Welfare Reform Bill 2010-12: amendments at the Lords Committee and Report stages

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The *Welfare Reform Bill 2010-12* was introduced in the House of Lords on 16 June 2011 and had its Second Reading on 13 September. There were 17 sittings in Grand Committee between 4 October and 28 November, and six days in Report between 12 December and 25 January 2012. The Lords Third Reading is scheduled for 31 January, and the Commons is due to consider Lords amendments on 1 February.

In addition to Government amendments agreed by the Lords, the Government suffered a defeat at Report Stage on 14 December on an amendment tabled by the Crossbench Member Lord Best on under-occupation of social housing. There were also Government defeats at Report Stage on 12 January on amendments relating to the Employment and Support Allowance (ESA). On 23 January the Government suffered a further defeat on an amendment moved by the Bishop of Ripon and Leeds to exclude Child Benefit payments from counting towards the household benefit cap, and again on 25 January on an amendment tabled by Lord Mackay of Clashfern which would limit the impact of fees on parents with care applying to the new child maintenance scheme.

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

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*

Standard Note SN06034, *Welfare Reform Bill 2010-12: Commons Report Stage and Third Reading*.

Other resources including policy briefing notes can be found at the DWP website.

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1 The Lords stages

Following Second Reading on 13 September, the House voted the next day on a motion to refer the Bill to a Grand Committee. The Lords *Companion to the Standing Orders* explains how proceedings in Grand Committee are conducted, and how they differ from consideration by a Committee of the Whole House:

> 8.101 If a public bill is not committed to a Committee of the whole House, it is usually committed to a Grand Committee. As described above this is done on motion moved after Second Reading. Bills which are unlikely to attract amendments and which would have their committee stage discharged on the day of the committee stage are not committed to Grand Committees.
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> 8.102 Any bill may be committed to a Grand Committee. The proceedings and forms of words in Grand Committees are identical to those in a Committee of the whole House save that no votes may take place. Only one bill per day may be considered in Grand Committee. Amendments, which may be tabled and spoken to by any member, are printed and circulated as for Committee of the whole House.
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> 8.103 As divisions are not permitted in Grand Committee, decisions to alter the bill may only be made by unanimity. Thus when the Question is put, a single voice against an amendment causes the amendment to be negatived. If there is opposition to an amendment, it should be withdrawn in Grand Committee, to enable the House to decide the matter on report. For the same reason the Question that a clause or Schedule stand part cannot be disagreed to unless there is unanimity; provided there is a single voice in favour, the clause or Schedule must be agreed to.
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> 8.104 Unless the House orders otherwise, the next stage of a bill reported from a Grand Committee is report.

The Government Chief Whip, Baroness Anelay of St Johns, said the usual channels had been unable to agree on how the Bill's Committee Stage should be taken. She added:

> I have taken soundings on this matter from around the House. Overall, bearing in mind the Bills currently before the House and those that are yet to reach it from another place, I believe that the Welfare Reform Bill is the best candidate for scrutiny in Grand Committee. It merits the more in-depth, informal and technical approach and the more, shall we say, paper-friendly reading from outside offered by the kind of facilities available in the environment of a Grand Committee.[1]

The Opposition Chief Whip, Lord Bassam of Brighton, said that it was a "very grave situation" and that it was "unusual for the usual channels not to be able to agree." He was "seriously concerned about the ability of all noble Lords to participate in the proceedings", highlighting the shortcomings of Committee rooms for those wishing to participate and observe. He commented:

> In my view the Bill needs around 68 to 70 hours of Committee time… If that is to be the case, it would occupy around 15 or 16 sessions in Grand Committee. My last offer on this was to suggest that the Bill be considered on the Floor of the Chamber for some eight days and in Grand Committee for the remainder, to deal with those technical and difficult issues that are tucked away in schedules at the back of the Bill.

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1 HL Deb 14 September 2011 c753

> The Government have got themselves into a muddle with their legislative programme.[2]

Lady Anelay said that the Government had offered to split the Committee Stage of the Bill between the floor of the House and Grand Committee, but the Opposition had refused:

> The offer of four days on the Floor of the House and as many as the House wished to spend in Grand Committee was turned down.[3]

The Opposition Work and Pensions Spokesman, Lord McKenzie of Luton, said that the Bill marked "the biggest change in the welfare system since the 1940s" and therefore deserved enough time on the floor of the House, adding:

> I think there was one adjustment we wished to make to it. We have co-operated. As my noble friend Lord Corbett says, we are talking about just four days. If that is what divides us we should take this away, rethink and get back to the usual channels.[4]

However, others felt that it was appropriate to refer the Bill to a Grand Committee. The Liberal Democrat Member Baroness Thomas Winchester felt that distractions and pressures on the chamber would mean interruptions and late sittings. A Grand Committee, she argued, would offer more time for proper scrutiny.[5]

Responding to the Opposition's concerns, Lady Anelay said:

> The point has been made that there is little difference between us, and that is precisely the case. The Government made an offer which the Opposition rejected. Our offer was to ensure that there was a reasonable split between Grand Committee and the Chamber-a split that would have meant that Peers who are interested in all the other Bills have a proper opportunity to consider those Bills as well. I am convinced that it is right to ask the House to take a decision on this matter.[6]

The motion was agreed by 263 votes to 211.

It was originally planned that there would be twelve days in Grand Committee, but in the event there were 17 sittings in total, with the final day on 28 November 2011.

There were six days at Report; the main issue discussed on each day was as follows:

Day 1	12 December 2011	Universal Credit
Day 2	14 December 2011	Housing including under-occupation
Day 3	11 January 2012	Employment and Support Allowance
Day 4	17 January 2012	Personal Independence Payment
Day 5	23 January 2012	Benefit cap
Day 6	25 January 2012	Child support maintenance

Links to the *Hansard* proceedings for each stage can be found at the Parliamentary website.

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2 HL Deb 14 September 2011 c754
3 HL Deb 14 September 2011 c755
4 HL Deb 14 September 2011 c760
5 HL Deb 14 September 2011 cc757-758
6 HL Deb 14 September 2011 c761

The Lords Third Reading is expected to take place on 31 January 2012.

The remainder of this note gives details of the amendments agreed in Grand Committee and at Report Stage in the Lords. Unless otherwise indicated, clause numbers refer to the Bill as introduced in the House of Lords.[7]

This note does not detail all amendments to the *Welfare Reform Bill* agreed in the Lords. Minor Government technical or drafting amendments, and certain other non-contentious amendments, are not covered.

2 Regulations: procedure

On 14 July 2011 the House of Lords Delegated Powers and Regulatory Reform Committee published its report on the *Welfare Reform Bill*.[8] The Committee recommended that regulations under number of provisions in the Bill should be subject either to the affirmative procedure, or to the affirmative procedure on first use only, rather than to the negative procedure. In other areas the Committee suggested that the House might want to seek clarification about the Government's intentions regarding the use of regulation-making powers.

The Government's response to the Committee is included in the 18th report of the Committee published on 15 September.[9] In the response, the Minister (Lord Freud) accepted most of the Committee's recommendations (although in almost all cases the undertaking was that the affirmative procedure would apply on first use only). The Government did not however accept the Committee's recommendations in relation to clauses 33, 47 and 89; the relevant extracts from the Minister's response are below:

> **Clause 33** relates to supplementary and consequential provision. The Committee states 'We do not therefore regard what is said in support of the negative procedure for the exercise of this Henry VIII power by the Secretary of State as particularly compelling. We therefore recommend that regulations made under clause 33 should be subject to affirmative procedures to the same extent as regulations made by the Scottish Ministers.' I feel that the argument for the negative procedure is valid and, as such, I cannot accept these recommendations. Making all consequential amendments to Regulations subject to the affirmative procedure may impose timing difficulties owing to the likely length and complexity of the regulations.
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> **Clause 47** relates to procedure for regulation making powers. The Committee recommends that this clause is removed from the Bill. I cannot accept this recommendation as this change is absolutely necessary. The first principles for Jobseekers Allowance were set out and established long ago so it is right that these regulations are now turned negative. I accept that our position should have been made clearer in the Explanatory Memorandum by explaining that the powers are currently affirmative because when they were introduced this was groundbreaking policy and there was great nervousness about the vagueness of the terms "actively seeking" and "available". However the House now has more than 15 years experience of how these powers are used and there is now much case law to clarify the meanings of these terms. We therefore feel that as the concerns raised in 1995 by the Committee, largely,

7 HL Bill 75 2010-12
8 HL 182 2010-12
9 HL 193 2010-12

> no longer apply and that the safeguard of these provisions being affirmative is no longer necessary.
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> **Clause 89** relates to powers to make supplementary and consequential provision in relation to Personal Independence Payment. The Committee recommends that regulations made by the Secretary of State under clause 89 should be, where they amend an Act, subject to affirmative procedure. We feel that the argument for negative procedure is valid. Making all consequential amendments to Regulations subject to the affirmative procedure may impose timing difficulties owing to the likely length and complexity of the Regulations. Consequential powers are usually subject to the negative procedure unless they are to be exercised it in a manner which is wider than consequential. It could impose an unreasonable burden when making minor amendments that simply add PIP in legislation which refers to DLA.

Lord Freud set out the Government's position further in a short debate on the 10th day of the Grand Committee.[10] In light of the Minister's explanations, the Opposition withdrew its amendments relating to regulation-making procedures.

Governments were agreed to during the course of the Grand Committee proceedings to implement the undertakings given by the Minister in his response to the Delegated Powers and Regulatory Reform Committee.

3 Universal Credit

No Opposition of backbench amendments to the provisions in Part 1 of the Bill relating to Universal Credit were agreed (although Lord Best's amendment on under-occupation of social housing – see section 4 below – also affects the housing element of Universal Credit).

3.1 Government amendments

At the ninth sitting of the Grand Committee on 1 November, the Minister for Welfare Reform, Lord Freud, announced that the Government intended to replace the provisions in clause 30 (Piloting: regulations) to expand the scope for piloting and testing different aspects of the Universal Credit system. He explained:

> It is vital that we are able continuously to test, improve and evolve the universal credit system after it is introduced. It is key element that we should have the flexibility to respond to change and ensure that the system does not stagnate while the world develops around it. The amendments I tabled will achieve this constant evolution.
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> The original wording of Clause 30 provided for piloting measures only to see if they would improve a claimant's chances of entering work, or of finding more or better-paid work. While this is a key objective, universal credit will also simplify the benefits system, improve work incentives and change behaviour. Amendments 56A and 69A will ensure that we are able to test approaches that cover these wider principles.
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> If we are to ensure that we have the flexibility to develop and continuously improve universal credit, we must ensure that piloting can also include the testing of changes to the structure, design and delivery of the benefit. The ability to run controlled pilots of tests-for example, of whether advances in technology could improve the structure or

[10] HL Deb 3 November 2011 cc505-512

> delivery of universal credit-will be a fundamental part of the evolution of the benefit and of its ability to remain responsive to claimants' needs.[11]

The Opposition welcomed the amendments. Clause 30 was disagreed to, and a New Clause on "pilot schemes" was later added to the Bill (before clause 42).

4 Under-occupation of social housing

It is the Government's intention to use provisions in the Bill to restrict the amount of Housing Benefit that a working-age tenant in social housing could receive if they are deemed to be living in a property that is larger than they need. Lord Freud clarified the rates of reduction to be applied at Report stage:

> In setting the percentage reduction rates, we have considered the sorts of rent differentials seen in the social rented sector alongside the question of affordability for the taxpayer. We intend to set the percentage reduction rates at 14 per cent for underoccupiers with one additional bedroom, and 25 per cent for underoccupiers with two or more additional bedrooms.
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> We think that the average cost to affected claimants, in terms of reduced housing benefit entitlement, will be around £14 a week in 2013-14. The majority of claimants affected-just over three-quarters of the total-are underoccupying their accommodation by just one bedroom. For this group, the average reduction will be around £12 a week. For those underoccupying by two or more bedrooms, the average reduction will be around £22 a week.[12]

On Report Lord Best sought to define under-occupation using the Department of Communities and Local Government's (DCLG) "bedroom standard." This standard, which differs considerably from the statutory room/space standards, has been used to measure overcrowding since the 1960s.[13] DCLG deems a social tenant to be under-occupying if they have two or more spare bedrooms whereas the DWP's test would not allow one spare bedroom. Lord Best said:

> Under the fierce new test, a family would be counted as underoccupying if, for example, two teenage girls were not sharing the same room, or if an older couple, one of whom is below pension age, have a two-bedroom flat.[14]

Lord McKenzie proposed an amendment to Lord Best's amendment (with which Lord Best agreed) and a further change, similar to that proposed by Baroness Hollis in Grand Committee, to prevent a Housing Benefit restriction where the tenant had not been offered suitable alternative accommodation by their social landlord. He expressed support for Lord Best's position and explained how the composite amendment would work:

> ...the amendments would not disturb the basic proposition in the amendments of the noble Lord, Lord Best, so that where there is no suitable alternative offer, the DCLG

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11 HL Deb 1 November 2011 c430GC

12 HL Deb 14 December 2011 cc1302-3

13 The English Housing Survey uses this standard as an indicator of occupation density. The definition of the bedroom standard can be found on the DCLG website.

14 HL Deb 14 December 2011 c1285

> definition of underoccupation should be used, and the tax would not apply unless there was more than one spare bedroom.[15]

Lord Kirkwood of Kirkhope described the composite amendment as "one of the most significant amendments in the whole of the Report stage." He said:

> This amendment mitigates the Bill's policy of tackling underoccupation; it is not a full frontal assault on the policy.[16]

Responding for the Government, Lord Freud advised that an additional £30 million annually would be added to the discretionary housing payment budget from 2013-14. This funding will be aimed specifically at under-occupying disabled people living in significantly adapted accommodation and at foster carers who keep a spare room when they are between fostering placements.[17] Lord Freud said "the case for providing some mitigation for these two groups is clear, but we have decided that the way to do it is through the discretionary housing payment route rather than through specific amendments."[18] On the question of transition for social housing tenants, he said that the Government will:

> ...make maximum use of the time available between now and the measure coming into force to help prepare local authorities and social landlords for the changes, which in turn will benefit those who are affected.[19]

He addressed Lord Best's and Lord McKenzie's amendments:

> Amendments 14 and 49, from the noble Lord, Lord Best, would exempt claimants from the measure where they underoccupy by just one bedroom. Amendment 12 would appear to tie Amendment 14 in with the housing costs calculation for universal credit.
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> There is a tension here between the bedroom standard, which is a widely used standard which views underoccupation as having two or more extra bedrooms, and the local housing allowance size criteria, which we propose to use for housing benefit purposes and which we already use for the private rented sector.
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> Our size criteria take a more generous view on the age at which someone is entitled to their own bedroom. Since the deregulation of rents in 1989, we have been using 16 as the adult threshold in size criteria for housing benefit purposes. The bedroom standard, on the other hand, sets the threshold at 21. Against these stricter criteria, however, the English Housing Survey and other similar surveys then consider the household to be underoccupying their accommodation only if they have more than one additional bedroom above the bedroom standard, a point the noble Lord, Lord Best, made. The size criteria that we propose to introduce into the social sector consider any number of spare bedrooms to be underoccupation. Neither approach is right or wrong. In some cases, the bedroom standard plus one will be more generous than the local housing allowance size criteria, in some they will work out the same and in a few cases the LHA size criteria would actually prove to be more generous.
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> [...]

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15 HL Deb 14 December 2011 cc1287-8
16 HL Deb 14 December 2011 c1294
17 HL Deb 14 December 2011 cc1301-2
18 HL Deb 14 December 2011 c1302
19 HL Deb 14 December 2011 c1303

I emphasised at the beginning of my response that the introduction of size criteria is fundamentally about savings. Without the inclusion of those who underoccupy by one bedroom, we would not achieve the £500 million savings expected from 2013.

The noble Lord, Lord Best, challenges our savings estimate. As I have set out in the evidence, though, a majority of people will pay the additional amount for the larger property. The cost of renting in the private rented sector may generally be higher but those who choose to move out of the cheaper social housing into private housing because they are underoccupying will by definition free up accommodation in social housing that can be offered to those on the housing waiting list or those living in expensive temporary accommodation. That argument from the noble Lord simply does not stand. If we excluded one-bedroom underoccupiers, we would lose around £300 million of the estimated savings. The fiscal case driving this measure forward must not be underestimated.

One other point made by the noble Lord, Lord Best, is about who is affected, and about concern for children. But by definition we are looking at people whose children have left, and so are underoccupying. The impact assessment shows that claimants with children are less likely to be affected by the measure than those without children. Only around a third of the claimants potentially affected have children living with them.

The other point raised by the noble Lord was about the difficulty of this working-age group pre-empting the room that pensioners might be transferred to. However, this measure will, over the longer term, help ensure that people are in suitably sized accommodation before they become pensioners. Our expectation is that the proportion of pensioners who need to or could downsize will in future be lower.

The other concern raised by the noble Lord, and indeed by the noble Baroness, Lady Hollis, is the implementation risk of costs to landlords. We are planning to work through these issues as part of our engagement with other departments, including the devolved Administrations, and with social landlords and local authorities. An implementation group has been set up which is already being used to explore the potential impact on landlords' costs as a result of this measure. We should bear in mind, however, that social landlords already collect rent from many claimants: for example, where the claimant has some income and only receives partial housing benefit, or where they have a non-dependent living with them.

The Government recognise that households are sometimes allocated properties with at least one extra bedroom by their landlord. This measure does not preclude them from continuing to do so. It is of course important that any household being allocated a larger property is aware of the implications in relation to housing benefit. We will work with stakeholders to ensure that communications are effective. Exempting this group is simply unaffordable. I beg the noble Lord, Lord Best, not to move Amendments 14 and 49.

Amendments 14ZZA and 49A would effectively modify that exemption to where there is no suitable alternative accommodation within the social rented sector, alongside Amendments 14 and 49. I will now explore that issue in relation to these amendments, and with regard to Amendment 17A.

We have heard a great deal about the lack of housing supply, and therefore the lack of suitable alternative accommodation. I recognise that there is not the sufficient range of stock in many areas that would enable landlords always to suitably house people according to the size of their household. That was acknowledged in the impact assessment. Noble Lords have highlighted some clear examples of when an extra

bedroom is not spare, but is actually being put to good use, such as in the case of teenagers under 16 of the same gender having their own room to do their homework.

As I have said, the LHA size criteria are more generous than the bedroom standard, in that they provide for an extra bedroom for every adult from the age of 16 rather than 21. However, these size criteria are for housing benefit purposes only. We are not insisting that everyone is housed according to those rules, but it is right to expect those who have that additional space-whether it is spare or not is not necessarily the point-to make a reasonable contribution to the rent. This puts those in the social rented sector on a more equal footing with those claimants living in the private rented sector where size criteria have always played a part in the housing benefit claim. Indeed, owner-occupiers also have to consider what they can afford.

This exemption is too broad, and would be complex and costly to administer. Suitability of accommodation will vary according to an individual's circumstances. If there is a smaller property in a location 60 miles away, where there happen to be jobs, is that suitable? It would not be possible to pin down through regulations unless they were so broad as to open the door to exempting almost everyone, thus significantly reducing the potential savings. It is not possible to predict the loss in savings, given the uncertainty surrounding this amendment, but it is not hard to see how the number of exemptions through this approach could spiral out of control.

In most cases where there is no suitable accommodation, we expect that claimants and their partners will find ways of meeting the shortfall-through employment, we hope, or through increased earnings. For those who are genuinely struggling to meet the shortfall and who have exhausted all possible options, the local authority might consider a discretionary housing payment. I beg the noble Lord, Lord McKenzie, not to move Amendments 17A, 14ZZA and 49A.

In summing up, I emphasise that this is not the end of the process. We have had to make some hard choices here to make the necessary savings as part of the deficit-reduction plan. We are balancing that by protecting those for whom being able to remain in their adapted homes and lead an independent life is rightly not something to be messed around with. Likewise, we recognise the vital work of foster carers and have in place additional funding to ensure that they are not discouraged. A watchful eye will be kept on the £30 million boost to the discretionary housing payment pot. A review will inform our evaluation of this measure. We have more than a year until implementation and we are using that time to explore the risks for landlords and claimants alike to minimise the potential for arrears and all the associated costs that can arise from them. We will continue to work closely with our stakeholders and draw on their expertise in this House. I ask for this amendment to be withdrawn.[20]

Lord Best pressed amendment 12, to pave the way for amendment 14, to a vote – the amendment was agreed by 258 votes to 190.[21] Subsequently Lord Best's amendment 14, as amended by Lord McKenzie's amendment 14ZZA, was also agreed.[22] A full analysis of the vote can be found at the Lords Divisions results section on the Parliamentary website.

[20] HL Deb 14 December 2011 cc1304-7
[21] HL Deb 14 December 2011 c1307
[22] HL Deb 14 December 2011 c1316

5 Employment and Support Allowance

Part 2 of the Bill includes controversial provisions relating to the Employment and Support Allowance (ESA).[23] The Government proposes to:

- limit receipt of contributory ESA for those in the Work-Related Activity Group (WRAG) to twelve months; and
- abolish the rules whereby people incapacitated early in life can become entitled to contributory ESA without having to satisfy the usual National Insurance contribution conditions (these are sometimes known as the "ESA youth rules" or "ESA in youth")

A DWP briefing note, *Proposed changes to contribution-based Employment and Support Allowance* (September 2011) gives further background on both measures.

The Government's reasons for introducing these measures are also discussed in section 2 (pp4-8) of Library Research Paper 11/23. Debates on these issues during the Commons Stages are summarised in pp35-37 of Library Research Paper 11/48.

In the Lords, the ESA changes were considered at the 11th sitting of the Grand Committee (8 November) and at Report on 11 January 2012. Government amendments were agreed in Grand Committee and at Report. The Government was also defeated on three sets of amendments at Report.

5.1 Government amendments

In Grand Committee, the Minister for Welfare Reform, Lord Freud, moved amendments to ensure that any time spent on the ESA "assessment phase" (the period at the beginning of a claim prior to person undertaking the Work Capability Assessment) does not count towards the 365 days for time-limiting purposes. He explained:

> Amendments 72 and 76 are technical amendments that seek to restore the original policy intent for Clauses 51 and 52. The current wording of those clauses meant that days in the assessment phase before the determination that the claimant should be placed in the support group must count towards the calculation of the 365-day limit. This would not of course affect a claimant who remains in the support group throughout their ESA award, but it would affect those claimants who moved to the work-related activity group from the support group, at which point they would be entitled only to the balance of the 365 days after deducting the day spent in the assessment phase. This was never our intention and I urge noble Lords to accept this amendment.[24]

The amendments were agreed.

At Report, further Government amendments were moved by Lord Freud to ensure that claimants whose time-limited award of contributory ESA had ended could re-qualify for contributory ESA if their condition subsequently deteriorated such that they became eligible for the ESA Support Group. The Minister explained:

> The government amendments will enable people whose contributory ESA, while in the WRAG, has ceased as a result of time limiting, to requalify for an award of ESA if, after

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[23] For an overview of the benefit, see *Employment and Support Allowance: an introduction*, Library Standard Note SN05574

[24] HL Deb 8 November 2011 c29GC

> their award ends, they continue to have, or are treated as having, limited capability for work, and-I stress this point-at any time thereafter they develop and continue to have limited capability for work-related activity and would become eligible for the support group. The substance of this new category of entitlement is found in Amendment 43, which provides for claimants to have further entitlement after time limiting has been applied to an award of contributory ESA. I note with pleasure that the noble Lord, Lord McKenzie, and the noble Baronesses, Lady Morgan and Lady Meacher, have added their names in support of Amendment 43.[25]

The amendments were agreed.

5.2 Other amendments

At Report Stage on 11 January, the Government was defeated on divisions on three amendments relating to Employment and Support Allowance:

- On an amendment moved by the Crossbencher Baroness Meacher to **retain the ESA youth rules for young people in the Support Group** (though the situation remains unclear following a separate Government amendment agreed later in the proceedings);
- On an amendment tabled by the Crossbencher Lord Patel to **extend the time limit for contributory ESA from one year to at least 2 years**; and
- On a separate amendment tabled by Lord Patel to **exempt from the time limit claimants receiving treatment for cancer, or receiving benefit as a consequence of being diagnosed with cancer**

Further information is given below.

Retention of ESA youth rules for people in the Support Group

The DWP's *Impact Assessment for Abolition of concessionary Employment and Support Allowance (ESA) 'youth' National Insurance qualification conditions* explains what the Government is proposing and why it believes it is necessary:

> At present, special arrangements apply which allow certain young people to qualify for contributory ESA under the ESA 'youth' provision, without having to satisfy the National Insurance contribution conditions which apply to all other claimants. Abolishing this concession from April 2012 puts those previously eligible for ESA 'youth' on an equal footing with others who have to satisfy the relevant National Insurance conditions before they qualify for contributory ESA, which will create a simpler system. Government intervention is necessary to ensure entitlement to contributory ESA applies consistently to all customers.[26]

Speaking to her amendment at Report, Baroness Meacher said that the Government's case for abolishing the ESA youth rules was "extraordinarily weak":

> First, they argue that abolishing the youth entitlement to contributory benefit puts those young people on the same footing as everyone else claiming contributory ESA. This is surely simply not the case. These young people with congenital conditions or impairments so severe that they are entitled to the support group provision are in a completely different category from people who are able to earn and build up capital,

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[25] HL Deb 11 January 2011 c123

[26] February 2011, p1

> pay contributions and thus have some kind of dignity. They are surely in a category of their own.[27]

Baroness Meacher argued that by removing entitlement to non-means-tested support from a young person could make it more difficult for them to find a partner, and thereby increase their long-term financial reliance on the state:

> How much more difficult for someone to find a partner if not only do they have to cope with their own severe disabilities, but they are also a financial burden if they have no entitlement of their own to any income should their partner have any earnings? Such a position is quite different from an able-bodied person who has had an opportunity to build up earnings and capital-and indeed a pension of their own.[28]

She went on:

> This is not an even playing field. The Government will argue that most of these young people will be entitled to some means-tested benefit. Indeed, I understand that only 10 per cent will receive nothing at all under a means-tested system. Then - you could turn that argument on its head - there will therefore be very little savings by denying these people the dignity of an entitlement to some benefit. Why remove that dignity from this peculiarly disadvantaged group?[29]

For the Government, Lord Freud reiterated the case for abolition set out at previous stages of the Bill. He also said that a recent judgment of the European Court of Justice – in the case of Lucy Stewart[30] – further strengthened the Government's case. The case concerned a young woman with Downs Syndrome who at the age of ten moved with her parents to live in Spain. On reaching 16, she tried to claim Incapacity Benefit under the special rules applying to people incapacitated in youth (which were later carried over to ESA when that benefit was introduced), but was refused because she did not satisfy the presence and ordinary residence tests. Lord Freud commented:

> [The ECJ's] judgment made it clear that we cannot use the past/present test to deny access to a benefit if a claimant demonstrates a genuine link to the UK in other ways, which may include consideration of the relationship of a claimant and the social security system of the competent member state or claimants' family circumstances. The past/present test requires that a claimant must be present in Great Britain for 26 weeks out of the last 52 preceding a claim for employment and support allowance. We still lost the case, even though we had lots of powers on residence. Clearly, the view of this Government is that it should be a matter for the Government of this country to decide how people qualify for benefits. The effect of this judgment is that young people can qualify for a benefit even when they have not lived in this country for many years.[31]

Lord Freud said that the case was causing "enormous concern at a number of levels" and that the Government was "currently challenging Commission lawyers on it." Removing entitlement to contributory ESA for young people was, he argued, the appropriate response to the situation.

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27 HL Deb 11 January 2012 cc132-133
28 HL Deb 11 January 2012 c133
29 HL Deb 11 January 2012 c133
30 C-503/09 of 21 July 2011
31 HL Deb 11 January 2011 c143

For the Opposition, Lord McKenzie of Luton acknowledged concerns about the implications of the Lucy Stewart case but questioned whether the Government's response was appropriate:

> …the Minister is praying this EU ruling in aid of his desire to stop the youth condition continuing in future. He has already said that that ruling has much wider implications, and that there will be a wider need to look at how it can be fully addressed. In those circumstances, is it not unfair of him simply to target this particular benefit and say, "This can be dealt with by stopping it", rather than addressing a wider solution in due course?[32]

In response to the Minister, Baroness Meacher said:

> What we have here is an attempt to protect the dignity of a very vulnerable group of severely disabled people at a cost of £10 million, which is absolutely paltry.[33]

She added that while the whole House had made it clear that it was behind the Government's attempts to tackle benefit tourism, "I feel that we are being somewhat sidetracked by the intervention on the European Union."[34]

Baroness Meacher's amendment (amendment 36A) was agreed by 260 votes to 216 (a full analysis of the vote can be found at the Lords Divisions results section on the Parliamentary website).

Amendment 36A was intended as a paving amendment to a substantive amendment – 46 – to be moved later in the proceedings. However, before amendment 46 could be moved, Lord Freud moved Government amendment 45A, which had the opposite effect to amendment 46. On division, the Government amendment was agreed by 132 votes to 49.[35] Opposition Members had assumed that the Government would not press its amendment to the vote, given the earlier decision of the House on Baroness Meacher's amendment, and complained that the Government had decided to call a division at a time when most Members had gone home, on the assumption that the point of principle had been established.

For the Opposition, Lord McKenzie of Luton commented:

> My Lords, this is somewhat unprecedented, and I am trying to be helpful here. The House is in danger of getting into a considerable muddle. I respectfully suggest to your Lordships that we should perhaps adjourn to try to sort this out, or perhaps come back to it when the House is in fuller session. I do not think that anyone on our side wants to accuse the Government of sharp practice, but that is certainly how it feels at the moment. That is not right or good for the reputation of the House.[36]

In response, Lord Freud said that he accepted that amendment 46 was consequential on amendment 36A.

Amendment 46 was then agreed without a vote.

Both amendment 46 and Government amendment 45A deleted the existing clause 52 from the Bill and substituted a new clause. It appears that amendment 46 does not supersede

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32 HL Deb 11 January 2011 c145-146
33 HL Deb 11 January 2011 c146
34 HL Deb 11 January 2011 c146
35 HL Deb 11 January 2011 c202
36 HL Deb 11 January 2011 c204

Government amendment 45A and that, as things stand, both amendments are valid. It is understood that further amendments will be necessary at the Lords Third Reading to deal with the inconsistency, although it is not clear what course of action will be taken.

Time-limiting contributory ESA

The Government's proposal is that, from April 2012, for those Employment and Support Allowance claimants assessed as eligible for the "Work Related Activity Group", contributory ESA will only be payable for up to one year. Those still on benefit at that point may then claim income-based (i.e. means-tested) ESA, but they may not be entitled to any benefit if they or their partner have other income or capital above a certain level. Around 700,000 people will be affected by the ESA time limit by 2015-16, and savings of around £1.2 billion a year are expected.

The DWP's *Impact Assessment* for time-limiting ESA explains why the Government believes the change is necessary:

> Expenditure on Employment and Support Allowance (ESA) and other incapacity benefits is forecast to be £11bn per year by 2014/15. People can presently qualify for years of benefit up to state pension age on the basis of a small amount of National Insurance paid. It was never intended that ESA for those in the Work Related Activity Group (WRAG) should be paid for an unlimited period to people who, by definition, are expected to move towards the workplace with help and support. Government intervention is required to help ensure that ESA is paid for a temporary period for those placed in the WRAG, thereby encouraging a return to work and stopping people being trapped on benefits for a lifetime.[37]

Speaking to his amendments, Lord Patel said that all the cancer charities, and the wider disability sector, were opposed to time-limiting ESA. He believed that those with a disability or illness should be able to receive support for as long as they were unable to work. However, he added:

> The Government are clearly opposed to removing time limiting altogether. Therefore, I understand the need to find a compromise that meets the Government's priority of finding savings but, crucially, gives disabled and sick people a more realistic timeframe in which to return to work. Evidence supports extending the one-year time limit.[38]

The Government's own figures, he noted, suggested that 94% of claimants in the Work-Related Activity Group would not be ready to return to work after one year. He added:

> In Committee, the Government were asked to publish evidence to demonstrate that a 12-month time limit reflected the needs of people in the WRAG. I have seen no such evidence. The Government were also asked which organisation of experts they had consulted before making the decision to introduce a time limit for contributory ESA. They have not consulted any of the organisations which have subsequently raised concerns about the impact of this policy.[39]

Lord Patel said:

> Calls for a rethink on the time limit have been widespread. There has been severe criticism of the policy from experts and commentators in the media. Today's newspapers are full of it. Liberal Democrats voted to change their party's policy to

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37 April 2011, p1
38 HL Deb 11 January 2012 c151
39 HL Deb 11 January 2012 c151

> oppose an arbitrary time limit on ESA. In Committee, the Government's case was unconvincing and did not stand up to scrutiny, at least by the Committee Members who attended. Despite assurances from Ministers throughout debates on the Welfare Reform Bill that the Government will improve the WCA for cancer patients in the light of Professor Harrington's recommendation, the Government are now consulting on proposals that will reduce the protection offered to thousands of cancer patients undergoing treatment. Today's report by Citizens Advice about the accuracy or reliability of the WCA points out that for 96 per cent of people who are assessed it is inadequate, inappropriate or inaccurate. Instead of extending automatic entitlement to ESA to cancer patients undergoing chemotherapy to other patients receiving equally debilitating treatment, the Government's proposals would remove automatic entitlement altogether and force all cancer patients, even those on intravenous chemotherapy, no matter how sick they are, to undergo an assessment to prove their eligibility, an assessment that today's report has found to be totally unreliable and faulty.[40]

Lord McKenzie of Luton said that the Opposition supported both of Lord Patel's amendments. He added:

> But we should be clear: being in receipt of a contributory benefit does not amount to having a life on benefits. The benefit is payable only for so long as somebody is unfit for work. We have accepted with some reluctance that a time limit could be imposed on contributory ESA, but it would have reasonably to reflect a time period sufficient to enable people to overcome their illness or disability and to access employment. A minimum of two years is to an extent still arbitrary, but there is no doubt that it is a more realistic timeframe within which to expect a return to work. However, an evidence-based process rather than an arbitrary figure should be locked into primary legislation.[41]

Replying for the Government, Lord Freud denied that the 365-day time limit was arbitrary:

> It is similar to the limits applied in several countries overseas and around the world, including France, Ireland and Spain, and strikes a reasonable balance between the needs of sick and disabled people claiming benefit and those who have to contribute towards the cost. We strongly believe that a time limit of one year is the correct approach for a number of reasons. It strikes the right balance between restricting access to contributory benefits and allowing those with longer-term illnesses to adjust to their health condition and surrounding circumstances, and it is double the length of time allowed for contributory JSA in recognition of that fact.[42]

He acknowledged however that there was also a "very strong financial argument", stating that doubling the time limit to 730 days would cost an additional £1.6 billion over five years.[43]

In relation to Lord Patel's amendment to exempt cancer sufferers from the time limit, Lord Freud said that at present around two-thirds of ESA claimants with a primary diagnosis of cancer were placed in the Support Group, and would be unaffected by time-limiting. The Government, he said, wanted to make sure that the Work Capability Assessment accurately identified the capabilities and needs of claimants and, following Professor Harrington's

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40 HL Deb 11 January 2012 c154
41 HL Deb 11 January 2012 cc163-164
42 HL Deb 11 January 2012 cc166
43 HL Deb 11 January 2012 cc166

recommendations, it was expected that the number of cancer sufferers placed in the ESA Support Group would increase by about 10%.[44]

In response to contributions to the debate, Lord Patel pointed out that his amendments would not require the Government to find additional expenditure, but instead reduced the expected savings.

Lord Patel's first amendment – to increase the contributory ESA time limit from 365 days to at least 720 days – was agreed by 234 votes to 186.[45]

Lord Patel's second amendment – to exempt from the time limit claimants receiving treatment for cancer, or receiving benefit as a consequence of being diagnosed with cancer – was agreed by 222 votes to 166.[46]

Analyses of both divisions can be found at the Lords Divisions results section on the Parliamentary website.

6 Personal Independence Payment

There were no Government defeats relating to the Personal Independence Payment in the Lords, but during the Lords stages the Government announced a number of changes to the PIP provisions, in response to concerns. At Report Stage on 17 January the Government also gave detailed undertakings regarding the implementation of the new benefit.

6.1 Mobility component for people in care homes

The Government originally proposed that the mobility component of PIP would not be payable to people living in care homes whose place was funded by a public body. However, following opposition to the proposal, and in the light of the findings of Lord Low's independent review of *Personal Mobility in State-Funded Residential Care* published on 3 November 2011[47], the Government issued a Written Ministerial Statement on 1 December announcing that it would not go ahead with the change:

Mobility Component in Residential Care

> **The Parliamentary Under-Secretary of State for Work and Pensions (Maria Miller):** The Government are today announcing that the mobility component of disability living allowance will not be removed from people living in residential care homes and that the mobility component of personal independence payment, which will replace disability living allowance, will also be payable at both the standard or enhanced rate to people in residential care homes provided they satisfy the entitlement conditions.
>
> In the spending review 2010 it was announced that, from October 2012, the disability living allowance mobility component would be withdrawn from people in residential care homes after 28 days. Our aims have always been to ensure not only protection of public funds but also that disabled people who live in residential care homes retain their independence and are not prevented from getting out and about.

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44 HL Deb 11 January 2012 cc167
45 HL Deb 11 January 2012 cc170
46 HL Deb 11 January 2012 cc173
47 See http://lowreview.org.uk/

> In response to concerns raised about this proposal, the Government announced that they would not remove the mobility component from people in residential care homes from October 2012 and that it would look again at the underlying evidence and gather more, before reaching a final decision on the way forward for the new personal independence payment. We have now gathered and reviewed further evidence, including the helpful contribution provided by Lord Low's review. Although this does show that the issue of mobility needs for people in residential care homes presents a complex and varied picture there was insufficient evidence of overlaps in funding provision to justify the withdrawal of the mobility component.
>
> Having listened to the concerns raised and carefully considered the evidence, the Government will now table an amendment to the Welfare Reform Bill for consideration at Lords Report stage to remove the provision which allows for withdrawal of the mobility component of personal independence payment from residential care home residents.[48]

Amendments to give effect to this undertaking were agreed at Report Stage on 17 January.[49]

6.2 Qualifying period

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 originally proposed to retain the six month prospective test, but to extend the qualifying period to six months. In response to concerns expressed during both the Commons and the Lords stages about the impact of this change, particularly for people with "sudden onset" conditions, the Government announced that it would support amendments at Report to provide instead for a three month qualifying period and a nine month prospective test. A similar amendment had been moved by the Opposition in the Commons.[50]

The amendments – moved by Baroness Thomas of Winchester – were agreed at Report Stage on 17 January.[51]

6.3 Other Government amendments

Further Government minor technical amendments were agreed in Grand Committee, relating to tax provisions for PIP claimants, and appeals against payment of benefit decisions where someone is imprisoned or detained in legal custody.[52]

6.4 Further Government concessions at Report

At Report Stage on 17 November, the Minister Welfare Reform, Lord Freud, announced a series of further concessions to address concerns about the pace of the PIP reforms and their potential impact on disabled people. Lord Freud announced:[53]

- The Government would continue to work with disabled people and their representatives to develop a number of "operational processes" through its "implementation development group"; and it intended to retain its services beyond April 2013 to help evaluate delivery arrangements.

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48 HC Deb 1 December 2011 cc77-78WMS
49 HL Deb 17 January 2012 cc559-562
50 See Library Research Paper 11/48, p49
51 HL Deb 17 January 2012 cc549-550
52 HL Deb 21 November 2011 cc322-324GC; HL Deb 28 November 2011 c80GC
53 HL Deb 17 January 2012 cc526-527

- Operational processes would be tested in a "model office environment" to see how arrangements worked, without affecting individuals' actual benefit entitlements.

- Contracts for suppliers of PIP assessments would make it clear that they would be expected to work with disability organisations – before, during and post-implementation – on the design of their processes, to improve the "customer experience".

- New claims for PIP would be limited to a "few thousand per month" for the first few months of implementation, to allow trialling of all the processes in a "truly live environment".

- Reassessment of existing DLA claims would not begin until the autumn of 2013; the process would again be staggered, beginning with those with a fixed term DLA award requiring renewal and claimants reporting a change in circumstances.

- There would be a "pathfinder trial" lasting three months, reassessing a small number of DLA claimants not due for reassessment, to ensure processes worked satisfactorily before full-scale, national reassessment began.

- The Government would legislate for two biennial independent reviews within the first four years if the implementation of PIP; the first would report within two years of the assessment regulations coming into force, with the second within four years of that date.

- A "firm undertaking" that a third review would be commissioned "if the second review demonstrates ongoing issues with the operation of the assessment which need to be addressed in this manner."

Lord Freud announced the concessions during the course of a debate on an amendment moved by the Crossbench Member Baroness Grey-Thompson to require an independent report on the PIP assessment, and trialling of the assessment, before implementation of the PIP. The amendment was put to the vote, and was rejected by 229 votes to 213.[54]

Government amendments making provision for the biennial reviews were agreed at the end of the proceedings on 17 January.[55]

7 Benefit cap

A Government amendment (amendment 100) was agreed in Grand Committee to provide for the statutory instrument containing the first regulations in relation to the benefit cap to be subject to the affirmative resolution procedure.[56] A consequential Government amendment was agreed (amendment 102) to provide for other statutory instruments made under this provision to be subject to the negative procedure.[57]

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54 HL Deb 17 January 2012 cc518-532
55 HL Deb 17 January 2012 cc568-570
56 HL Deb 23 November 2011 c429GC
57 HL Deb 23 November 2011 c429GC

On Report the Bishop of Ripon and Leeds moved an amendment to exclude Child Benefit payments from counting towards the household benefit cap of £500 per week for a family.[58] He argued that the cap failed to differentiate between households with children and those without and made "no provision for the additional costs of bringing up children."[59] He said:

> Child benefit is a non-means-tested benefit paid to both working and non-working families. In setting the cap, it has been ignored by the Government. It should also be ignored in calculating benefit income against the cap. Those who are suffering from the cap should be allowed to retain their child benefit. I know that, from 2013, higher taxpayers will not be entitled to child benefit-that is a different issue-but anyone taking home £26,000 will be entitled to it, as will many of those earning a good deal more than that.
>
> [...]
>
> This amendment goes some way towards protecting children by helping two groups especially. First, for children in families that are struggling to pay rent, it will mean fewer face homelessness-especially but not only in London. Secondly, it will help those in larger families. Children do not choose to be in large families and many are so because parents have taken in, and provided love for, those who would otherwise be a burden on the taxpayer. It cannot be right for someone who becomes unemployed not only to lose their job and have their assessed benefit cut but to be told that their children no longer have a right to child benefit.[60]

Speaking in support of the Bishop's amendment, Lord Kirkwood described the household benefit cap as "a ministerial override" enabling ministers to override by regulation "who gets child benefit if it is counted in a cap and if they are over the arbitrary limit."[61]

Responding for the Government, Lord Freud argued that excluding Child Benefit from the cap would reduce the number of families affected by around 20,000 and emphasised that the cap is aimed at "changing behaviours" to get people into work:

> That is the real cost of this amendment. It takes the pressure away from those 20,000 families that will go on in the same way that they have been going, and we will not have the behavioural change that we want and need from those families.[62]

He defended the inclusion of Child Benefit in the calculation of the cap and argued that children's life chances are damaged by living in households where unemployment is the norm:

> The cap, and the assistance to find work we will give households in the year leading up to the cap, will help towards freeing people from this benefit trap and giving their children a positive example. We will spend the next year putting an enormous amount of effort into helping these families move on and move out of dependency.[63]

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58 HL Deb 23 January 2012 cc833-5
59 HL Deb 23 January 2012 c833
60 HL Deb 23 January 2012 c835
61 HL Deb 23 January 2012 c842
62 HL Deb 23 January 2012 c852
63 HL Deb 23 January 2012 c855

The Bishop pressed his amendment (amendment 59) to a vote – it was agreed by 252 votes to 237[64] (a full analysis of the vote can be found at the Lords Divisions results section on the Parliamentary website).

Lord Freud said that the Government would look at ways of easing transition for families[65] and that the treatment of people placed in temporary accommodation was under consideration for housing costs purposes. More details will be shared "before too long."[66] He also said that the Government is looking at options in relation to kinship carers – there is concern that relatives/friends will be less willing to take in children if this would bring their benefits above the cap. Lord Freud expressed some sympathy with this group:

> I am not committing here to specific exemptions for this group, but I am saying that we are looking at how to do it so that we meet its requirements, of which I am very conscious.[67]

8 Child support maintenance

Part 6 of the Bill would introduce additional procedures for applicants to the new statutory "gross income" child support scheme, provision for which is contained in the *Child Maintenance and Other Payments Act 2008.*[68] The Bill 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'. It would introduce a calculation only service to give parents a figure for how much maintenance would be received through the statutory scheme. In addition, the Bill would make amendments to the *Insolvency Act 1986* in relation to the treatment of child maintenance debt under an individual voluntary agreement.

Background information on the development of these proposals is provided in the Library research paper written for the Bill's Second Reading debate in the House of Commons (RP 11/23).

8.1 Lords' debate

During the Second Reading debate in the House of Lords, it became clear that a number of Peers were particularly concerned about an issue described as "only marginally connected with the Bill",[69] namely the introduction of fees to use the new statutory child maintenance scheme. The provisions allowing the Child Maintenance and Enforcement Commission (the Commission) to charge such fees are contained in the *Child Maintenance and Other Payments Act 2008.*[70] However the required regulations, to make provision for the scheme, have yet to be introduced.

At Second Reading a number of Peers questioned the fairness of introducing charges on vulnerable parents and amendments to limit the impact of charges on parents with care were

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64 HL Deb 23 January 2012 c855
65 HL Deb 23 January 2012 c891
66 HL Deb 23 January 2012 c893
67 HL Deb 23 January 2012 c901

68 The scheme has yet to be implemented. A timetable for change is available on the Child Maintenance and Enforcement Commission's website.
69 Lord Mackay of Clashfern, HL Deb 13 September 2011 c653
70 Section 6 of the *Child Maintenance and Other Payments Act 2008*

tabled during Grand Committee, although all were eventually withdrawn. The issue was revisited during Report stage when Lord Mackay of Clashfern tabled an amendment which would limit the application of such charges on parents with care.

8.2 Grand Committee

The Government moved an amendment 114 to insert a new clause 136 into the Bill which would in effect extend the current power in the *Child Support Act 1991* to make child support deductions from social security benefits. The current power, in section 43 of the 1991 Act, allows the Secretary of State to make regulations to deduct child maintenance and arrears from benefits. The amendment would permit regulations to be made to also allow the deductions of fees for using the new statutory scheme.

The amendment was agreed without debate and new clause 136 was order to stand part.[71]

8.3 Report stage

Government amendment to the mandatory gateway

The Government moved a group of amendments which would make the proposed mandatory gateway to the new scheme a less stringent requirement. As originally drafted, clause 134 would allow the Commission to require applicants to have taken "reasonable steps" to come to their own arrangements before accepting an application to the statutory scheme. Amendments 62BL-BM would make that provision easier to satisfy by the Commission "inviting" rather than requiring applicants to consider private arrangements.[72]

For the Government, Lord De Mauley explained why the Government now believed that clause 134 required amendment:

> It has become apparent that Clause 134 as drafted, referring to reasonable steps, has been interpreted more stringently than we intended. We do not wish to require parents to take multiple steps determined by us before being able to make an application. That would risk establishing a new quasi-judicial function. It would require us to decide whether a parent had taken reasonable steps and is an impediment to making a collaborative agreement. This would be akin to the complex and intrusive bureaucracy that dogged the early days of the CSA. That is the antithesis of our approach and why we have brought forward Amendments 62BL and 62BM. I hope this clarifies our intentions.[73]

Lord De Mauley made it clear that the new arrangements were intended to encourage a collaborative approach to arrangements and the amendments supported that aim. When questioned about exactly what evidence applicants would have to provide to prove that they had considered a private arrangement, he assured Peers that there would not be any strict criteria:

> The only requirement on the parents contacting us before entering the statutory scheme will be to engage in this conversation and to discuss whether they have considered their alternatives. The adviser will be able to provide advice and signpost the parent to other support available, if required. Parents can then, if they wish, take time to consider the alternatives and discuss collaboration with the other parent. However, I stress that engaging in the conversation when first contacting us is the only requirement to enter the scheme. Everything else is voluntary. There is no question of

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71 *Ibid*
72 HL Deb 25 January 2012 c1081
73 HL Deb 25 January 2012 c1082

> us seeking to direct parents to take any specific steps. Where a parent identifies during the conversation that they need to make an application to the statutory service, the adviser will help them to do so.

The amendments were agreed.[74]

Government amendment to review the fee-charging system

A further amendment, 62CA, was also moved by the Government which would insert a new clause 138 entitled 'Review of fees regulations' into the Bill.[75] The new clause would require the Secretary of State to review and publish a report to be laid before Parliament on the effect of the fee charging provisions. The report would have to commence no later than 30 months after the fee provisions were brought into effect.

The Government's January 2011 Green Paper, *Strengthening Families* proposed that applicants to the new scheme should pay a one-off application charge and, where the statutory scheme is required to collect payments on behalf of parents, there would be a collection charge. Where parents apply to the scheme but make payments directly (known as maintenance direct) there would not be a collection charge.[76]

During Report stage, Lord De Mauley told the Chamber that the Government was convinced that the approach set out in the Green Paper was the right one and that it would formalise the requirements following an evaluation.[77] Amendment 62CA would allow for that review period.

Lords Mackay of Clashern and McKenzie of Luton, although expressing their support for a review of fees, stressed that it did not mean they accepted the structure of the fees proposed in the Green Paper.[78] The amendment was agreed to without Division.[79]

Government defeat

At Report stage, Lord Mackay of Clashfern tabled an amendment 62C to clause 134 which would limit the impact of fee-charging on the parent with care. An almost identical amendment had been tabled by the same Peer at Grand Committee stage.[80] Amendment 62C would prevent the imposition of fees on a parent with care where that parent had taken reasonable steps to come to a private agreement or, where a such an agreement was inappropriate, for example in cases of domestic violence.[81]

Lord Mackay explained that the amendment was a "simple matter of fairness." He asked whether it was fair to charge a parent with care where there had been a breakdown in the relationship and a private arrangement could not be achieved. He added:

> The motivation of the Government for these charges is said to be to try to bring people to voluntary agreement. I am entirely in favour of that. But if that proves impossible, when the woman is at the stage of having nothing more that she can to, she has to pay. What does that do? If anything, it might make her not go to the Child Support

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74 HL Deb 25 January 2012 c1090
75 HL Deb 25 January 2012 c1081
76 DWP *Strengthening families, promoting parental responsibility: the future of child maintenance*, January 2011; Cm 7990
77 HL Deb 25 January 2012 c1084
78 HL Deb 25 January 2012 c1086 and 1088
79 HL Deb 25 January 2012 c1127
80 HL Deb 28 November 2011 GC59-60
81 HL Deb 25 January 2012 c1090

> Agency at all and the child will lose the maintenance. I cannot see that asking for that is an incentive to do anything that the Government want.[82]

The amendment was supported by the majority of Peers who spoke on the issue, including strong support from Baroness Butler-Sloss, a family barrister and former President of Family Division in the High Court. Lord Kirkwood of Kirkhope, also supported the amendment but urged the Government to go even further and "scrap the whole idea [of charging] and not give it house room."[83]

Apart from Lord De Mauley, Baroness Berridge was the only Peer to speak against the amendment. She pointed to cases where the lack of payment of child maintenance was entirely the fault of the mother, who would in most cases be the parent with care. She believed that the amendment would have an unintended consequence of discouraging amicable relationships between the parents.[84]

In response to the amendment, Lord De Mauley for the Government, stressed the need for the new system to have a clear financial incentive on both parents to collaborate. He explained that without such an incentive, which the fee structure provided:

> [W]e risk recreating the CSA workload we currently have, with parents using it despite ultimately telling us they could collaborate. The evidence is clear that we have a system at the moment where 50 per cent of parents using the CSA believe they could make a collaborative arrangement with the right support.[85]

Lord De Mauley sought to reassure the House by explain that collection charges would not applied until the new scheme had "been running for at least six months to allow the new system to demonstrate that it is delivering an improved system for parents."[86]

Lord De Mauley urged Lord Mackay to consider withdrawing the amendment. However, the Peer stated that "one has a duty if there is a slight deviation from the norm to do one's best to bring the situation back on the correct pathway." Therefore he had "no real option but to press the amendment". Amendment 62C was agreed on Division by 270 votes to 128.[87]

9 Other matters

9.1 Working Tax Credit taper rate

The June 2010 Budget announced a series of changes to tax credits, "to ensure support is targeted on those in need by reducing unaffordable support for higher earners, and to simplify the system."[88] These included an increase in the first and second withdrawal rates for Child Tax Credit and Working Tax Credit from 39% to 41%, from April 2011. This particular measure is expected to yield savings of £645 million in 2011-12, rising to £780 million a year by 2015-16.[89]

The taper rate duly increased to 41% in April 2011.

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82 HL Deb 25 January 2012 c1092
83 HL Deb 25 January 2012 c1101
84 HL Deb 25 January 2012 c1100
85 HL Deb 25 January 2012 c1104
86 *Ibid*
87 HL Deb 25 January 2012 c1106
88 Budget 2010, HC61 2010-12, June 2010, para 1.104
89 Budget 2011, HC836 2010-12, March 2011, Table 2.2

In Grand Committee on 14 November, the Treasury Minister Lord Sassoon moved a series of Government amendments relating to the taper rate as it applies to Working Tax Credit:

> My Lords, the purpose of the government amendments in this group is to correct an omission in secondary legislation which was made to implement changes to the working tax credit withdrawal rate announced as part of the June 2010 Budget. I apologise for the fact that these amendments are required.
>
> Any award of working tax credit or child tax credit is reduced or withdrawn by a prescribed rate for every pound of income that a claimant has above a specified threshold. One of the changes announced in my right honourable friend the Chancellor's June 2010 Budget in relation to tax credits was to amend the withdrawal rate for both child tax credit and working tax credit. The intention for the tax year 2011-12 was that the withdrawal rate would be set at 41 per cent, so that for every pound of income above the threshold, the amount of tax credits payable would be reduced by 41p. HMRC accordingly amended the tax credits IT system and since 6 April 2011 has implemented the increase in the withdrawal rates for both working tax credits and child tax credits and thus has applied a withdrawal rate of 41 per cent in relation to both tax credits for 2011-12 awards. Although the secondary legislation was amended correctly for the child tax credit withdrawal rate, unfortunately the working tax credit withdrawal rate was not. This new clause will correct the technical omission and will ensure that the withdrawal rate for working tax credit from 6 April 2011 is 41 per cent and not 39 per cent.
>
> Let me be very clear for the record. HMRC is paying claimants the right amount of money as announced in the June 2010 Budget. It is applying the 41 per withdrawal rate and has been since 6 April 2011. In practical terms, the implementation of this correction will not impact tax credit claimants as it simply aligns the legislation with the announced and currently effective practice. I beg to move.[90]

Press by Baroness Hollis of Heigham, the Minister conceded that "As the law stands, HMRC is giving people less money than the law says that it should." However, he added that "I do not believe that there is any question of the Government being sued."[91]

After a short debate, the amendments were agreed.

9.2 Civil penalties

In Grand Committee, Lord Freud moved amendments to clause 113 (Civil penalties for incorrect statements and failures to disclose information) regarding recovery of amounts where benefit is paid to a third party. He explained:

> These two amendments will ensure that where a claimant's benefit is paid to a third party, usually a landlord, recovery of any civil penalty, along with recovery of the associated benefit overpayment, may be made by making appropriate deductions from that benefit payment. Currently, there is a slight difference in the wording used by this clause and Clause 102 when specifying that amounts are recoverable. This was unintentional.
>
> Amendments 104A and 104B remove that difference and ensure a consistent read across. This will mean that, in the limited circumstances in which the third party benefit payment is the only one from which we can make a recovery, we can ensure that

[90] HL Deb 14 November 2011 cc149-150GC
[91] HL Deb 14 November 2011 cc150-151GC

> whenever a civil penalty is imposed, that penalty and the benefit overpayment may both still be recovered by deduction from that benefit.
>
> In every civil penalty case there will always be an overpayment of benefit and we intend that the civil penalty will be added to the overpayment and recovered in the same way. Being unable to recover the civil penalty in the same way as the overpayment would mean that some claimants could evade the consequences of their negligence or failures to provide accurate and timely information and unnecessarily limit the methods of recovery available for civil penalties.
>
> We want to make it clear that the civil penalty is always recoverable from the person at fault, even if in practice the claimant's benefit is being paid to a third party. The process for recovery of the civil penalty needs to fit appropriately with debt recovery processes. Aligning the wording in new Sections 115C and 115D with that used in Clause 102 helps us to do that.[92]

The amendments – which were moved in the course of a debate on a probing amendment tabled by Baroness Drake – were agreed.

9.3 Information-sharing powers

At the final sitting of the Grand Committee, the Government Work and Pensions Spokesman, Lord De Mauley, moved amendments making provision for information-sharing between the DWP and other agencies for various purposes. He explained:

> My Lords, this group of amendments deals with the sharing of data between the DWP and the Crown Prosecution Service on the one hand and the DWP and local authorities on the other. They build on the good practice and precedent that has been developed in the department and debated regularly by your Lordships to ensure that DWP information is used and reused efficiently, effectively, legally and securely.[93]

A more detailed explanation of the provisions is in cc28-29GC. For the Opposition, Baroness Hayter of Kentish own said "There is nothing between us on the amendments."[94]

The amendments were agreed.

10 Amendments expected at Third Reading

10.1 Scotland

In a Written Ministerial Statement on 12 January 2012, the Minister for Employment issued a Written Ministerial Statement announcing that amendments would be brought forward at Third Reading as a consequence of a vote in the Scottish Parliament on 22 December 2011 on a legislative consent motion on the *Welfare Reform Bill*:

> **Welfare Reform Bill (Third Reading Amendments)**
>
> **The Minister of State, Department for Work and Pensions (Chris Grayling):** On 22 December 2011 the Scottish Parliament voted on a legislative consent motion to the Welfare Reform Bill which is currently at Report stage in the House of Lords. Although

[92] HL Deb 28 November 2011 cc8-9GC
[93] HL Deb 28 November 2011 c28GC
[94] HL Deb 28 November 2011 c30GC

> social security is a reserved matter, legislative consent is required from the devolved Administrations for a number of aspects of the Bill.
>
> Legislative consent was given, where required, in respect of the provisions in the Bill relating to data sharing, industrial injuries disablement benefit and the Social Mobility and Child Poverty Commission. However, it did not provide consent in respect of the provisions in the Bill which give Scottish Ministers the power to make consequential, supplementary, incidental or transitional provisions, by regulations, in relation to the introduction of universal credit and personal independence payment. The Scottish Government have opted to bring forward legislation in their own Parliament in due course to make the required changes.
>
> Therefore, in order to ensure the UK Government adhere to the principles of the Sewel convention, they will bring forward amendments at Third Reading of the Welfare Reform Bill to remove the relevant provisions from the Bill.
>
> These amendments will not affect the implementation of either universal credit or personal independence payment.
>
> Noble Lords will be given an opportunity to consider these amendments further at Third Reading.[95]

The full debate on the legislative consent motion can be read at the Scottish Parliament website.

During the debate, the Deputy First Minister, Nicola Sturgeon, said that while the Scottish Government recognised the need to reform the welfare system, it had "real concerns that these welfare reforms will hit the poorest and most vulnerable the hardest." She explained:

> On the implications of our position, I accept—and I have always been open about this—that by withholding legislative consent on the issues we cannot stop the UK Government implementing its proposals. Welfare is, unfortunately, a reserved matter, as I have said. Our approach will mean that the Scottish Government will be required to take powers by way of primary Scottish legislation rather than through Westminster legislation, to enable us to make the necessary consequential amendments to secondary legislation that will ensure access to passported benefits. Let me be clear: we will take whatever steps are necessary, in the timescale required, to ensure that we protect access to passported benefits when universal credit is introduced.
>
> Our doing that through primary legislation, and indeed with the establishment of a new parliamentary committee, will give the Parliament the opportunity to scrutinise more fully the implications of the changes and, within the obvious and severe financial constraints that we have, consider what mitigation measures are possible.

The full motion agreed to by the Scottish Parliament (S4M-01638.3) – which received the support of Labour MSPs – is below:

> That the Parliament supports the principle of a welfare system that is simpler, makes work pay and lifts people out of poverty but regrets that this principle, insofar as it is reflected by the introduction of universal credit and personal independence payments, is being undermined by the UK Government's deep and damaging cuts to benefits and services that will impact on some of the most vulnerable people in Scotland; on the matter of legislative consent, agrees that the relevant provisions of the Welfare Reform Bill, introduced in the House of Commons on 16 February 2011, in respect of data

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[95] HC Deb 12 January 2012 cc25-26WMS

sharing, Industrial Injuries Disablement Benefit and the Social Mobility and Child Poverty Commission, so far as these matters fall within the legislative competence of the Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament; further agrees that the provisions in the Bill that give the Scottish Ministers the power to make consequential, supplementary, incidental or transitional provisions, by regulations, in relation to the introduction of universal credit and personal independence payments, so far as these matters fall within the legislative competence of the Parliament, or alter the executive competence of the Scottish Ministers, should not be considered by the UK Parliament but that the necessary provision should be made instead by an Act of the Scottish Parliament; also agrees that an ad-hoc welfare committee should be convened with a remit to consider the implementation of the Welfare Reform Bill insofar as it affects people in Scotland, in particular the impact on passported benefits and, where benefits are devolved, the principles and operation of these, complementing the work of other relevant committees in the Scottish Parliament, UK Parliament and devolved assemblies across the UK and that this committee should continue to meet for the duration of the current parliamentary session; while agreeing the above position, urges the UK Government to reconsider the Welfare Reform Bill and, more broadly, its welfare reform agenda, which the Parliament considers will adversely affect vulnerable people across Scotland.

On 25 January the Scottish Parliament agreed a further motion setting up a Welfare Reform Committee with the remit "to keep under review the passage of the UK Welfare Reform Bill and monitor its implementation as it affects welfare provision in Scotland and to consider relevant Scottish legislation and other consequential arrangements."[96]

[96] c5682