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Welfare Reform Bill: reform of disability benefits, Housing Benefit, and other measures

Bill No 154 of Session 2010–11

RESEARCH PAPER 11/23 4 March 2011

For information on the provision in the Bill relating to the introduction of Universal Credit and associated matters, please see the Library Research Paper, *Welfare Reform Bill: Universal Credit provisions* (RP 11/24).

Besides Universal Credit, the Bill proposes a number of other significant welfare reforms, including:

- introducing Personal Independence Payments to replace the current Disability Living Allowance (DLA);
- restricting Housing Benefit entitlement to social housing tenants whose accommodation is larger than they need;
- up-rating Local Housing Allowance rates by the Consumer Prices Index;
- amending the forthcoming statutory child maintenance scheme;
- time-limiting the payment of contributory Employment and Support Allowance to twelve months; and,
- capping the total amount of benefit that can be claimed.

This paper has been prepared for the Second Reading debate in the House of Commons.

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Summary

The *Welfare Reform Bill* proposes a number of changes to the welfare system, including the introduction of a new Universal Credit (UC). This is intended to replace a number of benefits and tax credits, both for those out-of-work (such as Jobseekers Allowance) and in-work (such as Working Tax Credit). The Bill also makes provision for conditionality and sanctions for recipients of the UC, and also the abolition of Council Tax Benefit in its current form. For more information, see the Library Research Paper *Welfare Reform Bill: Universal Credit provisions* (RP 11/24).

This Research Paper looks at the other provisions in the *Welfare Reform Bill*.

The replacement of the Disability Living Allowance (DLA) with the proposed Personal Independence Payment (PIP) is proposed by the Bill. The Government has stated that it is seeking savings in DLA of 20% of expenditure on those of working age (16–64 years), and said that the new PIP would "maintain the key principles of DLA, but it will be delivered in a fairer, more consistent and sustainable manner". While the principles behind PIP have been generally welcomed, organisations representing disabled people have voiced concern about the proposed cut in funding.

The Bill will implement two of the Housing Benefit measures announced in the June 2010 Budget. Housing Benefit will be restricted for social housing tenants who are living in properties deemed too large for their needs; such arrangements already apply for those who live in private rented accommodation. While those affected might have recourse to Discretionary Housing Payments to make up any shortfall, welfare groups have called for the change to be phased in.

Secondly, the Bill proposes the up-rating of Local Housing Allowance rates by the Consumer Price Index (CPI), rather than by reference to rent officer determinations. The Government's intention is to "move toward providing a fairer and more sustainable Housing Benefit scheme which will help address the disincentive to work inherent in the system". Some have commented that CPI is not appropriate for this purpose, and it is forecast to lead to a widening gap between actual rent levels and the amount of housing benefit payable.

The child maintenance provisions of the Bill would make a number of changes which would affect the new statutory scheme due to be introduced in 2012. They include the introduction of:

- a new gateway which all parents would be required to go through before they could access the new statutory system;
- an indicative maintenance calculation service to assist parents with negotiating their own arrangements.

In addition, changes would be made to the *Insolvency Act 1986* in relation to the treatment of child maintenance debt in an individual voluntary arrangement.

Other provisions in the Bill include:

- time-limiting the payment of contributory Employment and Support Allowance to 12 months;
- capping the amount of benefit a person or couple are entitled to claim;

- restricting access to Income Support for lone parents; to be eligible they will have to have a child under 5 years of age, compared to under 7 years at present;
- ensuring that only those who are entitled to work are eligible to claim benefits;
- amending industrial injuries benefits to simplify the system;
- introducing new provisions to combat error and fraud, including penalties for those who attempt to commit benefit fraud;
- increased information sharing between the Department for Work and Pensions and local authorities.

In many cases, much of the detail of the proposed changes will be set out in secondary legislation.

1 Introduction

The Bill was introduced in the House of Commons on 16 February 2011, and is scheduled to have its Second Reading on 9 March. This Research Paper provides background to, and analysis of, the Bill in respect of those matters not related to the introduction of the Universal Credit, which is covered by a separate Library Research Paper (RP 11/24).

In his first speech as Secretary of State for Work and Pensions, Iain Duncan Smith described his view of the current welfare system: "A system that was originally designed to support the poorest in society is now trapping them in [the] very condition it was supposed to alleviate. Instead of helping, a deeply unfair benefits system too often writes people off".[1]

Prior to the publication of the Bill, there have been a number of green papers and white papers, as well as other consultations, that have been conducted on a range of social security and other matters which have helped to influence the Bill. These included the consultation on Disability Living Allowance reform, which closed after the Bill was published, and the consultation on child maintenance which is currently ongoing.

Many of the clauses propose amending existing legislation, and the Bill devolves a considerable amount of detail to regulations. In some instances the Government has indicated the likely contents of those regulations (for example, in the explanatory notes). There is, of course, no cast-iron guarantee that in all cases changes will not be made before the regulations are finally made (which, of course, would be after the Bill received Royal Assent). Many provisions are not due to come into force until 2013 or 2014, by which time, for example, the fiscal position may have changed for the better or the worse.

[1] Department for Work and Pensions, *Welfare for the 21st Century – Speech by the Secretary of State for Work and Pensions*, 27 May 2010

2 Employment and Support Allowance changes

Employment and Support Allowance (ESA) replaced incapacity benefits for people making new claims from October 2008. There are two forms of ESA: contributory ESA, for those with a sufficient National Insurance contribution record; and income-related ESA, which is means-tested.

Claimants who satisfy the Work Capability Assessment for ESA may be placed in either the "Support Group", if they are deemed to have a "limited capability for work–related activity", or the "Work Related Activity Group".[2] Those in the latter group are currently only required to attend Work-Focused Interviews and agree action plans, but under the proposed new "conditionality" regime for claimants of working-age benefits, ESA claimants in the Work Related Activity Group are to be subject to a "work preparation requirement" (see Library Research Paper, *Welfare Reform Bill: Universal Credit provisions*, RP11/24).

Apart from the changes to conditionality, the Bill makes three further changes to ESA.

Clause 50 amends the *Welfare Reform Act 2007* to ensure that people can claim contributory ESA while at the same time being a member of a couple entitled to joint-claim Jobseeker's Allowance. The clause also has retrospective effect, in order to "regularise" payments of contributory ESA made to joint-claim couples to date.[3]

Clauses 51 and 52 contain more controversial provisions.

2.1 Time-limiting contributory ESA

For further information on the background to this subject, please see the Library Standard Note, *Time-limiting contributory Employment and Support Allowance* (SN/SP/5853).

The October 2010 *Spending Review* announced that, from April 2012, for those ESA claimants assessed as eligible for the Work Related Activity Group, contributory ESA would only be payable for up to one year. Some would be compensated by income-related ESA, but others, including those with a working partner or with other income or capital, would lose entitlement to benefit completely. The measure would apply to all ESA claimants in the Work Related Activity Group, including those "migrated" from Incapacity Benefit after reassessment.[4]

In a written answer on 31 January the Minister for Disabled People, Maria Miller, set out the rationale for introducing a twelve month limit:

> The period of 12 months was chosen because it strikes the best balance between allowing people with longer-term conditions to adjust to their health condition and providing a level of access that is appropriate for contributory benefits. Around 60% of all those claiming ESA already come off this benefit within a year. We will be putting in place significant additional employment support through the Work programme.
>
> ESA has always been intended to be a temporary benefit for those in the Work Related Activity Group. It is important that we rebalance the benefit system so that it is fair to recipients as well as being affordable to the taxpayer.

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2 For further details see Library Standard Note, *The Work Capability Assessment for Employment and Support Allowance*, SN/SP/5850, 2 February 2011

3 Bill 154–EN, para 256

4 Around 1.6 million of the remaining incapacity benefit claimants are to be reassessed under the Work Capability Assessment between 2011 and 2014. And those who satisfy the test will be "migrated" to ESA. For further details see SN/SP/5850

> Those in the Support Group, who have the most severe health conditions or disabilities, are not affected by this measure. Customers in the Work Related Activity Group whose entitlement to contributory ESA ends after 12 months will be able to claim income-related ESA if they are eligible.[5]

Clause 51 restricts entitlement to contributory ESA to 365 days for claimants in the Work Related Activity Group. For those already getting contributory ESA, when the time limit is introduced in April 2012 the time they have already spent on the benefit will be taken into account, so for some contributory ESA will stop immediately.

For claimants moving from the ESA Support Group to the Work Related Activity Group, the 365 day period will not start until they move into the new group. Those transferred from Incapacity Benefit to the ESA Work Related Activity Group will be limited to one year's contributory ESA following reassessment.

Setting out the rationale for the time limit, the Impact Assessment states that "People can presently qualify for contributory ESA on the basis of a small amount of National Insurance paid". It adds:

> Government intervention is required to underline the principle that those claiming contributory ESA, who are placed in the WRAG are expected to move towards work with the right support. ESA is intended to be a short-term benefit for the majority of claimants.[6]

The Impact Assessment also mentions the need to reduce elements of social security spending and target those most in need in light of the "challenging fiscal position", and simplifying the benefit system by aligning contributory ESA more closely with contribution-based JSA in the run up to the introduction of Universal Credit.[7]

The original estimate in the Spending Review was that the ESA time limit would yield savings of around £2 billion by 2014-15, but this was revised downwards to £1.4 billion by the Office for Budget Responsibility. The latest Government estimate is that net savings from the measure will be around £1.2 billion (comprising gross savings of £3.1 billion, offset by an increase of £1.9 billion in expenditure on income-related ESA and other means-tested benefits).

The Government estimates that 700,000 people will be affected by the time limit by 2015-16, of whom around 60 per cent will be fully or partially compensated by income-related ESA. The average loss for those not fully compensated by means-tested benefits is estimated at £52 a week, and for those with no entitlement to means-tested benefits, the average loss is £81 a week.[8] For those not qualifying for income-related ESA, the main reason is that their partner works more than 24 hours a week.[9]

Welfare rights and disability organisations have criticised the proposal to time limit contributory ESA which, they argue, would further undermine the contributory principle and, coming on top of other announced benefit cuts, increase poverty and cause financial distress for people with long-term health conditions or disabilities and their families.

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5 HC Deb 31 January 2011 cc585-586w

6 *Time-limiting contributory element of Employment and Support Allowance Impact Assessment*, p5

7 *Ibid*, p6

8 The Impact Assessment notes that those losing entitlement completely "will still be able to claim ESA on a 'credits only' basis so they can maintain their National Insurance contribution record and access the support offered from the Work Programme" (p9)

9 *Ibid*, p9 (table 3)

The Disability Benefits Consortium (DBC) said in its response to the Spending Review that the proposal to time-limit contributory ESA was "very worrying":

> This policy means that disabled people who have worked and paid National Insurance throughout their lives who lose their job while still of working age will only be able to claim ESA for a year before being directed to other benefits. However, many of these people will then not be eligible for these benefits (because they have savings or their partner works for more than 24 hours per week) and could lose their independent income.
>
> Being excluded from the benefits system is likely to limit a person's ability to get the help and support they may need to get back to paid work. It also ignores the reality that due to factors including discrimination and access, many disabled people can take significantly longer to move into work than non disabled people. This policy seems to contradict the government's stated aims of supporting hard-working families and of providing real support to those who need it most, and once again, we ask that it is scrapped.[10]

Disability Alliance has questioned the Government's estimate of the number likely to lose benefit completely – it believes that the figure could be closer to 400,000 rather than 280,000 as suggested – and also noted that the Government's initial estimate of the saving from time-limiting ESA matched its estimate of the cost of introducing the Universal Credit

> We are concerned that disabled people are paying for the [Universal Credit] – which represents an unfair burden falling on already limited shoulders. A third of disabled people live in poverty in the UK and we believe the contributory ESA cut and other welfare changes risk increasing disability poverty.[11]

The RNIB described the time limit as "the biggest shock in the Comprehensive Spending Review"[12], while the Citizens Advice Chief Executive, Gillian Guy, has said that it "will betray people who have worked hard and paid national insurance contributions, only to find that they do not get the support they need if they become sick or disabled before pension age".[13]

The *Explanatory Notes* accompanying the Bill include a section on the compatibility of its provisions with the European Convention on Human Rights. Case law has found that welfare benefits constitute "possessions" for the purposes of Article 1, Protocol 1 (A1P1) of the ECHR (the right to peaceful enjoyment of possessions), and the Government therefore considered whether provisions in the Bill might potentially engage A1P1, either alone or in conjunction with Article 14 of the ECHR (right not to be discriminated against).[14] The Government does not believe that any measures in the Bill are incompatible with the Convention rights, but the discussion about possible engagement of A1P1 does not mention explicitly the time-limiting of ESA.

Further background on the proposal to time-limit contributory ESA, and on responses from organisations, is given in a separate Library standard note.[15]

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[10] Disability Benefits Consortium, *Disability Benefits Consortium response to the Government spending Review*, 18 November 2010

[11] *Ibid*, para 3.8.1

[12] RNIB, *Campaigners Briefing: Welfare Reform Bill 2011*, December 2011

[13] Citizens Advice, *Citizens Advice response to the Welfare Reform Bill*, 18 February 2011

[14] Bill 154–EN, paras 692-700

[15] Library Standard Note, *Time-limiting contributory Employment and Support Allowance*, SN/SP/5853, 3 February 2011

2.2 Abolition of the "youth rules"

Contributory Employment and Support Allowance is, by definition, payable to people with a sufficient record of National Insurance contributions. However, there are also provisions which allow a person incapacitated early in life to gain entitlement to contributory ESA without having to satisfy the usual contribution conditions. Under the "youth rules", a person under the age of 20 (or, in prescribed cases, 25), who is not in full-time education and who has had a "limited capability for work" for 196 consecutive days, can gain entitlement to contributory ESA.

The youth rules were introduced for Incapacity Benefit in April 2001 as a result of provisions in the *Welfare Reform and Pensions Act 1999*, which also abolished the Severe Disablement Allowance (SDA). The abolition of SDA, together with the introduction of the youth rules was intended to "refocus benefit on people disabled early in life who have never had the opportunity to work and gain entitlement to incapacity benefits through the payment of contributions".[16] The rules were carried over into Employment and Support Allowance when the new benefit was introduced in 2008.

Clause 52 abolishes the youth rules for contributory ESA. No new claims under the youth rules will be possible when the measure takes effect. Existing claimants in the Work Related Activity Group who gained entitlement to ESA under the youth rules will, when the change takes effect, have their entitlement to contributory ESA limited to 365 days. Days in receipt of ESA before the measure comes into effect count for these purposes, so some claimants will lose contributory ESA straight away. The time limit does not, however, affect existing youth rules claimants in the Support Group.

The accompanying Impact Assessment states that the ESA youth rules will be abolished from April 2012. In setting out the rationale for the change, it refers to the youth rules as an "easement" and a "concession", and states that abolition put this group "on an equal footing with others who have to satisfy the relevant National Insurance conditions". It also states that the change will simplify the benefits system prior to the introduction of the Universal Credit. It notes that "income-related ESA will continue to be available to those who do not meet the contribution tests".[17]

The net saving from abolishing the ESA youth rules is estimated at around £11 million a year. The Government estimates that by 2015-16, around 15,000 people will be affected. Of those, it estimates that around 20% will have no other income and will therefore receive the same amount in income-related ESA. A further 70% will qualify for income-related ESA at either the same rate as before or at a lower rate, because they have other sources of income. The average loss for this group is estimated at £25 a week, although they may also gain from entitlement to passported benefits such as free prescriptions. The remaining 10% are not expected to qualify for income-related ESA, because they have a working partner, capital over £16,000 or other income above their applicable amount.

There was no announcement prior to the Bill that the Government intended to abolish the ESA youth rules. There has been little comment as yet from disability organisations, but Nicola Smith, Senior Policy Officer in the TUC Economic and Social Affairs Department a member of the Social Security Advisory Committee, states in an article on the "Left Foot Forward" website:

> The impact assessment accompanying the announcement ...misses the point when it states that the rationale for this change is to ensure "consistency for all groups whilst

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[16] HC Deb 6 November 2000 c96w. For further background on the abolition of SDA see Library Standard Note *Severe Disablement Allowance*, SN/SP/583, 21 November 2000

[17] *Youth provisions in Employment and Support Allowance Impact Assessment*, pp1,5

> simplifying ESA conditionality"; inevitably young people are not the same, as they will not have had the same chance that other adults have had to build up enough NICs to qualify.
>
> The youth provision rule was brought in when Severe Disablement Allowance was ended (now several years ago), with the policy rationale of ensuring that after the abolition of SDA all severely disabled young people would still retain access to benefits even if they wouldn't pass a household means test for income based ESA.
>
> From now on this will no longer be the case. While many severely disabled adults will continue to receive a benefit that takes account of their disability, regardless of their household income, young people who live in households who earn slightly too much to qualify for an income related benefit will lose out.[18]

She adds:

> This is a pertinent example of how attempts to 'simplify' the benefits system can cause more harm than good. Should this move pass unamended, a small number of severely disabled young people will lose up to £100 a week (for the most severely disabled). The total estimated saving from the change is £11 million a year – small money in the scheme of things, but a cut that will have significant consequences for some of the most disabled young people in our society.[19]

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18 Left Foot Forward, *'Simplification' leads to severely disabled young people's benefits being cut*, 18 February 2011

19 *Ibid*

3 Lone parents and Income Support

Income Support is a means-tested benefit available to certain groups who are not required to be available for or to seek paid work. Until recently, all lone parents with a child under 16 could claim Income Support, but in November 2008 the age threshold for the youngest child was reduced to 12. As a result of further reductions, from October 2010 lone parents with a youngest child aged seven or over have no longer been able to claim Income Support. For existing lone parent claimants with a youngest child aged seven or over, Income Support will cease by April 2011.

Some lone parents whose youngest child reaches seven will be able to continue to receive Income Support on other grounds (e.g. as a foster parent, or because they also receive Carer's Allowance). Others with a health condition or disability may claim Employment and Support Allowance. For the majority however the only option will be to claim Jobseeker's Allowance (JSA). JSA claimants must be available for, and actively seeking, paid employment.

The extension of JSA to lone parents had been proposed in the July 2007 Green Paper, *In work, better off: next steps to full employment*. This followed David (now Lord) Freud's March 2007 report for the DWP on the future of the Government's welfare to work strategy, which argued that there was a "strong case for a fundamental shift in how the Government supports lone parents".[20]

When the new "Lone Parent Obligations" were proposed, the Labour Government said that no lone parent would be forced into a job that did not suit their circumstances, and that Jobcentre Plus advisers would have additional discretion so that lone parents would not be penalised if they did not take up a job because appropriate, affordable childcare was not available. Other "flexibilities" were introduced in the JSA regime to take account of lone parents' particular circumstances. Welfare rights groups have, however, expressed concern about the extension of conditionality to lone parent benefits, and about whether the JSA rules can be adapted to take account of the complexities of lone parents' lives. The availability of affordable and suitable childcare remains a major concern.[21]

In addition to these changes, the Labour Government planned that from October 2010 lone parents with a youngest child aged between three and six in four Jobcentre Plus districts would be required to undertake mandatory "work-related activity". The *Welfare Reform Act 2009* included provisions to enable piloting of the so-called "Progression to Work" regime inspired by Professor Paul Gregg's December 2008 report, *Realising Potential: A Vision for Personalised Conditionality and Support*. Under the previous Government's plans, lone parents on Income Support (and partners of claimants of certain benefits) in the relevant areas with a youngest child aged three or over would have been required to agree with an adviser a plan setting out a route back to work, which they would have been obliged to follow. Failure to undertake 'work-related activity' could result in a benefit sanction – i.e. a reduction in the amount they receive. The intention was not to force parents into specific jobs, but to help them prepare for a return to work when their youngest child reached seven. Further details are given in Library standard note, *Lone parents with younger children: the Progression to Work pathfinders*.[22]

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[20] Department for Work and Pensions, *Reducing dependency, increasing opportunity: options for the future of welfare to work*, 2007, p91

[21] For further details see Library Standard Note *Lone parents and Jobseeker's Allowance*, SN/SP/5532, 20 May 2010

[22] Library Standard Note, *Lone parents with younger children: the Progression to Work pathfinders*, SN/SP/5534, 20 May 2010

The incoming Government did not proceed with the Progression to Work pathfinders, but the June 2010 Budget announced:

> To support more lone parents into employment, **those with their youngest child over five will be moved onto Jobseekers Allowance rather than Income Support from 2011-12**. The Government estimates that this could move up to 15,000 lone parents into employment which will help reduce child poverty. The Government does not think that lone parents with children under school age should be required to seek work.[23]

Clause 57 amends the *Welfare Reform Act 2009* to provide that Income Support on the grounds of lone parenthood is restricted to lone parents with a youngest child under five, rather than seven as at present.

The Impact Assessment states:

> For most people, work is the best route out of poverty. DWP believes that it is important that people who can take up paid employment are given help and encouragement to do so. An increase in conditionality will ensure lone parents engage with the support and opportunities available to them.[24]

The new age threshold is to come into effect from January 2012. The Government estimates that the change will ultimately affect around 75,000 lone parents a year. It is assumed that the majority ceasing to be eligible for Income Support will claim Jobseeker's Allowance, although no specific figure is given in the Impact Assessment. The Government estimates however that the change will result in 20,000 to 25,000 additional lone parents in work.[25]

The organisation Gingerbread, which provides advice to and supports lone parent families, has long voiced concerns about imposing "conditionality" on lone parents. In response to the reduction in the Income Support age threshold to seven in October 2010, it warned that the lone parents affected were being "set up to fail". Its Chief Executive, Fiona Weir, said:

> The coalition government says it wants to make work pay and to support single parents into work, but the reality is that today thousands of single parents are being set up to fail. Government needs to act fast to improve availability of jobs with flexible working hours, improve the job-search support provided from day one of a claim, and increase access to childcare.
>
> Gingerbread welcomes the aim of new welfare reform proposals to make work pay, but the timescale for their implementation is too long for the single parents affected by today's change. We urge the government to introduce short-term measures to help make short-hours jobs pay, and to review recent decisions to cut help with childcare costs which will create a further barrier for single parents trying to get into work.[26]

Gingerbread also noted DWP research suggesting that some lone parents already subject to the JSA regime were not getting the right information from Jobcentre Plus staff, a finding supported by evidence from calls to its Single Parent Helpline. Fiona Weir added:

> Under intense pressure in such a tight labour market, single parents need expert help from JobCentre staff, but some are instead getting inaccurate advice. At the very least

23 HM Treasury, *Budget 2010*, HC61 2010-11, p33, para 1.101 (original emphasis)
24 *Lone Parent Conditionality Impact Assessment*, p5
25 *Lone Parent Conditionality Impact Assessment*, pp6-7
26 Gingerbread, *Job-seeking reforms leave single parents high and dry*, press release, 25 October 2010

> all single parents should be given specialist help from a New Deal Lone Parent Adviser from day one of their JSA claim.[27]

Further information on research into the impact of the "lone parent obligations" is given in Library standard note SN/SP/5532.

A more recent study for the DWP looking at the effects of lone parent obligations – involving 55 interviews with Jobcentre Plus staff and 202 interviews with lone parents who had been affected by the Income Support changes – found that, in relation to JSA:

> Whilst staff were positive about the JSA regime for lone parents overall, some current operational issues were highlighted. They suggested that the support for lone parent customers was not always sufficiently tailored to their needs where non-specialist staff were working with lone parents on JSA and/or where lone parent customers were not identified as such. The recession and its aftermath was also felt to be having an impact on the effectiveness of the JSA regime for lone parents.
>
> Both staff and customers felt the early stages of the JSA regime were not designed for customers who have been out of work for some time, and thus may not always be suitable for those lone parent customers moving from IS or ESA.
>
> In general lone parent customers demonstrated a good understanding of the JSA regime, but they did not always have detailed knowledge of conditionality and the sanctions regime. There was also a reluctance from some staff to consider referring lone parents for a benefit sanction/disallowance.[28]

In light of the findings from the research, the authors identified a number of areas "that may need to be considered further during the continued roll-out of LPO [Lone Parent Obligations]". These included:

> The possible effect from the likely increased demand for part-time work during school hours as LPO rolls out to those with younger children and potentially the greater use of JSA parent flexibilities to accommodate this demand.
>
> A greater requirement for formal childcare as an increasing number of lone parents with increasingly younger children are required to seek employment.
>
> A need to ensure that where lone parents access support through the new Work Programme, the support they receive is tailored to their needs as lone parents.
>
> A need to further consider the impact of the JSA conditionality regime on lone parents and the effect of any loss of benefit on them and their children.[29]

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[27] *Ibid*

[28] Department for Work and Pensions (Jo Casebourne *et al*), *Lone Parent Obligations: destinations of lone parents after Income Support eligibility ends*, Research Report 710, 2010

[29] *Ibid*

4 Entitlement to work as a condition for benefits

Section 115 of the *Immigration and Asylum Act 1999* provides that a "person subject to immigration control" is not entitled to most social security benefits and tax credits, except in certain limited circumstances. These provisions cover all means-tested benefits, Child Benefit, Attendance Allowance, Disability Living Allowance and Social Fund payments.

Immigration status does not affect eligibility for those benefits which depend on National Insurance contributions, such as contribution-based Jobseeker's Allowance (JSA) and contributory Employment and Support Allowance (ESA). Other work-related benefits including Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay, Statutory Sick Pay and Industrial Injuries benefits are also payable regardless of immigration status.

Clauses 60-62 introduce new requirement for claimants of certain benefits to have a right to work in the United Kingdom. Clauses 60 and 61 cover contribution-based JSA and contributory ESA respectively, and clause 62 makes provision for the Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, and Statutory Sick Pay. In each case, a person is only eligible for the benefit if:

- they do not require leave to enter or remain in the UK; or
- they have been granted such leave and the leave is not invalid, has not for any reason ceased to have effect, and is not subject to a condition preventing the person from accepting employment.

Regulations may however provide for exceptions. The Delegated Powers Memorandum states that this could make provision for certain categories of person covered by special immigration arrangements, such as an asylum seeker granted temporary admission with an entitlement to work.[30]

As regards the rationale for the change, the Impact Assessment states:

> There is no overt policy intention for contributory benefits and statutory payments to be available for illegal workers; [but] the current position means that there is no provision which prevents an illegal worker from legally qualifying for these benefits and payments. There is a strong risk of reputational damage. This amendment is consistent with the Government's commitment to Welfare and Immigration.[31]

There is a high degree of uncertainty about how many illegal workers there are in the United Kingdom. The Impact Assessment states:

> Due to the difficulty in obtaining information on illegal workers, we do not know the number of people who will be affected by this legislation. Research by the LSE and the IPPR suggested that there may be around 620,000 adults who could be illegally present in the UK and do not have an entitlement to work. Although a large proportion of this number will have arrived on visitor visas, are unlikely to be working and will in time leave, if we assume that half of these were employed, and half of those employed in jobs were paying tax and national insurance contributions, this would produce an estimate of 155,000 (or 0.5% of the number of people working in the UK) who might be

[30] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 240
[31] *Entitlement to work as a condition for contributory benefits and statutory payments Impact Assessment*, p5

> eligible to claim the contributory benefits or statutory payments despite having no entitlement to work in the UK. This loophole therefore needs to be closed.[32]

The measures were not foreshadowed by any official announcement, but some newspapers - including the *Daily Mail* and the *Daily Express* - carried reports on 14 February suggesting that 155,000 "illegal immigrants" qualified for benefits in the UK and quoted Government sources as stating that measures would be included in the forthcoming Welfare Reform Bill to deal with the problem.[33]

However, the figure of 155,000 in the Impact Assessment is an estimate of the number of illegal workers who might be *eligible* to claim benefits, rather than the number actually claiming. The Impact Assessment assumes that there are only around 8,600 claims for the relevant benefits from illegal workers each year.[34]

The Government estimates that the change would generate net savings of around £21 million in the current Spending Review period. In respect of Statutory Payments by employers (SSP, SMP etc.), the Impact Assessment states:

> …there should be no costs to DWP as it is the employer who has to satisfy their liability to ensure that an employee applicant satisfies the various conditions of entitlement to the award of a statutory payment.[35]

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32 *Entitlement to work as a condition for contributory benefits and statutory payments Impact Assessment*, p2. The studies referred to are Ian Gordon *et al*, *Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK*, April 2009; and *Irregular Migration in the UK: An ippr update*, May 2009

33 "Thousands of illegal workers claiming benefits: Loophole in the law costs taxpayers millions", *Daily Mail*, 14 February 2011; "Scandal of 150,000 illegal immigrants on benefits", *Daily Express*, 14 February 2011

34 *Entitlement to work as a condition for contributory benefits and statutory payments Impact Assessment*, p6

35 *Ibid*, p5

5 Industrial injuries benefits

Industrial injuries benefits (IIB) are legislated for in the *Social Security Contributions and Benefits Act 1992*, although IIB schemes have been developing since 1948. As such, the DWP states that IIB scheme "have many detailed and varied rules, which make them complicated for customers to understand and staff to administer", and cite the following examples:

- There is a separate scheme for trainees (Analogous Industrial Injuries Scheme).
- Two schemes for those injured before 5 July 1948 (Workmen's Compensation (Supplementation) Scheme and the Pneumoconiosis Byssinosis and Miscellaneous Diseases Benefit Scheme).
- People under 18 are paid a lower rate of benefit (Industrial Injuries Disablement Benefit for people under the age of 18).
- People can apply for an accident declaration which simply logs the incident for future reference.
- Industrial Death Benefit (IDB) is closed for deaths after 11 April 1988 but claims can still technically be made.[36]

Further detail of the scheme can be found in DWP's publication, DB1 – A guide to Industrial Injuries Disablement Benefits.[37]

The DWP has put forward a number of amendments to IIB, which have "strong advantages", namely that "the scheme will be simplified and the older obsolete elements removed, along with the associated legislation. It will remove some anomalies and make the scheme easier to understand and claim under". The DWP add that "the advantages of these measures are not about costs or savings", and that "it is time now to make support for people who suffer a workplace injury or illness easier to understand and claim".[38]

Clause 63 amends the 1992 Act to provide for a single scheme for State "no-fault" compensation for work injuries, namely Industrial Injuries Disablement Benefit (IIDB). The current "pre-1948 schemes", the Workmen's Compensation (Supplementation) Scheme 1982 and the Pneumoconiosis Byssinosis and Miscellaneous Diseases Benefit Scheme 1983, will be subsumed under the IIDB.

Subsection 3 allows the Secretary of State to deal with all new and existing claims under the "pre-1948 schemes" as claims under IIDB. The DWP explains that "it is intended that such regulations will result in all claims being made, decided and appealed under the same rules that apply to IIDB".[39] For those claiming through "pre-1948 schemes", the total rate will remain unchanged and the partial rate will increase from £56.91 to £61.57.[40]

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[36] *Industrial Injury Benefits Impact Assessment*, p5, para 1
[37] See: http://www.dwp.gov.uk/publications/specialist-guides/technical-guidance/db1-a-guide-to-industrial-injuries/
[38] *Industrial Injury Benefits Impact Assessment*, p5, paras 3–4
[39] Bill 154–EN, p44, para 309
[40] *Industrial Injury Benefits Impact Assessment*, p6, para 10 (table)

Clause 64 will remove the distinction between people aged 18 and under and those aged over 18 in claiming IIDB. DWP calculates that will result in IIDB payments to those aged 18 or under being around 60% higher than current rates.[41]

Clause 65 removes the distinction between trainees and other workers under IIDB. At present, trainees are covered by the "Analogous Industrial Injuries Scheme" (AIIS) if they suffer an accident at work whilst participating in certain training schemes or courses that are funded out of public funds by the Young People's Learning Agency and Skills Funding Agency in England (and equivalent bodies in Scotland and Wales). Under the proposed change, any trainees, who are injured by accident or disease whilst participating in prescribed training schemes or courses, will be able to access IIDB instead. As AIIS and IIDB are analogous, there will be no change in benefit rates to those affected (around 400 people).[42]

Subsection 3 allows the Secretary of State to make regulations to provide for AIIS claims to be treated as claims for IIDB, and the DWP states that "it is intended that such regulations will result in all claims being made, decided and appealed under the same rules that apply to IIDB".[43]

Clause 66 will amend paragraph 14 of Schedule 7 of the 1992 Act so that no new claims for industrial death benefit (IDB) can be made once the amendment comes into force. This means that claims before 10 April 1988, which are payable under IDB, will instead be payable under provisions for Bereavement Benefit (BB) as is the case for industrial deaths after 10 April 1988. The DWP notes that "It is many years since any such claims have been made for IDB. New claims are now extremely unlikely as the death would have had to occur before 1988 – over 20 years ago".[44]

Clause 67 abolishes the right to request an accident declaration by amending the *Social Security Act 1998*. Such a declaration can be requested, and then IIDB claimed subsequently, relying on the declaration as evidence of a work-related accident. If commenced, existing declarations will stand but no new declarations can be made. In the view of DWP, this change will have only limited consequences:

> Removing Accident Declaration provisions will incur a benefit by reducing staff costs. The Accident Declaration allows individuals to log an incident with a view to settling the matter of whether an accident has occurred if a claim is made in the future. It does not lead to any benefit payouts. At present this takes the time of 10-15 full-time equivalent members of staff. Jobcentre Plus decision-makers are trained to decide if an accident has occurred at the time a claim is made whether or not there is an accident declaration, therefore this is a nugatory process.[45]

[41] *Industrial Injury Benefits Impact Assessment*, p6, para 10 (table)
[42] *Industrial Injury Benefits Impact Assessment*, p6, para 10 (table)
[43] Bill 154–EN, p44, para 314
[44] Bill 154–EN, p45, para 318
[45] *Industrial Injury Benefits Impact Assessment*, p6, para 8

6 Housing Benefit

6.1 Background

Following the passage of the *Social Security Act 1986* the current Housing Benefit (HB) scheme was introduced in April 1988. This Housing Benefit scheme applies to social sector tenants and private sector tenants who were in receipt of benefit on 7 April 2008 and who have not changed their accommodation or had a break in their claim since that date.

HB is a means-tested benefit that is administered by local authorities and is paid to eligible tenants who live in the social and private rented sectors. The structure of the HB scheme is closely linked to that of the Income Support scheme. The basic level of personal allowances for the two schemes (and that of Jobseeker's Allowance) are the same (with some exceptions); these allowances vary depending on the age and composition of the household concerned.

Entitlement to HB is calculated by comparing the needs and resources of the household, taking their liability for rent payments into account. In calculating household net incomes the HB scheme provides for the disregard of some types of income (or a proportion of that income). Households in receipt of Income Support or income-based Jobseeker's Allowance, or who have an assessed net income at or below the Income Support threshold, receive maximum assistance. This may be equal to 100% of their eligible rent, less any deductions that have been made for non-dependents living in the household.

Claimants in private rented housing may have their HB entitlement reduced, for example, if they are living in accommodation that is deemed to be too large for their needs or if their rent level is above the Local Reference Rent for the area in which they live. These restrictions do not apply to claimants in social rented housing.

On 7 April 2008 the Local Housing Allowance (LHA) scheme was introduced for new claimants living in the deregulated private rented sector. In addition to applying only to claimants in private rented accommodation the LHA has three other key features:

- it is a flat rate allowance based on different sizes of properties within a Broad Market Rental Area (BRMA);
- as a general rule it is payable direct to claimants and not their landlords; and
- tenants who rent a property at below the LHA rate, or who move to a cheaper property in the local area, or who negotiate the rent below the LHA rate, are currently allowed to keep the difference between the rent charged and the allowance paid, up to a cap of £15 per week.

The June 2010 Budget and October 2010 Spending Review

The June 2010 Budget and October 2010 Spending Review announced several measures aimed at reducing Housing Benefit expenditure. The Government set out the rationale for these measures:

> The measures announced will provide a fairer and more sustainable Housing Benefit scheme by taking steps to ensure that people on benefit are not living in accommodation that would be out of the reach of most people in work, creating a fairer system for low-income working families and for the taxpayer. It will avoid the present situation where Housing Benefit recipients are able to live in very expensive properties in areas that most working people supporting themselves would have no prospect of being able to afford.

> Housing Benefit expenditure has ballooned in the past 10 years, from £11 billion in 1999/2000 to £20 billion in 2009/10, in cash terms. Within this total, expenditure on working age recipients has increased from £7 billion to over £14 billion. Without reform, total expenditure is forecast to reach £25 billion by 2015/16, a further rise of 24 per cent. This is unsustainable in any economic climate, but the need to tackle the record deficit makes reform even more pressing.[46]

For completeness, the full package of reforms is listed below but only measures 3, 6 and 10 are provided for by the *Welfare Reform Bill*. Measure 5, which would have required primary legislation, has been dropped by the Government.

1. Changing the basis for setting Local Housing Allowance rates from the median to the 30th percentile of local market rents from April 2011. This measure was originally due to be introduced from October 2011 but has been brought forward in order to reduce complexities around introducing changes in both April and October. Saving £425m by 2014/15.

2. Capping LHA rates at £250 per week for a 1 bedroom property, £290 per week for a 2 bedroom property, £340 per week for a 3 bedroom property, and £400 per week for all properties with 4 bedrooms or more, from April 2011. This replaces the inherited policy to exclude the top 1 per cent of rents from the market evidence used to calculate LHA rates. Saving £65m by 2014/15.

3. LHA rates to be uprated by the Consumer Price Index from April 2013 – saving £390m by 2014/15.

4. Uprating non-dependent deductions to reflect increases in rent since 2001/02, in April 2011 and annually on the same basis. Saving £340m by 2014/15.

5. Restricting Housing Benefit to 90 per cent of the full award after 12 months for claimants who are in receipt of Jobseekers Allowance, from April 2013. Saving £110m by 2014/15.[47]

6. Restricting Housing Benefit for working age social tenants who occupy a larger property than their family size warrants from April 2013. Saving around £400m a year from 2013/14.

The Budget included two further provisions in respect of Housing Benefit which do not involve cost savings:

7. Increasing the Government contribution to the Discretionary Housing Payments budget by £10m in 2011/12 and by £40m per annum from 2012/13. Cost £55m by 2014/15.

8. Amending the size criteria to provide an extra bedroom for disabled claimants who have a non-resident carer, from April 2011. Cost £15m per year.[48]

As part of the 2010 Spending Review two further Housing Benefit measures were announced:

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[46] Department for Work and Pensions, *Impact of changes to Local Housing Allowance from 2011 – Reasons for the changes* [webpage taken on 3 March 2011]

[47] This measure has been dropped by the Government and is not provided for within the Bill.

[48] For additional information on this measure see Library Standard Note, *Housing Benefit: Size Criteria and Discretionary Housing Payments* (SN/SP/4887)

9. raising the age at which the Shared (formerly Single) Room Rate applies from 25 to 35 from 2012 saving £215m a year by 2014/15; and

10. capping household benefits at £500 per week from 2013 (£350 per week for a single person with no children). Where household income from benefits exceeds these levels Housing Benefit entitlement will be reduced.

The Government is also proceeding with the previous Government's plan to remove the provision that allows claimants to keep up to £15 of the difference between the LHA rate and their actual rent level.[49]

Regulations to implement measures 1, 2 and 8 have already been made.[50] The up-rating of non-dependent deductions (measure 4) will be implemented by *The Social Security Benefits Up-rating Order 2011*. Further Regulations will be made in due course to implement changes to the Shared Room Rate (measure 9) – an equality impact assessment on the Shared Room Rate will be published with the draft Regulations.

During the consultation process on the measures to be introduced from April 2011 the Government agreed to introduce transitional measures for existing Local Housing Allowance claimants and to give local authorities additional discretion to pay LHA direct to landlords where they agree to rent reductions:

> All changes that will adjust the way local housing allowance rates are calculated will come into force from April 2011 for new claims to ensure the measures are fiscally neutral over the spending review period. Existing claimants affected by the changes to local housing allowance rules will continue at their current rate of benefit until their claim is reviewed by their local authority; they will then have a further period of transitional protection at their current local housing allowance rate of up to nine months if there has not been a relevant change of circumstances. No one will be able to receive more in benefit than they pay out in rent once their claim has been reviewed.
>
> The Government intend that the measures they are introducing to adjust local housing allowance rates will act to reduce rents in the private rented sector. To support this, the Government are temporarily widening the discretion of local authorities to make direct payments to the landlord in some circumstances where it will support tenants in retaining or securing a tenancy. The Government will work closely with local authorities to ensure this provision is used only in very specific circumstances where landlords are reducing rents to a level that is affordable for claimants.[51]

The Government also agreed to commission independent external research into the impact of the Housing Benefit reforms in response to a request by the Work and Pensions Select

[49] More information on this measure and opposition to it when first raised by the Labour Government can be found in Library Standard Note *Constituency casework: housing (England)* (SN/SP/4957)

[50] *The Housing Benefit (Amendment) Regulations 2010* (SI 2010/2835) and the *Rent Officers (Housing Benefit Functions) Amendment Order 2010* (SI 2010/2836)

[51] HC Deb 30 November 2010 c72WS

Committee.[52] The expectation is that this review will be completed before the move across to Universal Credit begins in 2013, giving time to make any adjustments deemed necessary.[53]

Detailed information and comment on the Housing Benefit reforms outlined above can be found in the Library Standard Note *Housing Benefit: implications of the June 2010 Budget and Spending Review* (SN/SP/5638). Many of the changes are controversial and will be carried over into the calculation of the housing element of the Universal Credit. The Work and Pensions Select Committee inquiry into the LHA changes concluded that "virtually all households face losses as a result of one or more of the measures in the LHA package".[54] While there is a commitment that no household will lose out in cash terms at the point of transition to the Universal Credit, those households affected by the LHA changes[55] will have experienced a reduction in benefit entitlement well before the point of transition is reached.

The Bill

Clause 68 will amend section 130A of the *Social Security Contributions and Benefits Act 1992*. This section provides for the determination of a claimant's "appropriate maximum housing benefit" (AMHB) in accordance with regulations and including reference to rent officer determinations. Assessing a claimant's AMHB involves a determination of whether they are entitled to receive Housing Benefit and how much they should receive.

The amendments will "generalise section 130A to reflect the Secretary of State's intention to exercise the powers in that section to provide for AMHB to be determined by methods other than by reference to rent officer determinations".[56]

The detail on how a claimant's AMHB is to be assessed will be contained in regulations. An assessment of a claimant's eligible rent may involve treating their liability to pay rent as something other than it actually is, i.e. their eligible rent will not necessarily be based on the rent level they have contracted to pay.

The Explanatory Notes to the Bill make it clear that the Secretary of State may use the regulation making powers contained in this clause to:

- restrict Housing Benefit for working age social tenants who occupy a larger property than their family size warrants (measure 6 as outlined above); and
- re-set Local Housing Allowance rates without reference to rent officer determinations.[57]

The following two sections consider the impact of each of these measures in turn.

The Explanatory Notes also state that "in the short to medium term" Housing Benefit for social rented sector tenants will continue to be based on the actual rent charged by local

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[52] HL Deb 24 January 2011 c778

[53] Work and Pensions Committee, White Paper on Universal Credit - uncorrected evidence, 9 February 2011, HC 743-ii 2010-11, Q110 [hereafter W&P Cttee 9 February 2011]. Please note however that *this is an uncorrected transcript of evidence taken in public and reported to the House. The transcript has been placed on the internet on the authority of the Committee, and copies have been made available by the Vote Office for the use of Members and others. Neither witnesses nor Members have had the opportunity to correct the record. The transcript is not yet an approved formal record of these proceedings*.

[54] Work and Pensions Committee, *Changes to Housing Benefit announced in the June 2010 Budget,* December 2010, HC 469 2010-11, p17

[55] At March 2010 there were some 1,015,330 LHA claimants (*ibid* p17)

[56] Bill 154–EN, para 323

[57] *Ibid*, para 325

authorities and housing associations, subject to the requirement that the property is not under-occupied (see below).[58]

6.2 Under-occupation of social housing

Application of the size criteria

Housing Benefit claimants living in private rented accommodation have their entitlement to benefit restricted if they are deemed to live in accommodation that is larger than their family size warrants. No such restriction is currently applied to tenants claiming Housing Benefit while living in social rented housing. The Government's rationale for extending size restrictions to working-age Housing Benefit claimants in the social rented sector is to "contain growing Housing Benefit expenditure; encourage mobility within the social rented sector; strengthen work-incentives and make better use of available social housing".[59]

On the definition of "working-age" the Impact Assessment advises:

> Until April 2010, working-age included claims where both the claimant (and any partner) were under the age of 60. By 2020, legislation currently provides that the relevant age threshold will be 65 ... New and existing Housing Benefit claims from those claimants who have reached the qualifying age for State Pension Credit will be unaffected by the measure.[60]

The size criteria to be applied will replicate that which applies to claimants in the private rented sector whose claims are assessed in accordance with the Local Housing Allowance – thus one bedroom will be allowed for each of the following:

- a couple;
- a person who is not a child (age 16 and over);
- two children of the same sex;
- two children who are under ten;
- any other child.

An additional bedroom will also be allowed for a non-resident carer where they provide overnight care for the claimant or their partner.

Where a claimant is under-occupying a social rented property their eligible rent for Housing Benefit purposes will be reduced by a percentage. Under-occupying claimants in the private rented sector have their entitlement reduced to a fixed rate. The expectation is that the size criteria will be applied to existing and new social housing tenants from 2013. There will be no transitional protection for existing social housing tenants.[61]

The choice for a social tenant facing a shortfall of Housing Benefit will be to seek a move to smaller accommodation within the social sector or move into the private rented sector. Other options would be to meet the shortfall from employment, other benefit payments or take in a lodger.

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[58] *Ibid*

[59] *Under-occupation of social housing Impact Assessment*, para 11

[60] *Ibid*, para 6

[61] *Ibid*, para 45

Additional help may be available through the Discretionary Housing Payments (DHP) scheme. Local authorities are not under any duty to make a DHP and they are generally not paid in perpetuity. The Government has announced an increase in funding for DHPs over the period of the Spending Review in order to mitigate the impact of reductions to Housing Benefit entitlement. The Social Security Advisory Committee's report on the draft *Housing Benefit (Amendment) Regulations 2010* notes that the increase in DHPs represents around 4% of the total cash losses resulting from the measures and recommended "the Department reviews the allocation of DHPs to better reflect the scope and scale of projected impacts across LAs".[62]

On 30 November 2010 a Written Ministerial Statement advised of a further increase in funding:

> In addition to the funding announced to increase the discretionary housing payment fund, the Government have allocated a further £50 million over the spending review period to support the implementation of these measures. This will provide targeted support to help meet the housing needs of claimants who are affected by the changes, and we will work with local government on its allocation.[63]

The good practice guidance on DHPs is under review.[64]

The Impact Assessment

The Impact Assessment advises that, at the proposed time of introduction (2013/14) the application of size criteria to the social rented sector is likely to affect around 670,000 tenants in receipt of Housing Benefit – representing around 32% of all working-age Housing Benefit claimants in the sector. Claimants will see an average reduction in Housing Benefit of £13 per week – this estimate takes account of forecast increases in social sector rents. As the qualifying age for State Pension Credit increases, the number of affected claimants is predicted to rise to 760,000 by 2020.[65]

Different regional impacts have been identified: in the North East and North West it is estimated that, respectively, around 46% and 43% of social housing tenants will be affected compared to 19% in London.[66]

Likely changes in landlord and tenant behaviour are described as "difficult to estimate" – it is accepted that the movement of tenants within the sector will be determined not just by their willingness to move but also by the availability of suitable alternative accommodation and landlord approaches to facilitating moves by tenants.[67] The Department of Communities and Local Government has estimated that there is a surplus of 3 bedroom properties and a lack of 1 bedroom properties in the sector. The Impact Assessment states that "this mismatch could mean that there are insufficient properties to enable tenants to move to accommodation of an appropriate size even if tenants wished to move and landlords were able to facilitate this movement".[68]

The Impact Assessment identifies the following potential costs:

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62 Social Security Advisory Committee, *The Housing Benefit (Amendment) Regulations 2010 (S.I. No. 2010/2835) and The Rent Officers (Housing Benefit Functions) Amendment Order 2010 (S.I. No. 2010/2836) report*, November 2010, p11

63 HC Deb 30 November 2010 c72WS

64 HC Deb 1 December 2010 c865W

65 *Under-occupation of social housing Impact Assessment* paras 25-26

66 *Ibid*, para 33

67 *Ibid*, para 38

68 *Ibid*, para 24

- claimants' removal costs;
- claimants moving into private rented housing may receive a higher level of Housing Benefit (reflecting higher rent levels). This may be offset by other households moving into the social sector from the private sector or temporary accommodation as properties become available;
- social landlords will have to fund schemes to identify and enable affected tenants to move;
- social landlords may face an increase in void periods (and a loss of rental income) if more tenants move;
- increased rent arrears and costs of recovering Housing Benefit shortfalls;
- increased court costs associated with the eviction of tenants who fail to make-up any shortfalls in rent payments;
- additional IT, administration and publicity costs for local authorities; and
- additional demand for DHPs (administered by local authorities).

The estimated benefits are identified as:

- savings to the Exchequer from reduced entitlement to Housing Benefit;
- increased mobility amongst social housing tenants and more effective use of the social housing stock;
- some claimants will "float off" Housing Benefit resulting in a reduction in administration costs for local authorities.[69]

Comment

This measure "fits" within the context of wider changes to social housing tenure contained in the *Localism Bill*, which is currently progressing through Parliament. The *Localism Bill* will give social landlords the discretion to offer new tenants "flexible tenancies" with a minimum fixed-term of two years. The intention is for landlords to review the circumstances of tenants with flexible tenancies and, where they are deemed not to need social housing, they will be expected to find alternative accommodation. One of the drivers behind this and other measures in the *Localism Bill* is to improve rates of mobility amongst social housing tenants. The limitation of Housing Benefit for under-occupying social tenants is also aimed at increasing mobility in the sector by exposing social tenants to the same pressures and incentives as those faced by Housing Benefit claimants in the private rented sector.

In *Ends and means: the future roles of social housing in England* (2007) John Hills identified the rate of employment-related mobility within the social rented sector as "strikingly low". Some respondents to his review suggested a move away from permanent security of tenure for social tenants and a requirement for tenants to move if they were found to be under-occupying.[70] Professor Hills considered some of the potential side-effects of such a move and concluded that there were strong arguments against a system of review based on "coercion or removing advantages" but supported the use of "incentives and options" (such

69 *Ibid*, paras 39-59
70 Professor John Hills, *Ends and means: the future roles of social housing in England*, 2007, p157

as grants to move to smaller properties) to promote more effective use of the social housing stock.[71] Professor Hills also highlighted the relatively advantageous position of under-occupying owner occupiers:

> Unless parallel pressures were put on owner-occupiers who "under-occupy" property (such as through more steeply graduated council tax between bands or other charges that made occupying larger property more expensive), it would seem strange in equity terms to be concentrating on the relatively small number of social tenants with larger amounts of space, particularly as it is the owners who have benefited from the increases in value that housing market pressures have created.[72]

It is certainly acknowledged that the limitation of Housing Benefit could act as a spur to freeing up larger under-occupied social housing but social landlords believe it will only succeed if there are sufficient alternative properties available at the right size to move the affected tenants to. As noted above, the Impact Assessment has identified a mismatch of accommodation sizes in the social sector meaning that households may have to move into the private rented sector. The Government's wider package of Housing Benefit reforms, which will impact on claimants in the private rented sector, has led commentators to predict rising levels of homelessness as private landlords withdraw from letting to Housing Benefit claimants.[73]

The Social Security Advisory Committee's consideration of the impact of these wider Housing Benefit reforms resulted in a recommendation to the Government not to proceed with the proposals:

> 6.1 In our view these proposed measures are neither a coherent expression of the Government's objectives for improving incentives and making work pay, nor a certain formula for achieving savings to the public purse as a whole. At the same time, the rationale for the measures suggests that the underlying problem that needs to be addressed is one of under supply of affordable housing, particularly in economically vibrant parts of the country.
>
> 6.2 All the evidence we have seen from both the Department and from the many respondents to our consultation exercise suggests that these are high risk measures. If they go ahead, in around six months, and again at twelve months time, and at relatively short notice, the vast majority of HB recipients in the PRS will find themselves facing new – or increased – shortfalls between their HB and the rent they have contracted to pay. As one of our respondents noted: *'… there are few or no comparable precedents of such large income shocks affecting such a large proportion of households within a housing sector simultaneously.'*[74]

The under-occupation measure has also been criticised on the ground that it may force households to leave communities in which they have lived and contributed to for many years. As those affected will be working-age households, and many recipients of Housing Benefit are in low paid work, there are concerns around the ability of these people to find alternative accommodation within reasonable travelling distance of their place of employment. Sarah Webb, CEO of the Chartered Institute of Housing (CIH), said:

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71 *Ibid*

72 *Ibid*

73 See Library Standard Note *Housing Benefit: implications of the June 2010 Budget and Spending Review* (SN/SP/5638)

74 Social Security Advisory Committee, *The Housing Benefit (Amendment) Regulations 2010 (S.I. No. 2010/2835) and The Rent Officers (Housing Benefit Functions) Amendment Order 2010 (S.I. No. 2010/2836) report*, November 2010, p26

> ...very few of us can afford to live in the place we would love to – but the reality of this policy for low paid families is that they may also have to give up their job. Moving to an area of low priced housing that you can afford under the new proposals may well result in you moving to an area with few jobs and already high levels of unemployment – and, if you currently live in Westminster and the only place you can now afford is Hastings - you won't be in a position to commute for your £6 an hour job back in the capital.[75]

Reductions in entitlement to Housing Benefit may increase the risk of tenants defaulting on their rent payments. An adverse impact on social landlords' rental streams could, in turn, destabilise the credit arrangements that housing associations have with financial institutions. Social landlords will no doubt seek to limit the likelihood of this by identifying under-occupying tenants ahead of April 2013 and working to resolve their status as under-occupiers. These landlords have no powers to evict or forcibly move tenants on grounds of under-occupation, except in some very limited circumstances involving succession, thus a process of education and persuasion is likely to be needed. This may be a costly process, as acknowledged by the Impact Assessment; the LGA is calling for the costs of the welfare reform measures to be fully met by Government.[76]

The housing sub-group of the Welfare Rights Consortium is calling for the under-occupation measure to be phased in for existing tenants in order to avoid a "big bang" approach in April 2013. Phasing in could enable landlords to focus on the most extreme cases of under-occupation in the first instance. The Consortium has also emphasised the need for clarity in relation to social tenants who move in and out of under-occupation, e.g. where their children leave home only to return again within months.[77]

As with many of the responses to reforms to social housing tenure contained in the *Localism Bill,* respondents have emphasised the need for Housing Benefit reform for claimants in this sector to be linked with wider developments in housing policy, specifically the need to address the shortage in supply of affordable housing.[78]

6.3 Setting Local Housing Allowance (LHA) rates

Background

Clause 68 of the Bill will allow the Secretary of State to re-set LHA rates without reference to rent officer determinations. The LHA is payable to tenants in living in the deregulated private rented sector who have submitted a claim since 7 April 2008.

Currently LHA rates within Broad Market Rental Areas (BMRAs) are set at the median of data on achieved rents collected by rent officers working for the Valuation Office Agency; this will reduce to the 30th percentile of achieved rates from April 2011. LHA rates are currently reviewed, and changed where necessary, on a monthly basis.

As part of the June 2010 Budget the Government announced an intention to up-rate LHA rates by the Consumer Price Index (CPI) from April 2013. Clause 68 will enable this change to the way in which LHA rates are reviewed to be implemented.

The Government's intention is that LHA rates will be set annually on a common date from April 2013 and that increases to the rates will be restricted to the maximum of any change in the CPI. The *Impact Assessment on Housing Benefit – uprating Local Housing Allowance rates by CPI* estimates that the measure could save £300 million a year – this will be

75 Chartered Institute of Housing, *Talking heads – No-go housing areas where there's no one left to serve you your cappuccino,* 18 February 2011

76 Local Government Association, *Welfare Reform Bill Briefing*, 18 February 2011

77 Meeting of the Welfare Rights Consortium, 21 February 2011

78 Shelter, *Briefing on the June 2010 Housing Benefit announcements*, 2010

dependent on actual changes in the CPI. Lord Freud advised the Work and Pensions Select Committee that when the CPI figure is set for 2013 it will apply for two years as it will represent a settlement for the 2010 Spending Review: "...what we are doing is breaking the link into the market as a whole for two years, in order to keep downward pressure".[79]

The rationale behind the policy is to reduce expenditure on Housing Benefit and to "move toward providing a fairer and more sustainable Housing Benefit scheme which will help address the disincentives to work inherent in the system.[80] The move is also in line with the Government applying the CPI, rather than RPI, to up-rate other social security benefits.

The Impact Assessment

The Impact Assessment notes that the precise impact on individual claimants will depend upon behavioural responses to choice of accommodation and on whether landlords will restrict their rent increases to changes in the CPI. An "illustrative average notional loss" to claimants is identified of £5.50 per week.[81] Restricting rent increases to the CPI will, it is noted, result in landlords receiving a reduced income than they otherwise would have done under the existing Housing Benefit scheme.

If landlords increase their rents above the CPI LHA claimants could accrue rent arrears and landlords could incur additional costs associated with recovering debts and terminating tenancies. The Impact Assessment refers to the possibility of landlords refusing, in the longer-term, to let to claimants reliant on LHA – although the likelihood of this happening will be related to demand for privately rented housing from other groups. Landlords who are willing to reduce their rent levels in light of restrictions to the LHA will be able to receive payments of LHA direct.[82]

Comment

Where private sector tenancy agreements make reference to a measure by which rents will be reviewed it is generally the Retail Price Index (RPI) that is mentioned. Where there is no reference to a specific measure, rents are usually increased annually in line with actual market rents. The CPI has tended to rise more slowly than RPI, primarily because it excludes some of the housing costs that are included in the RPI. Specifically, the CPI excludes:

- council tax
- mortgage interest payments
- house depreciation
- buildings insurance
- ground rent
- other house purchase costs such as estate agents' and conveyancing fees

The British Property Federation (BPF) argued that the CPI, as currently constructed, is not an appropriate index for setting housing costs:

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79 Work and Pensions Committee, *Changes to Housing Benefit announced in the June 2010 Budget,* December 2010, HC 469 2010-11, p20

80 *Housing Benefit – uprating Local Housing Allowance rates by CPI Impact Assessment,* para 3

81 *Ibid*, para 10

82 HC Deb 30 November 2010 c72WS

> ...it does not seem right that a benefit meant to cover a person's housing costs, should be set by an index that incorporates everything from the price of sausages to net curtains. Rent makes up a relatively small proportion of the current basket of goods that form the CPI, because the majority of the population are not renters. Even if the index is reformed to include mortgage costs this will not wholly resolve the issue because approaching half existing homeowners have no mortgage and therefore mortgage costs do not figure in their basket of goods.
>
> Although the differences may appear small, a per cent or two a year, the consequences of getting caught on the wrong index can be severe. History illustrates this through the experience of pensioners.[83]

Respondents have expressed concern that increasing LHA rates in line with the CPI rather than actual rent levels will, over time, result in these claimants being unable to afford privately rented homes. The Chartered Institute of Housing (CIH) submitted a spreadsheet to the Work and Pensions Committee's inquiry into the Housing Benefit changes announced in June 2010 which explores how long it might be until LHA claimants' purchasing power, increased by CPI, can no longer meet the cost of the cheapest properties in different areas. The Institute projects that within 15 years all two bedroom properties in 42 of 154 rental market areas will be at rents above LHA rates (assuming demand and supply remain unaffected).[84] The Institute's findings have been reinforced by the Cambridge Centre for Housing and Planning Research (CCHPR) – using inner Greater Manchester as an example rental market it found:

> ...by 2018, only the bottom 5% of 2- bedroom properties might be available at or below the LHA rate. The study suggests "this holds true for many other areas, and thus the pool of adequate properties affordable to LHA claimants will inevitably shrink".[85]

The CIH's evidence to the Committee emphasised the potential impact of the move to CPI up-rating on the fundamental purpose of Housing Benefit:

> It is critical to understand that this means that over time the effect of the CPI cap will be to break the link between what help tenants receive with their housing costs and the actual rent they pay. At this point it can no longer be said that housing benefit will be meeting its central policy objective: to ensure that accommodation is available to all households regardless of their income.[86]

Consequently the CIH describes up-rating by CPI as the Budget measure that it is most strongly opposed to.[87]

The Residential Landlords Association (RLA), which represents around 13,000 members, also submitted detailed evidence to the Work and Pension Committee's inquiry. The RLA describes the CPI measure as "one of the most detrimental of all these proposals",[88] while the BPF states that it is the "most severe aspect" of the Housing Benefit reforms.[89] The RLA also predicts that the gap between market rents and LHA rates will grow over time:

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83 Work and Pensions Committee, *Changes to Housing Benefit announced in the June 2010 Budget,* December 2010, HC 469 2010-11, Ev42
84 *Ibid*, Ev44-59
85 Cambridge Centre for Housing and Planning Research Study, September 2010, p30
86 Work and Pensions Committee, *Changes to Housing Benefit announced in the June 2010 Budget,* December 2010, HC 469 2010-11, Ev55
87 *Ibid*
88 *Ibid*, Ev103, para 125
89 *Ibid*, Ev41

> When market rents were introduced by the Housing Act 1988 the then Government gave a promise to link housing benefit rates to market rents. The successive Governments have honoured this, at least in principle. Now, for the first time the Government want to move away from this principle.
>
> 126. Between 1998 to 2010 private rented sector rents have risen by 63% from an average of £79 per week to £129 per week (CLG survey of English Housing). Over this period average earnings have roughly risen by about 48%. This has resulted from the structural problems which we have already referred to in the housing market due to shortage of supply. With the ongoing shortage of supply no doubt this trend will continue. The gap between market rents and LHA rates will widen over time.[90]

Homeless Link, a body representing over 480 organisations working with homeless people in the UK, has modelled all of the Housing Benefit reform measures, including the move to up-rating by CPI, and identified a "tipping point" at which increased levels of homelessness arising from the reforms will wipe out all of the expected savings. This "tipping point" is reached if one quarter of those households who are deemed to be at severe risk of being made homeless, actually do become homeless.[91]

The housing sub-group of the Welfare Rights Consortium regard the retention of the link between Housing Benefit rates and actual rent levels as essential. Respondents acknowledge that the actual impact of this measure will depend on movements in the CPI, which cannot be known in advance – thus there are concerns that the impact of the measure cannot be properly scrutinised prior to implementation.[92] There has been reference to the possibility of the measure being made subject to a "sunset clause".[93]

After considering the submitted evidence the Work and Pensions Select Committee recommended:

> ...that the Government fully evaluate the impact of the changes to Housing Benefit introduced in 2011, including on rent levels, before introducing the change to using the Consumer Price Index (CPI) for uprating LHA. If uprating using CPI is introduced in 2013, it should be accompanied by an undertaking that the Secretary of State will review the Local Housing Allowance rates in relation to prices in the wider private rental market prior to 2015.[94]

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90 *Ibid*, Ev103, para 124

91 Homeless Link, "'Tipping point' analysis", December 2010 (note that this analysis includes the 10% reduction in entitlement to Housing Benefit for claimants on Jobseeker's Allowance for more than 12 months - this measure has now been dropped).

92 Meeting of the Welfare Rights Consortium, 21 February 2011

93 A provision in a Bill that gives it an 'expiry date' once it is passed into law. 'Sunset clauses' are included in legislation when it is felt that Parliament should have the chance to decide on its merits again after a fixed period.

94 Work and Pensions Committee, *Changes to Housing Benefit announced in the June 2010 Budget,* December 2010, HC 469 2010-11, p21

7 The Personal Independence Payment

Part 4 of the Bill sets out the framework for a new benefit – the Personal Independence Payment – to replace Disability Living Allowance from 2013-14.

The June 2010 Budget announced that a new "objective medical assessment" would be introduced for both new and existing working age DLA claims from 2013-14, saving over £1 billion a year by 2014-15 and reducing the DLA caseload by 20%. On 6 December the Government published a consultation paper, *Disability Living Allowance reform*, which set out plans for an entirely new benefit – the "Personal Independence Payment" – to replace DLA, starting from 2013-14. Responses would "inform secondary legislation on the detailed design of the benefit, including requirements for the new assessment". The closing date for responses was 18 February. Detailed information on the Government's proposals, and on responses to them, is given in Library standard note, *Disability Living Allowance reform* (SN/SP/5869).

The October 2010 Spending Review also announced the withdrawal of the DLA mobility component from people in care homes whose place is funded by a public body, from October 2012. Full background on this can be found in another Library standard note, *Disability Living Allowance mobility component for people in care homes* (SN/SP/5841).[95]

7.1 Disability Living Allowance

Disability Living Allowance (DLA) was introduced in April 1992 by the merger and extension of two existing benefits: Mobility Allowance (MobA) and Attendance Allowance (AA). DLA has a mobility component and a care component. The mobility component – for help with walking difficulties – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels. Although DLA can be paid indefinitely, there is an upper age limit for the first claim. Claims must be made before a person's 65th birthday; otherwise, Attendance Allowance may be claimed instead. AA has no mobility component, but the disability tests are the same as for the middle and higher rate care components of DLA.

A recent Impact Assessment produced by the Department for Work and Pensions set out the rationale for DLA (and Attendance Allowance) as follows:

> The purpose of Disability Living Allowance and Attendance Allowance is to provide a financial contribution towards the generality of extra costs experienced by severely disabled people as a direct result of their disabilities. The benefits are part of the wider package of help available to support disabled people and help maintain their independence.
>
> [...] Both benefits were introduced as a policy response to the evidence that disabled people and their families suffered greater disadvantage and poverty than their non-disabled peers and preceded the opening up of the disability rights framework, including the introduction of measures to tackle discrimination against disabled people.[96]

Entitlement to DLA depends on the effects that a particular condition has on a person's need for personal care and/or ability to walk, and not on particular disabilities or diagnoses (although people with certain serious conditions, and people with a terminal illness, may

[95] SN/SP/5841, 21 January 2011

[96] Department for Work and Pensions, *Attendance Allowance, Disability Living Allowance and Carer's Allowance: Retrospective equality impact assessment*, September 2010, paras 2.1–2.2

qualify automatically) There is no requirement for the assessment of a claimant's income, capital or National Insurance contributions. Furthermore, DLA is non-taxable.

DLA cannot be paid until a person has needed help for three months (the “qualifying period”), and the person must be expected to need help for a further six months (the “prospective test”).[97] There are, however, special rules which exempt from these requirements those who are not expected to live more than six months because of a terminal illness. Such people automatically qualify for the highest rate DLA even if no help is needed.[98]

People making a claim for DLA must complete a self-assessment questionnaire giving details of their health conditions and the needs arising from them.[99] Claims are considered by DWP officials known as “decision makers”. The decision maker may also ask the claimant’s GP, or another medically qualified person treating the claimant, to complete a factual report (the claim form asks the claimant to provide contact details for their GP and/or person treating them). If, on receipt of the factual report, the decision maker decides that they still do not have enough information, they can require the claimant to attend a medical examination carried out by a healthcare professional employed by Atos Healthcare, the DWP Medical Services contractor. Atos Healthcare carried out 46,312 DLA assessments in the period October 2009 to September 2010.[100]

DLA awards may be for either a fixed period or for an open-ended period.[101] 71 per cent of current DWP recipients were awarded benefit for an indefinite period, although this will include people over pension age with long-term conditions.[102] The proportion of new DLA claims resulting in an indefinite award will be considerably lower.[103]

Fixed period awards may be for months or for a few years. For fixed period awards, the letter giving the decision on the claim will specify the date when payment starts and when it ends. The length of the award will depend on the DWP decision maker’s judgment when the original claim was made about how long the person’s needs are likely to last for.

The fact that someone may have been given an indefinite award of DLA does not mean that they will not have to undergo a further assessment at some point. Between 1999 and 2007 existing claims were reassessed under the “periodic enquiry” process. Since 2007 the DWP’s “Right Payment Programme” (RPP) has been checking the correctness of existing awards by examining a sample of around 12,000 DLA cases each year.

Estimates of the incidence of fraud and error in relation to DLA claims are low in comparison with other benefits. The latest DWP estimate is that around £220 million (1.9% of total expenditure on DLA) was overpaid due to fraud and error in 2009-10. This compares with 5.7 per cent of expenditure on Income Support overpaid due to fraud and error, 5.2% for Jobseeker’s Allowance, 4.4% for Housing Benefit and for Pension Credit, and 3.3% for Incapacity Benefit. Of the £220 overpaid, £60 million was due to fraud, £70 million was due to “customer error”[104] and £90 million was due to “official error”.[105] There is no official

97 *Social Security Contributions and Benefits Act 1992*, sections 72 and 74
98 *Social Security Contributions and Benefits Act 1992*, sections 66, 72 and 72
99 The form can be downloaded from the Directgov website
100 HC Deb 4 November 2010 c929w
101 *Social Security Contributions and Benefits Act 1992*, sections 72-73
102 HC Deb 19 January 2011 c796w
103 Of the 229,500 awards made in the 12 months to November 2006 for example, 163,500 (71 per cent) were fixed-period awards; HC Deb 5 July 2007 c1188w
104 Where the claimant provided inaccurate or incomplete information, or failed to report a change in their circumstances, but there is no fraudulent intent on their part.
105 Benefit was paid incorrectly due to inaction, delay or a mistaken assessment by the DWP, a local authority or HM Revenue and Customs.

estimate of the amount of DLA that is unclaimed because people eligible for the benefit do not claim it, but looking only at those already getting DLA, the DWP estimates that in 2009-10 claimants were *underpaid* a total of £290 million.[106]

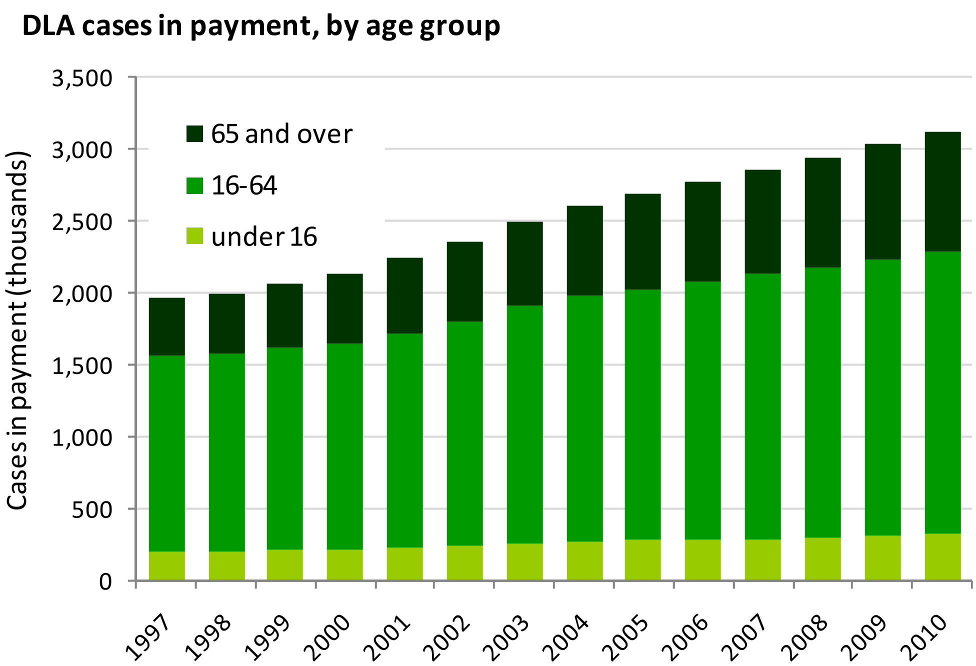
At May 2010, 3.2 million people were receiving DLA in Great Britain, of whom 2.7 million received a care component and 2.7 million a mobility component. 2.3 million received both a care and a mobility component.[107] The DWP estimates that total expenditure on DLA will be in excess of £12 billion in 2010-11.[108]

Disability Living Allowance caseload by rate component, May 2010
Great Britain

	Higher rate mobility	Lower rate mobility	No mobility rate
Higher rate care	542,000	196,000	45,000
Middle rate care	473,000	508,000	117,000
Lower rate care	422,000	214,000	255,000
No care rate	353,000	60,000	

Source: DWP Work and Pensions Longitudinal Study

The number is people claiming DLA has increased steadily since its introduction in 1992. The following chart shows the number of cases in payment in each year since 1997:[109]



Over a million DLA claimants (33% of the total caseload) are over State Pension Age, but nearly 1.8 million (57%) were of working age.

106 Department for Work and Pensions, *Fraud and Error in the Benefit System: October 2008 to September 2009*
107 Department for Work and Pensions, Tabulation Tool
108 Department for Work and Pensions, Benefit Expenditure Tables
109 Department for Work and Pensions, *Disability Living Allowance reform*, Cm 7984, December 2010

The growth in the DLA caseload is frequently remarked on, but there is surprisingly little recent research evidence on why it has continued to grow, year on year. In a written answer in February 2010 the then Minister for Disabled People, Jonathan Shaw, said:

> The Disability Living Allowance caseload has grown for a number of reasons, including the maturing of the benefit, which was introduced in its current form in 1992, demographic factors and increased awareness of the benefit. We currently forecast that expenditure will grow by a further 2.3 per cent. between 2009-10 and 2010-11. By convention the Treasury does not publish a projection of Annually Managed Expenditure beyond the current spending review period.[110]

7.2 DLA reform consultation

The June 2010 Budget Red Book announced:

> The Government will reform the Disability Living Allowance (DLA) to ensure support is targeted on those with the highest medical need. **The Government will introduce the use of objective medical assessments for all DLA claimants from 2013-14** to ensure payments are only made for as long as a claimant needs them.[111]

The Government expected additional savings of over £1 billion a year by 2014-15, implying that some people currently in receipt of the benefit would not be entitled to it under the new regime. Initial statements said that the new assessment would apply to both new and existing working-age DLA claims, and would be a points-based assessment along the lines of the Work Capability Assessment for Employment and Support Allowance.[112]

A statement issued by the DWP following the Budget explained:

> Disability Living Allowance (DLA) was originally designed to give those with severe disabilities extra help so they could live with dignity and independence in their own homes. While we are absolutely committed to supporting vulnerable disabled people, over the last decade the system has become open to abuse and the numbers claiming has steadily increased. In just eight years the numbers claiming DLA have risen by more than half a million.
>
> DLA awards can be decided on the basis of self-reporting of need and, although medical assessments are sought for certain awards, these are not mandatory. We believe support must be offered on the basis of genuine need.
>
> That's why we're taking the decision to reassess everyone of working age on DLA, and ensure everyone in the future goes through a proper gateway to claim the benefit.[113]

In response to a question from Caroline Lucas on 18 October, Maria Miller confirmed that the need to make savings worth 20% of expenditure was a factor when considering options for reform of the assessment:

> The new assessment, which we are developing with the help of specialists in the fields of health and disability and representatives of disabled people, is being designed to assess more accurately, objectively and consistently those disabled people who would benefit from support to reduce the barrier they face to participating in society as a result of their disability. One factor being considered in developing options for the new

110 HC Deb 2 February 2010 c257w
111 HM Treasury, *Budget 2010*, HC61 2010-11, p33, para 1.103 (original emphasis)
112 HM Treasury and HM Revenue and Customs, *Budget 2010 policy costings*, June 2010, p36
113 Department for Work and Pensions, *Fairness and reform at the heart of Budget settlement*, 22 June 2010

> assessment is the need for reform of disability living allowance to deliver savings of 20% of working age expenditure.[114]

The Budget referred to an "objective *medical* assessment" for DLA. However, during topical questions on 18 October, the Minister said that there was "no intention to introduce a medical assessment for DLA", adding:

> The work capability assessment, which, after all, tests people's ability to get into work, is very different. DLA is a benefit that is paid to disabled people to make up the additional costs that they incur for being disabled; it is not linked to their ability to work.[115]

The DWP consultation paper, *Disability Living Allowance reform*, was published on 6 December 2010. Launching the consultation, the Minister for Disabled People, Maria Miller, said in a Written Ministerial Statement that the Government remained "steadfast in our support for the principles of DLA, as a non-means-tested cash benefit contributing to the extra costs incurred by disabled people".[116] She went on:

> However, DLA has not been fundamentally reformed since it was introduced in 1992. We now have a disability benefit which is confusing for individuals to understand, based on unclear criteria and often results in inconsistent awards, and since 1992, both the case load and the cost of DLA have grown to a level that is unsustainable. Changes to DLA are long overdue and must address questions of fairness and value, while supporting disabled people to lead independent lives. We must ensure DLA better reflects the needs of disabled people today, rather than in the 1990s, and that it enables support to be targeted to those with the greatest need.
>
> This is why I want to bring disability benefits into the 21st century by replacing DLA with a new benefit-personal independence payment. This is an opportunity to improve the support for disabled people and enable them to lead full, active and independent lives. Personal independence payment will maintain the key principles of DLA, but it will be delivered in a fairer, more consistent and sustainable manner. It is only right that support should be targeted at those disabled people who face the greatest challenges to leading independent lives and this reform is required to enable that, along with a clearer assessment process.[117]

Responses to the consultation would "inform secondary legislation on the detailed design of the benefit, including requirements for the new assessment".[118] The consultation period began on 6 December and was due to end on 14 February 2011, but was extended to 18 February because of IT problems affecting the DWP website. The consultation was however still shorter than the recommended 12-week minimum period for public consultations. There is widespread concern among disability organisations about the timing and length of the consultation, in light of the importance of the proposed changes.

The consultation paper states that reform of Disability Living Allowance is needed for four reasons:[119]

- "The benefit caseload and expenditure is increasing at a rate never envisaged";

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114 HC Deb 18 October 2010 c452w
115 HC Deb 18 October 2010 c627
116 HC Deb 6 December 2010 cc9-10WMS
117 *Ibid*
118 Department for Work and Pensions, *Public consultation – Disability Living Allowance reform*, Cm 7984, December 2010, p12
119 *Ibid*, pp7-10

- "The current system is too complex and the benefit is not understood";
- "There is no system to check that awards remain correct";
- "The benefit can act as a barrier to work".

On checking whether awards remain correct, the consultation paper states:

> Currently, people are not always aware of how changes to their impairment or condition might affect their award. There is no straightforward way of reviewing people's entitlement to DLA on a regular basis to ensure that they receive the right level of benefit. Two-thirds of people currently on DLA have an indefinite award, which means that their award may continue for life without ever being checked to see if it still reflects their needs. This is not in line with other benefits, where we check for changes in individuals' circumstances. We will rectify this to ensure that the new system easily identifies if an individual's condition has deteriorated or improved.[120]

Disability Organisations have argued that such claims are misleading. The Disability Benefits Consortium, for example, points out that, since 2000, legislation has required that all awards are subject to review after an appropriate period of time based on an individual's circumstances.[121]

The consultation paper set out proposals for a new benefit – the "Personal Independence Payment" – to replace Disability Living Allowance from 2013/14. New claimants would be assessed for the new benefit from the outset. Existing claimants would remain on DLA until they are reassessed for the Personal Independence Payment. It proposed a "managed programme to reassess the existing caseload and transfer people to the new benefit, starting with those of working age".[122]

The paper stated that the Government was "considering whether to reassess children and people aged over 65".[123]

The main features of the proposed new benefit are as follows:

- it will consist of two components – a mobility component, based on an individual's ability to get around; and a "daily living" component, based on their ability to carry out other key activities necessary to be able to participate in daily life;
- each component will have two rates;
- claimants must satisfy the conditions for six months before they can receive the benefit, and must be expected to satisfy the conditions for at least a further six months;
- no automatic entitlement for people with particular conditions (although the existing DLA rules for people with a terminal illness will be carried over to the new benefit);
- entitlement will be determined by a "new, fairer, objective assessment of individual need" to ensure support is "targeted on those individuals whose health condition or impairment has the greatest impact on their day-to-day lives";

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120 *Ibid*, p8, para 18
121 *Consultation response by the Disability Benefits Consortium*, January 2011, p8
122 Department for Work and Pensions, *Public consultation – Disability Living Allowance reform*, p22
123 *Ibid,* p3

- advice from an "independent healthcare professional" is to be integral to the assessment process. In most cases, this will involve a face-to-face meeting with the claimant;

- the assessment will take into account the extent to which the use of aids and adaptations (e.g. a wheelchair) affects a person's ability to participate in everyday life;

- all awards to be subject to periodic review;

- there will be a new penalty for those who knowingly fail to report a change in their circumstances that would have reduced their benefit;

- claimants may be "signposted" to other forms of support, or meetings arranged with "appropriate professionals" to enable discussion of their health condition or impairment. The consultation paper states that the DWP "could potentially explore making elements of this part of the requirements of the benefit, where appropriate".[124]

In its response to the consultation, the Disability Benefits Consortium (DBC) said that while the paper outlined some positive proposals about simplification of DLA, reducing bureaucracy and a better understanding of the additional costs faced by disabled people, further clarification of certain aspects of the proposed reforms was needed. It had "significant concerns" about the impact of the changes on disabled people, particularly in the context of wider benefits changes already announced, with some estimates suggesting that disabled benefit claimants could lose £9 billion in support over the course of the current Parliament.

DBC does not support the target of reducing DLA expenditure and caseload by 20%, noting that there is uncertainty about exactly how many people will lose benefit or have their benefit cut as a result of the reforms. It argues that focusing on those with "greatest need" will exclude many disabled people currently on the lowest rates of DLA, who are unlikely to be able to access support elsewhere. It also believes that cuts could lead to unsustainable pressure on social care and NHS budgets. DBC also had concerns about the longer qualifying period for the benefit, the assessment process, the impact on carers, and about the lack of clarity on whether children and those over 65 would be affected by the changes.[125]

In its interim response to the consultation, Disability Alliance (DA) echoed the DBC in welcoming proposals aimed at simplification and reducing bureaucracy, but believed the risks of cutting expenditure on DLA by 20% outweighed any improvements a new assessment might bring. It stated:

> Had the Government announced a new assessment and improved personalisation alone we may have been more supportive of reform. However, the underlying objective of reform remains to cut expenditure by 20% – which Disability Alliance believes will exacerbate the link between poverty and disability.[126]

The overriding target of 20% savings, it argued, made all other considerations, including the nature of the new assessment, secondary.

DA also questioned underlying assumptions about the extent of inaccuracy in DLA awards, pointing to the DWP's own estimates of the extent of fraud and error:

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124 *Ibid*, p20
125 Disability Benefits Consortium, *Consultation response by the Disability Benefits Consortium*, January 2011
126 Disability Alliance, *Disability Alliance: Interim consultation response*, 3 February 2011, p4

> It cannot be fair to justify a 20% cut in working age DLA expenditure on a Government statistic of 0.5-0.6% potential fraud in the system. It also seems punitive to target many disabled people for a reduction or loss in support using a new bureaucratic process when the existing system's 'official error' has caused more inaccuracy than evidenced fraud.[127]

DA shares the DBC's concerns about the impact of changes in DLA in the context of wider public service and benefit changes which, it believes, will disproportionately affect disabled people. In draws attention not only to the human costs of cutting DLA expenditure by 20%, but also to the cost to governments through increased demands on the NHS and social care.

There is considerable uncertainty about how many people may be affected by the new assessment for the Personal Independence Payment. A 20% reduction in the working age DLA caseload (1.8 million) would imply 360,000 losing their benefit, but Disability Alliance pointed out that this would not deliver the £1 billion a year savings the Government wants to make. Abolishing the lowest rate DLA care component (received by 643,000 people at May 2010) would, Disability Alliance estimated, deliver savings of £643 million a year, still leaving a shortfall. To achieve the £1 billion figure, Disability Alliance suggested that almost 750,000 people could lose support. Alternatively, it noted that the Government could decide to reduce Personal Independence Payment rates.

There is great concern among organisations about the proposal to target the new benefit on those with "greatest need". The Disability Benefits Consortium comments:

> A focus on those disabled people with higher needs will exclude many disabled people - who will still face considerable additional costs as a result of their disability or condition - from participating in society. Meeting lower level need is important in terms of preventative benefits as well as providing essential support. If the Government's aim is to create a "sustainable system" this approach risks allowing unmet needs to develop into crisis situations, which have higher costs to individuals, families and public resource - for example, through reduced work hours or hospitalisation.[128]

The DBC is concerned that people not deemed "disabled enough" may be doubly hit by increasingly restrictive eligibility criteria for social care, noting that already in 2007/08, 74% of local authorities set eligibility criteria at "substantial" or "critical" only. It notes that this figure is likely to rise, with many local authorities consulting on proposals to further tighten eligibility rules and to increase costs of care.[129]

Both the DBC and the Disability Alliance believe that focusing on those with the greatest needs goes against the original purpose of DLA. The DA interim response noted:

> 'The Way Ahead' (which led to the legislation which introduced DLA in 1990) focused specifically on people with additional costs, but lower needs who were unable to access alternative support. The original Conservative Government's plan specifically highlighted the availability of alternative support – based on the findings of four major surveys – and included the action that DLA would:
>
> > 'introduce new lower rate payments for people with care and mobility needs lower down the severity scale'.

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[127] *Ibid*, p7
[128] Disability Benefits Consortium, *Consultation response by the Disability Benefits Consortium*, January 2011, pp4-5
[129] *Ibid*, p5

> We believe the PIP proposals risk distorting a principal aim of DLA which was introduced to help disabled people who now appear at risk of losing access to support.[130]

DBC argues that it is vital that the Government ensures that changes to DLA are not based on meeting "arbitrary target", but on "better supporting disabled people and their families to overcome the additional costs and barriers that can drive them into poverty".[131]

The 20% target is also criticised as arbitrary by the MS Society, which comments "…the Government has presented no evidence as to why this target has been set. We object to the approach to reform as a manifest cost-cutting exercise"[132], and Scope argues that the decision was taken "without consideration being given to the effect this will have on disabled claimants".[133]

Scope argues strongly that support should be targeted at those experiencing the highest costs as a result of their impairment, and that it is vital that the assessment for the Personal Independence Payment enables this. It argues that complexity of impairment is not a reliable proxy for extra costs because these are driven by a wide range of factors. Given this, any move towards a medical-type assessment, or one which looks at functional impact, would make the test less effective in identifying those facing the greatest extra costs.

The consultation paper proposed – controversially – that in assessing the extent to which an individual's health condition or impairment affects their ability to undertake everyday activities, the successful use of aids and adaptations should be taken into account. It noted that DLA already takes account of some (e.g. prosthetic limbs), but not others (e.g. wheelchairs). The Government acknowledged however that taking aids and adaptations into account "should not discourage individuals from using them".[134]

The Disability Benefits Consortium commented:

> We are concerned by the proposal that the PIP assessment will take into account more aids and adaptations. For example under PIP, the individual's ability to get about in a wheelchair will be considered, rather than ignoring it as under the current DLA process. This could then affect their eligibility for PIP, yet it is based on the incorrect assumption that using a wheelchair will mean all physical barriers and resultant additional expenses are overcome. Another potential example could be aids for people with sensory impairments such as long canes and hearing aids. These are just one part of successful mobility and communication for people with single and dual sensory impairments; they work in conjunction, for example, with any human support or transport. Therefore these individuals have an ongoing additional cost related to disability, despite successfully using aids and adaptations. Additionally, taking more aids and adaptations into account must not create a perverse incentive whereby individuals do not take up aids and adaptations for fear this could jeopardise their entitlement to PIP.[135]

At Lords starred questions on 7 February, the Minister for Welfare Reform, Lord Freud, admitted that taking into account aids and adaptations was a "complex issue" and added:

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[130] Disability Alliance, *Disability Alliance: Interim consultation response*, 3 February 2011, p23
[131] Disability Benefits Consortium, *Consultation response by the Disability Benefits Consortium*, January 2011, p6
[132] MS Society, *Disability Living Allowance reform: A response from the MS Society*, February 2011
[133] Scope, *Disability Living Allowance reform – a response from Scope*, p1
[134] Department for Work and Pensions, *Public consultation – Disability Living Allowance reform*, p17
[135] Disability Benefits Consortium, *Consultation response by the Disability Benefits Consortium*, January 2011, p9

> It would clearly be perverse if people were supported to live an independent life and that support was then removed when they still needed it. I cannot envisage that that situation would develop.[136]

The Disability Benefits Consortium is also "very concerned" about the proposed new penalty for failing to inform the DWP of changes in circumstances:

> For those people with unpredictable and fluctuating conditions such as MS and HIV, asking them to report every change in their condition would be extremely onerous and stressful. Rather than introducing penalties, the Government should issue clear guidance about what represents changes in circumstance that claimants would be required to report and make it as easy as possible for them to do so. There should also be clear information about what reporting a change in circumstance could mean for the claimant.[137]

Disability Alliance reiterated the DBC's concerns about the impact on people with variable conditions, adding:

> Other disabled people experience very gradual changes in circumstances which mean that the overall change (in an annual period for example) may seem slightly significant but won't have been realised necessarily by the disabled person at any given point. The DWP has previously used this analysis in reporting on 'fraud and error' within DLA – as neither 'fraud' nor 'error' titles are accurate to explain the change in circumstances that mean disabled people may no longer qualify for (the rate of) DLA received. It has not been considered fraud or departmental error for the change by DWP and the new requirements may risk imposing a level of bureaucracy in reporting changes that is unnecessary and costly.[138]

More detailed information on the Government's proposals and on reactions from disability and welfare rights organisations is given in a Library standard note, *Disability Living Allowance reform* (SN/SP/5869).

7.3 DLA mobility component for people in care homes

The mobility component of Disability Living Allowance is paid at two rates. The lower rate component is available for people aged five or over who are able to walk but who are so disabled physically or mentally that, disregarding any ability to use familiar routes, they need someone with them to provide guidance or supervision for most of the time when they are outdoors.

The higher rate is available for those aged three or over who:

- are unable or virtually unable to walk due to a physical disability; or
- have no legs or feet, either from birth, through amputation at or above the ankle, or a combination of both; or
- are both deaf and blind and need someone with them outdoors; or
- are severely mentally impaired, with severe behavioural problems and qualify for the highest rate of the care component; or

[136] HL Deb 7 February 2011 c7

[137] Disability Benefits Consortium, *Consultation response by the Disability Benefits Consortium*, January 2011, p11

[138] Disability Alliance, *Disability Alliance: Interim consultation response*, 3 February 2011, p25

- who suffer from physical disablement, and by making the effort required to walk would endanger their life or cause deterioration in their health.

In addition, as a result of a Government concession during the passage of the *Welfare Reform Bill 2008-09*, people with severe visual impairment will be able to claim the higher rate mobility component from April 2011.

The lower rate mobility component is currently worth £18.85 a week, and the higher rate component £49.85 a week. From April 2011 the rates will increase to £19.55 and £51.40 respectively. At May 2010, 1.78 million people received the higher rate mobility component, and 960,000 received the lower rate mobility component.[139]

Receipt of the higher rate DLA mobility component also acts as a "passport" to other sources of help. These include:

- exemption from Vehicle Excise Duty (road tax);
- parking concessions through the Blue Badge Scheme; and
- assistance in obtaining a motor vehicle adapted for their needs via Motability.

The Disability Living Allowance care component is withdrawn after a person has been in a publicly-funded care home for 28 days. The rationale is that the care needs of people in care homes are covered by those institutions; to pay the DLA care component in such cases would be duplicating provision.[140] The care component can only continue to be paid if the person is meeting the full cost of their place without help from a local authority or other source of public funding.

The DLA mobility component is however not affected if a person is in a care home. In a written answer in 2005, the then DWP Minister Malcolm Wicks said that this was because "care homes do not cover mobility needs".[141]

Neither component of DLA is payable after a certain period for people who are being maintained free of charge while undergoing medical or other treatment as an inpatient in a hospital or similar institution under the NHS. For adults, DLA stops after 28 days, but for children under 16 it can continue to be paid for 84 days.[142] A person in a care home whose place is funded by the NHS is, for these purposes, treated as an inpatient being maintained free of charge.

Announcement in the Spending Review

The October 2010 Spending Review announced a series of reforms to benefits and tax credits aimed at delivering net Annually Managed Expenditure (AME) savings of £7 billion a year by 2014-15, "to provide a fair and affordable platform for the introduction of the Universal Credit".[143] This included:

[139] DWP Tabulation Tool
[140] HC Deb 13 November 2000 c 527w
[141] HC Deb 8 March 2005 c1723w
[142] The longer period for children is in recognition of the special needs that they may have for support from their parents while they are adjusting to hospital life; HC Deb 10 January 2011 c133w
[143] HM Treasury, *Spending Review 2010*, Cm 7942, October 2010, p68

> removing the mobility component of Disability Living Allowance for people in residential care, where such costs are already met from public funds, saving £135 million a year by 2014-15.[144]

It was planned to implement the change from October 2012.

The Government said initially that around 60,000 people in Great Britain would be affected by the measure, but the estimate was subsequently increased to 80,000.[145] Around half were thought to be in receipt of the higher rate mobility component. Later statements estimates savings at around £160 million a year by 2014-15.[146]

In subsequent statements Ministers also said that local authorities should ensure that when assessing the needs of care home residents, their mobility needs are taken into account. For example, in a written answer on 4 November the Minister for Disabled People, Maria Miller, said:

> Local authority contracts with care homes cover services to meet all a resident's assessed needs, including any assessed mobility needs, so an individual's care support and mobility needs should be met by residential care providers from social care funding. This measure will remove an overlap of public funds while ensuring that resources continue to be targeted at disabled people with the greatest needs.[147]

In a written answer on 16 November, the Minister said that a care home resident's assessed needs would cover

> ...activities of daily living which may include providing access to doctors, dentists and local services such as libraries and banks. Local authorities should also take into account the resident's emotional and social needs as part of the assessment.[148]

In a more recent written answer, Maria Miller also added "care homes are required where practicable to promote the independence, participation and community involvement of their residents".[149]

The Minister acknowledged, however:

> This is a highly complex area in terms of both funding streams and the different responsibilities of all the parties involved and there are a maze of legal duties, contractual obligations and service levels to take into account. For example, NHS-funded individuals in residential care do not receive the DLA mobility component, while those funded by local authorities do.[150]

Disability and welfare rights organisations have voiced strong opposition to the proposal to remove the DLA mobility component from people in care homes. On 21 December the Disability Benefits Consortium issued a response to the Government's proposals, arguing that the measure would have a "huge and regressive impact". The introduction states:

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[144] *Ibid*, p69
[145] HC Deb 9 December 2010 c393w
[146] HC Deb 16 December 2010 c906w
[147] HC Deb 4 November 2010 c928w
[148] HC Deb 16 November 2010 c706w
[149] HC Deb 10 January 2010 c116w
[150] HC Deb 10 January 2010 c116w

> Removing Disability Living Allowance (DLA) mobility component from people living in residential care will have a huge and regressive impact on the independence of thousands of disabled people.
>
> The resulting savings of £160 million are relatively small in contrast to the total of £81 billion in spending cuts the Government plans to make by 2014/15. However, the impact on the 80,000 disabled people to be affected will be massive, with many left unable to afford to leave their home and denied the independence most people take for granted.
>
> Many people living in residential care have all their income taken to pay for their care, and are left with just the £22 per week Personal Expenses Allowance (PEA) to cover all personal costs, such as clothes, toiletries and phone bills, and DLA mobility component to meet mobility needs. Without DLA mobility component, the PEA is not enough to cover additional mobility costs and people will be left without the money to meet basic mobility needs.
>
> The removal of DLA mobility component from people living in residential care is based on an assumption of "double funding". However, local authorities are not currently meeting mobility costs and rather than removing “an overlap of public funds" as the Government has stated, this measure will simply transfer costs to already stretched local authorities or will leave people without the vital support that they need for independent mobility.
>
> We want to see DLA mobility component retained for everyone living in residential care and are calling on the Government to act to ensure that disabled people are not denied their independence.[151]

Attention has focused on the implications of the change for adults in care homes, but concerns have also been voiced about the impact on children and young people in residential schools and colleges.

There is also concern about the impact of the withdrawal of the mobility component on people in care homes who use the Motability scheme. The Government said at first that 8,000 users of the Motability scheme would be affected by the removal of the mobility component, but it later statements put the figure at 12,000. It said it was discussing the proposed measure with Motability “...to enable them to decide how best they can manage the impact of this change on their customers”.[152]

The DLA proposal was the subject of a Westminster Hall adjournment debate on 30 November initiated by Tom Clarke.[153] Highlighting the concerns voiced by disability groups, Mr Clarke added:

> There is not a shred of evidence from the local government organisations in England-or no doubt from Northern Ireland, and certainly none from the Convention of Scottish Local Authorities-that local authorities will be in a position to pick up the bill if the Government remove the money from those living in residential care. We are facing a crisis, both for local government and for disabled people.[154]

For Labour, the Shadow Minister for Disabled People, Margaret Curran, said that her party could not support “these crude cuts”, adding:

[151] Disability Living Consortium, *The Removal of DLA mobility component from people living in residential care*
[152] HC Deb 21 December 2010 c1182w
[153] HC Deb 30 November 2010 cc197WH-220WH
[154] HC Deb 30 November 2010 c202WH

> They are ill thought out and, as has been said, they go against the central principle of personalised support for disabled people by actively undermining their empowerment to choose how they live their lives.[155]

Ms Curran said:

> The issue of double funding lies at the heart of the Government's case; we have been told that that is their argument. The logic seems to be that transport costs are currently funded by local authorities and therefore should not be funded again by Government. However, as many charities have rightly pointed out, local authorities' assessments of care needs cover only what they consider core or essential needs. They do not always cover aspects of an individual's life and social interactions, so social trips such as those to friends and family are unlikely to be included within the current service arrangements.[156]

Margaret Curran also doubted that the additional £2 billion for social care announced by the Government would help in meeting mobility needs, given increasing demands on social care budgets. She concluded:

> As it stands, it is a crude, cruel cut that undermines moves towards personalisation, the Minister's own efforts at welfare reform, quality of life and opportunity. For such a small saving, it will have an enormous impact on the quality of life of the people in greatest need. It cannot be accepted.[157]

For the Government, Maria Miller said that the measure would not come into force until October 2012, and that that "will give us the opportunity to work across the Government Departments affected by the measure to ensure that good provisions are put in place and delivered effectively".[158] The Minister said however that the extent of duplication and overlap of provision, and the lack of clarity cause by different funding streams, had to be addressed:

> We currently have mismatched systems for assessing the needs of disabled people: one for DLA, which assesses mobility and need in terms of cash; and another that provides, via local authorities, a more generic needs assessment reflected in services contracted with care homes. Those mismatched systems produce huge potential for duplication, uneven expectations and varying provision. We have to change that and target the right funding on the right people.[159]

The Minister added:

> I can clarify that the measure was designed to remove overlaps in the payment of mobility support, as I have outlined. It is not intended to lead to a loss of independence and we remain committed to promoting greater personalisation for disabled people. I reiterate that milestones have been agreed with the Association of Directors of Adult Social Services, including the growth in personal budgets, and that we are absolutely committed to the implementation of personalisation across the board.[160]

In an interview published in *The Guardian* on 16 February, Maria Miller said "I can offer absolute reassurance to disabled people living in care homes and their families that this government will not remove their ability to get out and about".

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155 HC Deb 30 November 2010 c215WH
156 HC Deb 30 November 2010 c216WH
157 HC Deb 30 November 2010 c217WH
158 HC Deb 30 November 2010 c218WH
159 HC Deb 30 November 2010 c220WH
160 HC Deb 30 November 2010 c220WH

The Minister added:

> Care homes have very clear responsibilities about providing free transport for residents. Unfortunately, we have a situation where that day-to-day support is not being offered by care homes free of charge.[161]

"Don't limit mobility" report

On 12 January 2011 a report, *Don't limit mobility*, was published by a group representing 27 organisations representing disabled people. The report gives results from surveys involving care providers and care home residents, and argues that the assumption that there is "double funding" for mobility needs is wrong.

With regard to local authority community care assessments, the report notes that because most councils only provide funding for those with "critical" or "substantial" needs, an individual may be eligible for the DLA care and/or mobility component but ineligible for support under a local authority's criteria. Furthermore, where mobility needs are taken into account, they are likely to be narrowly defined:

> Mobility needs tend only to be factored into care packages to meet specific needs identified in the community care assessment, such as going to a day centre. Local authorities do not tend to factor in the costs of individuals' personal mobility or transport costs associated with visiting friends and family, going shopping or accessing local community and leisure facilities. The DLA mobility component enables disabled people to retain their independence in a way that local authority funding does not.[162]

The report states that local authority contracts with care homes may or may not specifically address individuals' transport needs. It notes that residential care provision mainly focuses on personal care and limited activities within the home, and has not generally covered activities outside the home apart from day services. Where help with transport is provided, it is frequently expected that residents will contribute to the cost themselves, using their mobility component. Extracts in the report from service specifications provided by care homes indicate that some local authorities do not regard it as their responsibility to provide funding for transport except to a very limited degree, and fully expect care homes to charge residents for transport provided, and for residents to make a contribution from their mobility component.

The survey of providers of social care services found that:

- half of the social care providers received no contribution towards the costs of transport as part of service users' social care packages. Of those that did receive funding for transport needs from local authorities, fee levels only covered travel costs deemed necessary for meeting people's assessed care needs;

- none of the social care providers surveyed received a state contribution towards the costs of personal transport, such as visiting family, accessing work, volunteering or education, and participating in leisure activities or community activities;

- care providers faced considerable difficulty in getting local authorities to contribute towards transport costs and given the current financial pressures they did not believe it would be possible to force local authorities to fund the additional costs of personal transport, especially if these were not considered part of their statutory obligations.

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[161] "A 'perfect' storm", *Society Guardian*, 16 February 2011
[162] Disability Alliance, *Don't limit mobility*, January 2011, p4

The report also casts doubt on the Government's assertion that residential schools and colleges already provide for the transport needs of children and young people in the receipt of the mobility component, stating:

> [...] the evidence, again, suggests that this is not the case. Even where transport is provided by the education provider, it is often restricted to provision at the start and end of term. No extra provision is factored in for visits at weekends or for the child when they are at home during the holidays.[163]

On the Government's argument that withdrawing the mobility component would bring the treatment of local authority funded care home residents into line with that of NHS-funded residents, the report says that such statements are "not correct" and that the situation is "more complicated than implied".[164] It points out that when an individual is receiving NHS continuing care, they are regarded as an inpatient and will be receiving appropriate round-the-clock care and support. Those in care homes receiving local authority funding, on the other hand, are not patients but residents.[165] Furthermore, the report notes that the financial situation for those receiving NHS continuing care is quite different from that facing local authority funded care home residents:

> Individuals whose placement is funded by NHS continuing care are not asked to contribute to the cost of their support. Those who are local authority funded are subject to financial assessment and required to make a contribution towards to the cost of care. Given the differences between these two situations, it is simply not the case that the removal of DLA mobility from local-authority-funded residents will end an anomaly and align the rules with those in NHS funded care.[166]

Of those care home residents who responded to a survey question on what impact the removal of DLA would have on them personally, 80% felt that they would see much less of friends, and 73% said they would lose their independence. Many respondents described anxiety about the prospect of losing DLA, and comments mentioned fear of isolation, depression and loss of self-confidence, concerns about the impact on quality of life, and reduced opportunities for social interaction.

The report concludes that the assumption of double funding behind the proposal to remove the mobility component from people in care homes is wrong, and that if the Government decides to go ahead with the measure it will "significantly restrict the ability of those in residential care to play an active role in their local community, be independent and maintain relationships with family and friends".[167] It adds:

> The implications of this change, even for people who currently receive some local authority funding for mobility costs, are extremely significant and in the current climate we do not expect local authorities to step in to cover these additional costs. In the long term, the impact on individuals is likely to result in higher costs to the state, due to consequent effects on disabled people's wellbeing and health, and the increased likelihood of a crisis.
>
> Implementing this proposal will mean one of two things for care home residents. Those affected will either have a diminished quality of life with restricted options available to them, or social services will be forced to make up the difference in funding. In the

[163] *Ibid*, p10
[164] *Ibid*, p8
[165] See also the letter from Lord Rix, President of Mencap, to *The Guardian* on 18 January 2011, "Disabled people want their freedom too"
[166] Disability Alliance, *Don't limit mobility*, p8
[167] *Ibid*, p18

> current climate this is unrealistic. Ultimately, the impact on disabled people will be devastating.
>
> **We therefore strongly urge the government to reverse this decision in light of the overwhelming evidence and strength of feeling regarding this measure.**[168]

7.4 The Bill

Part 4 of the Bill sets out the framework for the Personal Independence Payment, in line with the proposals in the consultation paper on *Disability Living Allowance reform*. The detailed rules for the new benefit are however to be set out in regulations.

Clause 75 provides that the Personal Independence Payment will comprise two elements: a "daily living" component; and a mobility component. Claimants will have to satisfy prescribed conditions of residence and presence in Great Britain.

Clause 76 provides that the daily living component will have two rates: a "standard rate" and an "enhanced rate". The former will be payable to people whose ability to carry out daily living activities is "limited" by their physical or mental condition, while the latter will be payable to those ability is "severely limited". "Daily living activities" are to se out in regulations

Clause 77 concerns the mobility component. Again, this has two rates. The standard rate is payable to those over a particular age threshold whose "ability to carry out mobility activities" is "limited" by their physical or mental condition, while is enhanced rate is payable to those whose ability is "severely limited". "Mobility activities" are to be set out in regulations.

Subsection (7) states that regulations may provide that a person is not entitled to the mobility component "where the person's condition is such that during all or most of the period the person is unlikely to benefit from enhanced mobility". Similar provisions currently exist for the DLA mobility component.[169]

Clause 78 provides for regulations concerning how entitlement to the two components is to be determined. The regulations must provide that entitlement is determined on the basis of an assessment (or repeated assessment) of the person, "except in prescribed circumstances"; the way in which an assessment is to be carried out; and which matters are, or are not, to be taken into account (subsection (3)). The regulations may make provision, among other things, requiring a person to attend a "consultation" with an "approved person" (subsection (4)(c)).

The Delegated Powers Memorandum states:

> The intention in setting out the detail of how the determinations are to be made in regulations is to allow for the assessment to be modified in the light of experience. In addition, as indicated, the Department is currently in the process of developing the assessment criteria. It is intended to publish draft regulations containing the criteria during the passage of the Bill.[170]

It further states:

> It is accepted that the determination of the disability conditions of entitlement by means of the assessment process is a matter of key importance, and it is therefore intended

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[168] *Ibid*, p18

[169] To qualify for the DLA mobility component, a person must be able to "benefit from enhanced facilities for locomotion".

[170] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 299

> that the first set of regulations made in exercise of the powers in clause 78 should be subject to the affirmative procedure. It is likely that the first set of regulations will only address the assessment process for adults and subsequent regulations will deal with assessment for children. Again, the first set of regulations addressing this point will be subject to the affirmative procedure (clause 91(6)(a) and (b)).[171]

Clause 86 requires the Secretary of State to lay before Parliament an independent report on the operation of the assessments under Clause 78, within three years of it coming into force.

Clause 79 concerns the "required period condition" for Personal Independence Payments. The Government's consultation paper proposed that claimants of the new benefit would have to have satisfied the relevant conditions for six months, and be likely to satisfy them for at least a further six months (see above). Regulations must provide for how it is to be determined whether the person satisfies the "qualifying period" requirement and the "prospective test".

Clause 80 concerns claims by people who are terminally ill. Subsection (2) automatically entitles a terminally ill person to the enhanced rate of the daily living component, without the requirement to undergo an assessment or meet the required period condition. A person with a terminal illness can also receive a mobility component without having to satisfy the required period condition, but there is no automatic entitlement to the mobility component.

As with DLA, a person is regarded as terminally ill for these purposes if they are suffering from a progressive disease and as a result their death can reasonably be expected within six months. Claims may be made on behalf of a person who is terminally ill without their knowledge, again in line with DLA.

Clause 81 provides that a person is not entitled to either component of Personal Independence Payment after they reach the "relevant age", which is 65 or State Pension Age, whichever is higher. Regulations may however specify exceptions. The Delegated Powers Memorandum states that this is intended to replicate the current situation whereby someone already getting DLA when they reach 65 can continue to receive it beyond that age.[172]

Clause 82 provides that there is no entitlement to daily living component of Personal Independence Payment where the United Kingdom is not the "competent state" for payment of cash sickness benefits under European Union Regulations concerning the co-ordination of social security schemes for people moving within the European Economic Area. The *Explanatory Notes* state that this is to prevent the possibility of a person receiving benefits from more than one Member State.[173]

Clause 83 concerns "persons receiving certain services". Regulations may provide that either or both the daily living and mobility components are not payable if the person is-

> …an in-patient of a hospital or similar institution, or a resident of a care home, in circumstances in which any of the costs of any qualifying services provided for the person are borne out of public or local funds by virtue of a specified enactment.

"Qualifying services" include:

> (a) medical or other treatment which the person is undergoing as an in-patient;

[171] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 301
[172] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 304
[173] Bill 154–EN, para 372

(b) accommodation;

(c) board;

(d) personal care;

(e) such other services as may be prescribed.

The October 2010 Spending Review also announced the withdrawal of the DLA mobility component from people in care homes whose place is funded by a public body, from October 2012. However, the Impact Assessment states:

> The DLA mobility component for those in care homes will be retained until March 2013, and any subsequent changes will be rolled into the design of the new Personal Independence Payment. The policy objective in respect of this measure is to identify and remove any overlaps in the way in which the mobility needs of people in residential care homes are met. Therefore the Department will review the support given by DLA against the responsibilities of care homes, and reflect the outcomes from this review in the PIP eligibility criteria for people in residential care homes.[174]

Clause 85 provides that awards of Personal Independence Payment are to be for a fixed term, "except where the person making the award considers that a fixed term award would be inappropriate". Guidance on this will be issued by the Secretary of State.

Clause 87 provides for the abolition of Disability Living Allowance.

Clause 88 gives effect to **Schedule 9**, which makes amendments to other Acts which are consequential upon the provisions in Part 4 of the Bill. The DWP noted that:

> The Schedule, in most cases, makes no changes to the existing procedure which applies in each case, so the Government does not believe the creation of personal independence payment justifies any changes to the level of Parliamentary oversight.
>
> […]
>
> The only new powers created relate to amendments to legislation that refer to specific rates of components of disability living allowance which are amended to include personal independence payment at a prescribed, rather than a specific, rate. Disability living allowance is composed of two components, the care component is payable at one of three rates; the mobility component at one of two rates. Personal independence payment will also have two components and the Bill makes provision that both the daily living component and mobility component will be payable at one of two rates. Whilst the Bill provides that personal independence payment will have a slightly different rate structure to disability living allowance the issue is subject to consultation and may change (the consultation ended on 14 February 2011) and any new rate structure will not necessarily match up with the old rate structure. A power to prescribe a rate is considered necessary in the circumstances.[175]

The main provisions of Schedule 9 are set out below:

> 322. Part 1 of Schedule 9 (Personal independent payment: claims, decisions etc.) includes personal independence payment within the scope of pre-existing powers which currently apply to disability living allowance in relation to the main provisions dealing with claims and decisions.

[174] *Disability Living Allowance Reform Impact Assessment*, pp6-7
[175] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, paras 318 and 319

[…]

323. Part 2 of Schedule 9 (Minor and consequential amendments) deals with remaining amendments that can broadly be divided into the following categories:

a) provisions relating to the administration of personal independence payment that are common to most social security benefits other than those included in Part 1 of Schedule 9;

b) amendments that insert personal independence payment into provisions which refer to disability living allowance but relate to other social security benefits;

c) minor and consequential amendments that insert personal independence payment into provisions which refer to disability living allowance;

d) amendments that insert personal independence payment into provisions which refer to disability living allowance at a specific rate and include a new power to prescribe a rate for personal independence payment.[176]

Clause 89 provides that the Secretary of State (and the Scottish Ministers, in relation to areas within their legislative competence) may by regulations "make such consequential, supplementary or incidental provision in relation to any provision of this Part" as is considered appropriate. Under subsection 4, regulations may-

(a) amend, repeal or revoke any primary or secondary legislation passed or made before the day on which this Act is passed, or

(b) amend or repeal any provision of an Act passed on or after that day but in the same session of Parliament.

The Delegated Powers Memorandum explains why such broad-ranging powers are considered necessary:

> These are quite broad amending powers but are not unusual in the context of an Act such as this, in relation to which it is often difficult to identify all consequential amendments required, but which requires consistency to be established across a range of primary and secondary provisions. The creation of a new benefit replacing disability living allowance results in wide ranging consequentials for which broad powers are necessary.[177]

Clause 90 and **Schedule 10** include provisions relating to the transition from DLA to Personal Independence Payment.

[176] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, paras as shown
[177] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 317

8 Benefit cap

The October 2010 Spending Review announced that from 2013 household benefits would be capped:

> ...capping household benefit payments from 2013 at around £500 per week for couple and lone parent households and around £350 per week for single adult households, so that no family can receive more in welfare than median after tax earnings for working households. All Disability Living Allowance claimants, War Widows, and working families claiming the working tax credits will be exempt from the cap.[178]

This cap will be delivered by local authorities who will assess the total benefit income of all new and existing Housing Benefit claimants and will be required to reduce Housing Benefit to ensure that they do not receive more than the cap.

In the November 2010 White Paper, *Universal Credit: welfare that works*, the DWP put the proposed cap on housing benefit payments into the context of the proposed Universal Credit:

> The cap on household benefit payments announced in the Spending Review will mean that the award of Universal Credit cannot exceed a maximum amount when combined with Child Benefit and other non-Universal Credit payments such as contributory Jobseeker's Allowance and Employment and Support Allowance. This maximum will be set on the basis of median earnings after tax and National Insurance for working families.[179]

The *Impact Assessment for the Household Benefit Cap* advises that the cap will affect large families (mainly with three or more children) who are out of work and households in high rent areas who receive large Housing Benefit payments.[180] It is estimated that around 50,000 households will have their Housing Benefit reduced as a result of this measure (representing around 1% of the out-of-work caseload) and that affected households will lose an average of £93 per week:

> Around 40% of the losers will lose less than £50 per week. Around 25% will lose between £50 and £100 per week. Around 20% will lose between £100 and £150 per week. The remaining 15% will lose more than £150 per week.[181]

The DWP estimates that the savings to the Exchequer of the benefits cap will be £210 million in 2013/14 and £240 million in 2014/15 (in 2010/11 prices).[182]

The key non-monetised costs identified by the DWP are:

> The cap is likely to affect where different families types will be able to live. Housing Benefit may no longer cover housing costs and some households may go into rent arrears. This will require expense and effort by landlords and the courts to evict and seek to recoup rent arrears. Some households are likely to present as homeless, and may as a result need to move into more expensive temporary accommodation, at a cost to the local authority. It is not possible to quantify these costs because they are based on behavioural changes which are difficult to assess robustly.[183]

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[178] HM Treasury, *Spending Review 2010*, Cm 7942, October 2010, p68
[179] Department for Work and Pensions, *Universal Credit: welfare that works*, p23, para 52
[180] *Household Benefit Cap Impact Assessment,* para 6
[181] *Ibid*, para 8
[182] *Household Benefit Cap Impact Assessment,* p6, para 12
[183] *Ibid*, p2

The National Housing Federation's (NHF) briefing on the Spending Review said that their analysis indicated that the cap would "not bite" for existing tenants of social housing.[184] However, an article in *Inside Housing* indicated that some tenants with large families would be affected – the article provided the following example of an unemployed couple with five children claiming Jobseeker's Allowance:

- £102.75 couple rate for JSA
- £24.59 Council Tax Benefit (Band C)
- £231.63 Child Tax Credit
- £73.90 Child Benefit
- leaving £67.13 for Housing Benefit

The average social sector rent in London is £98.22 per week and £76.51 per week in England.[185] The same article referred to lenders' concerns in terms of the impact of caps on housing associations' cash flows and, in turn, their ability to lever in and repay private finance for the supply of new housing and improvement of existing housing.[186]

Reactions to this measure from housing bodies covering both the private and social rented sectors echo many of the comments previously made in relation to reducing benefit for under-occupying tenants and moving to up-rate the LHA by CPI. There are concerns around the impact on rent arrears, potential evictions and increases in homelessness amongst those affected. As the impact is expected to fall disproportionately on larger families, there are concerns about overcrowding as families might seek smaller, less suitable housing in order to reduce their costs. London Councils is calling on the Government to consider London as a special case when introducing the cap because of its high rent levels; it also wants to ensure that London receives a significant proportion of funding for Discretionary Housing Payments to assist in managing the change.[187] Richard Capie, director of policy and practice with the Chartered Institute of Housing, has said:

> The new out of work benefit cap at £500 per week fails to take into account the massive variation in housing costs that exists around the UK and will create hardship for families. Our calculations show that in 20 per cent of communities in England it will be difficult for households to pay their current rents. This will have a particularly severe impact on families with children. We would expect to see greater arrears, debt and evictions. Families will face the inevitable choice of living in overcrowded, poorer conditions in their current community, or having to move away from areas where they have established networks and children are in local schools.
>
> If the housing element of the new universal credit is not sensitive to local housing costs it will not only impact on individuals but also have implications for private and social landlords and jeopardise access to private finance to build new homes.
>
> We need welfare reform that lasts and that individuals and businesses can plan against. The risk is that the approach to housing costs in the current plans won't be sustainable and will require further adjustments in future.[188]

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[184] National Housing Federation, *Briefing on the Comprehensive Spending Review*, October 2010
[185] "£500 benefit cap puts landlords' income at risk", *Inside Housing*, 15 October 2010
[186] *Ibid*
[187] London Councils, *Response to the Housing Benefit reform*, 2010
[188] "£500 a week cap could see more overcrowded properties", *Public Service*, 5 November 2010

One of the Government's key policies for increasing the supply of social housing is the introduction of an "affordable rent" tenure. Under this model housing associations will be able to offer tenancies at rents of up to 80% of market rent levels within the local area. The additional finance raised will be available for reinvestment in the development of new social housing. The Department for Communities and Local Government's (DCLG) November 2010 consultation document, *Local decisions - a fairer future for social housing* confirmed that Housing Benefit would be payable to cover "affordable rents":

> Where a tenant cannot afford to pay, the new Affordable Rents will be eligible for Housing Benefit and local authorities will be able to discharge their homelessness function through the new tenancy.[189]

In responding to the "affordable rent" tenure proposals housing organisations have highlighted the apparent policy tension between the drive to reduce expenditure on benefits by imposing a weekly cap that will take effect by "squeezing" Housing Benefit entitlement while at the same time giving housing associations an incentive to charge rents of up to 80% of market levels. The Building and Social Housing Research Foundation's (BSHRF) written evidence to the Public Bill Committee considering the *Localism Bill* raised the following concerns:

> Households who will gain access to the Affordable Rent tenure are likely to be those that might previously have been able to access social housing. Therefore it is reasonable to expect that a significant proportion of them will be in receipt of Housing Benefit. For these households, the amount of Housing Benefit needed to cover housing costs is likely to be higher than those in a traditional social tenancy, therefore placing a greater burden on Housing Benefit expenditure.
>
> In order to analyse the potential impact of Affordable Rent on Housing Benefit expenditure, BSHF made requests to DCLG, DWP and HMT for modelling they had undertaken on the impact of Affordable Rent on Housing Benefit expenditure. The departments declined to provide this information as the policy was still under development.
>
> In the absence of the government's modelling it is difficult to assess the likely impact of Affordable Rent on Housing Benefit expenditure. BSHF has only been able to perform basic modelling to estimate the impact; this has necessarily made significant assumptions and consequently should only be taken as a very broad guide of the scale of the impact. The modelling suggests that the introduction of Affordable Rent could add cumulatively £390 million to Housing Benefit expenditure each year. By the end of the Spending Review period that would amount to an increase of Housing Benefit expenditure of £1.56 billion per year. If £1.56 billion was spent on building affordable housing it could provide over 25,000 new social rented homes. The government needs to ensure that Affordable Rent does not simply transfer capital spending on housing to welfare budgets.[190]

The Housing Minister, Grant Shapps, rejected the idea that charging up to 80% of market rents would impact on Housing Benefit expenditure when giving evidence to the Communities and Local Government Select Committee in December 2010:

> **Q83 Stephen Gilbert:** On that specific issue, what impact assessment have you made on the way in which the housing benefit bill might rise because we are putting in place this extra, up to 80% of market rent?

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[189] Department for Communities and Local Government, *Local decisions - a fairer future for social housing*, November 2010, para 2.6

[190] BSHF Memorandum to the *Localism Bill* Public Bill Committee, January 2011

> ***Grant Shapps:*** Interestingly, the answer is that it will have relatively little impact on housing benefit, because quite often you are taking people who are in the private rented sector, who are receiving benefit at 100% of the rent level, and putting them into a less expensive house. So the difference is marginal on all the modelling.
>
> **Q84 Chair:** The calculations have been done.
>
> ***Grant Shapps:*** Yes.[191]

The Council of Mortgage Lenders (CML) is concerned about the impact of welfare reforms, including the benefit cap, on the financial viability of housing associations:

> For lenders and investors the social housing sector is viewed as a relatively low risk funding market. Comfort is derived from the sector having a strong regulator with the ability to intervene and indirect subsidies in the form of social housing grant and housing benefit. Changes to the welfare benefits system and move to a universal credit have already significantly raised potential risk to the sector. Rating agencies have flagged for investors during 2010 the factors that could be negative for the sector including housing benefit not meeting rent requirements and not being paid direct to providers.
>
> The concerns about housing benefit are brought into sharp focus when considering the move to affordable rent. We await the publication of the Homes & Communities Agency prospectus and further impact assessment on housing benefit. However it is uncertain whether this will provide sufficient detail on the interaction of affordable rent, housing benefit and universal benefit to support providers and lenders in making prudent and realistic assumptions in the modelling work that must sit behind a move to affordable rent.[192]

Clause 93 introduces the principle of a benefits cap for a single claimant or a couple, for where total entitlement exceeds the cap, entitlement to benefits may be reduced up to the excess. However, the detail will be prescribed in regulations, including how the amount of benefits in excess of the cap is to be calculated and the benefits to be reduced, exceptions to the cap, and the intervals to which the cap will apply. In terms of the benefits that can be reduced, the only exemptions stated in subsection 11 are state pension credit and state retirement pensions are exempt.

Subsection 6 states that the cap will be determined "by reference to estimated average earnings". Subsection 7 adds that the definition of "estimated average earnings" is the "average weekly earnings of a working household in Great Britain after deductions in respect of tax and national insurance contributions" in the opinion of the Secretary of State. However, subsection 8 allows the Secretary of State to estimate such earnings "in such manner as the Secretary of State thinks fit".

Subsection 9 exempts those benefits that are under the legislative competence of the Scottish Parliament or National Assembly for Wales, or provision is made by Welsh Ministers, the First Minister for Wales or General Counsel to the Welsh Assembly Government from being reduced under the cap.

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191 Communities and Local Government Committee, *Comprehensive Spending Review*, uncorrected evidence, 21 December 2010, HC 699-i 2010-11. Please note, however, that *this is an uncorrected transcript of evidence taken in public and reported to the House. The transcript has been placed on the internet on the authority of the Committee, and copies have been made available by the Vote Office for the use of Members and others. Neither witnesses nor Members have had the opportunity to correct the record. The transcript is not yet an approved formal record of these proceedings*.

192 Council of Mortgage Lenders, *Response to Local decisions: a fairer future for social housing*, January 2011

Clause 94 makes supplementary provision, including allowing regulation to state different caps for different purposes or cases (one cap for single claimants and another for couples). The DWP notes that:

> Different benefits and credits apply to couples in different ways; for example, for some benefits one member of the couple is the claimant, but both members are taken into account when determining the award, for other benefits both members must claim jointly. The regulations will need to set out what a couple is for the purposes of the benefit cap, taking into account the way benefits are structured in regulations.[193]

The cap must also be reviewed annually by the Secretary of State to ensure it continues to meet the estimated average earnings condition (if not, this can be achieved through an uprating order). Subsection 5 also makes whether or not the benefit cap applies an unappealable matter (although incorrect application of the cap would be appealable).

[193] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 341

9 General provision

Claims and awards

Clause 95 amends section 5 of the *Social Security Administration Act 1992* to amend the existing provision for advance claims for benefit so that, when a claimant meets the conditions for entitlement at a prescribed time, a claim made in advance will be met and an award paid at the point when the conditions are met. The DWP provide the following example: "a person with income above a certain level may not be entitled to income-related employment and support allowance during the assessment phase until they have completed the work capability assessment and become entitled to either the work-related activity or support components".[194] If the conditions are not met, then an advance award can be reviewed.

Subsection 4 allows regulations to provide for either member of a couple to make a claim for benefits on behalf of them both. Subsection 5 broadens the scope that regulations may provide for regarding changes in circumstances. At present, regulations may provide for "notice to be given of any change of circumstances affecting the continuance of entitlement to such a benefit or payment of such a benefit"; this is amended to include the words "any other change of circumstance of a prescribed nature".

Clause 96 will make further amendments to section 5 of the *Social Security Administration Act 1992*, repealing the current provision concerning information and evidence (sub paragraphs (h) and (hh)), and instead inserting new sub-clause 1A which will be a "single power" to require a person to provide information "relating to benefit awards and claims (including potential awards and claims)". The DWP explains that:

> The Secretary of State intends to use this power to make regulations to ensure that information can be gathered at a suitable time in relation to a claim or award for example information from landlords for universal credit, or in relation to potential awards, for example information to assist with targeted marketing campaigns to encourage take-up of state pension credit by pensioners.[195]

Appeals

Appeals concerning Social Security and Child Support (SSCS), as well as Criminal Injuries Compensation and Asylum Support, are heard by the Social Entitlement Chamber of the First-tier Tribunal. The DWP noted that in 2009/10 there were 339,200 SSCS appeals received by the Tribunals Service, an increase of 40 per cent on 2008/09, and that "the vast majority of the SSCS appeals are for benefits administered by DWP". The DWP adds that "there have been large increases in the numbers of SSCS appeals largely as a result of the introduction of ESA".[196]

At present, if a person is unhappy with a decision then, for most SSCS benefits and payments, they can either request a written explanation or apply for a revision of the decision within one month (known as a "reconsideration") with a right of appeal against a reconsideration, or appeal the decision without having first requested a reconsideration. The explanatory notes state that, in practice, many people do not ask for a reconsideration and make an appeal from the outset.[197]

The DWP proposes that claimants must have requested a reconsideration before being able to appeal. It explains that this approach "ensures that the decision has been checked

[194] Bill 154–EN, p65, para 464
[195] *Welfare Reform Bill 2011 Delegated Powers Memorandum*, para 353
[196] *Consideration of Revision before Appeal Impact Assessment*, p7, para 15
[197] Bill 154–EN, p67, para 479

thoroughly and the reasons for the decision are explained to the claimant before the case goes to appeal. It also allows an opportunity to proactively seek further evidence from the claimant about the disputed decision before the claimant makes an appeal".[198]

The issue of reconsiderations was raised by the Work and Pensions Committee in its February 2010 report, *Decision making and appeals in the benefits system*, which reported that "anecdotal evidence suggests that disputed IB and ESA decisions are not being reviewed properly by decision makers". The Committee judged that "many claimants will be deterred from an appeal by an unsuccessful request for a reconsideration" and was concerned that "if this reconsideration is not being conducted thoroughly, they may miss out on the benefits to which they should be entitled", and went on:

> 131. […] We do not believe that the reconsideration process is currently operating in the best interests of the claimant. We urge the Department to examine the operation of this process as a matter of urgency, and we hope that our successor Committee in the next Parliament keeps the matter under close scrutiny.[199]

The then Government responded as follows:

> 76. […] Jobcentre Plus will use Lean methodology to review the reconsideration process. The development of more robust quality assurance measures and internal management information are likely to emerge from this review.
>
> 77. The Government is not complacent, and works on the principle that continuous improvement is possible. Specialist teams dedicated to supporting operational staff to improve decision making effectiveness are in place for all benefits. Their role is to challenge, support, and report on decision making performance. In addition, the Government uses other internal and external scrutiny mechanisms to assess decision making effectiveness.[200]

Clause 99 will amend the *Social Security Act 1998* so that regulations may state the cases or circumstances in which an appeal can only be made once a reconsideration had been completed. The clause also introduces **Schedule 11** which makes similar provision in respect of a number of other Acts, namely relating to vaccine damage payments, child support, the recovery of benefits, housing benefit and council tax benefit, and payments in respect of mesothelioma.

Clause 100 introduces **Schedule 12** which tidies up a previous "drafting error" in respect of former appellant bodies.[201] The previous legislation abolished the old social security appeal tribunals and replaced them with a new appeals system. The intention had been for the Secretary of State, local authorities and the Child Maintenance and Enforcement Commission to change (supersede) a decision of the new appeals system and to continue to be able to do so in respect of decisions of the old appeals system. However, the legislation restricted them to be only being able to supersede decisions of the new appeals system.

Schedule 12 will make amendments so that both the new and old appeals systems are referred to in legislation, so enabling all their decisions to be superseded. The DWP explained that this, taken together with subsection (2)(b) of clause 100 which allows related regulations to be similarly corrected, "ensures that the legislation is restored to the position

[198] *Consideration of Revision before Appeal Impact Assessment*, p7, para 14

[199] Work and Pensions Committee, *Decision making and appeals in the benefits system*, 9 February 2010, HC 313 2009–10, paras 129–131

[200] Work and Pensions Committee, *Decision making and appeals in the benefits system: Government Response to the Committee's Second Report of Session 2009–10*, 7 April 2010, HC 523 2009–10, paras 76–77

[201] *Welfare Form Bill 2011 Delegated Powers Memorandum*, para 374

that it should have been when the old appeal bodies were abolished and their functions transferred".[202]

Electronic communications

Clause 101 will make similar provision as sections 8(4), 8(5) and 9(5) of the *Electronic Communication Act 2000* in respect of regulations under the *Social Security Administration Act 1992* and the *Social Security Act 1998* which require electronic communication (for example, of a benefit claim or supporting evidence). This could include provision for the form of the electronic communication, for example.

[202] Bill 154–EN, p69, para 490

10 Benefit and tax credit error, fraud and sanctions

For further information on the background to this subject, please see the Library Standard Note, *Recovery of benefit overpayments due to official error* (SN/SP/5856).

10.1 Defining fraud and error

DWP publications on fraud and error give separate estimates for fraud, "customer error" and "official error":

> **Fraud:** This includes all cases where the following three conditions apply:
>
> - the basic conditions for receipt of benefit, or the rate of benefit in payment, are not being met;
> - the customer can reasonably be expected to be aware of the effect on entitlement; and
> - benefit stops or reduces as a result of the review.
>
> **Customer Error:** The customer has provided inaccurate or incomplete information, or failed to report a change in their circumstances, but there is no fraudulent intent on the customer's part.
>
> **Official Error:** Benefit has been paid incorrectly due to inaction, delay or a mistaken assessment by the DWP, a Local Authority or Her Majesty's Revenue and Customs.[203]

Ministerial pronouncements have not always distinguished between the different causes of "incorrectness" in welfare payments. For example, in his statement on the Comprehensive Spending Review on 20 October, the Chancellor of the Exchequer said that fraud in the welfare system would no longer be tolerated, adding "We estimate that £5 billion a year is being lost in this way".[204] Official estimates in a recent joint DWP/HMRC paper indicate, of £5.2 billion of incorrectly paid benefits and tax credits, only £1.6 billion was due to fraud for the latest data (based on 2008 and 2009).[205]

	Central estimate		Range[206]	
	Amount	**Percentage of expenditure**	**Amount**	**Percentage of expenditure**
Fraud	£1.0 billion	0.7%	£0.8-£1.4 billion	0.6% – 1.0%
Customer error	£1.1 billion	0.7%	£0.8-£1.4 billion	0.6% – 0.9%
Official error	£1.1 billion	0.7%	£0.9-£1.5 billion	0.6% – 1.0%
Total	£3.1 billion	2.1%	£2.7-£3.8 billion	1.8% – 2.5%

203 Department for Work and Pensions, *Fraud and Error in the Benefit System: October 2008 to September 2009*, 27 May 2010

204 HC Deb 20 October 2010 c956. For reactions to this see "Churches call Osborne to account for welfare fraud exaggeration", *The Guardian*, 29 October 2010, and for further developments see pp4–5 of SN/SP/5856.

205 Department for Work and Pensions, and HM Revenue and Customs, *Tackling fraud and error in the benefit and tax credits systems*, 18 October 2010, p12

206 Approximate 95% confidence intervals are given. These indicate the range within which one can be 95% sure that the true value lies for each of the estimates.

The table above gives the Department's latest estimate of total fraud and error across all DWP benefits in Great Britain in 2009/10.[207] Because of uncertainties surrounding the estimates, the Department publishes estimates as ranges, although for each it also gives a "central estimate". Figures are also given as a percentage of total benefit expenditure (£148.0 billion in 2009/10).

Around 70% of the total amount overpaid due to official error concerned claims for means-tested benefits, Incapacity Benefit or Jobseeker's Allowance. Housing Benefit overpayments resulting from official error were estimated at £200 million, with Pension Credit accounting for a further £150 million, Incapacity Benefit £130 million, Income Support £120 million and JSA £110 million (all central estimates). As a percentage of benefit expenditure, the incidence of official error overpayments was greatest for JSA (2.3%), followed by Incapacity Benefit (2.1%) and Pension Credit (1.8%).[208]

The DWP publication also gives estimates for the amounts *underpaid*, i.e. where claimants receive less than they are entitled to. In 2009/10, it estimates that around £1.3 billion was underpaid to claimants, of which £0.8 was due to "customer error" and £0.5 billion official error.

It is important to note however that this only includes claimants who were already in receipt of benefits, but getting less than they were entitled to. It does *not* include people who were eligible for benefits but who did not apply for them. The Government does not produce a global estimate of the total amount unclaimed due to incomplete take-up of benefits, but in 2008/09 around £10 billion of means-tested benefits alone went unclaimed, and around £6 billion of tax credits went unclaimed in 2007/08. However, both figures are again "central estimates" and should be treated with caution.[209]

A recent report by the National Audit Office found that the DWP had insufficient data on the causes of official error overpayments, and that there was no clear evidence that the DWP's commitment to reducing administrative error had led to any significant improvement in performance. It recommended that the Department collect better information on the causes of administrative error and on the costs and benefits of different interventions, clarify responsibilities for tackling error, and improve quality control arrangements to prevent errors arising in the first place.[210]

Social security legislation provides that, for most benefits, overpayments may usually only be recovered if they were caused by misrepresentation or non-disclosure of a material fact by the claimant. The conditions that must usually be satisfied for an overpayment to be recoverable are that:[211]

- there was a misrepresentation, or failure to disclose, a material fact; and
- the overpayment occurred as a result of that misrepresentation or failure to disclose; and
- the original decision awarding benefit has been changed.

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[207] Department for Work and Pensions, *Fraud and Error in the Benefit System: October 2008 to September 2009*, 27 May 2010

[208] Department for Work and Pensions, *Fraud and Error in the Benefit System: October 2008 to September 2009*, 27 May 2010, Table 2.1

[209] Department for Work and Pensions, *Income-related benefits: estimates of take-ups*; HM Revenue and Customs, *Child and Working Tax Credit take-up rates*.

[210] National Audit Office, *Minimising the cost of administrative errors in the benefit system*, HC 569 2010-11, 25 November 2010

[211] *Social Security Administration Act 1992*, section 71(1)

The misrepresentation or failure to disclose does not need to have been purposeful. For example, if someone did not report a source of income simply because they did not think it mattered, any resulting overpayment would still be recoverable. However, if the overpayment was the result of official error, where all relevant information was disclosed to the DWP in the appropriate manner and at the appropriate time, it would not be recoverable under these provisions.

In a recent test case brought by the Child Poverty Action Group, the Supreme Court ruled that the DWP did not have the power to recover official error overpayments under common law and that recovery was only possible under the statutory provisions. The judgment does not affect overpayments of Housing Benefit of Council Tax Benefit, or tax credit overpayments.[212]

10.2 Announcement of the new DWP fraud and error strategy

On 18 October the Government published a new strategy paper, entitled *Tackling fraud and error in the benefit and tax credits systems*. This announced that, as part of the new strategy, DWP would "look to widen the range of debts" it could recover from claimants:

> We will ... seek powers to enable us to **widen the range of debts we can recover from**, to include those resulting from official error. While the Department must take responsibility for payments made mistakenly by our staff, that does not give claimants the right to keep hold of public money not intended for them.[213]

A written answer on 10 January 2011, the Employment Minister, Chris Grayling, confirmed that measures would be included in the forthcoming *Welfare Reform Bill* to widen the range of working age benefit overpayments the DWP could recover, and that this would include those resulting from official error. The Minister explained that "while the Department must take responsibility for its mistakes, that does not give people the right to keep taxpayers' money that they are not entitled to". He added:

> However, we recognise that recovery will not be appropriate in all cases, and the legislation will be supported by a code of practice which will set out the type of case where recovery action will not be taken. This will include overpayments arising from official error where the customer accepted the payment in good faith and where, given the customer's circumstances, it would be unreasonable for the money to be repaid.[214]

In addition, a new penalty would be introduced for those who receive a small overpayment as a result of not informing the DWP of a change in circumstances, as set out in the fraud and error strategy:

> The first step we will take in renewing the sanctions regime will be to introduce tougher measures for those who don't take sufficient care of their claim, resulting in a low-value overpayment. These claimants may not proactively be setting out to commit fraud, but they may knowingly let a change in circumstances go unreported because they simply don't get around to telling us, or they want to gain a little bit extra money before letting us know. At the moment HMRC has a charge of 'failure to take reasonable care' which allows a penalty to be imposed in such cases. However, DWP currently does not punish these individuals, and so in the future we will look to impose a **£50 civil penalty**

[212] Supreme Court, *The Child Poverty Action Group (Respondent) v Secretary of State for Work and Pensions (Appellant) – Judgment*, [2010] UKSC 54, 8 December 2010; see also the press summary of the judgment

[213] Department for Work and Pensions, and HM Revenue and Customs, *Tackling fraud and error in the benefit and tax credits systems*, p35, para 14 (original emphasis)

[214] HC Deb 10 January 2011 cc137-138w

> in such cases to deter such negligent behaviour in the future. These penalties will be issued quickly and without the need for a lengthy investigation.[215]

The strategy also proposed tougher action for low value fraud (raising the minimum penalty from £60 to "around £350" and the penalty rate from 30% to 50%, plus a four-week loss of benefit payments), and higher value fraud (increasing loss of benefits from 4 weeks to 3 months for a first offence, and from 13 weeks to 6 months for a second, and introducing a 3 year loss for a third offence, and seeking tougher penalties for those prosecuted).[216]

The DWP also announced that "in order to more clearly reflect the seriousness of benefit fraud and to act as a stronger deterrent to fraudsters in the future we will no longer issue cautions".[217]

It also said that "we will ensure that those caught trying to commit fraud at the point of claim will face punishments of similar severity to those who actually succeed in defrauding the system", explaining that "this will be critical in strengthening the deterrence effect of our current sanction regime and in making it clear to the public that the Government doesn't tolerate fraudulent activity of any kind".[218]

Responses to the strategy

Some of the organisations which submitted responses in December 2010 to the Work and Pensions Committee inquiry into the Government's Universal Credit proposals argued that making official error payments recoverable would penalise vulnerable claimants who receive incorrect payments through no fault of their own. The Low Incomes Tax Reform Group commented:

> We are worried about the Government's plans to increase their powers in respect of official error overpayments. Whilst we understand that they have a duty to protect public money, Government departments often contribute to overpayments through official error and claimants are left with overpayments through no fault of their own. It would be wrong to penalise people for errors over which they have no control and which often they are unable to identify due to the sheer complexity of the system.[219]

There is also concern that, in the context of the Universal Credit plans, the change effectively transfers to claimants the risks associated with new IT systems. Advice Northern Ireland commented:

> Advice NI is concerned about the proposal to 'seek powers to enable us to widen the range of debts we can recover, to include those resulting from official error.' Advice NI believes that the introduction of such radical reform may be susceptible to inherent error (for example due to inadequate IT systems) and as such this approach is effectively passing the risk of error within the new system on to shoulders of claimants. We believe this is unfair and claimants should not be held liable for the failure of others.[220]

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[215] Department for Work and Pensions, and HM Revenue and Customs, *Tackling fraud and error in the benefit and tax credits systems*, p38, para 4 (original emphasis)
[216] *Ibid*, pp39–40, paras 6–8, 10 and 12
[217] *Ibid*, p39, para 5
[218] *Ibid*, p40, para 15
[219] Work and Pensions Committee, *White Paper on Universal Credit - written evidence: UC38, Written Evidence Submitted by Low Incomes Tax Reform Group*, para 3.13.1
[220] Work and Pensions Committee, *White Paper on Universal Credit - written evidence: UC18, Written Evidence Submitted by Advice NI*, para 17

The Northern Ireland Welfare Reform Group also noted the proposal in *Tackling fraud and error in the benefit and tax credits systems* to increase the rate at which the Department could recover fraud-related debts from ongoing means-tested benefit awards, and sought clarification on whether this would also apply to debts caused by official error:

> We also have reservations about the proposal to increase the maximum rate at which fraud debts can be recovered through deduction from benefits by almost 25%. We would welcome clarification as to whether this will apply to the recovery of Official Error overpayments. There is a high risk of passing administrative errors of the new system onto the claimants. We recommend that there needs to be protection from debt recovery due to official error for the most vulnerable claimants.[221]

10.3 The Bill

Clause 102 amends the *Social Security Administration Act 1992* by inserting new sections 71ZB to 71ZG. New section 71ZB makes provision for the recovery of "any amount ... paid in excess of entitlement" of Universal Credit (UC), Jobseekers Allowance (JSA), Employment and Support Allowance (ESA) and (except for those cases prescribed in regulations) the housing credit element of Pension Credit. Only where the entitlement decision that led to the overpayment has been reversed or varied on an appeal, or revised or superseded can an overpayment be recovered.

The overpayment will be recoverable from the person it was paid to, or any other person prescribed in regulations; the explanatory notes suggest this might include "the benefit claimant's partner or an appointee who appropriates excess benefit for their own use. It would also include a landlord who had been paid the benefit direct".[222]

Regulations may prescribed the amount or means for calculating the amount to be recovered. For joint claimants, an overpayment to one of them can be recovered from the other. Subsection (5) allows UC to be reclaimed if an overpayment has occurred because of late payment of other income or benefits which, if they had been paid on time, would had reduced the UC payment due at that point.

Subsection (7) permits the recovery of overpayments by deduction from, or adjustment of, benefit or through the courts; each method is explained further in new sections 71ZC, 71ZE and 71ZD respectively.

New section 71ZC allows for deductions from the benefits of a claimant to reclaim an overpayment. Deductions can also be made from benefits paid to a third party where they receive benefits on the claimant's behalf through the following means: the third party's own prescribed benefits, if applicable, or; ongoing benefits paid to the third party on behalf of the claimant, or on behalf of other benefit claimants. Regulations will be made to prevent, for example, a landlord putting a claimant into arrears in such a situation.

New section 71ZD relates to the recovery of overpayments through the courts for England and Wales, and Scotland and allows the Secretary of State to recover associated court costs. The explanatory notes state:

> It is standard practice for the Secretary of State to seek to recover court costs when there is a court judgment in his favour. There is no mechanism at present however for the Secretary of State to recover any costs associated with civil recovery of

[221] Work and Pensions Committee, *White Paper on Universal Credit - written evidence: UC48, Written Evidence Submitted by Northern Ireland Welfare Reform Group*, para 8.2
[222] Bill 154–EN, p70, para 498

> overpayments in the same way as if they formed part of the overpayment debt, by deduction from benefits, or by adjustment of subsequent payments of benefit.[223]

New section 71ZE allows for a claimant's benefit to be adjusted in order to recover an overpayment; regulations can determine that in certain circumstances overpayments can be treated as properly paid, but be set against future payments to the claimant or a third party.

New section 71ZF allows for the recovery of payments on account, from either the person to whom it was paid or a third party as prescribed in regulations, using the methods under clauses 71ZC (deduction from benefit) and 71ZD (court action). Regulations will determine how to calculate or estimate the amount to be recovered, which in the case of joint claimants can be reclaimed from either.

New section 71ZG allows for the recovery of hardship payments under the UC and JSA hardship payment schemes. It also allows for payments made to JSA claimants in cases where they are "entitled to a prescribed rate of benefit despite not meeting the jobseeking conditions, or where their claim is yet to be determined",[224] and hardship payments paid to those who are subject to a sanction for fraud. The provisions for recovering such an overpayment are the same as those for new section 71ZF, although the mechanisms under new section 71ZE can also be used.

In addition, subsections 3 and 4 of clause 102 will amend sections 115A and 115B of the 1992 Act so that provisions relating to civil penalties apply where sums are recoverable under new section 71ZB. Clause 102(7) allows both claimants and third parties who are subject to recovery under the new sections added by clause 102 to appeal, although they can only appeal the amount to be recovered.

Clause 103 allows overpayments of child benefit and guardian's allowance to be recovered by amending the 1992 Act (for GB) and the *Social Security Administration (Northern Ireland) Act 1992*.

Clause 104 amends the *Limitation Act 1980* so that the six year time limit to recover a sum recoverable by virtue of an enactment does not apply in cases where a social security overpayment or debt (including social fund debt), or a tax credit overpayment are recoverable by the Secretary of State where recovery is through means other than via the courts (e.g. by deducting from benefit instead). It will apply only to proceedings brought after the commencement of clause 104.

Clause 105 amends section 109B the *Social Security Administration Act 1992* to allow regulations to state from whom an authorised officer can require information.

Clause 106 extends the scope of section 116 of the *Social Security Administration Act 1992* to include Housing Benefit and Council Tax Benefit, so that when an offence was committed more than 12 months previously, the Secretary of State can authorise prosecution proceedings within 3 months of the details of the case coming to his knowledge.

Clause 107 inserts a new section into the *Social Security Administration Act* 1992 to restrict authorities' powers to prosecute claimants for Housing and Council Tax Benefit fraud (this clause does not extend to Scotland). This change is being made in the context of the Government's intention to create a Single Fraud Investigation Service to tackle welfare fraud

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[223] Bill 154–EN, p71, para 511
[224] Bill 154–EN, p72, para 520

from 2013 - thus a need has been identified to end the "disparate and inefficient arrangements for legacy benefits fraud investigation". [225]

The Local Government Association (LGA) argues that local government has a good record on prosecuting benefit fraud and "many in local government will need convincing that a central single fraud investigation service is an improvement". The LGA is engaging with the DWP to ensure that the implications for local authority fraud staff are fully taken into account.[226]

Clause 108 amends section 115A of the *Social Security Administration Act 1992*, which sets out circumstances where an individual can agree to pay a financial penalty as an alternative to prosecution. In addition to the current provisions which apply when an overpayment has been made, the amendment extends this provision to those who have not received an overpayment (i.e. because the fraud was detected), the intention being the enable those who sought to commit benefit fraud to be fined.

Clause 109 amends section 115A of the *Social Security Administration Act 1992* so that the penalty is 50% of the overpayment (currently 30%), subject to a minimum of £350 (currently £60) and a maximum of £2,000. For those cases where fraud was detected before an overpayment occurred, a fixed rate penalty of £350 is proposed. It is proposed that the Secretary of State will be able to change the figures in this amendment by order.

Clause 110 amends section 115A of the *Social Security Administration Act 1992* to reduce from 28 days to 14 days the time that a claimant or an employer has to withdraw from an agreement to pay a penalty instead of facing prosecution.

Clause 111 amends the *Social Security Administration Act 1992* to add new sections 115C and 115D to introduce civil penalties for claimants who make an incorrect statement or fail to disclose information respectively. New section 115C allows a claimant who receives an overpayment because they negligently made an incorrect statement or representation, or gave incorrect information or evidence, and failed to take "reasonable steps" to correct the mistake to be subject to a penalty of an amount prescribed in regulations. This applies if they are not subject to fraud action, and the penalty can be reclaimed through a deduction of benefits or through the courts. In addition, the penalty can be imposed on a claimant, or, either claimant in the case of joint claimants if the other claimant knew or could reasonably be expected to know that an error was being made that would result in overpayment.

New section 115D makes similar provision as new section 115C in respect of a failure to provide information or evidence in respect of a claim for, or award of, a benefit or a failure to report a change in circumstances that affects their benefit entitlement, where the failure was without reasonable excuse. In the case of a joint claim, unlike new section 115C, new section 115D does not allow the penalty to be imposed on either of a joint claimant. However, where both members fail to disclose information under new section 115D, only one penalty can be imposed.

For both new sections, the DWP states that "It is intended that the penalty will be prescribed at a flat rate of £50. Regulations are needed to ensure flexibility as to this amount and to allow for its adjustment in the future".[227]

Clause 112 adds Child Tax Credit (CTC) and Working Tax Credit (WTC) to the list of benefits in section 6A of the *Social Security Fraud Act 2001*, meaning that offences involving

[225] Department for Work and Pensions, *Letter from DWP to Local Authority Chief Executives*, 16 February 2011
[226] Local Government Association, *Welfare Reform Bill Briefing*, 18 February 2011
[227] *Welfare Form Bill 2011 Delegated Powers Memorandum*, para 428

these tax credits trigger sanctions against benefit payments. It also adds CTC and WTC to the list of benefits that are non-sanctionable i.e. sanctions cannot be made against them because of a benefits offence (but also see clause 115 in respect of WTC).

Clause 113 amends section 6B of the *Social Security Fraud Act 2001* regarding the time that benefits will be lost when there is a conviction, penalty or caution for a benefit offence, so as to remove the current blanket four week period. For those convicted of a serious benefit offence, which is stated as conviction for conspiracy to defraud, or being overpaid by more than £50,000, or punished with a custodial sentence in excess of a year (including a suspended sentence), or having committed the offence for a period in excess of two years, benefits will be lost for a three year period. This applies to the first and any subsequent convictions for serious benefit fraud. The DWP explains that "relevant offences will include serious organised fraud and serious identity fraud relating to social security".[228] For other offences, a period of 13 weeks will be imposed for a first offence, and for cautions and agreed penalties there will continue to be a four week period of loss of benefit.

Subsection 6 allows the Secretary of State, by order, to amend the durations of lost benefit and the definition of a serious benefit offence.

Clause 114 amends section 7 of the *Social Security Fraud Act 2001* in respect of repeated benefit fraud in order to lengthen the time periods for which previous convictions or penalties for benefit fraud can count toward the escalation of a benefit payment disqualification. The amendment also allows the Secretary of State, by order, to amend the time periods for consideration of previous benefit offences.

Clause 114 also amends section 6A to allow the Secretary of State, by order, to specify the length of time that benefits can be lost, and to set different time periods depending on the number of previous disqualifying events (i.e. whether it was a conviction, or a caution, or agreement to pay a penalty).

Clause 115 inserts new sections 36A to 36D into the *Tax Credits Act 2002*. New section 36A allows for the loss of WTC in the event of benefit fraud. If a person has committed benefit fraud and been prosecuted, paid a penalty or received a caution (under section 115A of the *Social Security Administration Act 1992*) then WTC can also be withdrawn along with benefits for the disqualifying period. When paid to a couple, WTC can be withdrawn from either of them although under new section 36A(5) it is possible for HMRC to prescribe in regulations how WTC should be reduced rather than withdrawn in full for couples.

New section 36B, also inserted by clause 115, makes supplementary provision to new section 36A, including that WTC will be repaid in full if a conviction for benefit fraud is subsequently quashed.

New section 36C allows for the loss of WTC in the event of repeated benefit fraud, including a three-year withdrawal for those convicted of a serious benefit offence (see clause 113) irrespective of the number of previous offences. The other provisions to withdraw WTC for repeated benefit fraud mirror those for benefits in clause 114, although in matters determined in regulations it will be the Treasury, rather than the Secretary of State, who prescribes them.

New section 36D provides similar supplementary provision to new section 36C as new section 36B does to new section 36A.

[228] Bill 154–EN, p79, para 567

Clause 116 amends section 6B of the *Social Security Fraud Act 2001* and section 36A of the *Tax Credits Act 2002* to remove references to cautions to benefit offenders, as cautions are no longer to be offered.

Clause 117 amends section 109A of the *Social Security Administration Act 1992* to allow suspected WTC and CTC offences to be investigated in the same way as suspected benefit offences, so that the Secretary of State has the power to investigate whether tax credit fraud is or has been committed.

Clause 118 amends section 35 of the *Tax Credits Act 2002* so that offences involving payments up to £20,000 are tried before a Magistrates Court only; at present, all tax credit fraud cases are triable in either a Magistrates Court or County Court, meaning even low value cases can be tried at a County Court if a claimant so elects.

For a summary conviction, section 35 currently states a maximum term of 6 months. For England and Wales where the offence concerns payments up to £20,000, clause 118 will amend this to 51 weeks once section 281(5) of the *Criminal Justice Act 2003* comes into force (prior to which it will remain 6 months). In addition, a fine not exceeding level 5 on the standard scale may be levied instead of, or in addition to, imprisonment. For these offences, the time limits set out for benefit fraud in section 116 of the *Social Security Administration Act 1992* (see clause 106 above) will apply for CTC and WTC.

Cases involving payments exceeding £20,000 will continue to be triable in either a Magistrates Court or a County Court. For a summary conviction, the maximum term will be 12 months except in Northern Ireland where it will be 6 months; it will also be 6 months in England and Wales until section 154(1) of the *Criminal Justice Act 2003* comes into force. A fine not exceeding the statutory maximum may also or alternatively be applied. For a conviction on indictment, as is currently the case a maximum term of imprisonment of 7 years, or a fine, or both can be determined.

Clause 119 adds information about CTC and WTC to that for which it is an offence for DWP staff to disclose information unlawfully.

Clause 120 removes the bar, under the amended *Ministers of the Crown Act 1975*, preventing functions of HMRC relating to the payment and management of WTC and CTC being transferred from the HMRC Commissioners by an Order in Council. It also allows such a function to be exercisable concurrently with the Secretary of State, and also for it cease to be exercisable concurrently. The explanatory notes state:

> An Order under this section may also make provision in connection with such a transfer or direction, and other provision including provision relating to the use or supply of information, combining any aspect of the payment and management of tax credits with any aspect of the administration of social security and applying social security legislation in relation to tax credits. Subsection (5)(a) allows new functions to be conferred on, or functions to be removed from, the Secretary of State, the Treasury, the HMRC Commissioners, a Northern Ireland Department or any other person. Under subsection (5)(b), the Order may authorise the Secretary of State and the HMRC Commissioners to arrange for the HMRC Commissioners to provide services to the Secretary of State in connection with tax credits.[229]

[229] Bill 154–EN, pp85–86, para 612

11 Information sharing

Clauses 121–126 contain provisions relating to the sharing of "customer" information between the DWP and local authorities for prescribed purposes such as determining entitlement to benefits and services.

The DWP explains that currently there is only limited scope for data sharing meaning that individuals have to provide "duplicate information to different parts of Government, or give [signed written] consent [which requires a home visit] for data to be reused on a case by case basis", causing "delays, increased administration costs and potential overpayments":

> The existing legal gateway allowing customer information to be shared between the [DWP] and local authorities [LA] in relation to the provision of a welfare service is quite limited, and excludes a lot of services that a [LA] delivers, or is likely to deliver in the near future. Also there is no general legal gateway allowing [LAs] to share customer information to enable DWP or [LA] HB teams to reassess social security awards when a person moves into hospital or residential care, or needs overnight care at home.[230]

The DWP states that delays in obtaining such details "can mean that where a charge is liable in respect of a service ... the local authority often has to provide several weeks of free care until an accurate financial assessment can be completed". It can also mean that "customers may be discouraged from accepting the provision of a service until they know how much it might cost them". The DWP reports that "moves into hospital or residential care account for a large proportion of benefit overpayments", and that "customers find the process of being notified about overpayments and being asked to repay them, very stressful".[231]

The DWP calculates the following "key monetised benefits" from increased data sharing:

> Reduced administrative expenditure - Expected savings to Pension, Disability and Carers Service (PDCS) of at least £1.1m (equates between 12-15 FTE), to Jobcentre Plus of approximately £0.3m and administrative savings to local authorities of approximately £75.2m.
>
> Reduced benefit overpayments - Only a small proportion of overpayments are recovered. Therefore this will result in a net reduction of approximately £13.5m on overpayments detected if changes of circumstances are processed a week earlier through faster notification of customers moving into care/hospitals.[232]

Clause 121 allows data to be shared between HMRC Commissioners, and the Secretary of State or a specified Northern Ireland department, including third parties providing services to either, and *vice versa*. Information held by HMRC Commissioners can be shared for the purposes of social security, employment or training, and the investigation or prosecution of offences relating to tax credits. HMRC Commissioners can receive information in respect of their functions relating to taxes, duties and tax credits, and other functions listed in Schedule 1 of the *Commissioners for Revenue and Customs Act 2005*.

Clause 122 allows local authorities who have provided, or are likely to do so, overnight care to a person (e.g. overnight hospital accommodation) to share details of that care to the Secretary of State or a third party provider, or their own teams or third party provider. The information can include the fact that an overnight care service has been, or is to likely to be, provided, and when the service begins or ends or is likely to do so. Further information that can be shared e.g. how it is funded, can be prescribed in regulations. The DWP explains:

[230] *Data Sharing Impact Assessment*, p1
[231] *Data Sharing Impact Assessment*, p7, para 2.8–2.9 and 2.11
[232] *Data Sharing Impact Assessment*, p2

> Claimants of certain social security benefits have their benefit awards reassessed when they go into or are discharged from hospital or care. Claimants are already required to report such changes. This provision will allow local authority teams to use that information themselves, or supply the information to the Secretary of State, for purposes relating to the payment of benefits ... This will allow reassessment of benefit awards that are affected by these changes.[233]

Clause 123 provides similar provision in respect of welfare services allowing a prescribed person to supply information to the Secretary of State or a third party provider to the Secretary of State for a prescribed purpose, and *vice versa*. This clause will replace section 42 of the *Welfare Reform Act 2007* which will be repealed.[234] The DWP notes that the clause will "broaden the scope of data sharing that is provided under the existing section 42", and extends the provisions to Scotland, adding:

> It allows 'relevant information' to be shared between the Secretary of State, local authorities, and authorities administering housing benefit, while housing benefit continues, including their service providers and persons exercising their functions. It can be shared in relation to the provision of a welfare service and for certain housing benefit purposes. It also allows the supply of relevant information in connection with the provision of assistance under arrangements made by local authorities in England or others once community care grants and crisis loans that are not alignment loans cease to be provided by the discretionary social fund (see clause 69). [235]

Clause 124 makes it an offence to unlawfully disclose information gained under clause 123; as such, it makes similar provision as section 43 of the *Welfare Reform Act 2007* makes for section 42, which is to be repealed in place of clause 123.

Clause 125 enables regulations to make consequential, supplementary incidental, transitional or savings provision relating to data-sharing in relation to the provision of overnight care (clause 122) and in relation to welfare services (clause 123). It also provides a power to make different provision for different purposes, cases and areas.[236]

Clause 126 amends section 72 of the *Welfare Reform and Pensions Act 1999* to allow the Secretary of State to designate by description (as well as specifying individual organisations as occurs now) who information can be shared with for social security or employment purposes. The DWP explains that "organisations such as those delivering skills, employment and training services to Jobcentre Plus customers in England, Scotland and Wales are continuously changing. The express power to designate by description makes it absolutely clear the Secretary of State does not have to continually update the designation order".[237]

At present, social security information can be used and supplied by County Councils in England only where they are providing support services for 13-19 year olds and young adults aged 20-24 with learning difficulties. Clause 126(3) removes this restriction, "to allow the flexibility to be able to use and pass on information about persons falling outside of this group, to facilitate the provision of employment, skills and training services without having to seek written consent from customers".[238]

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[233] Bill 154–EN, p87, para 627
[234] For further background see Part III.A of the Library Research Paper, The *Welfare Reform Bill* (RP 06/39)
[235] Bill 154–EN, p88, para 630
[236] Bill 154–EN, pp89–90, para 642
[237] Bill 154–EN, p90, para 645
[238] Bill 154–EN, p90, para 646

12 Child support maintenance

12.1 Background

Since 2008 responsibility for the statutory system of child support in Great Britain has been under the remit of the Child Maintenance and Enforcement Commission (CMEC or the Commission).[239] The current statutory child maintenance schemes are administered for the Commission by its delivery body, the Child Support Agency (CSA). The Commission has a wider remit than the CSA – to support all separated families to set up child maintenance arrangements, not just those who are clients of the CSA. The CSA will continue with the delivery function until a new statutory scheme is introduced and all current clients have either moved to that scheme or made their own private arrangement for child maintenance.

The Commission was established as a non-departmental body under the *Child Maintenance and Other Payments Act 2008* as part of reforms to the statutory child support scheme introduced by the previous Government.[240]

Many of the provisions in the 2008 Act, such as the establishment of the Commission (section 1) and the provision of information and guidance to parents (section 5) — the Child Maintenance Options service — have been implemented. Other provisions, such as the introduction of the new statutory scheme, have yet to be brought into effect. Since the proposals were first presented by the previous Government, it was always the intention that they would be implemented in increments in order to minimise disruption for parents and provide 'a seamless service for the move to the new regime".[241] The timetable for change was to be kept under review in order to avoid some of the well publicised mistakes that stalled the implementation of previous reforms.[242] The current timetable for implementation of the changes is available on the Commission's website.

The child maintenance green paper

In January 2011, the Government published its Green Paper *Strengthening families, promoting parental responsibility: the future of child maintenance*, which it describes as a "radical re-shaping of the statutory child maintenance system".[243] The Government intention set out in the Green paper is to create a system for "supporting and empowering parents to reach family-based arrangements for child maintenance" which it believes are better for children in the long-term than state involvement.[244] The paper provides:

> Until now, the CSA may have been viewed as the default option for parents seeking support to make child maintenance arrangements following separation. We want to change this culture so that parents are supported to reach arrangements between themselves before conflict and disharmony have set in. This would enable the statutory maintenance system to focus on arrangements for maintenance when collaboration between parents is not possible (for example where a parent refuses to take responsibility or where issues, such as the risk of domestic violence, mean parents may not always be able to effectively resolve matters between themselves).[245]

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[239] There is a separate Child Maintenance and Enforcement Division for Northern Ireland

[240] See Library Research Papers *Child Maintenance and Other Payments Bill* (RP 07/57) and the *Welfare Reform Bill: disabled people, child maintenance and birth registration* (RP 09/09)

[241] Department for Work and Pensions, *A new system of child maintenance*, December 2006, para 3.21

[242] *Ibid.* Library Standard Note *Child Support Agency (CSA): Delays in introducing the new child maintenance scheme* (SN/SP/2898) provides further background information.

[243] Department for Work and Pensions, *Strengthening families, promoting parental responsibility: the future of child maintenance,* Cm 7990, January 2011, p5

[244] *Ibid,* pp6-7

[245] *Ibid,* p8

In support of its approach, the Government states that, of the 1.3 million families not on the statutory scheme, 550,000 already have a family-based arrangement of which 520,000 "are likely to be receiving some maintenance payments".[246] The Government expects that with "the right support, a sizable proportion of cases currently with the CSA will be able to make a family-based maintenance arrangement in the future".[247]

The Green Paper is described as a "discussion document" and its proposals are open to consultation until 7 April 2011. Many of the proposals are a continuation of the process commenced by the previous Government to reform the child maintenance system. However, the Coalition Government view is that those reforms do "not go far enough to promote collaborative arrangements between parents or to promote active decisions by parents before applying to the new scheme".[248] The Green Paper therefore proposed additional changes to primary legislation which would provide for:

- the introduction of a new **gateway** which all parents must go through before they can access the new statutory system. The purpose of the gateway would be to ensure all parents have considered the range of their child maintenance options so they can be directed to the appropriate family support services.

- a maintenance **calculation for information only service** which would not create any liability on the part of a non-resident parent. This would be designed to help parents that wish to make a maintenance arrangement between themselves and want an authoritative figure based on all factors as set out in legislation.

The Green Paper also confirmed that the new statutory child maintenance scheme would be introduced in phases with as many savings as possible "driven out" in the process to ensure that the new system "is as efficient as it can be". The new system would first be available to new clients and then, over a two year period, CSA cases would be closed and parents would be able to apply to the new system. Draft regulations will be published later this year covering the closure of the current CSA schemes.[249]

12.2 The Bill

The Bill would implement the proposals in the Government's *Strengthening Families* Green Paper which require primary legislation. It would introduce a new mandatory gateway to the statutory child maintenance system which would act as a 'signpost to support and advice for parents to come to their own arrangements'. Secondly, it would introduce a calculation only service to give parents a figure for how much maintenance would be received through the statutory scheme. The service would not create any liability on the non-resident parent to pay maintenance. In addition to the proposals in the Green Paper, the Bill would make amendments to the *Insolvency Act 1986* in relation to the treatment of child maintenance debt under an individual voluntary agreement.

The changes in the Bill to child support legislation would apply to England, Wales and Scotland. There are also associated amendments to the *Insolvency Act 1986* although these would not affect Scotland as the 1986 Act applies only to England and Wales.

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[246] *Child Maintenance Impact Assessment*, p6
[247] *Ibid*, p6, para 4
[248] *Strengthening Families Green Paper Impact Assessment* , p1
[249] Department for Work and Pensions, *Strengthening families, promoting parental responsibility: the future of child maintenance,* p26

Child maintenance provisions

The child support provisions which will be amended by the Bill are sections 4, 7 and 9 (as amended) of the *Child Support Act 1991.* Sections 4 and 7 (which apply to England and Wales, and Scotland respectively) provide the statutory basis for parents and non-resident parents, and in Scotland, a qualifying child over 12, to apply to the state child support scheme for a maintenance calculation. Section 9 of the 1991 Act makes it clear that parents who have made private arrangements for child support[250] are not prevented from applying to the statutory scheme.

Clause 128(1) amends section 9 of the 1991 Act by inserting a new subsection 2A to allow the Commission to require parents to "take reasonable steps to establish whether it is possible or appropriate" to make a maintenance agreement. The effect of the provision would be to implement the gateway to the statutory scheme proposed in the Green Paper. The Explanatory Notes to the Bill provide that "reasonable steps" will differ between individual cases:

> There will be some circumstances where a private maintenance arrangement is unsuitable, for example where the applicant does not know the whereabouts of the other person, or where there has been a separation due to violence or the risk of abuse. In those circumstances there would be no reasonable steps that the applicant could undertake.[251]

In addition, subsection (b) of new subsection 2A allows the Commission to take appropriate steps to "encourage the making and keeping of maintenance agreements".

The gateway would also apply to parents on the current CSA schemes if they wished to transfer to the new scheme. **Clause 128(2)** affects the transfer of cases to the new statutory scheme by providing the Commission with the authority to require parents wishing to transfer to schemes to take reasonable steps to try to make their own arrangements first.

The Government has not yet decided on the type of organisation that should deliver the gateway. The Impact Assessment to the Bill provides that it "it could be completely independent of the statutory scheme organisation and family support services or could be interlinked".[252]

Clause 129 makes changes to the collection of child maintenance following a request to the Commission for a maintenance calculation. Currently, once a calculation has been made, either the parent with care or the non-resident parent, and in Scotland, the qualifying child, can request the Commission arrange for the collection of the maintenance. This is known as the "collection service". Otherwise, payments are to be made by "maintenance direct" – that is the non-resident parent pays the other parent directly. It is estimated that around 20% of clients assessed under the newer of the CSA schemes pay by maintenance direct.[253]

Clause 129 amends section 4 of the 1991 Act so that if the parent with care requests that the Commission collect the maintenance payable, the Commission will only do so if the non-resident parent agrees to the arrangement or, if the Commission is satisfied that the non-resident parent is unlikely to make the payments. The clause also makes the corresponding amendments to section 7 of the 1991 Act, which is the equivalent provision for the collection of child maintenance in Scotland.

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250 Outside of the statutory scheme and the court system
251 Bill 154–EN, para 657
252 *Child Maintenance Impact Assessment*, p8
253 *Ibid*, p8

Clause 130 inserts section 9A into the 1991 Act to allow the Commission to make an indicative calculation of child maintenance if requested to do so by a parent with care, the non-resident parent, and, in Scotland, the qualifying child. Subsection 3 allows an indicative calculation to be made on the same basis as an actual calculation of maintenance following an application to the statutory scheme. However, under subsection 4 a request for an indicative calculation would not create any liability to pay maintenance.

The intention behind the policy change is that, "over time, parents will be able negotiate the amounts and payments with each other outside of the rigid State rules and this should lead to a greater number of family-based arrangements".[254] If however, parents encounter problems with those arrangements, they would have the option to use the statutory scheme.

Insolvency provisions

Clause 131 amends section 382 of the *Insolvency Act 1986* to make it clear that a non-resident parent's liability to pay child support is not a debt that can be included in an individual voluntary arrangement (IVA). The amendment would prevent a non-resident parent from reducing his liability to pay. The provision would clarify the law following a Court of Appeal judgment on the issue.[255]

12.3 Initial reaction

At the time of writing, many organisations had not yet responded to the Bill proposals which form part of the wider Green Paper consultation due to run until April. However, Gingerbread, the charity for single-parents, in an early response to the Green Paper was generally supportive of a collaborative approach to family breakdown but called the Government's view of the potential for parents to reach voluntary agreements "over-simplistic" It argued that the Bill's "do-it-yourself" approach to push parents into making their own child maintenance arrangements would not necessarily result in reduced conflict and more engaged non-resident parents, but it would "certainly make many children poorer". In Gingerbread's opinion, the Government had failed to:

> ....acknowledge that what may seem advantageous to the paying parent about private arrangements – that they are flexible as to amount and timing and do not involve interference from the state - may be seen as potential disadvantages to the recipient parent, with day-to-day care of the children: payments are not regular; may be for lower amounts than the statutory formula, and if not paid, there is no redress. Much therefore depends on the degree of trust between the parents in question when reaching an agreement, and their mutual commitment to the best interests of their children.[256]

The charity pointed to evidence that, whilst over half of non-resident parents using the CSA thought that parents should make their own child maintenance arrangements, only a quarter of parents with care thought the same.[257]

Gingerbread's view was shared by the Church of England which feared the Bill's "laudable focus on mediation will fail to serve some of the most vulnerable families and children".[258]

Gingerbread was also critical of the changes which would require a non-resident parent's permission before the collection service could be used. It warned of the consequences of delaying maintenance collection, saying "losses of a month's worth, or perhaps even more,

254 *Child Maintenance Impact Assessment*, p9
255 *Child Maintenance and Enforcement Commission v Beesley and another* [2010] EWCA Civ 1344. A summary of the case in the Weekly Law Reports is available at: [2010] WLR (D) 304
256 *Gingerbread briefing in response to the Green Paper*, February 2010, para 11
257 *Ibid,* para 15
258 *The Church of England's briefing on the Welfare Reform Bill 2011*

of child maintenance is not a trivial matter, as the government seems to think. Late and irregular maintenance payments can cause significant problems for parents with care looking after children, disrupting budgets and making it difficult to plan ahead".[259]

In Gingerbread's view, the proposals amounted to a "free pass" "to a non-resident parent to pay how they like, and look likely to put a heavy burden on the parent with care to prove, in advance of suffering actual financial loss, that such arrangements are unlikely to work".[260]

[259] *Gingerbread briefing in response to the Green Paper*, para 21
[260] *Ibid,* para 22

13 Miscellaneous provisions

13.1 Claimants dependent on drugs

The *Welfare Reform Act 2009* introduced new provisions regarding claimants dependent on drugs, and also those with alcohol addiction. Section 9 and Schedule 3 of the Act amended the *Jobseekers Act 1995* and the *Welfare Reform Act 2007* to make provision in relation to persons claiming JSA and ESA "who are dependent on, or have a propensity to misuse, drugs. They will be required to engage in certain activities if their condition affects their prospects of finding work". Schedule 3 of the 2009 Act also contained a power to extend the provisions to those who misuse alcohol.[261]

In March 2010, the Labour Government presented to the Social Security Advisory Committee (SSAC) draft proposals for a "Welfare Reform Drug Recovery" (WRDR) pilot scheme. Draft *Social Security (Welfare Reform Drugs Recovery Pilot Scheme) Regulations 2010* were submitted to the SSAC, which included a new "Additional Support programme", a "Treatment Allowance" in place of ESA or JSA and payable on a voluntary basis, and the power to impose a mandatory rehabilitation plan.

In a report published after the General Election, the SSAC concluded that "overall, the Committee feels strongly that this pilot is unlikely to be effective, contains a number of significant flaws and is unlikely to produce robust results ... [and] runs a high risk of causing significant harm", and recommended that the pilot should not proceed in its current form.[262]

In response to the SSAC report, the Coalition Government said that it would not be taking forward the proposed pilot scheme, but would "look at how Government departments can work together to provide the help and support people need to overcome drug and alcohol dependency and get back to work".[263]

In August 2010, the Home Office published its *2010 Drug Strategy Consultation Paper*, which indicated that it was considering benefit sanctions for drug and alcohol users who refused treatment, asking "should we ... offer claimants a choice between some form of financial benefit sanction, if they do not take action to address their drug or alcohol dependency".[264]

The consultation ended on 30 September, and on 8 December the Government published its *Drug strategy 2010*. In relation to welfare benefits and claimants with drug or alcohol dependency, the strategy's proposals stated:

> those not in treatment will neither be specifically targeted with, nor excused from sanctions by virtue of their dependence, but will be expected to comply with the full requirements of the benefits regime or face the consequences. Where people are taking steps to address their dependence, they will be supported, and the requirements placed upon them will be appropriate to their personal circumstances and will provide them with the necessary time and space to focus on their recovery.[265]

Clause 59 will repeal the related provisions in the *Welfare Reform Act 2009* and the amendments it made (see first paragraph of this section) in their entirety.

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[261] Act 24-EN, para 98

[262] Social Security Advisory Committee, *Report of the Social Security Advisory Committee made under section 174(2) of the Social Security Administration Act 1992 on the Social Security (Welfare Reform Drugs Recovery Pilot Scheme) Regulations 2010*, 19 May 2010, paras 6.4 and 7.1

[263] Department for Work and Pensions, *Radical rethink on getting drug and alcohol users back to work*, press release, 17 June 2010

[264] Home Office, *2010 Drug Strategy Consultation Paper*, August 2010, p14, Question E5(a)

[265] Home Office, *Drug strategy 2010*, December 2010, p23

13.2 Carer's additional amount in Pension Credit

Clause 73 amends the *State Pension Credit Act 2002* to change the entitlement conditions for the additional amount of guarantee credit in respect of caring responsibilities. The Explanatory Notes say:

> 335. Currently a claimant is entitled to the additional amount if the claimant or their partner is entitled to carer's allowance. Subsection (2) amends section 2(8) of SPCA 2002 so that a claimant is entitled to the additional amount if they or their partner have regular and substantial caring responsibilities. Subsection (3) amends section 17 of the SPCA 2002 to provide that the Secretary of State will prescribe what is meant by regular and substantial caring responsibilities in regulations. The intention is that this definition will cover, but not be limited to, people entitled to carer's allowance.[266]

DWP explains that the intention is to remove an anomaly by which a person has to claim carer's allowance to be entitled to the carer's additional amount in Pension Credit, even though the rate of carer's allowance to which that person would be entitled is nil because of the "overlapping benefit rules".[267] Under these rules, the State Pension and Carer's Allowance are not payable at the same time because they are both income maintenance benefits and this would involve duplicate provision from public funds.[268]

Comment

There has long been concern that the requirement to claim Carer's Allowance (despite the fact that there may be no entitlement because it overlaps with the State Pension) was leading some carers over pension age to miss out on the additional allowance in Pension Credit. For example, Carers UK has said that many carers "are probably unaware that they are eligible for the Carer's Addition because they mistakenly believe they are not eligible to apply for Carer's Allowance once they reach State Pension Age".[269] The Work and Pensions Committee, in its 2008 report, *Valuing and Supporting Carers,* concluded that the "overlapping entitlement rules are confusing and over-complicated". It recommended that DWP urgently streamline the application process for carers of State Pension age.[270]

13.3 "Tell us Once" registration service

Sir David Varney's December 2006 report, *Service Transformation: a better service for citizens and businesses, a better deal for the taxpayer*,[271] found that people often had to provide the same information to different Government Departments. In response to its recommendations, the DWP is leading the Tell Us Once cross-Government programme to develop a "joined-up notification service provided through a single point of contact".

The birth notification service element of Tell Us Once was initially tested by HMRC in eleven local authority areas but following review within HMRC, DWP was asked to take responsibility for the birth notification service (BNS). The birth notification service is currently running in four local authority areas, with national roll out of the service beginning in 2011.

The DWP explains that by using the birth notification service, there is no need to separately notify each of the participating departments or agencies:

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266 Bill 154–EN, para 335
267 *Welfare Form Bill 2011 Delegated Powers Memorandum*, para 290
268 HC Deb 16 April 2007 c257W
269 Carers UK, *Response to the White Paper – Personal Accounts: a new way to save.* December 2006
270 Work and Pensions Committee, *Valuing and Supporting Carers*, 21 July 2008, HC 485-i 2007-08, para 157
271 See: http://www.official-documents.gov.uk/document/other/011840489X/011840489X.pdf

> The aim of the birth notification service is that where citizens wish to take advantage of the service, the verified birth notification and related information will be held on a single IT application designed, administered and owned by DWP. With consent, the information will then be securely passed on to the relevant departments and agencies. Each receiving department will use this notification to process the change as they would have if the customer had contacted them directly.[272]

The DWP estimates that total benefits for the BNS "are estimated to be £54m over 10 years, of which £46m are in respect of individuals, and £8m in respect of government".[273]

Clause 127 amends the *Registration Service Act 1953* by inserting new section 19A to enable the Registrar General, superintendent registrars and registrars to share birth information with the Secretary of State, or a third party provider to the Secretary of State, who can then share the information with other government departments and local authorities as part of "Tell Us Once". The DWP explains that:

> Drawing the data from the General Register Office enables those services to accept the birth registration as verified for the purpose of assessing changes to entitlement to benefits and services and also removes the reliance on paper certificates.[274]

13.4 Advertising by the sex industry in Jobcentres

In 1996, several complaints were made in Parliament regarding the advertisement of vacancies associated with the sex industry in jobcentres.[275] In February 1997, the Employment Service issued new guidelines for staff which stated that the Service would not handle vacancies associated with the sex industry.[276]

This policy was subsequently challenged by the retailer Ann Summers Ltd and in a judgment on 18 June 2003, the High Court ruled that the ban on jobcentre adverts for vacancies in the retailer was unlawful.[277] As a consequence, on 21 July 2003 Jobcentre Plus altered its policy to take account of the High Court ruling and has since accepted advertisements from the adult entertainment industry – as long as they are legal and as long as the following safeguards are in place.[278] In addition, jobseekers were not penalised for failing to consider or take-up the offer of work in the adult entertainment industry.[279]

Jobcentre Plus' decision to carry advertisements not just from retail outlets such as Ann Summers, but from the wider legal sex industry has been subject to criticism from a range of organisations, such as Object.[280]

Clause 132 inserts new section 2A into the *Employment and Training Act 1973* to remove the obligation on the Secretary of State to advertise in Jobcentre Plus certain types of vacancies or opportunities related to the sex industry, stating that he "may" not "including arrangements in respect of employment for sexual purposes". The Secretary of State may by order make an exception to this. Subsection 2 of new section 2A defines "employment for sexual purposes" as sexual stimulation solely or principally of one or more other persons.

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272 *Tell Us Once Impact Assessment*, p5, paras 2.1 and 2.2
273 *Ibid*, p6, para 4.2
274 Bill 154–EN, para 654
275 HC Deb 23 July 1996 c192W
276 "Jobcentres banned from carrying sex vacancies", *Independent*, 6 February 1997, p2
277 See: http://www.bailii.org/ew/cases/EWHC/Admin/2003/1416.html
278 Department for Work and Pensions, *Accepting and advertising employer vacancies from within the adult entertainment industry by Jobcentre Plus – consultation document*, December 2008
279 *Ibid*, pp6–7, para 10
280 OBJECT, *OBJECT response to the Department for Work and Pensions (DWP) Consultation Document*

14 Territorial extent

Social Security has in the past been a matter for Great Britain, with analogous, but separate, provision for Northern Ireland. The Bill maintains that approach, meaning that most of the clauses relate to England, Scotland and Wales only.

However, the Bill allows for the input of the relevant Welsh and Scottish authorities where appropriate:

> 26. In general, the provisions of the Bill apply to Wales in the same way as they apply to England. At introduction the Bill includes provisions allowing the sharing of information between local authorities in Wales (amongst other bodies) relating to welfare services within the legislative competence of the National Assembly for Wales and which therefore require a legislative consent motion in the Assembly.
>
> 27. There are also provisions which require the consent of Welsh Ministers because they impact on their functions, these measures are:
>
> – changes to Welsh legislation as a result of the introduction of universal credit (clause 33) [see RP 11/24 on the Universal Credit]
>
> – amalgamating a separate scheme for people injured as trainees into the main Industrial Injuries Disablement Benefit Scheme (clause 64);
>
> – changes to allow localisation of the social fund (clause 69) [see RP 11/24 on the Universal Credit].
>
> 28. Some of the provisions of the Bill will require the consent of the Scottish Parliament. At introduction the following provisions have been identified as ones which will trigger the Sewel Convention. The provisions are those:
>
> – allowing data-sharing with local authorities (clause 123); and
>
> – amalgamating a separate scheme for people injured as trainees into the main Industrial Injuries Disablement Benefit Scheme (clause 64).
>
> 29. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.[281]

In addition, there are a number of clauses that apply both to Great Britain and Northern Ireland, namely clauses 33, 34 (for both, see RP 11/24 on the Universal Credit), 89, 120(1) to 120(13) and clauses 133 to 137 (excluding reference to Schedule 13).

[281] Bill 154–EN, pp5–6