Welfare Reform Bill 2010-12: Commons Report Stage and Third Reading

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Section Social Policy Section

The Commons Report Stage and Third Reading of the *Welfare Reform Bill* took place on 13 and 15 June. Amendments relating to the Universal Credit, housing support, the Social Fund and the Personal Independence Payment were debated, but other groups of amendments – including those on Employment and Support Allowance changes and the benefit cap – were not discussed as proceedings on each day reached the deadlines specified in the programme motion before they could be considered.

No Opposition or backbench amendments were agreed to. A number of Government amendments were agreed to; most were on technical matters but amendments also provide for the first versions of regulations in various areas to be made under powers in the Bill to be subject to the affirmative procedure.

The Bill received a Third Reading by 288 votes to 238 and was introduced in the House of Lords on 16 June. The Lords Second Reading debate was originally scheduled for 19 July, but was subsequently postponed to 13 September.

Further background to the Bill can be found in the following Library Research Papers:

Research Paper 11/23, *Welfare Reform Bill: reform of disability benefits, Housing Benefit, and other measures*

Research Paper 11/24, *Welfare Reform Bill: Universal Credit provisions*

Research Paper 11/48, *Welfare Reform Bill: Committee Stage Report*

The Bill itself, together will associated documentation and links to the proceedings on the Bill so far, is available at the Parliament website. Other resources including policy briefing notes can be found at the Department for Work and Pensions website.

Contents

1 Programme motion

Two days were set aside for Report Stage: 13 and 15 June. A programme motion was agreed at the beginning of the first day which required proceedings on Report to be concluded at 10.00 pm on 13 June and at 6.00 pm on 15 June, with proceedings on Third Reading to conclude at 7.00 pm on 15 June. In the event, the Third Reading debate did not begin until 6.30 pm on the second day.

Speaking on the programme motion at the beginning of the proceedings, the Minister for Employment, Chris Grayling, said that he hoped that the two days would allow sufficient time to debate all the key areas in the Bill. For the Opposition, Stephen Timms replied:

> I take issue somewhat with the Minister. I do not agree that there has been adequate time in Committee to consider the Bill, not least because on more than one occasion Ministers left early, before we had completed our first afternoon discussion. Consequently, a number of key issues, particularly new clauses, were left undebated when the Committee ended, and as a result, some of those are on the Order Paper today.
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> With that backlog, as well as other key points in the Bill, I am very concerned that the two days now available are likely to be insufficient for the debate that is needed. Given that inadequate time, however, the knife proposed in the Government's programme motion is in a perfectly sensible place. Because we need to get on with the debate I shall not seek to divide the House on the motion, but I am concerned that, as will become clear during the debate, the House will not have had sufficient time to consider properly the full consequences of the Bill.[1]

The programme motion was agreed without a division.

On the first day, the proceedings reached the 10.00 pm deadline before amendments on conditionality and Employment and Support Allowance could be discussed. The impact on people affected by cancer of the proposed one year time limit on receipt of contributory ESA for claimants in the Work-Related Activity Group was however the subject of a lively exchange between the Leader of the Opposition and the Prime Minister at Prime Minister's Questions on 15 June.[2]

On the second day, the Report Stage ended before amendments relating to the benefit cap and to child poverty could be discussed.

2 Government amendments: deductions from earnings

A Government New Clause and associated Government amendments were moved at the beginning of the Report Stage proceedings to provide for a new method of recovery for social security debts: a Direct Earnings Attachment (DEA). Speaking to the New Clause and amendments, Chris Grayling said:

> Amendments 1 to 13 and new clause 1 introduce the direct earnings attachment, or DEA, as a method of social security debt recovery. An attachment of earnings is a method by which money will be stopped from a customer's wages to pay a debt. The debt in question could be an overpayment of benefit, any associated penalty, a

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1 HC Deb 13 June 2011 c500
2 HC Deb 15 June 2011 cc769-771

> recovery of hardship payments or a payment on account. The measure will also be available for use by local authorities for the recovery of housing benefit overpayments. In due course it could also be used for the recovery of council tax benefit overpayment, once the localisation of council tax benefit takes place. A DEA would also be available to recover an administrative penalty for a benefit fraud offence or a civil penalty for failing to take proper care of a benefit award.[3]

The Minister added:

> I apologise to the Opposition for the fact that we were unable to bring the new clause forward in Committee. It has been very carefully considered and discussed in our regulatory processes. We have brought it forward at this time and hope that they will not find it controversial. One of the reasons why I hope that they will not find it controversial is that there is currently something of an anomaly in the system. If someone incurs a penalty, for whatever reason, and remains in the benefit system, we can recover that money through a deduction from the benefit payments they receive. However, if they move into PAYE employment and basically say, "No way. Go away," we currently have no mechanism for recovering the debt that is owed. That is the purpose of the measures that we are considering.[4]

For the Opposition, Stephen Timms described the measure as sensible, but sought clarification of various points.[5]

The New Clause and associated amendments were agreed without a vote.

3 Universal Credit

3.1 Government amendments

Following undertakings given by the Minister for Employment in Committee to consider further the appropriate regulation-making procedure for various aspects of Universal Credit[6], a number of Government amendments were agreed at Report to make the first versions of regulations in certain areas subject to the affirmative procedure.[7]

As a result of the Government amendments, the first versions only of regulations under the following provisions in the Bill are to be subject to the affirmative procedure (the clause numbers refer to the Bill as amended in Committee; Bill 197 of 2010-12):

- clause 5(1)(a) and (2)(a) (capital limits);
- clause 8(3) (income to be deducted in award calculation);
- clause 9(2) (amount to be included in award calculation for standard allowance element);
- clause 10(3) (amount to be included in award calculation for children and young persons element);

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3 HC Deb 13 June 2011 c502
4 HC Deb 13 June 2011 c503
5 HC Deb 13 June 2011 cc505-508
6 See Library Research Paper 11/48 p30
7 HC Deb 13 June 2011 cc532-534

- clause 11 (housing costs element);
- clause 12 (other needs and circumstances element);
- clause 19(2)(d) (claimants subject to no work-related requirements);
- clauses 26 and 27 (sanctions);
- clause 28 (hardship payments);
- paragraph 4 of Schedule 1 (calculation of capital and income);
- paragraph 1(1) of Schedule 6 (migration), where making provision under paragraphs 4, 5 and 6 of that Schedule.

In addition, the first version of regulations in the following areas will be subject to the affirmative procedure:

- Sanctions for Jobseeker's Allowance claimants (clauses 46 and 49; see Government amendments 16 and 17);
- Conditionality and sanctions for Employment and Support Allowance claimants (clause 56; see Government amendment 18); and
- Capital limit for the new housing credit element of Pension Credit (clause 74; see Government amendment 19)

The Government amendments were agreed without a vote.

3.2 Opposition amendments

The Opposition tabled a number of New Clauses and amendments relating to issues discussed previously in Committee.[8] These included:

- Childcare support within Universal Credit (New Clause 2);
- Provision within Universal Credit for free school meals (New Clause 3);
- Help with health costs (New Clause 4);
- Statements for claimants giving a breakdown of Universal Credit awards (New Clause 5);
- Capital disregards for in-work claimants with savings in ISAs (amendments 23 and 24);
- Support for disabled children (amendment 30);
- Treatment of the self-employed (amendments 27-29);
- Qualifying age for Pension Credit (amendment 33);
- Provision of welfare rights advice to support migration to Universal Credit (amendment 26); and

8 See Library Research Paper 11/48

- Payment of the child element to a designated carer (amendment 61)

Introducing the Opposition amendments, Stephen Timms said:

> As this Bill returns to the Chamber on Report, it is astonishing how many policy gaps remain. This group of proposals addresses some of the worst holes in the policy on universal credit, and new clause 2 in particular deals with child care.[9]

Childcare costs

Mr Timms said that the Government had failed to bring forward proposals on childcare before the end of the Committee Stage, as it had promised in March. He said:

> At least with the NHS reforms the Government paused to work out a policy: on this Bill, they have not managed to work out a policy, but they are pressing on all the same. No proposals were presented in Committee and we have none in front of us today. Instead, we just had an informal seminar on options. We know that the Government want to extend provision for child care support to people working fewer than 16 hours a week, but they want to do that within the existing budget. That does not add up—it is a mess.[10]

New Clause 2 provided for a childcare element within Universal Credit covering up to 80% of eligible childcare costs (or 90% for disabled children), but limited support to claimants in full-time work. Speaking to the amendment, Stephen Timms said that while he accepted the case for childcare support for people doing "mini-jobs", until additional funding was available for this help should be concentrated on those in full-time work.[11]

For the Government, Chris Grayling said that the Government had held two seminars on childcare support:

> Members of both Houses attended, and there were interesting and fruitful discussions. There was a follow-up seminar with a group of key stakeholders. I am aware that Members raised particular queries, and we have undertaken to look into them and provide more information. The seminars were part of an ongoing dialogue about how best to structure child care support under universal credit.[12]

Mr Grayling went on to say:

> I hope that we will reach a resolution in a relatively short space of time. However, I want to take the time to get it right. I do not want to rush through under an artificial timetable something that is not necessary right now. We are still two and a half years away from the introduction of new claims for the universal credit. We have got time to get these things right and we are trying to work with a fixed envelope of money for child care—we will talk about some of the other issues shortly. We want to take the time to look at the real costs of child care, the requirements and how we can best deploy the £2 billion available.[13]

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9 HC Deb 13 June 2011 c514
10 HC Deb 13 June 2011 c514
11 HC Deb 13 June 2011 cc515-516
12 HC Deb 13 June 2011 c534
13 HC Deb 13 June 2011 c536

He added:

> On the child care issue, we are in consultation at the moment. I would hope that we will get all the responses that we are going to get by the summer and be able to take decisions quickly after that.[14]

New clause 2 was put to the vote, and was defeated by 293 votes to 215.[15]

Passported benefits

Stephen Timms said that Opposition New Clause 3 (school meals) and New Clause 4 (assistance with health costs) were designed to "fill the policy holes on passported benefits".[16] New Clause 2 would provide for an element within Universal Credit to cover free school meals, which would taper away as family income increased. Mr Timms suggested that support could be provided via electronic cards which could only be used to pay for school meals.[17]

For the Government, Chris Grayling said:

> It is absolutely our objective to ensure that people on universal credit will continue to receive appropriate support for school meals and health costs, and that this support is withdrawn gradually to avoid damaging the incentives to work. However, entitlements to passported benefits are the responsibility of other Departments and devolved Administrations. We have been working closely with those responsible to consider the options, and we have commissioned the Social Security Advisory Committee to review passported benefits and how they interact with universal credit. The review was announced in a written statement on 23 May, and a copy of its terms of reference has been placed in the Library. To answer a question put to me earlier, I should say that the Committee will produce its interim report in September and a final report by January.[18]

Mr Grayling said that, in relation to health costs, the Government's aim was to "ensure that passported benefits are awarded to broadly the same number of people as now."[19]

Further information on the Social Security Advisory Committee review of passported benefits can be found at the SSAC website.

Treatment of savings

Opposition amendments 23 and 24 provided for savings held in Individual Savings Accounts (ISAs) to be disregarded when calculating entitlement to Universal Credit for working households. Speaking to the amendments, Stephen Timms reiterated the criticisms of the proposed UC savings rules voiced in Committee[20], arguing that they added up to an "extraordinary punishment for saving".[21]

Replying for the Government, Chris Grayling said that while the Government fully understood the importance of saving-

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14 HC Deb 13 June 2011 c536
15 HC Deb 13 June 2011 c578
16 HC Deb 13 June 2011 c517
17 HC Deb 13 June 2011 c518
18 HC Deb 13 June 2011 c538
19 HC Deb 13 June 2011 c539
20 See Library Research Paper 11/48, pp11-12
21 HC Deb 13 June 2011 c521

> ...families with substantial savings should draw on those reserves when their incomes fall, not look to the taxpayer for support. Our analysis suggests that in 2014-15, there will be up to 100,000 households on tax credits with savings over £16,000 who could be affected by the capital rules in universal credit. However, transitional protection will ensure that there are no cash losers at the point of the transition to universal credit where circumstances remain the same.
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> However, it is important to be fair to the taxpayer. Although nearly one in three pensioner households have savings in excess of £16,000, only 13% of households with a working-age adult in them have that much in savings. A typical working-age household has only £300 in savings. It cannot be right that people with significantly greater savings than the average family can claim universal credit. A maximum limit of at least £50,000 in ISA savings, as proposed by the right hon. Member for East Ham, is a large sum to be excluded from the capital ceiling. We are striking the right balance between protecting people with modest savings and placing responsibility for their own support on those with substantial resources. Once again, we are talking about an uncosted spending commitment. The right hon. Gentleman said that it would cost £70 million a year to uncap totally, but not that many people on universal credit would have savings of more than £50,000, so the majority of that £70 million would be spent on his measure.[22]

Amendment 23 was put to the vote, and was defeated by 299 votes to 217.[23]

The self-employed

Opposition amendment 27 and related amendments sought to align the definition of income from self-employment in Universal Credit with that used in the tax and tax credits system, addressing concerns voiced in Committee, including the proposal for an assumed income floor linked to the National Minimum Wage for people starting self-employment.[24] Speaking to amendment 27, Stephen Timms said:

> The idea that the self-employed are earning at least the minimum wage for every hour they work in self-employment is a complete illusion, and if the Bill is not amended it will destroy the very effective support that the tax credit system currently offers to self-employment.[25]

Chris Grayling said that the Government was "giving careful consideration to the conditions that we set for people claiming universal credit who seek to make their living from self-employment", but added that since the rules on the treatment of self-employment income would be set out in regulations there was "no need to deal with the question today".[26]

Asked whether the Government was reconsidering the income floor proposal, Mr Grayling said:

> ...we are looking at the best way of doing this. We cannot have a situation in which people who are receiving an entitlement to the universal credit while generating no income at all over long periods of time still say that they are self-employed. We must ensure that that does not happen, and we are looking for the best way of doing it. If we wrote the rules into primary legislation, we would not be able to take decisions and fine-tune on the basis of experience, as we would have to come back to primary

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22 HC Deb 13 June 2011 c541
23 HC Deb 13 June 2011 c581
24 See Library Research Paper 11/48, pp14-15
25 HC Deb 13 June 2011 c523
26 HC Deb 13 June 2011 c542

> legislation every time. That is why I think it inappropriate to accept the right hon. Gentleman's amendments.[27]

For the Opposition, Stephen Timms said that while Mr Grayling had given no firm assurances on self-employment income,-

> The Minister appeared to acknowledge that there was a problem, which, I suppose is progress from his previous position.[28]

Amendment 27 was pressed to a division, and was defeated by 304 votes to 213.[29]

Payment of housing costs[30]

New clause 6, tabled by Conservative MP Mike Weatherley, was discussed alongside a series of amendments and other new clauses moved by Stephen Timms at Report Stage.[31] The clause would have provided for the payment of the housing cost element of Universal Credit to be paid direct to a landlord where the claimant requests this and, in any event, where an amount equivalent to two weeks rent or more is owed. Speaking in support of the amendment Tom Greatrex, for Labour, referred to social landlords' concerns around the impact that paying benefit for housing costs to tenants might have on their income streams.[32]

This issue was discussed during the Bill's Committee Stages; Paul Uppal repeated the response previously provided by the Minister:

> We recognise that in some circumstances, direct payments to landlords may be necessary and the Bill makes provision for that.[33]

Other issues

In relation to support for disabled children[34] and payment of child element to a designated carer[35], the Minister reiterated the Government's position set out in Committee.

Mr Grayling also gave an undertaking to write to Dame Anne Begg giving a breakdown of the estimated £2 billion cost of introducing Universal Credit, including how much transitional protection would cost.[36]

4 Housing support[37]

Karen Buck, Labour Spokesperson for Work and Pensions, moved an amendment to clause 11 to create "a statutory requirement for annual reviews to be conducted to assess how far housing support payments are keeping track of rents in the private rented sector in the future" and "to ensure that adjustment is made accordingly."[38] The issue of how far housing support payments will reflect rents actually charged once the Local Housing

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27 HC Deb 13 June 2011 c544
28 HC Deb 13 June 2011 c544
29 HC Deb 13 June 2011 c544
30 Contribution by Wendy Wilson, Social Policy Section
31 HC Deb 13 June 2011 c513
32 HC Deb 13 June 2011 c564
33 HC Deb 13 June 2011 c566
34 See Library Research Paper 11/48 pp17-18; and HC Deb 13 June 2011 c542
35 See Library Research Paper 11/48 pp31; and HC Deb 13 June 2011 c544-545
36 HC Deb 13 June 2011 c545
37 This section by Wendy Wilson, Social Policy Section
38 HC Deb 13 June 2011 cc585-6

Allowance (paid to private sector tenants) is uprated by the Consumer Price Index (CPI) was discussed at length in Committee.

The Minister, Maria Miller, argued that the amendment would "significantly erode" the savings the Government propose but said that "the Government will keep such matters under review."[39] The amendment was rejected without a division.

A further Labour amendment was considered alongside this to exempt disabled people living in social rented properties adapted specifically for their needs, or "particularly suited to their needs," from experiencing a reduction in their Housing Benefit entitlement due to under-occupation. This issue was also raised in Committee where the Minister rejected an exemption for *all* adapted properties but said the Government was "prepared to look in detail at how we can ensure that there are exemptions for individuals who are disabled, where their homes may have been subject to extensive adaptations to accommodate that."[40] Karen Buck questioned the cost and bureaucracy involved in securing moves for under-occupying disabled tenants to other suitable accommodation.[41] The Minister said that she understood the arguments presented but reiterated her view that the "broad-brush" approach in the proposed amendment would not be appropriate – she went on:

> Some adaptations, such as a handrail in a bath, may be so minor that exempting the tenant on the basis of that adaptation alone would simply not be justifiable. The provision would also cover a property that had been adapted for someone's past needs, and would require local authorities to exempt those whose accommodation was particularly suited to meet their needs—perhaps those in a ground-floor flat or a property with a limited number of stairs to climb. We do not have the data on how many such cases there are, but it seems likely that many would fall into such a broad category. Again, that would prove very expensive—something that the hon. Member for Westminster North seemed to ignore. It is not clear what evidence would be required or who would be responsible for the decision. The amendment refers to the provision of
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> "certificates, documents, information or evidence",
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> which, as the hon. Member for Westminster North said, also suggests a degree of administrative intervention. She made a valid point in Committee, but I am surprised that she is pushing it even further. I think that many stakeholders would rightly be concerned about the potential cost of her proposals and about the additional burdens such bureaucracy could load on to landlords and others.
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> The National Housing Federation estimates that about 108,000 tenants in adapted accommodation are likely to be affected by the introduction of the size criteria to restrict housing benefit. The NHF has kindly shared its data with us and I understand that our officials have met the federation since Committee and are continuing to explore the data in some detail. However, as well as looking at the available data, we want to talk to housing providers, but that will take some more time.
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> [...]
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> We acknowledge the concerns that have been highlighted, but this amendment goes much further than was suggested even by the sector itself. I hope that, in the light of

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39 HC Deb 13 June 2011 cc597-8
40 PCB 3 May 2011 cc685-716
41 HC Deb 13 June 2011 c592-3

> my comments, hon. Members will look again at the amendments and agree to withdraw them.[42]

5 Social Fund

The Labour Members John McDonnell tabled amendments 53 and 54 to prevent the abolition of Social Fund Crisis Loans and Community Care Grants. The Opposition front bench also tabled amendments 39 and 40 requiring that, before abolition of the existing discretionary Social Fund, the Secretary of State consult on, publish details of and pilot a replacement scheme or schemes; ensure that the scheme(s) provide protection for applicants in an emergency or crisis, with eligibility criteria set out in regulations; and make provision for an independent appeals mechanism.[43]

Speaking to his amendments, Mr McDonnell noted that pressure groups had urged the Government, Committee Members and Members of Parliament not to abolish the Social fund without "robust and effective alternatives put in its place."[44] He explained:

> I tabled the amendment because of the real danger that we will now be faced with numerous schemes being developed by local authorities, and that vulnerable people will lose this essential support. I am concerned that if the funding to local authorities is not ring-fenced, it will be diverted to other priorities.[45]

He added:

> I would therefore urge the Government not to abolish or wind down the social fund without giving an absolutely clear commitment about what will replace it. If emergency support is to be localised, we need strong, unambiguous and extremely clear statutory duties placed on local authorities to support vulnerable people, and for those duties to be attached specifically to such funding. I urge the Government to think again about ring-fencing, so that the money cannot be diverted away from the poor. The social fund commissioner proposed that the Government consider establishing national criteria for the schemes to be drawn up by local authorities, to ensure consistency in the use of local discretion. It would still be possible to reflect local circumstances, but national parameters would be set on the use of that discretion. I am also concerned that the devolution of emergency support services might create high administrative costs—this has been mentioned by a number of organisations, including Age UK and the Disability Alliance—which might divert funds away from provision for the poorest.[46]

For the Opposition front bench, Karen Buck congratulated Mr McDonnell on the way he had introduced his amendments, adding-

> His amendments and those tabled in my name cover much the same ground. Like him, I am deeply concerned that the Government propose to remove the discretionary element of the social fund without giving us a great deal more clarity about how the poorest and most vulnerable will be protected, about the adequacy of the replacement

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42 HC Deb 13 June 2011 cc602-3
43 HC Deb 15 June 2011 c798
44 HC Deb 15 June 2011 c798
45 HC Deb 15 June 2011 c799
46 HC Deb 15 June 2011 c800

> system, about the protection of vulnerable people without a local connection—a matter to which I shall return in a moment—and about the lack of a proper system of review.[47]

Ms Buck went on to reiterate the concerns expressed in Committee, concluding:

> There might be scope for a localised response to some of these needs, but we are a long way from having anything like the structures, framework and legislation to enable individual needs to be accommodated, including with reviews and when the vexed question of local connection is not resolved.[48]

In response, the Minister, Maria Miller, said that reform was necessary because the Social Fund was "open to widespread abuse", and that the Government did not believe that the threefold increase in Crisis Loans since 2006 reflected an "underlying increase in genuine need."[49] Nor did the Government believe that the new "localised" service would be a barrier to people in genuine need. The Minister also added that "alignment payments" accounted for over half of all Crisis Loans and that these, along with Budgeting Loans, would be replaced by new national provision.[50] She continued:

> Amendments 53 and 54 would prevent those reforms from taking place and would leave us with an out-of-date and inefficient discretionary social fund scheme which would soon be unworkable with the introduction of the wider benefit reform we have already outlined.
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> Amendments 39 and 40 would impose criteria set by central Government on arrangements to replace the discretionary social fund if it were abolished. Some of the requirements in amendment 39 are activities that we are already undertaking in our work on the replacement of the discretionary social fund. Other elements in the amendment would not be helpful to what the reform of the social fund is trying to achieve. As I said, in some ways the amendment misses the point of the reform, which is that local authorities are better placed to understand the needs of their local communities and to make sure that the money is getting through to the right people for the right activities.[51]

On appeals mechanisms, the Minister said that local authorities could set up internal review mechanisms if they thought it appropriate, and that people dissatisfied with a decision of a local authority would have recourse to the Local Government Ombudsman.[52]

Mr McDonnell sought leave to withdraw his amendment, on the basis of supporting Opposition amendment 39. This was granted, and amendment 39 was put to a division. The amendment was defeated by 300 votes to 237.[53]

The Government response to the DWP call for evidence on *Local support to replace Community Care Grants and Crisis Loans for living expenses in England* was published on 23 June 2011. This confirmed key aspects of the Government's proposals, including the intention not to ring-fence funding or to impose any new duty on local authorities to provide assistance.

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47 HC Deb 15 June 2011 c802
48 HC Deb 15 June 2011 c809
49 HC Deb 15 June 2011 cc809-810
50 HC Deb 15 June 2011 cc811-812
51 HC Deb 15 June 2011 c812
52 HC Deb 15 June 2011 c813
53 HC Deb 15 June 2011 cc821-822

On 6 July the Communities and Local Government Committee held a one-off evidence session to examine the Government's decision to "localise" aspects of welfare provision, including parts of the discretionary Social Fund. In its written evidence to the Committee, Citizens Advice warned that the reforms could leave claimants facing a "post-code lottery for some of life's basic necessities."

6 Personal Independence Payment

A number of Opposition and backbench amendments relating to the Personal Independence payment were discussed, picking up on issues discussed previously in Committee.[54]

The following Opposition amendments were tabled:[55]

- Amendment 43, exempting people with certain serious conditions from any requirement to attend a face-to-face assessment
- Amendments 44-47, providing for a three month "qualifying period" and a nine month "prospective test", instead of a six month qualifying period and six month prospective test
- Amendments 41 and 42, removing the power in the Bill to withdraw the mobility component from people in care homes
- Amendment 60, requiring that no DLA claimant be reassessed until an independent report on the PIP assessment for new claimants had been commissioned and the Secretary of State was satisfied that the assessment process is functioning correctly
- Amendment 74, requiring that the first version of any regulations relating to entitlement to the mobility component for people in care homes be subject to the affirmative procedure

Amendments 76 and 77 were tabled by Dame Anne Begg, and related to recognition of fluctuating conditions in the PIP assessment.

Amendment 66, tabled by John McDonnell and Jeremy Corbyn, removed the power in the Bill to withdraw the mobility component from people in care homes, in line with Opposition amendments 41 and 42.

Amendment 73, tabled by Jenny Willott and Ian Swales, required the Secretary of State to lay before Parliament a report on the impact of regulations made under powers in clause 83 (the clause enabling the mobility component to be withdrawn from people in care homes).

Amendment 74, tabled by Jenny Willott, Ian Swales and Alan Reid, required that the first version of any regulations under clause 83 about the payment of the mobility component to people in care homes be subject to the affirmative procedure.

Introducing the Opposition amendments, Margaret Curran set out her party's position on DLA reform:

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54 See Library Research Paper 11/48, part 3.7
55 HC Deb 15 June 2011 cc826-827

> Although disability living allowance is a much respected and much valued benefit, it was designed in a different time, well before measures such as the Disability Discrimination Act 2005 and the Equality Act 2010, which were introduced by the last Labour Government and which have profoundly changed the way in which disabled people participate and are recognised in society today. I acknowledge that the application procedure to make a new DLA claim—the process of self-assessment whereby somebody has to fill out a long, and at times complicated, form—is not one that many people believe to be suitable in a modern welfare state. We therefore believe, and have said consistently throughout our deliberations, that it is right to reform DLA. We welcome the Government's decision to keep DLA as a non-means-tested, in-work benefit, and we think it is right to introduce a new, objective gateway.
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> Notwithstanding that, we feel that this Government have made profound mistakes and have missed opportunities in their approach to DLA reform. The whole process was kick-started by a rushed consultation. Apparently, according to the DWP website, it was one of the biggest of its kind, yet despite all those representations it yielded very few changes following the introduction of the Bill. The consultation was carried out over the Christmas and new period and was cut short. Perhaps most disappointingly of all, the Government chose to publish their proposals before it had even closed. No wonder this Minister, in particular, has a reputation for not listening. She will know that charities and the disabled people whom they represent have been highly critical of the process of reform. It did not have to be like that, and it is very disappointing that the Government did not undertake more groundwork to ensure that key stakeholders were a key part of the reform process.
>
> While we take issue with the process of reform, we also have major concerns about its substance, and that will be the focus of my remarks. We now know that universal credit will halve support for disabled children and take away the severe disability premium for disabled people who live alone without a carer, yet put nothing appropriate in its place. Furthermore, part 4 outlines details of the new personal independence payment, with proposals to make disabled people wait half a year before they receive support and to take away the right of automatic entitlement for those with severely disabling conditions. The proposals are plainly chaotic and confused as regards the future of DLA mobility component for those in residential care homes.[56]

6.1 Mobility component for people in care homes

For the Opposition, Margaret Curran said that while there had been "warm words" from Ministers about the Government's plans regarding the mobility component for people in care homes, nothing had changed since the policy was first announced:

> The clause remains unamended and the cut remains in the Budget book. Some 80,000 disabled people continue to be under threat of losing out at the hands of this Government. Warm words, yes; a change in policy, no.[57]

She continued:

> When the Minister is not talking about "overlap" in an attempt to address the problem in question, she is talking about the need for a review. It was promised that the review, first announced earlier this year, would look into the provision of DLA mobility to those in residential care homes, which I know offered some succour to Members who were concerned about the matter. Labour Members were mildly optimistic that that was a signal that the Government were undertaking a rethink, as we know they are prepared

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[56] HC Deb 15 June 2011 cc827-828
[57] HC Deb 15 June 2011 cc830

> to do when the time is right. However, we have been sadly disappointed. Although a review was launched, it has no time scale, there are no terms of reference, no review group has been established and there is no involvement for disabled people. No wonder people are confused about where the policy stands.
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> I remind the House that at Prime Minister's questions on 23 March, the Prime Minister offered the Leader of the Opposition an opportunity to contribute to the review. I do not think that possibility actually exists. Have the terms of reference of the review been made public? No. Will the findings be published? No. This is not a review, it is, as the hon. Member for North Antrim (Ian Paisley) said, a delaying tactic to cover up a deeply flawed policy.[58]

The Liberal Democrat backbencher Jenny Willott, who served on the Public Bill Committee, said that she hoped that the Government would confirm that its intention was merely to tackle the overlap of funding rather than entirely remove mobility support for people in care homes, but said she was concerned as clause 83 of the Bill "leaves it open for Ministers to cut the mobility component for those in care homes."[59]

For the Government, Maria Miller said, in response to amendments 14, 42 and 66:

> We have already announced that we will not remove the mobility component of DLA from people in residential care from 2012, as originally planned. We have also said that we will re-examine its position within the personal independence payment, which is precisely what we are doing. When that work is complete we will make a final decision, in the context of the full reform of DLA and the introduction of PIP.
>
> [...]
>
> We will treat care home residents in exactly the same way as any other recipient of DLA. The views that have been expressed during, and in the lead-up to, today's debate have been vigorous and made people's positions clear. That is why we are not introducing the change in 2012 and are undertaking a review of the practical issues on the ground. We will not produce a review report, because we are not undertaking an official review. We are simply collecting information about the implementation of the policy at the moment, as I am sure Labour Members did when they were in government to inform their policy decisions.[60]

The Minister added:

> I would like to return to the commitment that I gave the hon. Member for Glasgow East in Committee when I said that I would reflect on whether other regulations should be subject to the affirmative procedure. I am happy to reiterate that, but at the moment I do not think that we need to go further.[61]

Regarding the promised review of the extent of overlaps in mobility provision for people in care homes, Tom Clarke said:

> The Government announced that they would review the proposals and it was hoped that that would offer greater clarity. Such clarity did not emerge today. The review is internal, within a Department; it is not transparent; and it has no terms of reference. There will be no reports to this House of which I am aware about what it actually does.

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58 HC Deb 15 June 2011 cc832
59 HC Deb 15 June 2011 cc840
60 HC Deb 15 June 2011 c853
61 HC Deb 15 June 2011 c855

> Regardless of the review, all that has happened is a six-month delay to the implementation of the proposal. No disabled people who stand to be affected have been consulted and the findings will not be made public. What sort of review is that? Is the House seriously expected to support that?
>
> We are being asked to decide on an issue about which we do not have the full facts. Even when the Government come to a decision, there will be no scope for an informed discussion, because the details will not be in the public domain. Although the review of the reforms in the Health and Social Care Bill was far from perfect, at least it enabled scrutiny, public participation and transparency—something that is certainly not taking place in this review.
>
> Given what we know, these proposals are in all candour absolutely cruel and stand to the disadvantage of tens of thousands of vulnerable people. No further clarity has emerged today to suggest otherwise and one reason I shall support amendments 41 and 42 is that the Government have been given so many opportunities—from the debate in November to the Budget debate and from questions in the House to this debate today—to make their position clear, but they have failed abysmally to do so.[62]

Amendment 42 was put to the vote, and was defeated by 295 votes to 238.[63] Sir Peter Bottomley voted for the amendment, having indicated his intention to do so in the preceding debate.[64]

On 18 July it was announced that Lord Low of Dalston would chair an independent review of how personal mobility needs of people living in residential care are met. The review – initiated by Mencap and Leonard Cheshire Disability – is gathering evidence from people living in state-funded residential care and their families, care providers and local authorities. Its brief includes how disabled people's needs are met, how they are funded and what responsibilities care home providers and local authorities have in relation to the mobility needs of residents. The call for evidence runs until 10 October, and the review will publish its findings and recommendations by the end of October 2011. Further details can be found at the Low Review website.

6.2 Qualifying periods

DLA is only payable after a person satisfies the disability conditions for three months (the "qualifying period"), and the person must be expected to need help for a further six months (the "prospective test"). For the Personal Independence Payment, the Government proposes to retain the six month prospective test, but to extend the qualifying period to six months.

In Committee, the Opposition moved an amendment retain the existing three month qualifying period. However, it also proposed an extension of the prospective test to nine months, to retain the overall 12 month "required period condition" for the new benefit.[65]

Opposition amendments 44-47 tabled at Report sought to achieve the same outcome.

In response, Maria Miller said:

> I can reassure Members that the Government have been listening to the arguments regarding the return to a three-month qualifying period, and we will continue to listen and talk regularly to disabled people and their representative organisations. We

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62 HC Deb 15 June 2011 c862
63 HC Deb 15 June 2011 c873
64 HC Deb 15 June 2011 c859
65 See Library Research Paper 11/48, pp48-49

> recognise that for some people there may be additional financial burdens at the outset, but we have to consider the matter within the ambit of the wide range of other support that is already available during the early months.[66]

Amendment 44 (to retain the three month qualifying period) was put to the vote. The amendment was defeated by 294 votes to 239.[67]

6.3 Exemption from assessments

Speaking to Opposition amendment 43, Margaret Curran said:

> We believe that the Government are misguided in their decision to lengthen the time disabled people must wait before they are given support. The Government are also wrong to remove automatic entitlement for certain severely disabled people who currently have the automatic right to receive the higher rate of DLA. At the moment, the severely mentally impaired—that is the language that is used—double amputees and those who are deaf-blind, undergoing haemodialysis or are severely visually impaired are automatically able to receive higher rates of DLA. Under the Bill, however, only those with a terminal illness will automatically receive PIP. Obviously I welcome the Government's commitment to protect the terminally ill, but we believe that this obligation does not go far enough. Amendment 43 would ensure that those with a severely disabling condition, who are currently eligible for automatic entitlement, would retain that right following the introduction of PIPs.[68]

For the Government, Maria Miller said:

> Amendment 43 seeks to exclude individuals from the face-to-face consultations in the new assessment process for PIP. DLA relies on a self-assessment form and I will not go through the details of why that does not work. One of my constituents had to take a four-hour course to learn how to fill out the DLA form, which shows its ineffectiveness. One of our key proposals to ensure that the benefit has a more consistent and transparent assessment is that most people will have a face-to-face consultation with a trained independent assessor. The consultation will allow the individual to play an active part in the process, rather than passively filling in a form, and put across their views on how their health condition or impairment affects their everyday life.
>
> We recognise the importance of ensuring that the assessment process is sensitive and proportionate. The Minister of State, Department for Work and Pensions, my right hon. Friend the Member for Epsom and Ewell (Chris Grayling), has a great deal of expertise in that area from his work on the work capability assessment. Let me be absolutely clear that when it comes to PIP, some people will not be required to attend a face-to-face consultation. I was clear about that in Committee and I reiterate it now. For such people, the assessment will be carried out on the basis of evidence that has already been gathered. Such decisions will be at the discretion of the individual triaging the assessment as it goes through.
>
> Amendment 43 would undermine one of the key principles of PIP. It would effectively label people by health condition or impairment, rather than treat them as individuals. The disability organisations with which I am working day in, day out on the development of the assessment and the overall benefit would feel that to be a step back, not a step forward. The impact of a condition can vary greatly. Under the amendment, somebody with a severe mental impairment would not have to have a face-to-face assessment. That is a broad category, which covers a wide range of

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66 HC Deb 15 June 2011 c852
67 HC Deb 15 June 2011 c869
68 HC Deb 15 June 2011 c836

conditions that affect people in many ways. Although we accept that not everybody who has a severe mental impairment will have to undergo a face-to-face consultation, for others it will make a great deal of sense. For that reason, I cannot accept the amendment.[69]

6.4 Other developments

Work and Pensions Committee inquiry

On 12 July the Work and Pensions Committee launched an inquiry into the proposal to replace DLA with the Personal Independence Payment. The press notice announcing the inquiry stated that it would focus on the following issues:

- The need for DLA reform, including: how well understood DLA is; why the DLA caseload and expenditure has increased; the effectiveness of the decision-making and review process for DLA.
- The implications of a reduction in expenditure, including: the implications of focusing on those with the greatest needs; the likely impact of having only two rates of PIP in the 'daily living' component; the number of current DLA recipients who would not be eligible for PIP.
- The extent to which overlaps in funding exist, particularly with local authority and NHS funding, and including for people in residential care or hospital.
- Whether automatic entitlement should apply to people with some conditions or impairments and whether some people should receive awards for indefinite periods.
- The implications of a six month qualifying period.
- The extent to which PIP will act as a gateway to other benefits, including Carers Allowance and the Motability Scheme.
- The design of the PIP assessment, including: the assessment criteria and design; whether the assessment can objectively assess those with mental, intellectual and cognitive conditions and with fluctuating conditions; and the extent to which aids and appliances should be taken into account in the assessment.
- The delivery of the PIP assessment, including: who should carry it out; the approach to tendering for the assessment contract; who should make the award decisions; whether there are lessons to be learned from the Harrington Review of the Work Capability Assessment; and interaction with other eligibility assessments.
- How DLA/PIP should apply to children and people over the state pension age
- The steps DWP needs to take to ensure that its reform proposals are clearly and effectively communicated to claimants and the general public.
- Transitional arrangements

The deadline for written evidence is Friday 2 September 2011.

Disability Alliance legal challenge

On 3 July Disability Alliance announced that it was considering launching a legal challenge to the Government's plans to replace DLA with the Personal Independence Payment. Their

[69] HC Deb 15 June 2011 cc851-852

legal advisers, Unity Law, had examined the Government's plans and believed that there was a "very credible case". Disability Alliance has sent a "letter of claim" to DWP highlighting its concerns about the Government plans and outlining the legal basis for a challenge. The Disability Alliance website gives details:

> Disability Alliance is especially concerned over plans to abolish Disability Living Allowance (DLA) for working age people (defined as 16-64 years of age by DWP) and introduce a new benefit (Personal Independence Payment – PIP) which will have a £2.17 billion lower budget by 2015. PIP will not provide an equivalent level of support for the 652,000 disabled people currently receiving low rate care DLA payments.
>
> We have raised our concerns with DWP over the last year, since plans were announced in June 2010. We have ensured our member organisations' views and those of the disabled people we have surveyed have been communicated to DWP. We have aired concerns in meetings, briefings, a consultation and evidence to two parliamentary committees. Over 5,500 organisations and people responded to the Government consultation on DLA reform. But concerns have sadly gone unanswered and the Government have made no changes to plans to reflect the level of anxiety disabled people and organisations like Disability Alliance have communicated.
>
> We are very concerned that the timetable for the passage of the Welfare Reform Bill may prevent adequate analysis of the potential impact of plans to be undertaken. We do not want to take formal legal action but feel we have no option if our concerns remain unaddressed.
>
> We have sent a 'letter of claim' to DWP. Unity Law drafted the letter which formally highlights our concerns about the Government plans and outlines the legal basis for our challenge. Disabled people are protected by UK (Equality Act) and European law. DWP have clarified that all DLA recipients are 'disabled people' in Welfare Reform Bill documents. DWP has a duty to promote disabled people's equality of opportunity which we believe is being ignored in plans to considerably reduce support. We also believe the Government is failing to take into account the need to impact assess the potential costs of ending support for some disabled people and their families; we have evidenced potential costs to the NHS and local authority services for example.[70]

Further information, including the letter of claim sent to the DWP, can be found at the Disability Alliance website.

7 Third Reading

The Third Reading debate was short but heated.

For the Government, the Secretary of State for Work and Pensions, Iain Duncan Smith, said that the Bill "allows us to start dealing once and for all with the welfare dependency we inherited."[71]

Mr Duncan Smith said that the Opposition was "completely divided" on the benefit cap:

> Even late last night, the Opposition tabled an amendment that they knew they would not be allowed to vote on—a starred amendment—just so that they could posture and appease their Back Benchers, who are on the wrong side of the debate entirely.[72]

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[70] HPotential DLA legal challengeH, 18 July 2011

[71] HC Deb 15 June 2011 c878

The Secretary of State was pressed by Simon Hughes on whether special consideration should be given to the potential impact of the benefit cap in London:

> **Simon Hughes:** Before the Secretary of State leaves the benefit cap, let me say that I understand the reason for a national benefit cap. Does he accept, however, that colleagues across the House are concerned that in London, because of the cost of housing, there is a special issue that deserves further debate? I wonder whether he would be willing to meet colleagues from all parties, local government, the Mayor, housing providers and the Housing Minister so that we can get the problem sorted for all those with an interest in London.
>
> **Mr Duncan Smith:** I have always said that the door is open to everybody to discuss the effects and how some of them can be ameliorated—or not, depending on what the issues are. The answer is therefore yes—as a London MP, I should join that delegation too—although I still believe that we have the right policy, because it is about balancing fairness for those hard-working people who pay their taxes who often feel that those beyond work are not working themselves.[73]

Responding to complaints from the Opposition that there had been insufficient opportunity to scrutinise the Bill, Mr Duncan Smith said:

> The Opposition tabled more than 200 amendments in Committee, but voted on them only 16 times. They have complained that we did not allow enough time for consideration of issues on Report and then, on the day before yesterday, they proceeded to talk for more than an hour on amendments that they did not even push to a vote. If they had not done that, they would easily have had a chance to debate some of these other areas.[74]

For the Opposition, the Shadow Secretary of State for Work and Pensions, Liam Byrne, said:

> I am glad that the Bill has finally come back to the House and I wish I could say that I thought the Bill's passage through this place had improved it. I cannot with justice say that. We said from the outset that we wanted to approach this question in a spirit of national consensus.[75]

He continued:

> On Monday night, I set out how I thought that further reforms should be made to toughen the responsibility to get back into work and to enshrine a culture of work in every community in this country. Throughout the passage of the Bill, we have sought to table amendments that would have improved it and allowed it to leave this place for the better. The Government have refused to listen and have refused to accept advice and amendments. The Bill presented to this House might have started with an instinct for compassionate Conservatism in action, but we have in front of us tonight a law that cuts benefits for people with cancer when the Minister says that they will not be ready to work by the time that cut hits them.
>
> I said that we would not oppose the Bill on Second Reading to give the Government some space to improve it. We back welfare reform that gets people back to work and that simplifies the benefit system. We support the principle of universal credit and we

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72 HC Deb 15 June 2011 c880
73 HC Deb 15 June 2011 c881
74 HC Deb 15 June 2011 c883
75 HC Deb 15 June 2011 c884

> support sanctions for those who are not trying hard enough to get a job. We support a cap on benefits if it saves public money, but this is where the agreement ends, not least because this Bill is so cold and so hard that it ends a tradition of compassion in the welfare state that we should conserve and not consign to history.[76]

Mr Byrne said that while he thought the Secretary of State had honourable intentions, "...he has not presented us tonight with a Bill that is in an honourable state." Picking up on the exchange between the Prime Minister and Leader of the Opposition at Prime Minister's Questions earlier that day, Mr Byrne said that it was "a disgrace that the Government have not found additional time to debate cuts to contributory ESA that would cut benefits to people with cancer before they are fully recovered." Mr Byrne asked the Secretary of State "...to speak to his friend the Prime Minister and to sit down with cancer charities, disability groups and other campaigners to try to get this sorted out."[77]

Mr Byrne proceeded to reiterate the Opposition's about the Personal Independence Payment and Universal Credit, but his speech was interrupted at 7.00 pm, in line with provisions of the programme motion.

The Bill received a Third Reading by 288 votes to 238.[78]

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[76] HC Deb 15 June 2011 c885
[77] HC Deb 15 June 2011 cc885-886
[78] HC Deb 15 June 2011 c888