

# WELFARE REFORM ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Social Security

##### *Section 37: Minor amendments*

193. Section 80 of the Social Security (Contributions and Benefits) Act 1992 provided that incapacity benefit, severe disablement allowance, state pension, carer's allowance, widow's benefit and bereavement benefit could be increased where a person was receiving child benefit in respect of a child, defined as a person under the age of 16, or a person under the age of 19 who was still in full time education.
194. When child tax credits were introduced in 2003, child dependency increases ceased and section 80 was repealed; however it was preserved for those cases where the increase was already in payment, until such time as the child reached the age of 16, or 19 where he or she remained in full-time education.
195. The definition of a child was amended to a person who has not attained the age of 16 from 10 April 2006 when the Child Benefit Act 2005 came into force. A new definition of 'qualifying young person' applies to a person over 16 years of age who meets certain conditions set out in the [Child Benefit \(General\) Regulations 2006 \(SI 2006 No. 223\)](#).
196. No amendments were made to change the definitions for the purposes of preserved child dependency increases, with the consequence that these may only be paid in respect of a child who has not reached the age of 16.
197. *Subsections (1) and (2) of section 37* will ensure that the preserved right to a child dependency increase under sections 80 and 81 of the Social Security Contributions and Benefits Act 1992 can continue for a child over 16 who meets the relevant conditions.
198. *Subsection (3) of section 37* amends section 150(2) of the Social Security Contributions and Benefits Act 1992 (interpretation of Part 10: Christmas bonus) to amend a provision of the Welfare Reform Act 2007. This resulted in entitlement to a Christmas bonus to all claimants of employment and support allowance, including income-related employment and support allowance. This did not achieve the policy intention of taking forward the existing distinction between contributory incapacity benefit and income-related income support.
199. Incapacity benefit can be increased for adult dependants aged 60 or over or who are caring for children. This applies to a spouse or civil partner aged 60 or over with care of a child or qualifying young person (the adult must be residing with or maintained by the claimant) and an adult with care of a child (the adult must be residing with or maintained by the claimant). Section 88 of the Social Security Contributions and Benefits Act 1992 prevented more than one increase being paid to one person. Without it a person might be able to claim more than one increase on the basis that he or she has a spouse or civil partner who meets the relevant conditions and that there is another adult who also meets the relevant conditions as the carer of a child. Section 89 of the 1992 Act provides for

*These notes refer to the Welfare Reform Act 2009 (c.24)  
which received Royal Assent on 12 November 2009*

occupational pensions to be treated as earnings, which in some cases means that an increase is not payable. Without it, the increase would become payable in some cases. Both sections 88 and 89 of the 1992 Act have been erroneously repealed by the Welfare Reform Act 2007. This means that in some circumstances people may be paid more than one increase and that some increases will be due since occupational pensions can no longer be treated as earnings. The amendment in [section 37\(4\)](#) restores the policy intention and will ensure that a person can get an increase for only one adult dependant and that occupational pensions are treated as earnings.