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Welfare Reform and Work Bill 2015-16: Lords amendments

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Inside:

Contents

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Summary

The *Welfare Reform and Work Bill 2015-16* was introduced in the House of Lords on 28 October 2015 and had its Second Reading on 17 November. There were five sittings in Committee between 7 December 2015 and 12 January 206. Report Stage was held over two days, on 25 and 27 January. The Lords Third Reading was on 9 February, and the Commons is due to consider Lords amendments on 23 February.

Government amendments were agreed to parts of the Bill relating to the household Benefit cap, loans for mortgage interest, and social housing rents.

At Report Stage on 25 January, the Government suffered a defeat on an amendment tabled by the Bishop of Durham and others to require the Secretary of State to continue to report annually to Parliament on the number of children living in poverty under each of the four existing poverty measures specified in the *Child Poverty Act 2010*. The amendment was agreed by 290 votes to 198.

The Government suffered a second defeat at Report Stage on 27 January on an amendment tabled by the Crossbencher Lord Low of Dalston and others to remove from the Bill the clause abolishing the additional work-related activity component of Employment and Support Allowance (ESA) for new claims from April 2017. The amendment was agreed by 283 votes to 198. A linked amendment retaining the limited capability for work element of Universal Credit was agreed without a vote.

1. Background

The *Welfare Reform and Work Bill* had its First Reading in the Commons on 9 July 2015 and finished its Commons Stages in 27 October.

The Bill will implement some, but not all, of the measures announced in the Chancellor's Summer Budget 2015 on 8 July. The overriding aim of the welfare benefit measures in the Bill, including the introduction of loans for mortgage interest and reductions in social housing rents, is to reduce expenditure and "help to achieve a more sustainable welfare system." A related aim is to support efforts to increase employment and "support the policy of rewarding hard work while increasing fairness with working households."

It is essentially a Bill of three parts. First, it introduces a duty to report to Parliament on:

- Progress towards achieving full employment.
- Progress towards achieving 3 million apprenticeships in England.
- Progress with the Troubled Families programme (England).

Second, it repeals almost all of the *Child Poverty Act 2010* and introduces a new duty for the Secretary of State to report annually on "life chances": children living in workless households and educational attainment at age 16, in England. The name and remit of the Social Mobility and Child Poverty Commission is changed so that it becomes the Social Mobility Commission.

Finally, the Bill allows for the introduction of extensive changes to welfare benefits, tax credits and social housing rent levels. These account for around 70% of the £12-13 billion in welfare savings identified in Summer Budget 2015. The welfare/housing measures include:

- Lowering the benefit cap threshold and varying it between London and the rest of the UK.
- A four year benefits freeze.
- Limiting support through Child Tax Credits/Universal Credit.
- The abolition of Employment and Support Allowance Work-Related Activity Component.
- Changes to conditionality for responsible carers under Universal Credit.
- Replacing Support for Mortgage Interest with loans for mortgage interest.
- Reducing social housing rent levels by 1% in each year for four years from 2016-17.

Some of the measures in the Bill had been widely trailed, such as the reduction in the benefit cap to £23,000, while others, including the social housing rent provisions, were unexpected.

Some of the provisions in the Bill apply across the UK while others apply in England, Wales and Scotland only. Some provisions apply in England only.

This paper gives details of amendments to the Bill agreed during the Lords Stages. 57 amendments were agreed, three of which were opposed by the Government. The Lords Amendments to the Welfare Reform and Work Bill can be found on the parliamentary website, together with an Explanatory Note.[1]

Note that the numbering of the amendments in these documents does not correspond to the numbering of the amendments as tabled in the House of Lords.

[1] Bill 132 2015-16 and Bill 132-EN respectively

2. Child poverty and life chances

Clauses 4-6 of the Bill remove most duties and provisions set out in the *Child Poverty Act 2010*, in particular four measures and targets for child poverty that were to be met by 2020/21. Instead, the Bill introduces a new duty for the Secretary of State to report annually on two "life chances" measures: the proportion of children living in workless households and educational attainment at age 16.

2.1 Lords amendment 1: child poverty measures

Lords Amendment 1 would require the Secretary of State to report annually on the proportion of children living in poverty, on each of the four poverty measures originally used in the *Child Poverty Act 2010*. Although the amendment uses the same measures as the 2010 Act, it does not restore the child poverty targets.

The four measures in the amendment (and in the *Child Poverty Act 2010*) relate to the percentage of children living in:

- Relative low income – households with incomes below 60% of the median, before housing costs)
- Combined low income and material deprivation – households with income below 70% of the median and which experience material deprivation
- Absolute low income – households with income below 60% of median income in 2010/11, uprated for inflation
- Persistent poverty – households that have been in relative low income for at least 3 out of the past 4 years.[2]

The amendment was moved in the House of Lords at Report Stage on 25 January by the Bishop of Durham and was agreed by 290 votes to 198. The amendment was also signed by the Earl of Listowel and by the Labour spokesperson Baroness Sherlock. A similar amendment had previously been discussed at Lords Committee Stage (amendment 25), where it was moved by Crossbench peers the Earl of Listowel and Baroness Grey-Thompson, but was not put to a vote.[3]

2.2 Lords Report Stage

Speaking to the amendment, the Bishop of Durham emphasised the importance of income in understanding child poverty and children's wellbeing and life chances. He responded to criticisms of income-based

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2 Income refers to disposable household income (i.e. after taxes and benefits) and is *equivalised* to enable comparisons between households of different sizes. The measures and targets in the Child Poverty Act 2010 related to income measured before housing costs are taken into account, although the Lords amendment does not specify if income should be measured before or after housing costs. More information on these measures can be found in section 2 of Library briefing paper CBP 7252, prepared for the House of Commons Second Reading of the Welfare Reform and Work Bill.

3 HL Deb 9 Dec 2015 c1569-90

poverty measures as voiced by Ministers at earlier stages of the Bill, noting that the income measures would not supplant the other statutory measures relating to worklessness and educational attainment. Furthermore, the absence of specific targets (unlike in the *Child Poverty Act 2010*) reduced the risk that the measures would drive policymakers to place too much emphasis on income transfers. Baroness Sherlock, speaking for the Opposition, observed that the amendment had the "great advantage … that it does not cost any money and yet it would be incredibly powerful in holding the Executive to account".[4]

Responding for the Government, the Minister for Welfare Reform, Lord Freud, rearticulated the Government's objections to measuring poverty based on household income. He argued that income measures do not reflect the reasons people are in poverty or "incentivise action to prevent poor children becoming poor adults". He also noted income may not accurately reflect a family's true financial situation and went on to outline some of the flaws of the four individual income measures set out in the amendment. In response to concerns that the Government might stop publishing data on income-based measures in its annual *Households below average income* (HBAI) publication, he reassured the House this was "almost unthinkable" in practice.[5]

The Government's 2012 consultation Measuring Child Poverty and 2014 evidence review, which looked at the drivers of child poverty, featured heavily in discussions at Committee Stage and Report Stage in the Lords. Baroness Lister (for Labour) and others pointed out that the 2012 consultation identified income as "a key part of our understanding of child poverty" and that an analysis of consultation responses found near universal support for the inclusion of an income measure.[6]

In response to concerns about the lack of an in-work poverty indicator in the Bill, Lord Freud argued the 2014 evidence review made clear that worklessness and educational attainment are the factors with greatest impact on child poverty and children's life chances. Other Lords rejected this reading of the evidence review, arguing that the review had actually considered worklessness together with low earnings.[7]

Amendments seeking to include children living in low-income households where one or more parents are in work ("in-work poverty") within the list of life chances indicators were also debated by peers at Committee and Report Stage, but were not put to a vote.[8]

2.3 Life chances strategy

Alongside the statutory life chances measures in the Bill (children living in workless households and educational attainment at age 16), the Government has announced it will publish a life chances strategy which

4 HL Deb 25 Jan 2016 c1046-8, c1052
5 HL Deb 25 Jan 2016 c1053-7
6 For example, see HL Deb 25 Jan 2016 c1049-50
7 In particular, see the discussion of the evidence review at Lords Committee Stage (2nd Day): HL Deb 9 Dec 2015 c1585
8 HL Deb 9 Dec 2015, c1569; HL Deb 25 Jan 2016 c1077

will cover other non-statutory measures as well, to be published in the spring. At Report Stage, Lord Freud explained it will "set out a comprehensive plan to fight disadvantage and extend opportunity, including a wider set of non-statutory measures on the root causes of child poverty such as family breakdown, problem debt, and drug and alcohol addiction."[9] The Prime Minister set out the Government's thinking in more depth in a speech on life chances on 11 January, where he explained the strategy would cover four key areas:

- Improving family life and the early years
- Creating an education system "genuinely fit for the 21st century"
- Opportunity for everyone, regardless of their background (particularly in adolescence)
- Treatable problems such as alcoholism, drug addiction and poor mental health.[10]

Social Mobility Commission and removal of duties on Ministers in Scottish and Welsh Governments: House of Commons Report Stage

As noted above, the Welfare Reform and Work Bill removes most of the duties and provisions in the *Child Poverty Act 2010*. However, clause 5 of the Bill also changes the name and remit of the Social Mobility and Child Poverty Commission so that it becomes the Social Mobility Commission.

The Bill was amended at Report Stage in the House of Commons at the request of the Scottish and Welsh Governments, so that the reformed Commission would no longer describe in its annual report the measures taken by Scottish and Welsh Ministers in accordance with Scottish and Welsh child poverty strategies. There would no longer be a Commissioner appointed by the Scottish or Welsh Government, although the Commission would still publish an annual report on progress made towards improving social mobility in the UK. Other duties placed on Ministers in the Scottish Government by the 2010 Child Poverty Act are also removed.

The Scottish and Welsh Governments both explained they had requested the changes on the basis that they could not support the removal of child poverty from the remit of the Commission.[11]

9 HL Deb 25 Jan 2016 c1084
10 Prime Minister's speech on life chances, 11 January 2016
11 Scottish Government, *Legislative Consent Memorandum: Welfare Reform and Work Bill*, 12 November 2015. The reasons why the Welsh Government requested the amendments are set out in detail in a letter from Lesley Griffiths (Minister for Communities and Tackling Poverty in the Welsh Government) to William Graham (Chair of the Enterprise and Business Committee in the National Assembly for Wales), 17 November 2015.

3. Benefit cap

These clauses (currently 8 and 9 of HL Bill 92) provide for regulations to be made to determine the level of the benefit cap and for a review of the threshold to be carried out at least once during a Parliament. It is the Government's intention to reduce the level of the cap from £26,000 to £23,000 in London and £20,000 elsewhere.

On Report, Baroness Pitkeathley (for Labour) sought to remove carer's allowance from the list of qualifying benefits for the benefit cap (amendment 24). In response, Lord Freud announced that the Government intended to exempt *all* recipients of carer's allowance from the cap and that an amendment to achieve this would be brought forward at Third Reading.[12]

Government amendments (28, 29 and 30) were agreed to what were then clauses 7 and 8 of the Bill. Lord Freud described amendment 28 as a "tidying amendment."[13] Amendments 29 and 30 provide for any changes in the level of the cap to be subject to the affirmative resolution procedure and therefore subject to parliamentary debate. These amendments were introduced in response to recommendations made by the Delegated Powers and Regulatory Reform Committee in its 13th Report of 2015-16. The Government also accepted a recommendation that regulations pertaining to the benefit cap should be referred to the Social Security Advisory Committee (SSAC). Lord Freud said that an amendment to achieve this would be brought forward at Third Reading.[14]

The Government amendment to give effect to the commitment to exempt *all* recipients of carer's allowance from the cap was brought forward at Third Reading in the House of Lords. At the same time, Lord Freud announced that everyone in receipt of guardian's allowance would also be exempt – the Bill has been amended to provide for this:

> **The Minister of State, Department for Work and Pensions (Lord Freud) (Con):** My Lords, I will first speak to Amendments 1 and 2, which seek to pave the way for the introduction of an exemption from the benefit cap for all households where a member receives carer's allowance or guardian's allowance. We will bring forward regulations to give effect to these exemptions later this year. The exemption will mean that households where someone receives carer's allowance or guardian's allowance will be exempt from the cap. For carer's allowance, this means that the claimant's household will be exempt from the effect of the cap regardless of whether the cared-for person is part of that household or not.[15]

Baroness Pitkeathley asked Lord Freud to confirm that those with an underlying entitlement to carer's allowance would also be exempt. He responded thus:

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12 HL Deb 25 January 2016 c1094
13 HL Deb 25 January 2016 c1135
14 HL Deb 25 January 2016 c1135
15 HL Deb 9 February 2016 c2121

> The noble Baroness, Lady Pitkeathley, had forensic queries about the underlying entitlement. As she understands, that is quite complicated. We will go through these issues carefully and bring forward the regulations that allow us to frame the required exemptions, but I make it absolutely clear that our intention is that the exemptions should cover all the carer's allowance underlying entitlement group, caring for at least 35 hours a week, and equivalent groups in universal credit. I hope that I have satisfied her on that. I confirm also that we will amend housing benefit and universal credit regulations in line, so I think that I have answered affirmatively—indeed, I always answer the noble Baroness affirmatively, as the House has now noticed.[16]

Government amendment 3 provides for regulations pertaining to the cap to be referred to the SSAC. Lord Freud advised that questions around the level of the cap would not be referred:

> During the debate on 25 January, the noble Baroness, Lady Sherlock, asked for a clarification of what regulations might be available to be sent to SSAC, as well as an explanation of why the Government do not think that the level of the cap should be referred to SSAC. I will explain that now. But before I do, I should like to put on record the fact that the Government greatly value the role that SSAC undertakes in providing impartial advice on social security and related matters. This is why consultation with SSAC may extend to cover regulations relating to the key features of the benefit cap policy. For example, we would discuss with SSAC any proposed changes to the grace period or exemption criteria, the introduction of new disregards, or changes to which level of the cap applies to the different household types.
>
> Regulations relating solely to changes in the level of the cap are not included in this amendment. Changes in the level of the cap require a broad assessment of the most significant long-term developments and trends that might affect our economy and are important to households up and down the country. Factors such as inflation, benefit rates, the strength of the labour market, and any other matters that may be crucial and relevant at that time, need to be considered. This is why we have maintained throughout that it is important to allow the Secretary of State the ability to consider the context of the cap in a broad and balanced way. Maintaining this approach means that the Government can respond quickly in the light of any significant economic events that occur unexpectedly but will have long-term consequences for the national economy, and can take steps to adjust the cap level accordingly.
>
> Equally importantly, let us not forget that any changes to the level of the cap are subject to the affirmative procedure, as agreed on Report on 25 January, when government amendments to that effect were accepted. So noble Lords will have the opportunity to ask the Government to explain any changes in the level of the cap before voting to accept those changes. I believe this approach substantially addresses the committee's recommendation, but also enables the Secretary of State to respond to economic circumstances by considering a broad range of factors when considering the cap level.[17]

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16 HL Deb 9 February 2016 cc2128
17 HL Deb 9 February 2016 cc2122-3

Baroness Sherlock questioned why the Government had not accepted the Delegated Powers and Regulatory Reform Committee's recommendation in full:

> I am glad the Minister has explained why the Government took the view to accept only in part the recommendation made by the Delegated Powers and Regulatory Reform Committee. However, I think it is worthwhile reminding ourselves that the committee could not have been much stronger. It actually said that it considered it inappropriate,
>
> "for this Bill to confer the highly significant regulation-making powers in Clauses 7 and 8 without the application of the SSAC scrutiny requirement".
>
> When the Government decided not to accept that in full, that is quite a strong statement. It is worth remembering why. Although the benefit cap is a matter for Parliament, all regulations are a matter for Parliament. All that happens is that they go there via an expert Social Security Advisory Committee which will then give advice to us and to Ministers about the way in which the Government should proceed. The Executive are entirely at liberty to ignore that advice and to press ahead, but they really ought to listen.[18]

Government amendment 4 was made in consequence of amendment 3 to make clear that regulations under the benefit cap provisions within the remit of the SSAC extend to England, Wales and Scotland.[19]

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18 HL Deb 9 February 2016 c2126
19 HL Deb 9 February 2016 c2123

4. ESA work-related activity component

The Bill as introduced in the Lords included clauses to abolish the Employment and Support Allowance work-related activity component, and the corresponding limited capability for work element in Universal Credit, for new claims from April 2017.[20] Amendments tabled by Crossbench, Labour and Liberal Democrat Members which removed the clauses were agreed at the Lords Report Stage on 27 January. The amendments were opposed by the Government.

The Lords vote followed the publication in early December of the findings from a review initiated by Members of the House of Lords and supported by disability charities. The review recommended that the Government should not proceed with the removal of the work-related activity component/element.

4.1 The "Halving the Gap?" review

On 3 November it was announced the Crossbench Peers Lord Low of Dalston, Baroness Meacher and Baroness Grey-Thompson would lead a review of the proposed changes to ESA.[21] The review – which was supported by Leonard Cheshire Disability, Royal National Institute of Blind People, Mind, MS Society, National Autistic Society, Royal Mencap Society and Scope – would look at how the change would affect the day-today lives of disabled people and whether or not it would help them move closer to work. It received submissions from over 30 organisations and almost 200 disabled people, and considered evidence from two roundtable sessions, relevant legislation and publications and a survey of claimants by the Disability Benefits Consortium.

A report, *Halving The Gap? A Review into the Government's proposed reduction to Employment and Support Allowance and its impact on halving the disability employment gap*, was published on 8 December.[22] The main findings were:

> There is no relevant research setting out a convincing case that the £30 a week ESA WRAG payment acts as a financial disincentive to claimants moving towards work;
>
> claimants and organisations are deeply concerned by the notion that ESA WRAG claimants could be incentivised to go into work when many are too ill to work;
>
> the proposed reduction in the financial support to this group is likely to move them further away from the labour market rather than closer;
>
> the removal of the £30 a week ESA WRAG payment would reduce claimants' ability to take practical steps towards

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20 For further background see section 7 of Commons Library briefing CBP-7252, Welfare Reform and Work Bill [Bill 51 of 2015-16]

21 The review was referred to as a "Parliamentary Review," but it was not an official review by a Committee of either House

22 See also Mencap's press release, "ESA cuts will have damaging impact on people with disabilities," 8 December 2015

> employment, as well as diminish their capacity to even think about work;
>
> the reduction in financial support is likely to negatively impact on claimants' ability to look for work;
>
> the reduction would might actually discourage disabled people from moving into employment as they would risk receiving a lower amount of benefit, should they lose their job in future. In particular it may dissuade people from undertaking short term contracts for the same reason.[23]

The review recommended that the Government "…halt its proposed change to ESA WRAG and instead focus on improving back to work support [for disabled people] by ensuring it is personalised, tailored and meets individuals' needs."[24]

4.2 Lords Report Stage

The ESA changes were considered in Committee on 9 December[25] and at Lords Report Stage on 27 January.[26]

At Report, Lord Low of Dalston moved an amendment to leave out clause 13 (which provided for the abolition of the ESA work-related activity component). The amendment was also signed by Baroness Meacher, by the Labour Spokesman Lord McKenzie of Luton, and by Baroness Manzoor for the Liberal Democrats.

Speaking to the amendment, Lord Low referred to the review published in December and emphasised five points:

- A drop of £1,500 a year in their benefit income from £5,300 to £3,800 would be "catastrophic" for many people and exacerbate poverty among the disabled.
- The review had found no evidence to support the Government's assertion that the ESA work-related activity component acts as a disincentive for people to look for work.
- The claim that disabled people would be more likely to get a job if their benefit was cut did not stand up. The review had in fact found that the barrier to employment for disabled people was not any financial disincentive created by ESA, but factors including "employer attitudes, their health condition, illness or impairment, difficulty with transport, and lack of qualifications, experience, confidence and job opportunities."
- While the Government's aim of halving the disability employment gap was welcome, the proposed cut would hinder people's ability to look for work.
- It was clear from those who gave evidence to the review that they encountered a wide variety of barriers to work that could not simply be removed by providing generic back to work support – "The overwhelming message was that personalised support tailored to the individual's particular needs is the key."[27]

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23 Ibid. pp56-57
24 Ibid. p9
25 HL Deb 9 December 2015 cc1603-36
26 HL Deb 27 January 2016 cc1299-1322
27 HL Deb 27 January 2016 cc1300-1302

Lord Low concluded:

> Our review contained 11 recommendations, chief of which were to reverse the cut of the ESA WRAG component and the equivalent payment under universal credit, and to conduct a thorough impact assessment of the proposed changes to ESA WRAG, plus a raft of other measures to promote the employment of disabled people. This cut is estimated to save £640 million a year by 2020-21 but, as we have seen, this is at the cost of considerable further hardship for disabled people who are already poor and, by definition, unable to work. Furthermore, no assessment has been made of the additional costs to the NHS and social care services as a result of these changes, as well as other DWP benefits. Clauses 13 and 14 are all about making savings for the Treasury and have nothing to do with the interests of disabled people. They should be resisted.[28]

Responding for the Government, the Minister for Welfare Reform, Lord Freud, mentioned additional funding being made available to help claimants return to work:

> Currently, those in the WRAG are given additional cash payments but very little employment support. As the Prime Minister recently stated, this fixation on welfare treats the symptoms and not the causes of poverty. Over time, it traps people in dependency. That is why we are proposing to recycle some of the money currently spent on cash payments, which are not achieving the desired effect of helping people to move closer to the labour market, into practical support that will make a genuine difference to people in these groups.
>
> The additional practical support is part of a real-terms increase that was announced at the Autumn Statement. How the £60 million to £100 million of support originally set out in the Budget will be spent is going to be influenced not only by Whitehall but by a task force of representatives from disability charities, disabled people's user-led organisations, employers, think tanks, provider representatives and local authorities. I thank the noble Lord, Lord Low, and the noble Baronesses, Lady Grey-Thompson and Lady Meacher, for their work in Committee in this area.
>
> The new work and health programme will provide specialist support for the very long-term unemployed. We are committed to supporting everyone who is able to work to do so. The forthcoming White Paper is aimed at ensuring that we offer the best possible support to those with health conditions or disabilities, a point raised by the noble Baroness, Lady Campbell, and the right reverend Prelate the Bishop of St Albans.[29]

Following discussions in Committee,[30] Lord Freud also reiterated the Government's view that, in some cases, acts as a financial incentive to remain on benefit.[31] He also said that it was "important to also recognise that the changes to ESA and universal credit work together and cannot be taken forward in isolation." Lord Freud noted that,

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28 HL Deb 27 January 2016 c1302

29 HL Deb 27 January 2016 cc1315-6; see also paras 1.1106 and 1.130-1.131 of Spending Review and Autumn Statement 2015, Cm 9162, 25 November 2015

30 HL Deb 9 December 2015 cc1603-36; see also Lord Freud's letter of 22 December to Lords colleagues following the Committee Stage session on 9 December, and the attached Welfare Reform and Work Bill Policy Brief addendum: Clauses 13 & 14 (in DEP 2015-1009)

31 HL Deb 27 January 2016 cc1316-7

unlike ESA, UC claimants with a health condition or disability would be offered labour market support, where appropriate, from the very start of their claim. He also said that the absence of hours rules in UC would encourage people to enter the labour market and make smaller, regular hours pay, thereby helping more people than the disability element of Working Tax Credit.[32]

Lord Freud concluded:

> Clauses 13 and 14, together with the additional practical support announced in the Budget, provide the right support and incentives to help people with limited capability for work move closer to the labour market and, when ready, into work. I therefore urge the noble Lord to withdraw his amendment.[33]

In light of contributions to the debate and the Minister's response, Lord Low said that he was "…left feeling that the case for the amendment is even stronger than when I moved it, and that it has not really been answered by the Minister, or anyone who has spoken against it."[34]

The amendment (now Lords amendment 8) was put to the vote, and was agreed by 283 votes to 198.

The linked amendment (Lords amendment 9) relating to the limited capability for work element of Universal Credit) was agreed without a vote.

32 HL Deb 27 January 2016 cc1317
33 HL Deb 27 January 2016 cc1317-8
34 HL Deb 27 January 2016 c1319

5. Loans for mortgage interest

Clauses 15 to 18 of the Bill (as amended at Lords Report Stage) provide for a new system of loans for mortgage interest, to replace the existing Support for Mortgage Interest (SMI) scheme for people in receipt of means-tested benefits. Further background can be found in section 9 of Commons Library briefing CBP-7252, Welfare Reform and Work Bill [Bill 51 of 2015-16].

Three Government amendments were agreed at the Lords Report Stage:[35]

- Lords Amendment 10 – to provide that regulations relating to loans for mortgage interest are submitted to the Social Security Advisory Committee (SSAC) for consideration. This followed a recommendation by the Lords Delegated Powers and Regulatory Reform Committee.[36] SSAC is an independent statutory body that provides impartial advice on social security and related matters. It scrutinises most secondary legislation underpinning the social security system.
- Lords Amendment 11 – to provide that certain decision-making rules in the Social Security Act 1998 apply to decisions about loans for mortgage interest in the same way as they apply to decisions about benefits. In particular, this gives applicants for loans the same rights of appeal as currently apply to SMI decisions.
- Lords Amendment 12 – to allow DWP to share information about loans for mortgage interest with other persons concerned with the provision of welfare services. This would, for example, allow information to be shared with providers of "passported" benefits such as free prescriptions and free prescriptions, to help them identify who is eligible for assistance.

A technical amendment (Lords Amendment 57) also amends the Long Title of the Bill so that it accurately reflects the content of the clauses relating to loans for mortgage interest.

The amendments were agreed without a vote.

35 See HL Deb 27 January 2016 cc1365-6
36 See the Committee's 13th Report – HL Paper 56 2015-16 – and the Government response in HL Paper 85 2015-16

6. Social housing rents

These clauses (currently 20 to 30 of HL Bill 92) will require local authority landlords to reduce their rents by 1% every year for four years from April 2016.

The following Government technical amendments were agreed without debate during the committee stage in the House of Lords on 12 January 2016:

- amendment 104DA to clause 21 (now clause 20) to require a registered provider's practice as regards its tenancies to be determined by reference to its practice in the year ending with 31 March 2016;[37]
- amendments 108B and 108D to clause 22 (now clause 21) to dis-apply the requirement to reduce rents when relevant steps are taken in connection with the enforcement of a mortgage, charge or other security over the registered provider's interest in the property;[38]
- amendments 110C to 110E to schedule 2 to the Bill to ensure that the exceptions in clause 21(2)(a) and paragraph 5(2)(a) of schedule 2 apply only when the mortgagee in possession is the mortgagee of the registered provider's interest in land;[39]
- amendments 110F to 110H to insert three new clauses:[40]

  Implied terms: to imply a term into tenancy agreements that rents may be reduced, without notice, to comply with the requirements of the social rent reduction provisions. Such an implied term would override any express provision of an agreement regarding rent review dates and thus help registered providers comply more easily with the rent reduction policy.

  Change of a Registered Provider: This clause will apply where social housing subject to a tenancy transfers from one registered provider to another and clarifies how the rent reduction policy applies in these cases.

  Transitional provision: to prevent extended impact on registered providers that have tenancy agreements in place that provide for rent reviews on fixed dates. It will enable, but not require, providers to review rents more quickly after the rent restrictions come to an end.

- amendment 110J to clause 27 (now clause 30) to insert reference to a change of registered provider.[41]

A number of additional Government amendments to this part of the Bill were agreed without debate at Report stage on 27 January 2016. Baroness Evans of Bowes Park explained the purpose of the

37 HL Deb 12 January 2016 c231
38 HL Deb 12 January 2016 c252
39 HL Deb 12 January 2016 c258
40 HL Deb 12 January 2016 cc259-60
41 HL Deb 12 January 2016 c261

amendments in detail, most of which were prompted by the Delegated Powers and Regulatory Reform Committee and others stemming from issues identified by social landlords:

> I start by addressing some of the points raised by the committee. In its report it expressed concern both that the power in Clause 26 to make provision for excepted cases through regulations was drafted too widely, which could provide latitude to make different provision for rent control or enforcement, and that negative procedures apply here. The powers under Clause 28 provide important flexibility to put in place, by means of regulations, alternative provision for how maximum rents should be determined in special cases. Our broad intention is to use these powers either to relax the requirements for social housing providers or to protect tenants.
>
> However, we recognise some of the committee's concerns and, in response, have brought forward Amendment 77, which restricts the use of the power so that it may not be used to increase the annual 1% reduction specified in the Bill or to impose a maximum rent below the social rent rate in a case where an exception from Part 1 of Schedule 2 applies. The amendment also provides clarity regarding how the power may be used to apply modifications of the provisions.
>
> The power remains a wide one, and necessarily so, because it will allow the flexibility to put in place provisions which soften the effect on providers of the rent restriction measure. It will also put in place protection for tenants and, if necessary, make provision for new rent products launched during the life of this measure. These are important flexibilities to ensure the proportionate application of the Bill's provisions so that they are aligned, as far as possible, with the current rent policy, and they will enable us to respond to developments in the sector. It is not our intention to use them to put in place significantly different or more onerous provision for large swathes of social housing. That is why we have not accepted the committee's recommendation that regulations under this power should be affirmative. That would make implementing measures intended to assist providers or help tenants more burdensome and it would curtail the Government's ability to act quickly to modify the effect of provisions where required.
>
> Amendment 80 is consequential on Amendment 77, and Amendment 65 is, in turn, consequential on Amendment 80.
>
> The committee also expressed concerns about the different approach to enforcement of Part 1 of Schedule 2 and of regulations under Clause 26—both, as originally drafted, powers to provide for enforcement—as well as enforcement of Clause 21, which is on the face of the Bill. We accept that there should be consistency of approach, so Amendments 54 to 58, 74 and 78 align enforcement of Schedule 2 and Clause 26 with that of Clause 21 so that all enforcement will be provided for on the face of the Bill through Clause 24. Amendment 60 is consequential on Amendment 74. Amendment 59 is a consequential amendment which transposes Clause 24 to after Clause 28.
>
> We are grateful to the committee for identifying an inconsistency in drafting relating to the definition of formula rent and have brought forward Amendment 64 to address this. We have also taken the opportunity to clarify that the power to define formula rent includes the power to provide that it is a rent set in

accordance with a method specified in regulations. The committee also expressed the view that delegation of the power to define "formula rent" is inappropriate in the absence of a proper justification and includes unacceptable sub-delegation. I hope that I will be able to reassure the House on both points.

As many of your Lordships will know, formula rent is a principle that is well understood in the social housing sector and a key element of the current rent policy regime. We have been clear that the definition of formula rent in the Bill will be aligned to the definition under the rent standard and government guidance on the reference date, albeit with the qualification that the flexibility to deviate from formula in exceptional circumstances will no longer be available. That policy intention has been subject to parliamentary scrutiny and, given that the method for determining formula rent is complex and involves reference to numerous tables of supporting data, we remain of the view that it is appropriate to set the definition out in secondary legislation and to refer to the rent standard and guidance from which that definition is derived. We do not accept that cross-reference to these historic documents is inappropriate, but do accept that the drafting did not make the intentions in this regard clear. Amendment 64, therefore, restricts such references to the rent standard and guidance documents applicable on the reference date.

Finally, the committee expressed similar reservations about the power to define affordable rent. Having reflected on them, we have tabled Amendment 70 to address the criticism of sub-delegation. We agree that cross-referring from the regulations to the content of the rent standard and guidance documents is not necessary. Instead, the regulations may provide that it is a rent set in accordance with a method specified or described in regulations. However, again, the Government's clear view remains that the complexities of the definition are such that they are more appropriately dealt with in secondary legislation, which can, if necessary, be adjusted to reflect the terms of new affordable rent agreements.

I now turn to Amendments 66 to 68. These are important amendments to address a drafting oversight and to allow the continuation of the present policy that affordable rent housing may be let at the social rent rate when this is higher than the affordable rent, as may be the case in some low market-value areas.

Amendments 71 and 82 will enable continuation of the present policy that affordable rents are inclusive of service charge when determined on the percentage of market rent principle, but exclusive of service charge when determined on the social rent model.

Amendment 79 is a consequential amendment and removes the definition of "affordable rent housing" and "affordable rent" from the interpretation section, as these terms are no longer used other than in Schedule 2. Amendment 69 adds an example to the list in paragraph 4(4) of types of arrangements and agreements to which the definition of "affordable rent housing" may refer.

I now turn briefly to Amendments 72 and 73. I know that my noble friend Lady Williams had a helpful meeting with some of your Lordships to explain the purpose of these amendments. They amend Schedule 2, paragraphs 6(2) and (8), and would enable the regulator of social housing or the Secretary of State to issue an exemption allowing a provider to set initial rents at a specified

> percentage above the social rent rate if the statutory conditions for granting such an exemption are met.
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> Amendment 81 is a small clarification that, for the purpose of calculating rent reductions, the day on which a tenancy begins or ends should be treated as a full day. The purpose of this is to simplify calculations for providers.
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> Amendment 62 modifies the principles for determining the assumed rent in order to avoid disadvantaging providers who implement their annual rent increases later in the year than 8 July. An "assumed rent" is a rent set by reference to the rent of a previous tenant, and this amendment corrects a drafting anomaly which could have meant that, in certain circumstances, the assumed rent would be determined by reference to the provider's 2014-15 rate, not the 2015-16 rate as intended. Again, the Government's intention here is that this amendment should prove helpful to providers.
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> Amendments 75 and 76 are consequential amendments.
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> I apologise to noble Lords, but I misspoke earlier: I was supposed to have said Clause 26 and not Clause 28.[42]

A further Government amendment (5) to schedule 2 to the Bill was agreed at Third Reading. The amendment was brought forward in order to address "ambiguity in the drafting and clarify that, in the case where the tenancy begins after the beginning of the first relevant year but not at the beginning of the second or third relevant year, the rent should be calculated in the following relevant year."[43]

Lord Freud said that an unintended consequence of the Government amendment brought forward on Report had been identified. Further drafting amendments will therefore be moved during the Commons Consideration of Lords Amendments.[44]

42 HL Deb 27 January 2016 cc1382-5
43 HL Deb 9 February 2016 cc2130
44 HL Deb 9 February 2016 cc2130

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