds or on those grounds coupled with other grounds (section 130C(3)).
156. The relevant orders for possession specified can be stayed, suspended, or (in Scotland) sisted, with conditions attached. Those conditions may relate to behaviour and the payment of rent and rent arrears. If a relevant possession order is made and stayed, suspended or sisted with behaviour conditions, the sanction can only be applied if the order takes effect as a result of the breach of those behaviour conditions (section 130C(4), (5) and (6)).
157. Section 130D(1) will provide a power to prescribe circumstances in which benefit not paid due to the application sanction can be paid to the claimant. An example of such circumstances will be where a claimant has made a successful application for the relevant order for possession to be set aside.
158. Section 130D(2) will provide a power to vary the definition of relevant orders for possession.
159. Section 130D(3) will provide a power to prescribe the matters which should be taken into account when deciding whether or not a person has good cause, and circumstances in which a person is, or is not, to be regarded as having good cause, for not complying with a warning notice or a requirement of a Scottish local authority.
160. Section 130E will make provision for cases where the claimant is a member of a couple. Subsection (2) would provide that where both members of a couple lived in a dwelling to which a relevant order for possession relates and leave the dwelling as a result, housing benefit could be subject to a future sanction should either member of that couple fail to comply with a warning notice or in Scotland take specified action. If only one member of the couple resided in a dwelling to which a relevant order for possession relates the sanction is not to apply (section 130E (3)).
161. Section 130F will make provision for the necessary information sharing. New information sharing powers are necessary to provide for relevant information regarding relevant orders for possession to be given to the Secretary of State by the courts or others who may be aware of such an order (in England and Wales); for the Secretary of State to provide relevant information relating to relevant orders for possession or housing benefit to local authorities providing services related to rehabilitation; for authorities

providing rehabilitation services to give relevant information to the Secretary of State for purposes relating to the administration of housing benefit; and for the sharing of relevant information within and between authorities administering housing benefit or providing rehabilitation services.

162. Section 130F(1) will allow the Secretary of State, through regulations, to require courts to notify him when a relevant order for possession is made and provide relevant details of it. Section 130F(1) will also enable the Secretary of State, through regulations, to require similar information to that required from a court from others who may be aware of the making of a relevant order for possession. Such people could include for instance the landlord or local authority. The intention is to place the obligation on the courts in the first instance. This subsection will not apply to Scotland.
163. Section 130F(2) will enable the Secretary of State to provide information obtained under section 130F(1) to a relevant local authority providing rehabilitation services, or to a person authorised by the authority to provide those services. It will also allow the Secretary of State to provide information he holds relating to housing benefit to those authorities or service providers.
164. Section 130F(3) will provide for the Secretary of State to require, through regulations, relevant information for purposes relating to the administration of housing benefit to be provided by a relevant authority providing rehabilitation services or a person authorised by the authority to provide those services to him. Information could include whether a person has satisfied some or all of the conditions of sections 130B (1), (2) and (3).
165. Section 130F(4) will allow the Secretary of State to require, through regulations, that relevant information may be shared within and between authorities administering housing benefit and those providing rehabilitation services for purposes relating to the administration of housing benefit.
166. Section 130F(5) will allow the Secretary of State to require, through regulations, that relevant information be shared within and between authorities administering housing benefit and those providing rehabilitation services for purposes relating to the provision of rehabilitation services. This subsection would not apply in Scotland, where existing legislation already allows such information sharing.
167. Section 130F(6) will define relevant information. The manner in which relevant information is to be supplied may be prescribed by the Secretary of State (section 130F (7)).
168. The intention is to pilot the use of a sanction in about 10 authorities in England for a period of 2 years. Section 130G will provide the necessary piloting powers. It will not apply to Scotland.
169. *Subsection (2)* of Section 31 will provide that any regulations made under subsection 130B(4), relating to the rate of the benefit reduction, and regulations made under subsection 130D(2), relating to varying what constitutes a relevant order for possession, must be approved by both Houses of Parliament.
170. *Subsection (3)* of section 31 will limit the duration of the powers in section 31. Subsection (3) will bring the provisions of section 31 to an end at 31 December 2010. Any regulations made under this provision will cease to have effect after this date, although it is possible for the regulations to cease to have effect before that date if they so provide. For example, it is intended that regulations made under the piloting power (section 130G) will cease to have effect before that date. Further primary legislation will need to be in place to allow the scheme (or any replacement scheme) to operate after 31 December 2010.
171. *Subsection (4)* will enable Secretary of State to make orders preventing anything which has been done under section 31 (other than piloting) from having effect after 31

December 2010. The piloting regulations will end any sanction in force at the end of the pilot period. It is unlikely that this power will be used but it is included as a safeguard.

***Section 32: Housing and Council Tax Benefit for persons taking up employment;  
Section 33: supplemental; and Section 34: interpretation***

172. The housing benefit and council tax benefit extended payment schemes provide access to a four week run-on of benefit in certain circumstances, after a qualifying person starts work or increases their hours / wages of current employment. There are two parallel schemes:

- (i) for people going off either income support or income-based jobseeker's allowance; and
- (ii) for people leaving either incapacity benefit or severe disablement allowance.

Generally the four week extended payment will be at the same rate of benefit as the person was receiving in the week before they took up work. This is intended to bridge the gap between leaving benefits and the first pay packet.

173. In order to be entitled to an extended payment a number of criteria need to be satisfied, which are set out in secondary legislation. For example:

- claimant or partner must have been entitled to and in receipt of the relevant qualifying benefit(s) for 26 weeks immediately before taking up work or increasing hours / wages of current employment; and
- claimant or partner must be entitled to housing benefit or council tax benefit in the week before employment commenced.

174. Under the current scheme, a claimant's housing benefit or council tax benefit award is ended when they move off the qualifying benefit and meet the other criteria to enable payment of the extended payment. A new claim must be made in order to obtain any in-work entitlement to housing benefit and council tax benefit.

175. These sections provide for a simpler method of making extended payments and remove the need for those who receive extended payments to submit a new claim for any in-work housing benefit or council tax benefit. If a person stays in their original local authority for the extended payment period, then the amount of the extended payment will be the higher of the out of work housing benefit or council tax benefit they were receiving or their in work entitlement to housing benefit or council tax benefit. The extended payment will be paid by the original authority, i.e. the authority that the person was living in just before they took up work. So the move to employment (and entitlement to an extended payment) will be treated like a change of circumstances in a continuing award.

176. If the person moves to a new authority in order to take up work, the amount of the extended payment will be the amount of their out of work housing benefit or council tax benefit entitlement and it will be paid as an extended payment by the original authority. They will not need to make a new claim to receive their out of work extended payment. However, if the claimant thinks that their in-work entitlement to housing benefit or council tax benefit exceeds their extended payment entitlement, they will need to claim in-work housing benefit or council tax benefit from the new authority. The new authority will pay as housing benefit or council tax benefit (not an extended payment) any amount by which the in-work housing benefit or council tax benefit exceeds the extended payment.

177. The current extended payment provisions are set out in regulations primarily made under powers in sections 130(2), 130(4) and 131(10) of the Social Security Contributions and Benefits Act 1992. The detailed rules are in: regulations 72, 73, 77, 78 and schedules 7 and 8 of the [Housing Benefit Regulations 2006 \(S.I. 2006/213\)](#);

regulations 52,53, 58 and Schedule 7 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) [Regulations 2006 \(S.I. 2006/214\)](#); regulations 60, 61, 65, 66 and Schedules 6 and 7 of [The Council Tax Benefit Regulations 2006 \(S.I. 2006/215\)](#); and regulations 44, 49 and Schedule 5 of the Council Tax Benefit (Persons who have attained the qualifying age of state pension credit) [Regulations 2006 \(S.I. 2006/216\)](#).

178. **Section 32** is designed to recast the underpinning powers for extended payments.
179. *Subsections (1) and (2)* provide for the basic underpinning entitlement conditions for extended payments of housing benefit or council tax benefit, namely that a person entitled to housing benefit or council tax benefit will be entitled to such a payment for a prescribed length of time when his own or his partner's entitlement to one of a number of prescribed benefits ends, in prescribed circumstances, and certain prescribed conditions are satisfied (e.g. he is liable to make payments for the dwelling he occupies as his home). The detailed rules are expected to remain the same or similar to the current scheme, and will remain in secondary legislation to provide the flexibility to keep these under review. The length of the extended payment period is likely to be four weeks as it is now.
180. *Subsections (3) and (8)* provide for the extended payment conditions of entitlement take precedence over normal entitlement rules, in calculating the amount of housing benefit or council tax benefit during the prescribed extended payment period.
181. *Subsection (4)* clarifies that where a person meets the qualifying conditions for an extended payment, there will be no need to make a separate claim for the extended payment. (There will still be a requirement for certain notifications to be made to the local authority).
182. *Subsections (5) and (6)* provide that, in contrast to the current scheme, the local authority that was administering housing benefit or council tax benefit immediately before the claimant or his partner took up work shall fund and administer the extended payment, even if the recipient moves out of that local authority's area. The effect of this will be to avoid the claimant needing to re-claim any balance of their extended payment after moving, although they will need to apply to the new local authority for any in-work housing benefit or council tax benefit in the usual way.
183. As now, the Department expects that the method of calculating the extended payment will be contained in regulations, which are provided for by *subsection (7)*. It is intended that the amount of the extended payment will be the higher of the out-of-work entitlement or the in-work entitlement. The effect of this is to ensure that the claimant is entitled to *at least* the amount of housing benefit or council tax benefit they were receiving before they started work or increased their income from work, during the extended payment period. However, in the small number of cases where a claimant moves local authority during the prescribed extended payment period the amount of the extended payment will be the out-of-work entitlement. If they suspect that they will be entitled to in-work benefit that is higher than this, they will need to make a new claim with the new authority in order to receive the additional amount. *Subsection (10)* provides for the extended payment to be offset against the in-work entitlement to achieve this.
184. *Subsection (9)* provides that regulations can prescribe how the entitlement under *subsection (2)* interacts with an entitlement of housing benefit or council tax benefit, whether the housing benefit or council tax benefit entitlement is claimed by the extended payment claimant or their partner. For example, regulations made under this provision could provide that the out-of-work award will continue during the extended payment period, although nothing would be paid on that award and what happens when the prescribed extended payment period finishes, i.e. how a claimant transfers back on to normal housing benefit or council tax benefit if they have in-work entitlement at that point. If the claimant is part of a couple, regulations can provide whether the



calculation of the extended payment will be based upon the claimants or the partner's housing benefit or council tax benefit entitlement and how a partner's housing benefit / council tax benefit entitlement will be treated when an extended payment is in payment.

185. *Subsection (11)* provides that in a case where a person moves during the prescribed extended payment period, the amount payable by the new local authority can be reduced to nil. This is intended to cover cases, for example, where the extended payment in payment from Authority A was greater than the entitlement established by the claimant in Authority B, for example because he has moved to a lower rent area, or now has non-dependants living with him.
186. Some flexibility is provided by *subsections (12) (a)-(c)*. *Subsection (12)(a)* provides that regulations may disapply *subsection (8)*. *Subsection (12)(c)* provides that regulations may provide for benefit not to be reduced as mentioned in *subsection (10)*. This flexibility may be needed if for example there are cases where the claimant has an unavoidable rental liability on two properties, either in the same or in different local authorities. *Subsection (12)(b)* is necessary to stop couples obtaining dual provision by changing which one of them is the housing benefit / council tax benefit claimant when they move from one authority to another.
187. *Subsection (13)* enables the Secretary of State to make special provision in regulations for a person who was not entitled to housing benefit or council tax benefit when they stopped being entitled to any of the qualifying benefits, but had been so entitled until a week before they took up employment. This may happen, for example, because a person moved out of their current home to start work in another local authority area (and as a result ceased to be entitled to housing benefit and/or council tax benefit) in the week they took up employment or in the preceding week. Without this provision the subsequent ending of the qualifying benefit for work-related reasons – one of the basic conditions of entitlement for an extended payment – would have no effect, as the housing benefit claim would have already been closed.
188. **Section 33** supports those arrangements by providing in *subsections (1), (2) and (3)* that the Secretary of State can prescribe in regulations any modifications to the housing benefit and council tax benefit provisions contained in the Social Security Administration Act 1992, or subordinate legislation made in pursuance of that Act, which he considers are required in relation to extended payments. In particular, modifications made under *subsection (1) (b)* allow in cases where someone moves local authority area during the prescribed extended payment period, and they normally have their benefit paid in the form of a rent or council tax rebate, that the former local authority can make payments directly to the new local authority. The intention is that the secondary legislation under these subsections will avoid disrupting the normal method of benefit payment, and where appropriate, will complement the payment provisions under the new local housing allowance arrangements.
189. *Subsections (4), (5), (6) and (7)* relate to the proposed regulation-making powers, and ensure consistency with existing regulation-making powers in relation to housing benefit and council tax benefit entitlement.
190. *Subsection (8)* provides that payments under Section 32 are classed as housing benefit and council tax benefit, for example for cross-references to these benefits in other legislation. For example, Schedule 7 of the Child Support, Pension and Social Security Act 2000, which provides the revisions and appeals mechanism for housing benefit and council tax benefit, will also apply to payments under section 32.
191. **Section 34** provides specific details on the interpretation of terms used in Sections 32 and 33, thereby clarifying specific terms and ensuring consistency with established legislation.

**Section 35: Information relating to housing benefit**

192. As part of their functions under section 122 of the Housing Act 1996, rent officers currently collect information about the private rented sector to enable them to make case specific housing benefit determinations and generic local housing allowance determinations. When making these determinations, rent officers are required to exclude housing benefit rents from their market evidence database to ensure that rents for housing benefit properties do not drive the levels at which individual or generic determinations are made, and thus drive housing benefit expenditure.
193. Under existing powers, regulations may only require local authorities to provide the information required for rent officers to consider a particular claim. The Act broadens this power by allowing the Secretary of State to prescribe that local authorities must provide such information as is necessary or expedient to enable rent officers to carry out their housing benefit functions. Local authorities will be required, for example, to provide information about local housing allowance cases, as well as the individual cases they still have to refer to the rent officer. This will ensure that rent officers can identify housing benefit properties that are not referred to them when the local housing allowance applies.
194. **Section 35** provides for new subsections (2A)-(2C) to be inserted into section 5 of the Social Security Administration Act, which concerns the administration of claims and payments for housing benefit and certain other benefits. The new powers enable the Secretary of State to require prescribed persons to provide certain information to rent officers that is not linked to the determination of a particular claim, but relates more generally to information that rent officers require in order to carry out their housing benefit functions. It also enables him to require prescribed persons to provide information about awards of benefit, as well as claims for benefit.
195. One example of how the new powers in (2A)-(2C) will be used concerns information about properties rented by housing benefit claimants. It is important to ensure that rent officers receive information about local housing allowance cases so that they can exclude rents in relation to those properties when making determinations.
196. **Subsection (3)** of this section removes subsection (3) from section 5 of the Social Security Administration Act. This subsection provides for the general power in section 5(1)(h) for requiring prescribed persons to provide information and evidence for determining claims to apply to information required by a rent officer. This is no longer necessary as the provision of information and evidence to rent officers is covered by the new subsections (2A)-(2C).

**Section 36: Supply of information by rent officers**

197. This section establishes a clear gateway for the transfer of information from rent officers to the Department for Work and Pensions by inserting a new section 122F into the Social Security Administration Act. **Subsection (1)** of the new section 122F enables the Secretary of State to require rent officers to provide housing benefit information to him or someone providing services to him. **Subsection (2)** enables him to make directions which may impose requirements about the supply of such information and the form and manner in which it is to be provided.
198. This information will be used for social security purposes, along with the other purposes listed in 122F(1)(b)-(e). For example:
- To monitor determinations made for the housing benefit cases that are referred to rent officers;
  - Carry out policy analysis - for example on the impact of any future changes to the way the local housing allowance is set; and
  - Use the information for benefit expenditure forecasts.

199. *Subsection (3)* ensures that the information sharing provision meets the information sharing principles of the Commissioners for Her Majesty's Revenue and Customs. This will be necessary once the Secretary of State's responsibilities for the appointment, remuneration and administration of rent officers transfer to the Commissioners for Her Majesty's Revenue and Customs on 1<sup>st</sup> of April 2009 and the work of The Rent Service in England is integrated into the Valuation Office Agency (an agency of Her Majesty's Revenue and Customs).

***Section 37: Payment of housing benefit***

200. Currently under section 134 of the Social Security Administration Act 1992, and the housing benefit rules, housing benefit in the social sector must take the form of a rent rebate where the local authority administering housing benefit is the landlord. In other cases, it must take the form of a rent allowance. Both rent rebates and rent allowances can be paid by way of rebate to or by payment to the claimant (which includes someone on his behalf), or by a combination of rebate and payment to the claimant. Where the authority is the landlord it has an effective choice as to the manner of payment. Where the authority is not the landlord it cannot rebate the claimant's rent account and has to pay the claimant or someone on his behalf (such as a landlord, or a third party). Regulations set out the circumstances in which payment must or may be made to someone other than the claimant.
201. *Section 37* amends section 134 of the Social Security Administration Act. Section 37 replaces section 134(2) of the Social Security Administration Act with new subsections (2), (2A) and (2B). These allow for regulations to be made specifying the manner in which payment must be made. This would, for example, enable secondary legislation to prescribe when payment is to be made directly to the claimant, or to someone on their behalf or in respect of the liability the claimant has; or by rebating the claimant's rent account; or by a combination of these methods. This would ensure that the Secretary of State could ensure that payments were made to claimants, even where the local authority was the landlord.

***Section 38: Duty to send inspection reports to the Secretary of State and; Section 39: Directions by Secretary of State***

202. Under the arrangements set out in the Social Security Administration Act 1992, the Secretary of State may authorise persons to report to him on local authorities' administration of housing benefit and council tax benefit, and, in particular, their performance in the prevention and detection of fraud. The Benefit Fraud Inspectorate is the only 'person' so authorised. On receipt of a report from the Benefit Fraud Inspectorate, the Secretary of State must send a copy of the report to the local authority and may invite it to consider the report and submit its proposals for improving performance and remedying identified failings. After considering the report and any response from the local authority, the Secretary of State may give directions to the authority. Directions may also be given on the basis of certain other reports commissioned, or received, by the Secretary of State - for example in England and Wales, public interest reports sent to him by the relevant audit body.
203. *Sections 38 & 39* provide for greater flexibility for the Secretary of State in respect of the range of reports that can be used to trigger a direction, to include public interest reports and Best Value audit reports from the Controller of Audit in Scotland and Best Value reports from the Auditor General for Wales.
204. *Section 39* also allows directions to be given on a wider range of matters. An example of this might be to require the local authority to draw up benefits-related policy documents or to review existing benefits administration procedures. Additionally, they allow the Secretary of State, when reaching a decision to give directions, to take into account information in addition to that contained in the report he has received and the authority's response - for example trends in performance.

205. In addition, section 39 enables the Secretary of State to require a local authority to consider a report and submit to him its proposals for improving performance and remedying identified failings. It also provides for him to vary or revoke any direction made, for example he would be able to vary a direction where a material change of circumstances had affected the local authority's ability to meet it.
206. *Subsections (1) and (2)* of section 38 amend the Local Government Act 1999, to enable the Auditor General for Wales to send copies of Best Value reports that relate to any extent to the administration of housing benefit or council tax benefit to the Secretary of State.
207. *Section 39* amends section 139D of the Social Security Administration Act 1992, which provides for the Secretary of State to act on certain reports he receives on housing benefit and council tax benefit administration. Following consideration of a report and any response from the local authority, the Secretary of State may direct the authority to attain specified standards in its administration of housing benefits, within specified timescales.
208. *Subsection (2)* provides for the Secretary of State to use his powers of direction in respect of (i) public interest reports and (ii) Best Value reports referred to him by the Controller of Audit in Scotland. This restores the legislative position in relation to public interest reports that was inadvertently broken with the introduction of the Local Government in Scotland Act 2003.
209. Similarly *subsection (3)* adds Best Value reports, referred by the Auditor General for Wales, to the list of reports on which the Secretary of State can issue directions.
210. Following the Secretary of State's receipt of a relevant report *Subsection (4)* allows the Secretary of State to require the authority to submit its proposals for improvement. *Subsection (5)* further enables the Secretary of State to specify the information (and the format and timescales for the information) he requires from the local authority, to fully inform a decision on possible directions. This does not prevent the authority submitting other information it thinks relevant to the Secretary of State's considerations. To ensure that sufficient time is given to the authority to consider its response, the Secretary of State is required to give the authority not less than one month to respond and can extend this, for example where there were reasonable grounds for doing so following a request from the local authority.
211. *Subsection (6)* allows the Secretary of State to also take into account any other relevant information he thinks appropriate. This might include, for example, past statistical trends, or evidence of the authority's commitment to, and success in, the delivery of improvement.
212. The section also provides the Secretary of State with the power to direct a local authority to take any action he thinks necessary or expedient to improve its performance and the timescales within which it must do so. The powers, which allow the Secretary of State to specify the standards he expects an authority to attain and the timescales within which he expects them to attain them, remain by virtue of *subsection (3A)*. Where there are serious concerns in respect of a benefits administration matter, but a standard cannot be specified, the provision in *subsection (3B)* enables the Secretary of State to give a direction on that matter. The power allows him, for example, to require the authority to draw up a counter fraud strategy policy for benefits where none existed, or to review and make detailed proposals for improving a particular operational process about which there were serious concerns.
213. *Subsection (7)* takes into account the change in subsection (6) and provides for the Secretary of State to continue to make recommendations to an authority about the actions it might take to attain the standards set out in a direction.
214. *Subsection (8)* places a requirement on the Secretary of State, before giving a direction, to give the local authority an opportunity to make representations about the directions to

him. However, *subsection (8)* permits the Secretary of State to issue directions *without* consulting the authority about their content if he considered it a matter of urgency. In such an urgent case, the Secretary of State must inform the authority in writing of his reasons for not inviting representations from it before giving the directions.

215. *Subsection (9)* inserts a new section, 139DA, into the Social Security Administration Act 1992, enabling the Secretary of State to vary or revoke a direction when he thinks it necessary to do so. He can do so where he had received representations from the relevant local authority; to rectify an omission or error; or where there had been a material change of circumstances. For example, he might vary or end a direction where a change in legislation means that the direction was no longer relevant or needed to be changed in a material aspect. This subsection also requires the Secretary of State to write to the authority giving his reasons for making the variation and offer it the opportunity to make representations about the proposed variation.

### **PART 3: Social Security Administration: General**

#### **Sharing and use of social security information**

##### ***Section 41: Social Security Information***

216. This section amends the Social Security Administration Act 1992 by (a) inserting a new section 7B to provide for the use by a “relevant authority” of social security information in connection with the administration and promotion of claims for benefit and (b) amending section 7A of that Act which deals with the receipt by relevant authorities of claims for benefit and the collection and verification of evidence relating to claims. Also, the definition of “relevant authority” is extended to include county councils in England. These measures support joint working arrangements and are intended to improve the take-up and delivery of benefits and other services administered by the Department for Work and Pensions, local authorities and English county councils (“relevant authorities”).
217. Currently section 7A of the Social Security Administration Act 1992 allows regulations to be made which enable the Department for Work and Pensions and local authorities administering housing benefit and council tax benefit to perform certain functions on behalf of one another. The section enables claims for prescribed benefits administered by the Department for Work and Pensions to be made to a local authority, and claims for housing benefit and council tax benefit to be made to the Department for Work and Pensions. It also allows the Department for Work and Pensions and local authorities to collect and forward information and evidence for each other's respective benefits as prescribed. However, the current provisions exclude English county councils because they only apply to local authorities who administer housing benefit and council tax benefit. They also make no specific provision for local authorities to use social security information they hold to promote the take up of benefits other than housing benefit and council tax benefit. And, current powers do not expressly permit relevant authorities to verify claims-related evidence and information on behalf of other relevant authorities.
218. ***Section 41*** extends these provisions by:
- including the English County Councils as relevant authorities able to receive prescribed benefit claims and related information and evidence, including housing benefit and council tax benefit claims, on behalf of the Department for Work and Pensions and on behalf of housing benefit and council tax benefit administering authorities;
  - enabling local authorities (and English county councils that do not administer housing benefit and council tax benefit) to use social security information that they hold to encourage people to claim benefits administered by the Department, as well as housing benefit and council tax benefit;



- ensuring that information and evidence provided by a customer to a relevant authority can be verified, forwarded to and used by the administering authority in connection with a claim for or an award of a benefit, without the need for further verification; and
  - ensuring that information and evidence that has been used by one relevant authority in connection with a claim for or award of a benefit can be used by a different relevant authority in connection with a claim for or an award of a benefit that it administers, without the need for further verification.
219. There are specific provisions within the Social Security Contributions and Benefits Act 1992 which impose a duty on local authorities administering housing benefit and council tax benefit (local authorities) to promote the take up of benefits for which they are responsible. However, there is no specific provision enabling a local authority or, following the amendment to section 7A, an English county council to promote the take up of benefits administered by the Secretary of State. This section, through the inclusion of a new section 7B to the Social Security Administration Act, enables local authorities and English county councils to promote the take up of benefits administered by the Secretary of State. As an example, the section would enable a local authority to use information obtained on a claim for housing benefit or council tax benefit to pre-populate a claim form for pension credit (which is administered by the Secretary of State). This partly completed form could then be submitted to the claimant to encourage them to apply for pension credit.
220. *Subsection (2)(a) and (c)* of section 41 provides for English County Councils to perform, through regulations, benefit claims functions on behalf of other relevant authorities. *Subsection (2)(b)* of section 41 inserts a provision into section 7A of the Social Security Administration Act that enables, through the making of regulations, a relevant authority to verify information or evidence that it receives in connection with a claim or an award of a specified benefit, in cases where that benefit is administered by a different relevant authority. Subsection (3) ensures that, the provision making it a criminal offence to unlawfully disclose social security information acquired in the course of employment, that applies to public sector staff involved in social security administration, also applies to English county council staff.
221. *Subsection (1)* of section 41 provides for a new section 7B in the Social Security Administration Act. *Subsection (1)* of section 7B enables a relevant authority to use for a relevant purpose, any social security information which they hold. *Subsection (3)* clarifies that a relevant purpose is activity intended to encourage a claim which is made or could be made for a specified benefit. This power broadens the boundaries governing local authorities' use of the information that they hold. The Secretary of State has existing powers under section 3 of the Social Security Act 1998 to use information that he holds for one of his functions for another of his functions.
222. *Subsection (2)* of section 7B is a regulation-making power to specify the procedure to be followed by a relevant authority where it receives information and evidence that has already been used or verified and forwarded by another relevant authority. The purpose of this provision is to reduce claims processing times and the incidences of duplicate requests for information from customers. Regulations under section 7B would ensure that information and evidence that has already been used by the Department for Work and Pensions, for example, must, subject to certain safeguards, be accepted as correct by the receiving authority for purposes connected with another benefit claim. Without this provision, receiving authorities could opt to continue as before by requesting and verifying the evidence from scratch, thereby duplicating information requests to customers.
223. Section 7B defines the term "social security information" as covering information relating to social security (including child support and war pensions data), and also evidence obtained in connection with any claims or awards relating to these areas. To

provide maximum flexibility in developing these provisions section 7B also clarifies that a "specified benefit" (in respect of which this section applies) is to be prescribed in regulations.

***Section 42: Information relating to certain benefits***

224. Since April 2003, support services, which assist vulnerable persons to live independently, have been provided for or on behalf of local authorities under the Supporting People programme. Those in receipt of certain income-related benefits automatically qualify under the Supporting People means-test to receive assistance with charges for these services. The Act will enable the Department for Work and Pensions and local authorities to confirm to the Supporting People team of a local authority whether a person is in receipt of one of these benefits, without that Supporting People team having first to obtain that person's consent. It will also enable Supporting People teams to provide certain information to local authorities to assist with the administration of housing benefit, for example to help identify where it would be appropriate to make payments of housing benefit to the landlord rather than to a claimant. These information exchanges will only be permissible for limited purposes. If a person is a certain person within a Supporting People team or a Supporting People service provider, he will commit a criminal offence if he discloses, without lawful authority, information supplied to him by virtue of one of these powers.
225. Supporting People teams for local authorities in England and Wales administer grants from the Department for Communities and Local Government and the National Assembly for Wales to provide welfare services. These services provide support to assist vulnerable groups in society, including the elderly, people suffering from substance abuse and people with mental health or learning difficulties, to live in the community. Section 93 of the Local Government Act 2000 provides a power by which these grants can be paid. An equivalent to this grant-making provision exists in Scotland but is contained within Scottish legislation.
226. Section 94(1) to (3) of the Local Government Act 2000 allowed information relating to certain income-related benefits - housing benefit, income support, income-based jobseeker's allowance and state pension credit, administered by the Department for Work and Pensions or local authorities - to be supplied to Supporting People teams for purposes connected with applying a grant made under section 93 towards welfare services. Section 95 of the Local Government Act 2000 created an offence concerning disclosure, without lawful authority, of information which was supplied by virtue of section 94.
227. Section 94 of the Local Government Act 2000 enabled the supply of information by the benefit teams of the Secretary of State or the local authorities to Supporting People teams. It gave no power for information to be supplied by the Supporting People teams to the benefit teams. *Subsection (1)* enables a two-way supply of information between benefit teams and Supporting People teams. Specifically, the subsection enables Supporting People teams to contact benefit teams when they receive an application for support services. In common with what previously occurred, this subsection enables the benefit team to confirm whether a certain income-related benefit (including the new income-related employment and support allowance) is in payment. This information will be used by the Supporting People team to determine whether the claimant meets the means test in determining the amount of assistance with service charges for the support services. Similarly, the subsection will enable benefit teams to inform Supporting People teams when payment of a certain income-related benefit – and hence automatic entitlement to full support – ceased.
228. It is intended that grants to support these welfare services would in future be made under powers in addition to section 93 of the Local Government Act 2000. To support this shift in funding arrangements, subsection (1) of this section creates a freestanding

provision that enables supply of information concerning grants paid under enactments which will be specified by order as per *subsection (7)*.

229. *Subsection (2)* of this section also enables certain information held for prescribed purposes by Supporting People teams or by housing benefit teams to be supplied to the other teams for use for prescribed purposes. The prescribed purposes are limited either to a purpose relating to housing benefit or to a purpose relating to welfare services (*subsection (8)*). This provision will be used, for example, to enable housing benefit teams to consider information relating to the vulnerability of a claimant or the probity of a landlord when considering whether to pay housing benefit to the claimant or to the landlord. For example, in considering whether a payment of housing benefit should be made to the claimant or to the landlord it would contribute to the decision-making process in housing benefit teams for them to know whether the claimant is receiving Supporting People assistance because of a disability and, if so, whether that disability may indicate a level of vulnerability.
230. Certain information supplied to Supporting People teams could be passed to the welfare service providers when required under *subsection (5)*. This mirrors the provision in Section 94(4) of the Local Government Act 2000.
231. The information sharing powers provided for within this section and the offence of unlawful disclosure in section 43 replace those contained in sections 94 and 95 of the Local Government Act 2000, which are omitted.

#### ***Section 43: Unlawful disclosure of certain information***

232. Section 95 of the Local Government Act 2000 made it an offence for a person to disclose without lawful authority information supplied by virtue of section 94 of the Local Government Act 2000. Section 43 creates a similar unlawful disclosure provision in relation to information received by virtue of section 42.
233. *Subsection (2)* sets out to whom this section applies. It covers specified positions within Supporting People teams and those providing welfare services. Relevant persons in the Department for Work and Pensions or local authority benefit teams are not covered by this new section as there is an existing unlawful disclosure provision which applies to them, section 123 of the Social Security Administration Act 1992.
234. This section complements section 123 of the Social Security Administration Act 1992 and *subsections (3) to (6)* of this section follow the wording of that section.

### **Overpayment recovery**

#### ***Section 44: Recovery of overpaid benefit: Great Britain***

235. This section amends section 71 of the Social Security Administration Act 1992 in relation to the recovery of overpayments of benefits.
236. *Subsection (2)* provides for the removal of section 71(5), which, according to a Social Security Commissioner's decision, has the effect that benefit overpayments caused by errors made in the direct credit transfer system (which are recoverable in accordance with regulations under section 71(4)) can be recovered only where a decision to revise the award and a decision that the payment is recoverable were made at the same time.
237. Section 71(5A) provides that, where overpayments of benefits have arisen because a person has misrepresented facts, such overpayments are not recoverable unless there has been a decision to revise the award, e.g. on appeal. *Subsection (3)* amends section 71(5A) by widening its scope to include overpayments recoverable under section 71(4) so that the necessary decisions can be made separately.

***Section 45: Recovery of overpaid child benefit and guardian's allowance: Northern Ireland***

238. This section provides for the same changes as section 44 in respect of child benefit and guardian's allowance in Northern Ireland. Child benefit and guardian's allowance are not devolved in Northern Ireland. Her Majesty's Commissioners for Revenue and Customs administer these two benefits throughout the United Kingdom.

**Benefit fraud**

***Sections 46 and 47: local authority powers to investigate and prosecute benefit fraud***

239. Section 110A of the Social Security Administration Act 1992 allows local authorities to investigate fraud against local benefits (i.e. housing benefit and council tax benefit). However, significant doubt has arisen as to whether this allows them to investigate fraud in connection with national benefits administered by the Department for Work and Pensions. In particular, the doubt exists where entitlement to a national benefit means that a claimant automatically satisfies some eligibility conditions to a local one. This reduces the scope for effective joint working between local authorities and the Department for Work and Pensions to investigate and prosecute fraud cases that involve more than one benefit. The Government estimates that around 50% of fraud against a local benefit also involves fraud against a national benefit.
240. On 10th March 2005, the Government published a consultation paper<sup>2</sup> setting out proposals to remove the doubt by using powers in the Regulatory Reform Act 2001. Forty eight responses were received, the overwhelming majority of which were in favour of the proposals. However it became clear that the use of a Regulatory Reform Order would not be able to deliver an effective set of powers for local authorities. Therefore the Government announced to Parliament in a written Ministerial statement on 18th July that it had decided not to proceed with the Regulatory Reform Order, and instead to seek to address the issue in this Act.
241. Most cases of national benefit fraud will continue to be investigated by the Department for Work and Pensions. However, the Act provides local authorities with clear powers to investigate and prosecute offences in relation to national benefits where they already have power to investigate and prosecute offences concerning local benefits.
242. While it is proposed that Scottish local authorities be allowed to *investigate* offences against national benefits, the power to *prosecute* would not apply in Scotland, where the Procurator Fiscal is responsible for the prosecution of all criminal offences.
243. *Section 46* sets out the scope of the new provisions which give local authorities administering housing benefit or council tax benefit a wider power to investigate benefit fraud. The measures in this section permit them to investigate offences concerning social security benefits administered by the Department for Work and Pensions.
244. *Section 46* extends the powers of local authority authorised officers to permit them to obtain information from persons such as employers, pension providers, financial service companies, utilities and educational organisations for "relevant purposes" that relate to:
- the entitlement to social security benefits;
  - whether benefit legislation has been contravened; and
  - the prevention or detection of benefit offences.
245. This brings the investigative powers of local authorities generally into line with those available to the Department for Work and Pensions and allows them to obtain

---

<sup>2</sup> Local Authority Investigative Powers Regulatory Reform Order: A consultation document on proposed changes to the powers of local authorities to investigate and prosecute benefit fraud, Department for Work and Pensions, March 2005.

information relating to national social security benefits in addition to housing benefit and council tax benefit. However, local authorities will not be able to obtain information about the circumstances of accidents or injuries giving rise to claims for benefit, because such a power would be unnecessary for the investigation of benefit fraud. The measures will not add to the list of persons who may be required to provide information.

246. *Subsection (3)* gives the Secretary of State power to prescribe in regulations that certain conditions must be satisfied in order for an authority to make use of these powers. These "prescribed conditions" enable him to limit the powers in a way that ensures that only certain benefit offences may be investigated and to provide safeguards against misuse. Subsection (3) also gives the Secretary of State power to impose prescribed restrictions on the authorisation or to prescribe conditions in which an authorisation is invalid, again providing safeguards against misuse.
247. **Section 47** creates a new power for local authorities administering housing benefit or council tax benefit to prosecute offences concerning "relevant social security benefits" as defined in section 121DA of the Social Security Administration Act 1992. It will do so by the insertion of a new section 116A into that Act.
248. *Subsection (3)* of new section 116A gives the Secretary of State power to prescribe in regulations that certain conditions must be satisfied before an authority can prosecute offences against national benefits. These conditions allow safeguards to be put in place to ensure that the authority's powers are not misused. The Secretary of State can also issue a direction preventing authorities from bringing prosecutions in certain types of cases, or directing a particular authority not to bring prosecutions (or a prosecution in a particular case) for example, where he considers that the authority has misused, or are likely to misuse, those powers. In situations where the local authority ceased to satisfy the prescribed conditions, or where he has issued a direction, the Secretary of State will have a power (see subsection (4)) to continue with the prosecution himself rather than see the charges dropped. Subsection (5) provides that, in exercising its prosecution powers under the new section 116A(2), a local authority must have regard to the Code for Crown Prosecutors.
249. *Subsection (7)* of new section 116A clarifies that the powers would apply in England and Wales only, because the Procurator Fiscal is responsible for the prosecution of all criminal activity in Scotland.

#### **Section 48: Local authority functions relating to benefit: information**

250. This section provides for a number of changes to the information sharing provisions contained in the Social Security Administration Act 1992 by giving local authorities access to information relating to national benefit offences as well as allowing the Secretary of State to obtain information from them relating to those offences. These changes are of a consequential nature, in that they are necessary to allow the new investigation and prosecution powers to function effectively.
251. Currently, section 122C of the Social Security Administration Act 1992 permits the Secretary of State to disclose information to local authorities for purposes relating to the administration of, and offences against, housing benefit and council tax benefit. Restricted in such a way, local authorities will not have access to information and evidence held by the Department for Work and Pensions relating to national benefit offences. *Subsection (1)* amends section 122C so as to allow the Secretary of State to disclose to local authorities information relating to national benefit fraud investigations and prosecutions. This extension applies to the investigation and prosecution of benefit offences only, and does not extend his power to supply information to local authorities for administrative purposes more generally. This information may include details about the award and payment of benefits as well as copies of claim forms and other signed declarations.



252. Section 122D of the Social Security Administration Act 1992 allows the Secretary of State to require an authority to provide him with certain information relating to social security or benefit policy. As a result of the measures in the Act, authorities will be able to obtain information relating to national benefit fraud investigations that would be relevant to the Secretary of State in preparing future policy and expenditure estimates for national benefits, but which the Secretary of State could not currently obtain. *Subsection (2)* amends section 122D so as to permit the Secretary of State to require a local authority to provide him with information it had obtained during the investigation or prosecution of a national benefit offence.
253. Section 122E of the Social Security Administration Act 1992 currently contains a power allowing local authorities to share information amongst them, so long as it is information relating to housing benefit and council tax benefit. Unless this restriction is removed, local authorities will not be able to share information relating to national benefit offences in the same way that they are permitted to share information relating to local benefit offences creating a number of anomalies for the way that local authorities investigate fraud. For example, local authorities could continue to conduct joint investigations into housing benefit fraud but could not work jointly to investigate national benefit offences because they would be prevented from sharing information relating to those offences. *Subsection (3)* amends section 122E so as to remove this restriction by extending the powers of local authorities to share information with other local authorities for purposes relating to benefit offences more generally. However, they will not be permitted to share such information for general administrative purposes. *Subsection (4)* makes a consequential amendment to section 126A(8) of the 1992 Act (power to require information from landlords and agents) so that it reflects the provisions of sections 122D and 122E as revised by subsections (2) and (3).

#### ***Section 49: Loss of benefit for commission of benefit offences***

254. *Subsection (1)* would amend section 7 of the Social Security Fraud Act 2001, which enables benefit entitlement to be removed or reduced where a person is convicted of benefit fraud twice and the second offence was committed within three years of the date of conviction for the first offence. This amendment will extend the period between the date of conviction in the earlier proceedings and the date of commission of the offence in the later proceedings from three to five years. This will have the effect that a person's benefit may be withdrawn or reduced if they commit a benefit offence, of which they are later convicted, within five years of a conviction for a previous benefit offence.
255. *Subsection (2)* provides that this amendment should be disregarded when considering whether an offence committed before the date that this section comes into force was committed within the relevant period. Where an offence was committed before the date this section comes into force, the relevant period will remain three years.

### **PART 4: Miscellaneous**

#### **Benefits for bereaved persons**

##### ***Section 50: Widowed mother's allowance***

256. Broadly, in order to be entitled to widowed mother's allowance, a widow must be entitled to child benefit in respect of a child.<sup>3</sup> A widow is entitled to child benefit in respect of a child if:
- the child is living with her, or

---

<sup>3</sup> Section 37(1)(a) of the Social Security Contributions and Benefits Act 1992. A widow may also be entitled to widowed mother's allowance where she is pregnant.

- the child is not living with her but she makes contributions to the cost of providing for the child at a rate which is not less than the rate of child benefit payable in respect of the child.<sup>4</sup>

257. At present, section 37 of the Social Security Contributions and Benefits Act 1992 provides that, where a widow is entitled to child benefit in respect of a child who is not living with her, she is not entitled to widowed mother's allowance unless she also makes additional contributions to the cost of providing for the child at a rate which is not less than the rate of guardian's allowance.<sup>5</sup> Section 50 removes this requirement.

### ***Section 51: Widowed parent's allowance***

258. This section amends the provisions of section 39A of the Social Security Contributions and Benefits Act 1992 in respect of widowed parent's allowance in the same way that section 50 amends the provisions about widowed mother's allowance.

### **Disability living allowance: age conditions**

#### ***Section 52: Care component of disability living allowance: persons under the age of 16***

259. This section amends section 72 of the Social Security Contributions and Benefits Act 1992, which sets out the entitlement conditions to the care component of disability living allowance (section 72(1)). The entitlement conditions are modified in the case of claims for a period in which the claimant is under the age of 16 (section 72(6)). This section removes subsection (6) and replaces it with new subsections (1A) and (2A). The new subsections apply the same modifications to the standard entitlement conditions for the care component (in section 72(1)) but only if a person is under the age of 16 on the date on which the award would begin and only in relation to any period up to and including the day before a person reaches the age of 16. Consequential amendments are also made.

#### ***Section 53: Mobility component of disability living allowance: persons under the age of 16***

260. This section amends section 73 of the Social Security Contributions and Benefits Act 1992, which sets out the entitlement conditions to the mobility component of disability living allowance (section 73(1)). The entitlement conditions are modified in the case of claims for a period in which the claimant is under the age of 16 (section 73(4)). This section removes subsection (4) and replaces it with new subsections (4A) and (9A). The new subsections apply the same modifications to the standard entitlement conditions for the mobility component (in section 73(1)) but only if a person is under the age of 16 on the date on which the award would begin and only in relation to any period up to and including the day before a person reaches the age of 16. Consequential amendments are also made.

### **Social Fund**

#### ***Section 54: Matters to which regard must be had in awarding budgeting loans***

261. Section 138 of the Social Security Contributions and Benefits Act 1992 provides for payments to be made out of the social fund in the form of budgeting loans, crisis loans and community care grants to give help to people on low incomes.

---

<sup>4</sup> Sections 141 and 143(1) of the Social Security Contributions and Benefits Act 1992.

<sup>5</sup> Sections 37(2) and 77(5) of the Social Security Contributions and Benefits Act 1992. This requirement was added by the Tax Credits Act 2002. It replaced a requirement to make contributions at not less than the amount of child dependency increases payable in respect of a child under section 81 of the Social Security Contributions and Benefits Act 1992. Child dependency increases were abolished by the Tax Credits Act 2002 (except for cases in respect of which transitional provision was made).

262. Certain officials at Jobcentre Plus (“appropriate officers”) determine applications for social fund payments in accordance with the provisions in primary legislation, principally section 140 of the Social Security Contributions and Benefits Act 1992, and directions and guidance issued by the Secretary of State (and guidance issued by the nominated appropriate officer for the area). Section 140(1) sets out factors relevant to decisions on crisis loans and community care grants and section 140(1A) does the same for budgeting loans. The system of decision-making in respect of budgeting loans has been simplified with the consequence that some of the provisions in section 140(1A) are unnecessary. Section 54 removes them. The possibility that a third party may meet the need under consideration will no longer be one of the factors relevant to decisions on budgeting loans (see section 140(1)(c) and (1A)(b)). The reference in section 140(1A) to budgeting loan criteria other than the applicant’s personal circumstances which may be specified by the Secretary of State in directions has been removed, as the directions no longer contain such criteria.

### ***Section 55: Allocations from the Social Fund***

263. Under section 168 of the Social Security Administration Act 1992 the Secretary of State allocates money out of which Social Fund payments may be made under section 138(1) (b) of the Social Security Contributions and Benefits Act 1992.
264. The money available is limited. There is one budget for loans and one for grants. The budgets are currently allocated to Jobcentre Plus offices for the purpose of making payments of loans and grants to the customers in their geographical area. The intention is that there should be flexibility as to how allocations are made and, in particular, it should be clear that it is open to the Secretary of State to make a single allocation from which loans may be made nationwide, or to make an allocation for loans to be paid from a regional centre or in respect of a particular type of loan or grant. The amendments to section 168 in section 55 give that clarity and flexibility. There are other minor amendments to section 168, and an associated amendment to section 140 of the Social Security Contributions and Benefits Act, in paragraphs 2 and 3 of Schedule 7 to the Act (minor and consequential amendments).

## **Vaccine Damage Payments Act 1979**

### ***Section 56: Overseas vaccinations***

265. Section 2(1)(a)(i) of the Vaccine Damage Payments Act 1979 provides that payments are normally only to be made under that Act in respect of vaccinations carried out in the United Kingdom or the Isle of Man. Section 2(5) of that Act currently provides that regulations shall specify cases where certain vaccinations given to members of Her Majesty’s Forces and their families abroad are treated as though they are given in England for the purpose of entitlement to a vaccine damage payment.
266. *Subsection (2)* of section 56 substitutes the regulation-making power currently in section 2(5) of the Vaccine Damage Payments Act 1979 with an order-making power in new subsections (5A) and (5B) of that section. The order-making power in new subsection (5A) specifies that the Secretary of State may provide that, in such circumstances as may be specified in an order, the condition of entitlement in section 2(1)(a)(i) of the Vaccine Damage Payments Act 1979 does not need to be met in the case of vaccinations given under arrangements made by or on behalf of Her Majesty’s forces, a specified government department, or any other body listed within the order. This means that the Secretary of State can provide that serving members of Her Majesty’s forces, specified Crown servants and other people posted abroad and members of their families will be entitled to claim a vaccine damage payment through the Vaccine Damage Payments Act 1979 for disablement resulting from vaccinations given under specified arrangements.

***Section 57: Appeals to appeal tribunal in Northern Ireland***

267. This section provides for appeals tribunals in Northern Ireland to hear vaccine damage payments cases in Northern Ireland.
268. Section 3A(6) of the Vaccine Damage Payments Act 1979 defines an appeal tribunal for the purposes of an appeal under that Act to mean appeal tribunals constituted under Chapter 1 of Part 1 of the Social Security Act 1998. Sections 4 to 7 of the Social Security Act 1998 establish and provide the constitution for appeal tribunals. These provisions do not extend to Northern Ireland, in relation to which parallel provisions were made by the [Social Security \(Northern Ireland\) Order 1998 \(SI. 1998/1506 \(N.I. 10\)\)](#).
269. Tribunals established under the Northern Ireland Order were not brought within the scope of the definition in section 3A(6) of the Vaccine Damage Payments Act 1979. The consequence of this omission is that appeal tribunals constituted under the Northern Ireland legislation cannot hear appeals under the Vaccine Damage Payments Act 1979, although the legislation does permit the hearing of Northern Ireland cases by a Great Britain tribunal.
270. *Subsection (2)* of section 57 provides that appeals under the Vaccine Damage Payments Act 1979 are to be made to “an appropriate tribunal”. It defines an appropriate tribunal as one constituted under the Social Security (Northern Ireland) Order 1998, where the claimant’s address is in Northern Ireland. In all other cases the appropriate tribunal will be continue to be an appeal tribunal constituted under the Social Security Act 1998.
271. *Subsection (3)* provides for making procedural rules for Northern Ireland tribunals in relation to such appeals.
272. *Subsection (4)* enables the Department for Social Development in Northern Ireland to make provision by regulations in relation to the correction of a Northern Ireland appeal tribunal’s errors and, where it appears reasonable, the setting aside of the tribunal decisions.
273. *Subsection (5)* provides that the Department for Social Development in Northern Ireland is to pay travel and related costs to those required to attend before a Northern Ireland appeal tribunal and, where appropriate, to those who accompany the disabled person to such an appeal tribunal.

**Compensation for pneumoconiosis etc.**

***Section 58: “Relevant employer”***

274. The conditions of entitlement to a payment in the case of a person suffering from a disease to which the Pneumoconiosis etc. (Workers’ Compensation) Act 1979 applies are set out in section 2(1) of the Act. One of the conditions of entitlement is that all relevant employers have ceased to carry on business. “Relevant employer” is defined in section 2(3) as meaning any person by whom the person suffering from the disease was employed at any time during the period which he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement. If there are no relevant employers, a payment is made.
275. [Section 58](#) substitutes a new definition of “relevant employer” which is set out in Schedule 6. A relevant employer is any person by whom the person was employed in a prescribed occupation at any time during the period he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement.
276. The following periods of employment would be disregarded for the purposes of determining whether there is a relevant employer:

- those that ended more than 20 years before the date on which the employee's claim for industrial injuries disablement benefit was determined (or, in the case of a claim from a dependant, where such a date does not exist, from the date of the death of the sufferer), and
  - in cases of diffuse mesothelioma only, any employment which began not more than 15 years before that date.
277. A person is not a relevant employer if, disregarding the periods of employment mentioned in the previous paragraph, the period during which he employed the person suffering from the disease:
- did not exceed 12 months, and
  - did not exceed 5 years in total and does not represent more than 25% of the total period during which the person was employed in a prescribed occupation (or 7 years and not more than 20% of the total period employed in a prescribed occupation).

### ***Section 59: "Dependant"***

278. A "dependant" of a person who, immediately before his death, suffered from a relevant disease can bring a claim under the Pneumoconiosis etc. (Workers Compensation) Act 1979. Section 3 of that Act sets out the meaning of a "dependant". Section 3(1) of that Act sets out an order of priority for determining which "dependant" may bring a claim in each case.
279. [Section 59](#) amends the 1979 Act so that civil partners, children of civil partners, a person who was living with a sufferer as if husband and wife and a person who was living with a sufferer as if they were civil partners are included within the meaning of "dependant".
280. [Section 59\(3\)](#) removes a provision which, in certain circumstances, prevents a person from bringing a claim as a "dependant" where he or she and a person suffering from a relevant disease were living together as husband or wife in Scotland.

### **Other**

### ***Section 60: Power to stop payment of allowances to care home residents***

281. *Subsection (1)* of this section replaces section 67(2) of the Social Security Contributions and Benefits Act 1992, to provide for payment of attendance allowance to be stopped, with new subsections (2) to (7).
282. New subsection (2) confers a power to make regulations providing for circumstances in which payment of attendance allowance may be withdrawn from those resident in a care home, namely where any of the costs of any qualifying services provided in a care home are borne out of public or local funds under a specified enactment.
283. New subsections (3) to (7) define what is meant by a "care home", "qualifying services" and an "enactment" for these purposes.
284. *Subsection (2)* of this section replaces section 72(8) of the Social Security Contributions and Benefits Act 1992, to provide for the care component of disability living allowance to be stopped, with new subsections (8) to (13).
285. New subsections (8) to (13) confer a power to provide by regulations for circumstances in which payment of the care component of disability living allowance may be withdrawn from those resident in a care home.



### ***Section 61: Independent Living Funds***

286. This section amends the Disability (Grants) Act 1993 which provides for the making of grants by the Secretary of State for Work and Pensions and the Department for Social Development in Northern Ireland to the Independent Living (Extension) Fund, the Independent Living (1993) Fund and Motability. The current Independent Living Funds are being replaced by a new Trust called The Independent Living Fund (2006) and this section will update the names of the funds to allow the Secretary of State and the Department for Social Development in Northern Ireland to make grants to the new fund.
287. This section provides a power to make consequential amendments to subordinate legislation.

### ***Section 62: Medical Examinations***

288. This section allows the Secretary of State and the eligible member of an appeal tribunal to refer a person to a health care professional for medical examination and report, rather than only allowing a referral to a medical practitioner. Such a reference can be made where considered necessary for the purpose of providing the Secretary of State with information for use in making a decision on entitlement to benefit or to aid the appeal tribunal's determination of an appeal.
289. **Section 62(4)** also allows the eligible member of an appeal tribunal to specify the description of health care professional to whom a person is to be referred.
290. **Section 62(5)** inserts a definition of health care professional into section 39 of the Social Security Act 1998. It 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 carrying out medical examinations.

## **General**

### ***Section 64: Northern Ireland***

291. The Northern Ireland Act 2000 enables legislation for Northern Ireland to be made by Order in Council while devolved government is suspended. This section enables such Orders in Council to be made by negative resolution procedure if they are made only for purposes corresponding to the purposes of the Act.
292. Such Orders in Council are normally made at the Privy Council following Royal Assent to a Bill, usually later the same month or the following month. This practice has been adopted in order to enable parity of content and also, as far as possible, parity of timing, between legislation for Great Britain and for Northern Ireland. On restoration of the Northern Ireland Assembly, this section will cease to have practical effect, and corresponding legislation for Northern Ireland would be by Bill of the Assembly.

### ***Section 67: Repeals***

293. This section gives effect to Schedule 8, which repeals certain existing legislation as a consequence of the measures in the Act.

## **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 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.
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.