

# **WELFARE REFORM BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Welfare Reform Bill as brought from the House of Commons on 16th June 2011. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND SUMMARY**

3. In July 2010 the Government published a consultation document *21<sup>st</sup> Century Welfare (Cm 7913)*. This set out a range of options for reform of the welfare system. Over 1600 responses were received, from external organisations, individual members of the public and Department for Work and Pensions staff. At the end of the consultation period, in November 2010, a White Paper *Universal Credit: welfare that works (Cm 7957)* was published, alongside the Government's responses to the consultation (*Consultation responses to 21<sup>st</sup> Century Welfare (Cm 7971)*). The White Paper set out the Government's proposals for welfare reform, which aim to improve work incentives, simplify the benefits system and make it less costly to administer. Not all the measures in the White Paper will require primary legislation, but this Bill gives effect to those proposals that do.
4. The major proposal for reform is the introduction of a new benefit, to be known as universal credit, which will replace existing in and out of work benefits. The Bill also makes provision for a new benefit, personal independence payment, which will replace the existing disability living allowance.
5. The Bill consists of 7 Parts:
  - Part 1 – Universal credit

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- Part 2 – Working-age benefits
- Part 3 – Other benefit changes
- Part 4 – Personal independence payment
- Part 5 – Social security: General
- Part 6 – Miscellaneous
- Part 7 – Final

6. The following paragraphs summarise those Parts, and are followed by detailed explanations of the individual clauses and Schedules.

## **GLOSSARY**

7. The following abbreviations are used for existing Acts:

- SSAA 1992 – Social Security Administration Act 1992
- SSCBA 1992 – Social Security Contributions and Benefits Act 1992
- JA 1995 – Jobseekers Act 1995
- SSA 1998 – Social Security Act 1998
- SSFA 2001 – Social Security Fraud Act 2001
- SPCA 2002 – State Pension Credit Act 2002
- TCA 2002 – Tax Credits Act 2002
- WRA 2007 – Welfare Reform Act 2007
- WRA 2009 – Welfare Reform Act 2009

8. The following other abbreviations are used:

- JSA – jobseeker’s allowance
- ESA – employment and support allowance

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- IS – income support
- DWP – Department for Work and Pensions
- HMRC – Her Majesty’s Revenue and Customs

**Part 1 – Universal credit**

9. This Part of the Bill contains provisions and confers regulation-making powers for an integrated working-age benefit to be called universal credit, which, depending on the claimant’s circumstances, will include a standard allowance (to cover basic living costs) along with additional elements for responsibility for children or young persons, housing costs and other particular needs.

10. Universal credit will be paid to people both in and out of work, replacing working tax credit, child tax credit, housing benefit, IS, income-based JSA and income-related ESA (for details on provisions for council tax support, please see the note on clause 34). It will provide support for people between 18 (or younger in specific circumstances) and the age at which the claimant becomes eligible for state pension credit.

11. The aim of universal credit is to smooth the transition into work by reducing the support a person receives at a consistent rate as their earnings increase.

12. The financial support provided by universal credit will be underpinned by responsibilities which claimants may be required to meet. The level of those requirements will depend on the claimant’s particular circumstances.

**Part 2 – Working-age benefits**

13. This Part of the Bill makes provision for changes to the responsibilities of claimants of JSA, ESA and IS in the period leading up to the introduction of universal credit and the abolition of income-based JSA, income-related ESA and IS. In particular provision is made for the introduction of a claimant commitment. The claimant commitment will be a record of the requirements claimants are expected to meet in order to receive benefit and the consequences should they fail to do so.

14. Once the universal credit clauses have come into force, ESA and JSA will continue alongside universal credit as contributory benefits. As well as the changes to be made in the interim period, this Part also introduces longer-term reforms to align ESA and JSA more closely with the provisions for universal credit. *Clauses 49 and 56* insert new sections into the

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JA 1995 and the WRA 2007 which replicate those for universal credit which relate to work-related requirements and sanctions, apart from where small differences are necessary, so that what can be expected of a claimant of contributory JSA or ESA is the same as it would be for a similar claimant of universal credit.

**Part 3 – Other benefits**

15. This Part of the Bill contains changes to a number of other social security benefits.

**Part 4 – Personal Independence Payment**

16. In June 2010 the Government announced, as part of the Budget, its intention to reform disability living allowance from 2013-14. Subsequently, in December 2010, a consultation paper *Disability Living Allowance reform (Cm 7984)* was published. The consultation paper sets out the Government's proposals to replace disability living allowance with a personal independence payment. The provisions in Part 4 set out the framework for the new benefit, while the consultation responses will feed into the detailed design of the benefit which will be provided for in secondary legislation.

**Part 5 – Social security: general**

17. This Part of the Bill contains provisions relating to the administration of social security benefits, including provisions relating to a cap on benefit payments; measures to deal with benefit and tax credit fraud and enabling the Secretary of State to share data with other bodies.

**Part 6 – Miscellaneous**

18. In January 2011 the Government published a consultation document *Strengthening families, promoting parental responsibility: the future of child maintenance (Cm 7990)*. The document set out the Government's view that parents should be encouraged and supported to make their own family-based arrangements for the maintenance of their children wherever possible, rather than using the statutory maintenance scheme. This will enable the Child Maintenance and Enforcement Commission ("the Commission") to focus on those cases where it is not possible for parents to make those arrangements themselves. This Part of the Bill makes provision to implement proposals which support the principles in the consultation document (but did not form part of the consultation) and which require primary legislation.

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19. Provision is also made for an amendment to the Insolvency Act 1986 to put beyond doubt that arrears of child support are excluded from the debts which may be included in an individual voluntary arrangement.

20. Provision is also made to establish the Social Mobility and Child Poverty Commission.

### **Part 7 – Final**

21. Part 7 contains clauses relating to financial provision, the extent of the Bill, commencement of provisions of the Bill, and the short title.

### **TERRITORIAL EXTENT**

22. Most provisions in this Bill extend to England and Wales and Scotland, but not to Northern Ireland. Northern Ireland has its own social security legislation, but there is a long-standing policy of parity in this area.

23. The provisions of the Bill extend to England and Wales and Scotland except:

(a) the following provisions extend to England and Wales, Scotland and Northern Ireland:

- *clause 33* (power to make consequential and supplementary provision: universal credit);
- *clause 34* (abolition of benefits);
- *clause 89* (power to make consequential and supplementary provision: personal independence payment);
- *clause 123(1) to (13)* (tax credits: transfer of functions etc);
- *clause 124(1) to (9)* (information-sharing between Secretary of State and HMRC); and
- *Part 7* (except for the Schedule of repeals); and

(b) amendments and repeals made by this Bill have the same extent as the legislation which is being amended or repealed.

24. Provisions relating to the transfer of tax credit functions (*clause 123(1) to (13)*), information-sharing between Secretary of State and HMRC (*clause 124(1) to (9)*) and the Social Mobility and Child Poverty Commission (*clause 136* and *Schedule 13*) will require a legislative consent motion in the Northern Ireland Assembly.

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25. In general, the provisions of the Bill apply to Wales in the same way as they apply to England. The Bill includes provisions allowing the sharing of information between local authorities in Wales (amongst other bodies) relating to welfare services within the legislative competence of the National Assembly for Wales and which therefore require a legislative consent motion in the Assembly.

26. There are also provisions which require the consent of Welsh Ministers because they impact on their functions, these measures are:

- changes to Welsh legislation as a result of the introduction of universal credit (*clause 33*);
- amalgamating a separate scheme for people injured as trainees into the main Industrial Injuries Disablement Benefit Scheme (*clause 64*);
- changes to allow localisation of the social fund (*clause 69*);
- provision relating to the Social Mobility and Child Poverty Commission (*clause 136 and Schedule 13*).

27. The Scottish Parliament's consent has been sought for the provisions in the Bill that trigger the Sewel Convention. These provisions are those:

- changes to other legislation relating to the introduction of universal credit and personal independence payments (*clauses 33 and 89*);
- amalgamating a separate scheme for people injured as trainees into the main Industrial Injuries Disablement Benefit Scheme (*clause 64*);
- allowing data-sharing with local authorities (*clause 126*); and
- provision relating to the Social Mobility and Child Poverty Commission (*clause 136 and Schedule 13*).

28. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

## **COMMENTARY ON CLAUSES**

### **Part 1: Universal credit**

#### ***Clause 1: Universal credit***

29. Part 1 creates the legislative framework for universal credit, a social security benefit available to people in and out of work.

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30. Universal credit may include, depending on the claimant's circumstances, a standard allowance, an amount for responsibility for children or young persons, an amount for housing costs and amounts for other particular needs or circumstances.

***Clause 2: Claims***

31. *Clause 2* contains provisions about claims for universal credit. A claim may be made either by a single person or, in the case of a couple, jointly.

32. *Subsection (2)* enables the Secretary of State to make regulations setting out circumstances in which a member of a couple may make a single person claim. This may be used, for example, where one member of a couple does not have a right to reside in the UK, and so is not entitled to universal credit. The other member of the couple would then be able to make a claim as a single person.

***Clause 3: Entitlement***

33. A single person is entitled to universal credit if they meet both the basic conditions and the financial conditions. For couples, both claimants must meet the basic conditions and they must jointly meet the financial conditions.

***Clause 4: Basic conditions***

34. The basic conditions are that a claimant must be at least 18 years old, under the qualifying age for state pension credit, in Great Britain, and not receiving education. From April 2010 the qualifying age for state pension credit is increasing gradually from 60 to 65, in line with women's State Pension Age. The claimant must also accept a claimant commitment, which contains the requirements that a claimant will be expected to meet in return for receiving universal credit. These requirements are set out in *clauses 13 to 28*.

35. *Subsection (2)* allows for regulations to prescribe circumstances in which exceptions may be made to the requirement to meet any of the basic conditions. In the case of joint claimants an exception may apply to either or both of the claimants. For example, where a person is above the qualifying age for state pension credit but their partner is not, the couple will need to make a claim for universal credit so the upper age limit will not be applied.

36. *Subsection (3)* provides a regulation-making power to define circumstances in which a different lower age limit will apply. This allows universal credit to be made available to people who are younger in specific circumstances, such as in the case of lone parents who are under 18 or young people who are estranged from their parents.

37. *Subsection (5)(a)* allows for regulations to specify whether or not a person is to be treated as being in Great Britain. For example, a person might be treated as being in Great Britain if they are employed on board a ship or working on an oil rig. Regulations may also specify when a person is to be treated as not in Great Britain because they are not considered to be habitually resident here. *Subsection (5)(b)* enables a claimant to continue to be entitled

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to universal credit if they leave the country temporarily. *Subsection (5)(c)* enables the universal credit provisions to be modified in relation to a person who leaves the country temporarily.

38. Under *subsection (6)*, regulations may be made setting out how receiving education is to be defined in relation to universal credit and to allow for provisions to treat people in particular circumstances as receiving or not receiving education. Under *subsection (7)* a person may be treated as having accepted or not accepted a claimant commitment in prescribed circumstances.

***Clause 5: Financial conditions***

39. *Clause 5* explains the financial conditions. *Subsection (1)* provides that entitlement is dependent on a claimant's capital and income. The capital and income thresholds for entitlement to universal credit will be set out in regulations. *Subsection (1)(b)* also allows for regulations to prescribe a minimum entitlement to universal credit. This could be used so that a person who would be entitled to only a very small amount of universal credit would not be entitled. *Subsection (2)* provides that in the case of joint claimants their combined capital and income must be below the prescribed thresholds, and provides an equivalent power to prescribe a minimum entitlement. The first regulations made under this clause will be subject to the affirmative resolution procedure.

***Clause 6: Restrictions on entitlement***

40. *Clause 6* allows the Secretary of State to place certain restrictions on entitlement to universal credit.

41. Under *subsection (1)(a)* regulations may specify circumstances in which a person will not be entitled to universal credit even though they meet the conditions of entitlement. This may be used in cases where a person is receiving another benefit such as state pension credit but also meets the conditions of entitlement for universal credit, to prevent both benefits from being payable.

42. *Subsection (1)(b)* prevents a person from being entitled to universal credit if they only meet the conditions of entitlement for a short period, to be prescribed in regulations.

43. *Subsection (1)(c)* provides that a claimant may not be entitled to universal credit for a short time after meeting the conditions of entitlement. This period will be determined in regulations. This recreates the waiting days that currently apply in JSA and ESA, and is intended to avoid the administrative costs involved in making awards for very short periods of entitlement.

44. *Subsection (2)* ensures that the number of days prescribed under paragraphs (1)(b) or (c) can be no more than seven.



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45. Regulations made under *subsection (3)* may set out circumstances in which the restrictions on entitlement in subsections (1)(b) and (1)(c) do not apply.

***Clause 7: Basis of awards***

46. *Clause 7* provides that an award of universal credit is to be payable in respect of an assessment period. This period will be prescribed in regulations. Under *subsection (3)* regulations will also allow for universal credit to be payable in respect of part of an assessment period, for example to deal with a part-period at the beginning or end of an award.

***Clause 8: Calculation of awards***

47. *Clause 8* sets out how the amount of universal credit a claimant receives will be calculated. For each claimant there is a “maximum amount” made up of the different elements (set out at greater length in clauses 9 to 12). Sums may then be deducted from this maximum amount in respect of a claimant’s earned income, such as wages, and unearned income, such as pension income. Regulations will prescribe how income is calculated and taken into account for universal credit. *Paragraph 4 of Schedule 1* contains further provisions about the calculation of income and capital. Under universal credit earned and unearned income will be treated differently.

48. The amount of universal credit will be reduced in respect of a claimant’s earned income. Claimants may be allowed to receive a certain amount of earned income before their universal credit award begins to reduce. The amount of income to be disregarded may differ depending on a household’s circumstances. The level of these disregards will be set in regulations under the powers provided in *paragraph 4 of Schedule 1*. Earnings disregards will be per household and where the conditions for more than one disregard are satisfied, people will get the highest disregard only.

49. Once earnings are above the level to be disregarded, the award of universal credit will be reduced at a constant rate for each extra pound earned. This rate will be determined in regulations made under *subsection (3)(a)*. The first regulations made under subsection (3) will be subject to the affirmative resolution procedure.

50. Some unearned income, which may include income from other benefits such as disability living allowance or the new personal independence payment, may be completely disregarded and not affect the amount of a person’s universal credit award. Other unearned income may reduce a claimant’s award.

***Clause 9: Standard allowance***

51. *Clause 9* provides for universal credit to include a standard allowance which will provide an amount for basic living costs. Essentially, the standard allowance for universal credit is intended to mirror the comparable standard rates currently in JSA and ESA. The first regulations made under *subsection (2)* will be subject to the affirmative resolution procedure.

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52. *Subsection (3)* allows for circumstances where an award will not include a standard allowance. For example, a standard allowance will not be included for prisoners on remand (but an amount in respect of housing costs could be included in an award for such a claimant).

***Clause 10: Responsibility for children and young persons***

53. *Clause 10* provides that where claimants have responsibility for dependent children or qualifying young people, an amount per child in respect of extra living costs may be included in the universal credit award. Under *subsection (2)* an extra amount may be included in respect of a disabled child or young person. The rate of the amount for children and young persons, and any extra amounts for disabled children, including any amount for more severely disabled children, will be prescribed in regulations. The first regulations made under *subsection (3)* will be subject to the affirmative resolution procedure. *Subsection (4)* allows for regulations to set out circumstances where an award will not include an amount in respect of responsibility for a child or qualifying young person.

54. A qualifying young person will be a person over the age of 16 who meets other conditions to be set out in regulations under *subsection (5)*. This will allow families to continue to receive support for young people over the age of 16 who are part of the household and continue in full-time, non-advanced education.

***Clause 11: Housing costs***

55. *Clause 11* provides for an amount to be included for housing costs. A person's maximum amount may include an amount for housing costs if the claimant is liable to make payments on their home. This could be in the form of rent, mortgage costs or other housing-related costs. Where the amount for housing relates to a liability to pay rent, it is intended that the amount will be calculated with reference to a claimant's household size and circumstances as well as their actual rent, as is the case currently in housing benefit. The detailed rules for calculating the amount will be set out in regulations under *subsection (4)*.

56. Regulations under *subsection (5)* may allow for circumstances where an award will not include an amount for housing at all, as well as for an amount for housing not to be included until a prescribed time or for its inclusion to end after a prescribed period. This may, for example, be used to prevent a person from receiving support for mortgage costs for a period at the beginning of their claim, as is currently the case in income support, or to maintain the current limit on how long a claimant may receive support for mortgage costs.

57. The first regulations made under this clause will be subject to the affirmative resolution procedure.

***Clause 12: Other particular needs or circumstances***

58. *Clause 12* provides a regulation-making power to prescribe amounts to be included in the universal credit award for other needs or circumstances, which would be extra elements in addition to the standard allowance. The Government intends to use these powers to include additional amounts for people who are at risk of having longer durations out of work, where a

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person is assessed as having limited capability for work or limited capability for work-related activity because of their physical or mental condition. An amount may also be included for carers, such as claimants who have regular and substantial caring responsibilities for a severely disabled person. It is also the Government's intention to provide an amount for working claimants who pay for formal childcare in respect of a qualifying child or children. Regulations may specify or provide for the determination or calculation of the rates of any such additional amounts.

59. Under *subsection (4)* additional amounts may be included in an award after a prescribed time or may not be included after a prescribed period. This may be used, for example, to prevent an award from including an amount in respect of limited capability for work or work-related activity until such time as a claimant has completed an assessment period and taken part in a work capability assessment. This is currently the case for the work-related activity component and the support component in ESA.

60. The first regulations made under this clause will be subject to the affirmative resolution procedure.

***Clause 13: Work-related requirements: introductory***

61. *Clause 13* sets out the four different types of work-related requirements. The requirements which any particular claimant may be expected to meet depend on which of four groups they fall into. *Clauses 15 to 18* define the four different types of work-related requirements, and *clauses 19 to 22* set out which of these requirements may be imposed on different groups of claimants.

62. The requirements a claimant may be expected to meet will vary depending on their circumstances and capability for work. These circumstances will include being a responsible carer for a child of a particular age. *Subsection (4)* of *clause 13* defines a responsible carer as either a lone parent or a member of a couple nominated as the lead carer. Regulations made under *paragraph 5(2)* of *Schedule 1* may make provision about nominations.

***Clause 14: Claimant commitment***

63. The responsibilities a claimant has to meet, including relevant work-related requirements, may be recorded in the claimant commitment, as set out in *clause 14*. The commitment may be updated and changed as necessary. To be entitled to universal credit, a claimant will normally need to accept a claimant commitment when they claim and whenever the commitment is changed.

64. Information that may be recorded in the claimant commitment, in addition to any work-related requirements, includes any information prescribed in regulations under *subsection (4)* or any other information specified by the Secretary of State. This may, for example, include the general duty to report changes of circumstance which affect the claimant's entitlement or rate of award.

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**Clause 19: Claimants subject to no work-related requirements**

65. *Clause 19* sets out the groups of claimants on whom the Secretary of State cannot impose any work-related requirements. These include:

- claimants who have limited capability for both work and work-related activity owing to a physical or mental condition. *Clause 38* contains further provisions on limited capability for work and work-related activity and the work capability assessment;
- responsible carers of a child under the age of one; and
- any claimant with regular and substantial caring responsibilities for a severely disabled person.

66. *Subsection (2)(d)* allows for regulations to add additional categories of claimant to the group subject to no work-related requirements. This may include some groups who can currently claim income support and who are not required to prepare for work, such as people serving on a jury. The first regulations made under this subsection will be subject to the affirmative resolution procedure.

67. *Subsection (3)* provides that these regulations may identify additional categories of claimant by reference to hours worked, earnings, income or the amount of universal credit paid (or any combination of these factors). This can be used to establish a “threshold” relating to a claimant’s level of employment. Regulations may provide that where a claimant falls above any such threshold the Secretary of State may not impose any work-related requirements on them.

68. *Subsection (4)(a)* makes clear that for claimants in a couple any such regulations can either be framed in relation to the individual claimant (such as the hours the individual works) or to the couple together (such as the hours both members of the couple work combined). *Subsection (4)(b)* ensures that regulations can enable the Secretary of State to determine any relevant matters such as hours, earnings, or the amount of universal credit on the basis of an estimate or calculation. For example, where a claimant has a variable working pattern regulations may enable the Secretary of State to determine whether a claimant should be subject to no work-related requirements based on estimated earnings.

**Clause 20: Claimants subject to work-focused interview requirement only**

69. *Clause 20* sets out the groups of claimants on whom the Secretary of State may only impose a work-focused interview requirement. A claimant will fall into this group if they are the responsible carer of a child who is at least one but below a prescribed age which may not be less than three. Regulations may also specify other descriptions of claimants who would fall into this group.

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***Clause 15: Work-focused interview requirement***

70. *Clause 15* defines the work-focused interview requirement. These interviews are to discuss the steps that a claimant might take (immediately or in the future) to increase their chances of getting work, increasing the number of hours they work or getting work that is better paid. Regulations under *subsection (2)* will set out in more detail the purpose of work-focused interviews.

***Clause 21: Claimants subject to work preparation requirement***

71. *Clause 21* sets out the groups of claimants on whom the Secretary of State may only impose work preparation and work-focused interview requirements. A claimant in this group may not be required to look for or be available for paid work. A claimant will fall into this group if it is determined that they have limited capability for work owing to a physical or mental condition, or if they fall into another description prescribed in regulations. Such regulations must include a responsible carer of a child aged three or four where such a person does not fall into the group which may only be subject to a work-focused interview requirement.

***Clause 16: Work preparation requirement***

72. *Clause 16* defines the work preparation requirement as actions specified by the Secretary of State in order to increase a claimant's chances (immediately or in the future) of getting work, increasing the number of hours they work or getting work that is better paid. *Subsection (3)* provides examples of the types of activities that could be specified, such as undertaking a work placement or work experience, participating in a training course or writing a CV, but this is not an exhaustive list. Regulations may set out other actions or provide more detail about the actions listed.

73. *Subsection (4)* makes clear that a work preparation requirement may include taking part in a work-focused health-related assessment. These will be carried out by a health care professional and will provide information about the claimant's capabilities and steps which might be taken to improve their mental or physical health. *Subsection (6)* defines what is meant by a health care professional.

***Clause 22: Claimants subject to all work-related requirements***

74. *Clause 22* provides that a claimant may be subject to all work-related requirements if they do not fall into one of the previous three groups. Except in prescribed circumstances a person in this group must always be subject to the requirements to search for work under *clause 17* and be immediately available and willing to take up work under *clause 18*. This is similar to the conditions that JSA claimants must currently meet.

***Clause 17: Work search requirement***

75. *Clause 17* defines the work search requirement. This requirement is in two parts: a general requirement to take all reasonable action to obtain paid work and a requirement to take any particular action specified by the Secretary of State, such as applying for a specific

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job or registering with a particular recruitment agency. *Subsection (3)* sets out examples of the kinds of actions a claimant may be required to undertake, and regulations may set out other actions or provide more detail about the actions listed. *Subsection (2)* allows the Secretary of State to specify an amount of time which must be devoted to an action.

76. Typically claimants in this group will be required to look for any reasonable employment. However, *subsection (4)* enables limitations to be placed on the work certain claimants in certain circumstances must look for. Limitations can either be indefinite or for a particular period. *Subsection (5)* includes examples of the types of limitations which may be applied. Limitations can be imposed through regulations or specified by the Secretary of State.

***Clause 18: Work availability requirement***

77. *Clause 18* defines the work availability requirement. This is a requirement that the claimant is able and willing immediately to take up paid work, increase the number of hours they work or get work that is better paid. *Subsection (3)* allows for regulations to place limitations on the work a claimant must be available for. These would match any limitations imposed on the work search requirement under clause 17. Again, limitations may be indefinite or for a particular period, and may be specified by the Secretary of State or imposed through regulations. *Subsection (5)* provides for regulations to define what is meant by being able and willing immediately to take up work, allowing the work availability requirement to be relaxed where it would not be possible for the claimant to take up work straight away. This may be used, for example, in circumstances where an existing contract of employment prevents the claimant from doing so.

78. If a claimant moves from one group to another then any work-related requirements which may not be imposed on the group the claimant moves to automatically cease. For example, any work search, work availability and work preparation requirements would no longer apply if a claimant moves from the group subject to all work-related requirements to the group who may only be subject to work-focused interviews.

***Clause 23: Connected requirements***

79. *Clause 23* provides for other requirements which can be placed on claimants in connection to the four work-related requirements. *Subsection (1)* allows the Secretary of State to require a claimant to participate in an interview at a particular time and place. This interview may be for any purpose relating to the imposition of a requirement, verification that a requirement is being met or helping the claimant to comply.

80. Under *subsection (3)* a claimant may be required to confirm their compliance in a particular way and provide evidence that requirements are being met. For claimants subject to work search and work availability requirements this can be used to require them to declare on a regular basis that they are meeting all the requirements placed upon them.

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81. *Subsection (4)* provides that claimants may be required to report certain changes of circumstance which may affect the work-related requirements that are imposed on them, or that they should become subject to, such as leaving a job.

***Clause 24: Imposition of requirements***

82. *Clause 24* contains provisions about the imposition of requirements on claimants. *Subsection (1)(a)* allows for regulations to prescribe circumstances in which specific requirements must or must not be imposed on certain claimants. *Subsection (1)(b)* does the same for any action which may be specified by the Secretary of State. This can be used to prevent the imposition of requirements where it would be inappropriate to do so. *Subsection (1)(c)* allows for regulations to set parameters around the detail of any action that may be required by the Secretary of State. This may be used, for example, to prescribe a maximum number of interviews a claimant could be expected to attend in any given period.

83. *Subsection (2)* provides that when deciding whether a work-focused interview requirement or a particular action under a work preparation or work search requirement should be imposed the Secretary of State must take regard of any matters prescribed in regulations.

84. *Subsection (3)* allows for any requirement imposed or action to be specified to be changed or withdrawn. If a requirement or a change to a requirement is not included in the claimant commitment, the Secretary of State may determine how a claimant is to be notified under *subsection (4)*.

85. *Subsection (5)* allows for claimants who have been victims of, or threatened with, domestic violence within a prescribed period to be exempted for a period 13 weeks from any work-related requirements applying to them. Further details of how domestic violence is to be defined and the circumstances in which this exemption may apply will be set out in regulations under *subsection (6)*.

***Clause 25: Compliance with requirements***

86. Regulations under *clause 25* may set out the circumstances in which a person will be treated as having met or not met the requirements placed upon them. These regulations may set out, for example, the level of activity which the claimant will be required to demonstrate in order to be treated as meeting requirements (such as the time to be spent looking for work). The regulations may also provide that where a claimant does not engage properly with the requirement (for example by being disruptive or violent in an interview or on a training course, or where a claimant's behaviour or appearance undermines their chances of success in a job interview) they will not be treated as meeting that requirement.

***Clause 26: Higher-level sanctions***

87. *Clause 26* provides for a reduction of the amount of a claimant's award in the event of certain failures. A failure under this section may be sanctionable for up to three years.

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88. *Subsection (2)* sets out the failures by those subject to all work-related requirements which may be sanctioned for up to this duration:

- failing to comply with a work preparation requirement to take part in a prescribed type of work placement, such as Mandatory Work Activity;
- failing to comply with a work search requirement to apply for a particular vacancy when required to do so;
- failing to comply with a work availability requirement to take up an offer of paid work; and
- leaving paid work or reducing pay voluntarily or because of misconduct.

89. *Subsection (3)* allows for a sanction to be applied under this section when a claimant who is in work at a level above a threshold set by regulations under clause 19(3) leaves their job or reduces their pay through misconduct or voluntarily, and as a result moves into the group subject to all work-related requirements.

90. *Subsection (4)* allows for a sanction to be applied under this section when a claimant leaves their job or reduces their pay voluntarily and without good reason or as a result of misconduct, or fails to take up an offer of paid work without good reason, if such failures occur before they make a claim for universal credit and when the resulting award is made they fall into the group who may be subject to all work-related requirements.

91. In all cases (except leaving work through misconduct), a claimant will not be sanctioned if they can demonstrate that they had good reason for the failure. Regulations under *paragraph 7 of Schedule 1* may set out the circumstances in which a person is to be treated as having or not having a good reason and the matters which are or are not to be taken into account in determining whether a claimant has good reason.

92. Under *subsection (5)(a)* regulations may prescribe circumstances in which a person is to be treated as not having ceased work or reduced pay voluntarily or because of misconduct. *Subsection (5)(b)* allows for reductions in pay below a prescribed level to be disregarded.

93. Regulations under *subsection (6)(a)* will set out the amount by which a claimant's award will be reduced. *Subsection (6)(b)* allows for regulations to prescribe the duration of a sanction, up to the three year maximum for any single failure.

94. *Subsection (7)* provides that regulations setting the duration of sanctions under this section may in particular allow for it to be decided with reference to any other failures and the period between failures. For example, regulations may provide that second and third failures



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after a first will result in a longer-lasting reduction if they occur within a particular period of time after the previous one.

95. *Subsection (8)(a)* provides for regulations to prescribe circumstances in which a sanction will not be applied. *Subsection (8)(b)* makes provision for a sanction to be carried over if a person's award ceases during the period of sanction and a new award is made within a prescribed period.

96. Regulations under *subsection (8)(c)* may allow for a sanction to be suspended or terminated in certain circumstances, such as if the work-related requirements that the claimant may be subject to change. Where a sanction is suspended, it may be reinstated in accordance with regulations.

97. To impose a sanction, a decision under section 10 of SSA 1998 will be made to supersede the original award decision so as to reduce the award amount for a particular period. This superseding decision will be appealable under section 12(1)(a) of that Act. Other determinations made before the sanction decision (such as the imposition of work-related or connected requirements, or whether the claimant has good reason for a failure) and which are made under the relevant clauses of this Act, are not appealable. This is the case currently in relation to, for example, JSA.

98. The first regulations made under this clause will be subject to the affirmative resolution procedure.

***Clause 27: Other sanctions***

99. *Clause 27* provides for a reduction in the amount of a claimant's award where they have failed without good reason to meet a work-related requirement or a requirement under clause 23, such as participating in an interview with an adviser. Any failure which is sanctionable under clause 26 cannot also be sanctioned under clause 27.

100. The amount by which an award of universal credit may be reduced, and the duration of any reduction will be set out in regulations under *subsection (4)*.

101. *Subsection (5)* provides that regulations under *subsection (4)* may allow for a reduction to continue until a claimant meets specified compliance conditions, or to last for a fixed period of up to 26 weeks (in relation to any single failure), or a combination of the two (for example, an open-ended period until the claimant meets the compliance conditions followed by a particular fixed period).

102. *Subsection (6)* defines a compliance condition to mean a condition to comply with the original requirement or a condition relating to future compliance with a requirement (for example, to comply with a new requirement or to take an action that should lead to the claimant meeting a requirement). The Secretary of State may specify that the claimant must

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meet more than one requirement and take more than one action to have met the compliance condition.

103. *Subsection (7)* allows a compliance condition to be varied or revoked, and enables the Secretary of State to notify a claimant of a condition in such manner as he determines.

104. *Subsection (8)* enables the duration of a fixed period sanction to be decided with reference to any previous failures and the period between the failures. For example, as with higher-level sanctions, the second and third failures after a first may result in a longer-lasting reduction if they occur within a particular period after the previous one.

105. *Subsection (9)* has the same effect as subsection (8) of clause 26.

106. The first regulations made under this clause will be subject to the affirmative resolution procedure.

***Clause 28: Hardship payments***

107. *Clause 28* enables regulations to make provision for universal credit payments to be made to claimants who have been sanctioned under clauses 26 or 27 and can demonstrate that they are or will be in hardship. In particular, regulations may prescribe the circumstances in which a person will be treated as being in hardship, the amounts and duration of any payments and conditions which claimants will have to satisfy to become and remain eligible. It also enables regulations to make provision for such payments to be recoverable. Where such payments are recoverable *clause 102* deals with the methods through which recovery can be made (for example, by deduction from future benefit payments).

108. Decisions relating to JSA hardship payments are currently appealable under section 12(1)(a) of the SSA, and similarly a decision as to whether or not to make a hardship payment by way of universal credit, and whether the payment ought to be recoverable, will be appealable under section 12(1)(a) of that Act.

109. The first regulations made under this clause will be subject to the affirmative resolution procedure.

***Clause 29: Delegation and contracting out***

110. *Clause 29* allows for contracted providers in the private and voluntary sectors to exercise functions of the Secretary of State relating to work-related and connected requirements.

111. It is envisaged that providers will be permitted to exercise such functions so as to deliver employment programmes such as the Work Programme. The Secretary of State, using the power to impose work preparation requirements under clause 16, may require claimants to participate in the Work Programme. In reliance on clause 29, Work Programme providers will

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be authorised to carry out the functions of the Secretary of State under clauses 13 to 25 which relate to work-related and connected requirements. Work Programme providers will therefore be able to impose relevant requirements on claimants, for example a work-preparation requirement to participate in particular training.

112. Any functions contracted out in this way will be subject to the same restrictions that apply to the Secretary of State. For example, a person in the group subject only to work-focused interview and work preparation requirements could not be expected to search for work or be available to take a job.

113. Where a claimant fails to comply with a requirement imposed by a provider, the Secretary of State will determine whether a sanction ought to apply. Functions relating to sanctions cannot be contracted out.

***Clause 30: Regulations: piloting***

114. *Clause 30* provides for pilot schemes to operate in relation to any regulations made under sections 13 to 28. Any pilot scheme must have the aim of determining whether the provisions made by the regulations are likely to help people to remain in work, obtain work or increase their pay or hours.

115. Pilot schemes are regulations made under sections 13 to 28 in relation to claimant responsibilities which are made for a limited period of up to three years and which may apply to only a limited group or number of people. The purpose of a pilot scheme is to trial different approaches to requirements or sanctions so as to evaluate the extent to which they may help claimants move into work.

***Clause 31: Supplementary regulation-making powers***

116. *Clause 31* and *Schedule 1* provide for further regulation-making powers relating to universal credit.

***Schedule 1: Universal credit: supplementary regulation-making powers***

117. *Paragraph 1* enables regulations to provide for circumstances in which a couple may be entitled to universal credit without both members of the couple meeting the basic entitlement conditions.

118. *Paragraph 2* allows for two periods of entitlement separated by a short gap to be treated as a single continuous period. This may be used, for example, to prevent a person having to go through a second qualifying period for an additional element. Regulations will prescribe the number of days allowable between periods of entitlement for linking rules to apply.

119. *Paragraph 3* makes provision relating to couples. Regulations under *sub-paragraph (1)* may provide for circumstances in which a joint claim may be treated as a claim by either

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or both members as single people and where claims made individually by members of a couple may be treated as a joint claim.

120. *Paragraph 3(2)* provides regulation-making powers relating to claimants becoming or ceasing to be a member of a couple. This provides that a joint award may be converted into one or two single awards, or a joint award with someone else, when a couple separate, without a new claim having to be made. It also enables a joint award to be made without a claim when a single claimant becomes a member of a couple. This may be used in cases where it is administratively simpler to continue the award and treat a couple separating or entering into a new relationship as a change of circumstance rather than requiring either party to make a new claim. Under *sub-paragraph (2)(c)*, regulations may set out the procedure to be followed when an award is converted and the information that a claimant may be required to provide.

121. *Paragraph 4* provides for regulations to set out how the income and capital of a claimant or joint claimants is to be calculated for the purposes of the universal credit. The first regulations made under this paragraph will be subject to the affirmative resolution procedure.

122. The intention is that the treatment of capital will be similar to that under income support currently. Capital below a certain level will be fully disregarded. Where a claimant has capital above a certain level, they will not meet the financial conditions and will not be entitled to universal credit. If they have capital between the lower and upper limits a nominal income from this will be calculated and taken into account as unearned income, reducing the universal credit award accordingly. Earned income will reduce a claimant's award at a constant rate for each extra pound earned, as set out in clause 8.

123. *Sub-paragraph (2)* provides that regulations may allow income and capital to be calculated by reference to an average over a certain period. This could be used in cases where a claimant's income fluctuates and cannot easily be taken into account otherwise.

124. Under *sub-paragraph (3)(a)* regulations may set out when a person is to be treated as having or not having capital or income. This may be used, for example, if a person deliberately disposes of capital to increase their entitlement to universal credit. *Sub-paragraph (3)(b)* provides for income to be treated as capital or capital as income. This allows for one-off payments to be dealt with in the most appropriate way. For example, a payment such as royalties would be considered capital but under this power could be treated as income. *Sub-paragraph (3)(c)* enables unearned income to be treated as earned or earned income as unearned, for example to allow for certain other benefits to be treated as earned income and taken into account with the earned income taper when calculating the amount of an award.

125. *Sub-paragraph (3)(d)* allows for regulations to prescribe an assumed level of income from a person's capital. This will be used to reduce a claimant's award of universal credit if they have capital above a certain level and below an upper limit. *Sub-paragraph (3)(e)* enables the capital or income of one member of a couple to be treated as being the other member's.

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126. Regulations may be made under *sub-paragraph (4)* specifying groups of people who may be regarded as having a certain level of income.

127. *Sub-paragraph (5)* provides that where there are joint claimants the income and capital of both will be taken into account, although under *sub-paragraph (6)* regulations may specify circumstances in which the income and capital of either member may be disregarded.

128. *Paragraph 5* allows for regulations to specify when a person is to be regarded as responsible or not responsible for a child or qualifying young person, and makes provision in relation to a couple nominating which member is responsible for a child for the purposes of clause 13.

129. *Paragraph 6* allows for regulations to provide for liability to pay all or part of an award to be discharged by the provision of a voucher. In such cases, entitlement to the amount of universal credit in relation to which the voucher is provided is extinguished.

130. Regulations may only provide for payment by voucher in cases where the calculation of the award includes an amount in respect of particular costs which the claimant may incur (referred to here as claimant costs). The amount of the award to be paid as a voucher may be determined in regulations but must not be more than the amount included in the calculation of the award in respect of claimant costs.

131. Vouchers under this paragraph may include not only physical documents but also any electronic code, authorisation or other non-cash means by which a claimant may meet claimant costs of a particular description.

132. A voucher may be limited in relation to the particular people who will accept it (such as authorised providers of services), the particular costs in relation to which it may be used and the period for which it will remain valid.

133. *Paragraph 7* provides for regulations to set out the circumstances in which there is or is not to be good reason and the factors which must or must not be considered when determining whether or not a person had good reason for a particular act or omission, such as failing to meet a requirement placed upon them. A determination as to whether a claimant has good reason is not appealable, as is the case under the current benefits system.

***Clause 32: Supplementary and consequential amendments***

134. *Clause 32* gives effect to *Schedule 2*.

***Schedule 2 – Universal credit: amendments***

135. *Schedule 2* makes consequential amendments relating to the introduction of universal credit. This includes amendments to allow some universal credit claimants to receive other benefits such as free school meals or legal aid.

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136. *Paragraph 1* amends various provisions in the Children Act 1989 so that universal credit claimants in particular circumstances may be exempted from contributing to the costs of certain services provided by local authorities.

137. *Paragraph 2* amends the Child Support Act 1991 so that where a person is paid universal credit and meets other prescribed conditions they will be taken to have no assessable income for the purposes of calculating maintenance payments.

138. *Paragraphs 3 to 34* amend SSAA 1992 to apply the provisions that relate to other benefits in respect of claims and payments to universal credit and to make other consequential amendments.

139. In particular, *paragraph 16* enables the Secretary of State to require rent officers to provide housing information for the purposes of universal credit or housing credit. *Paragraphs 17 to 21* make further provision relating to the supply of information for universal credit purposes.

140. *Paragraph 22* provides that rates of universal credit may be uprated annually by way of an uprating order. Under *paragraph 23* the amount of an award may be altered as a result of uprating without a further decision being made by the Secretary of State. Similarly *paragraph 24* allows for a person's universal credit award to be increased due to them reaching a particular age without a further decision. *Paragraph 25* makes consequential changes to existing financial provisions.

141. *Paragraphs 32 to 34* amend the Local Government Finance Act 1992 so that in certain circumstances outstanding amounts of council tax owed to a local authority may be deducted directly from an award of universal credit.

142. *Paragraph 35* amends section 2(3C) of JA 1995, as inserted by section 12(5) of WRA 2009, so that a person may be taken to have met the first contribution condition for contributory JSA in prescribed circumstances when they have been in receipt of universal credit.

143. *Paragraph 36* contains amendments to the Housing Act 1996 which make provision relating to the functions of rent officers in relation to universal credit and housing credit.

144. *Paragraphs 37 to 39* make amendments to the Education Act 1996 relating to school trips and free school meals. Under section 457 of the Act a pupil's parents are excluded from paying for board and lodging on school trips if they are in receipt of IS, income-based JSA or prescribed elements of tax credits. *Paragraph 38* amends this so that eligibility will be based on receipt of universal credit and other prescribed circumstances. *Paragraph 39* makes similar provision relating to free school meals and the right to request free milk at school.

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145. *Paragraphs 40 to 42* apply the provisions of the Social Security (Recovery of Benefits) Act 1997 to universal credit, so that if a person is awarded damages to compensate for wrongful dismissal or personal injury which has resulted in a claim to universal credit the amount of damages received may be reduced by the amount of benefit paid.

146. The amendments in *paragraphs 43 to 51* apply provisions in SSA 1998 relating to the making, supersession and revision of benefit decisions to universal credit.

147. *Paragraphs 52 to 54* make amendments to the Immigrations and Asylum Act 1999 so that people subject to immigration control cannot claim universal credit, except in prescribed circumstances.

148. *Paragraph 55* amends the Child Support, Pensions and Social Security Act 2000 to enable local authorities to make discretionary housing payments to universal credit claimants.

149. *Paragraphs 56 to 63* amend the SSFA 2001 to apply its provisions to universal credit.

150. *Paragraph 64* amends the SPCA 2002 so that a member of a couple who has attained the qualifying age for state pension credit may not receive state pension credit if the other member of the couple has not attained that qualifying age. This is to ensure that all claimants who have not attained the qualifying age for state pension credit are required to claim universal credit and, if appropriate, be subject to work-related conditions of entitlement.

151. *Paragraph 65* amends paragraph 1(5) of Schedule 1 of WRA 2007 so that a person may be taken to have met the first contribution condition for contributory ESA in prescribed circumstances when they have been in receipt of universal credit.

***Clause 33: Power to make supplementary and consequential provision etc***

152. *Clause 33* enables the Secretary of State in relation to reserved or excepted matters, and Scottish and Welsh ministers in relation to provision that falls within their respective devolved legislative competence, to make consequential, supplementary, incidental or transitional provision relating to universal credit.

153. Regulations under this clause may amend, repeal or revoke any relevant primary or secondary legislation.

***Clause 34: Abolition of benefits***

154. *Clause 34* provides for the abolition of income-based JSA, income-related ESA, IS, housing benefit, council tax benefit, child tax credit and working tax credit. *Schedule 3* makes consequential amendments relating to the abolition of these benefits. Abolition will happen once all claimants have been transferred to universal credit, with the exception of council tax benefit, which will be abolished in favour of localised schemes from April 2013. The repeals in *Part 1* of *Schedule 14* are consequential on this.

***Schedule 3 – Abolition of benefits: consequential amendments***

155. *Schedule 3* makes amendments consequential to the abolition of the benefits listed under *clause 34*. For the most part these changes remove references to contributory ESA or JSA, as these will be unnecessary once ESA and JSA are contributory benefits only, and update references to other legislation which has been amended.

***Clause 35: Universal credit and state pension credit***

156. *Clause 35* and *Schedule 4* provide for a new housing credit element of state pension credit to replace housing benefit for claimants above the qualifying age for state pension credit.

***Schedule 4: Housing credit element of state pension credit***

157. State pension credit is currently made up of two elements: the guarantee credit and the savings credit. *Schedule 4* amends SPCA 2002 to create a new credit to cover housing costs. This will provide support for people who have reached the qualifying age for state pension credit (for couples where both members have reached the qualifying age) once housing benefit is no longer available following the introduction of universal credit.

158. *Paragraph 2* and *3* of *Schedule 4* amend SPCA 2002 to provide that a person is entitled to state pension credit if, in addition to being in Great Britain and having attained the qualifying age, that person satisfies the conditions for entitlement to the new housing credit element. A person may be eligible for the housing credit without being entitled to either of the other elements of state pension credit, or may receive more than one element if they meet the relevant conditions.

159. *Paragraph 4* inserts a new *section 3A* into SPCA 2002. *Section 3A* sets out the conditions of entitlement to the housing credit and provides the powers to set out the structure of the housing credit in regulations. *Subsections (1)* and *(2)* of *section 3A* outline the specific conditions which a claimant must meet along with basic conditions which need to be satisfied in order to be entitled to the housing credit. *Subsection (1)* provides that, as with housing benefit, a claimant must be liable to make payments in respect of the accommodation they occupy as their home. *Subsection (2)* provides that a claimant will not be entitled to housing credit if the amount payable is below a certain level, to be prescribed in regulations, once the claimant's income and capital has been taken into account. This calculation will be specific to the housing credit and will not be the same as the income rules for the other elements of state pension credit.

160. *Subsection (3)* of the new *section* allows the Secretary of State to prescribe in regulations the method by which the rate of the housing credit will be determined or calculated. The amount may be zero to allow entitlement to be restricted in specific circumstances outside of the core entitlement conditions. The intention is that claimants will be entitled to broadly the same amount of support under the housing credit as they would have been entitled to by way of housing benefit.



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161. *Subsections (4) and (5)* of the new section specify types of accommodation in respect of which a housing credit may be claimed and allow the Secretary of State to make provision through regulations to determine when a claimant is treated as liable or not liable for payments in respect of the accommodation. *Subsection (6)* enables different provision to be made for different areas.

162. Assessed income periods in state pension credit are set periods in which changes to retirement provision, such as income from retirement pensions, annuities or capital, do not need to be reported, thereby fixing the amount of retirement provision. Provision in respect of fixing a claimant's retirement provision is provided by section 7 of SPCA 2002. *Paragraph 5* of the Schedule amends section 7 so as to give the Secretary of State the power to prescribe in regulations circumstances in which retirement provision will not be fixed for the purpose of determining entitlement to the housing credit.

163. *Paragraph 6* amends section 12 of SPCA 2002 to enable regulations to modify provisions relating to the housing credit where a claim is made by members of a polygamous marriage. *Paragraph 7* inserts a definition of housing credit into the interpretation section of SPCA 2002.

164. *Part 2* of the Schedule makes consequential amendments to other legislation as a result of the replacement of housing benefit with the housing credit.

***Clause 36: Universal credit and working-age benefits***

165. This clause and *Schedule 5* make provision about the relationship between universal credit, JSA and ESA.

***Schedule 5: Universal credit and other working-age benefits***

166. *Paragraph 2* of *Schedule 5* enables the Secretary of State to make provision in regulations for circumstances where a claimant is entitled to universal credit and either ESA or JSA. After the introduction of universal credit, ESA and JSA will continue to be available as contributory benefits.

167. *Sub-paragraph (1)* allows for regulations to determine the amount of ESA or JSA payable where a claimant is entitled to universal credit as well as one of the contributory benefits. Under *sub-paragraph (2)* this may include paying no amount of ESA or JSA.

168. Regulations may also make provision for how work-related requirements and sanctions will apply where a person is entitled to either JSA or ESA and universal credit. This may include treating compliance with a requirement for the purposes of one benefit as compliance for the other, or not applying work-related requirements in certain circumstances.

169. *Sub-paragraph (5)* enables regulations to provide for the order in which sanctions are applied when a person is entitled to more than one benefit and provide that, if both benefits

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are payable, a reduction in one as a result of a sanction does not lead to an increase in the other.

170. *Paragraph 3* allows regulations to provide that sanctions imposed on a universal credit claimant may be applied to an award of ESA or JSA if the award of universal credit ceases and the claimant moves onto one of these benefits.

171. Similarly, regulations may provide that sanctions imposed on JSA or ESA claimants may be applied to an award of universal credit. In certain circumstances, these rules may not apply (which may include, for example, certain changes in a claimant's circumstances such as severe ill health).

172. *Paragraph 4* allows for regulations under clause 28 to provide for hardship payments to be made to a person who is subject to a sanction and is entitled to JSA or ESA and universal credit, or where a sanction imposed on a JSA or ESA claimant has been applied to a subsequent award of universal credit.

173. *Paragraph 5* amends JA 1995 and WRA 2007 to allow for the introduction of an earnings taper, so that ESA and JSA will be reduced at a constant rate as earnings increase in the same way as universal credit. This rate will be prescribed in regulations.

***Clause 37: Migration to universal credit***

174. *Clause 37* gives effect to *Schedule 6* which makes provision relating to the replacement of the benefits that will be abolished under clause 34, as well as any other prescribed benefits.

***Schedule 6 – Migration to universal credit***

175. *Schedule 6* provides for the migration of existing benefit claimants onto universal credit. *Paragraph 1(1)* provides a general regulation-making power for this purpose, and the rest of the Schedule sets out illustrative examples of how this power may be used. The first regulations made under this sub-paragraph will be subject to the affirmative resolution procedure, where they are making provision under *paragraphs 4, 5 and 6* of this Schedule. *Paragraph 1(3)* defines the 'appointed day', which is referred to in many of the illustrative provisions, as the day on which section 1 (and therefore the universal credit provisions) come into force.

176. *Paragraph 2* contains provisions relating to claims made before universal credit provisions come into effect. *Sub-paragraph (1)(a)* enables a claim for universal credit to be made before the universal credit provisions are introduced. *Sub-paragraph (1)(b)* allows a claim for universal credit made before the appointed day to be treated as a claim for the appropriate existing benefits. This may be used if the person making the claim fell into a group which had yet to begin the transition process. *Sub-paragraph (1)(c)* allows for a claim for an existing benefit to be treated as a claim for universal credit.

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177. *Sub-paragraph (2)* allows for an award of universal credit to be made in respect of a period before universal credit is introduced. This might be used if a person made a claim to one of the existing benefits shortly before the introduction of universal credit. In these circumstances, it could make sense to treat their claim as a claim to universal credit, making an award for the whole period.

178. *Paragraph 3* contains provisions relating to claims made after the ‘appointed day’ on which the universal credit provisions come into effect. It allows for a phased transition from existing benefits to universal credit.

179. Claimants may not be able to move voluntarily from an existing benefit to universal credit. *Sub-paragraph (1)(a)* provides that regulations may exclude temporarily or permanently anyone receiving one of the relevant existing benefits from making a claim for universal credit. The power to exclude a person permanently could be used, for example, where a claimant is approaching state pension age and so will soon not meet the conditions of entitlement for universal credit.

180. *Sub-paragraph (1)(b)* allows for a temporary delay before a person can make a claim for universal credit. *Sub-paragraph (1)(c)* allows for a person to be excluded from entitlement for a temporary period.

181. *Sub-paragraph (1)(d)* allows claims for universal credit to be treated as claims for an existing benefit. This may apply particularly in cases where the claimant is excluded from claiming universal credit under *sub-paragraph (1)(a)*. *Sub-paragraph (1)(e)* enables a claim for an existing benefit to be treated as a claim for universal credit during this transitional period.

182. *Sub-paragraph (2)* allows for an award of universal credit to be made in respect of a period before the universal credit provisions come into effect. This follows the provision in *paragraph 2(2)* with the same effect for claims during the transitional period.

183. *Paragraph 4* enables regulations to make provisions relating to ongoing awards of the existing benefits and the making of awards for universal credit.

184. *Sub-paragraph (1)* allows for the termination of an award of an existing benefit and the making of an award of universal credit in its place. An award of universal credit may be made without the claimant having to apply.

185. Under *sub-paragraphs (2)(a)* and *(b)* regulations may require claimants to follow a certain procedure, provide information or undergo an assessment when the new award of universal credit begins, and to set out the consequences if a person fails to do so.

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186. *Sub-paragraph (2)(c)* allows for regulations to temporarily or permanently alter the conditions of entitlement for people moving onto universal credit and determine the amount of their award. This means that some people who are entitled to an existing benefit but would not otherwise meet the conditions of entitlement for the universal credit could be entitled to universal credit.

187. The sub-paragraph also allows in certain circumstances for people who have taken a work capability assessment for the purposes of an existing benefit to be exempted from the requirement to undertake an assessment for universal credit.

188. *Sub-paragraph (2)(d)* enables regulations to make provision for the amount of an award. *Sub-paragraph (2)(e)* enables the fulfilment of certain conditions of entitlement for an existing benefit to be treated as fulfilment of the same condition for universal credit.

189. *Sub-paragraph (3)* allows for the amount of universal credit a claimant will receive to be linked to the amount of benefit they receive under the current system, so that their amount of universal credit is the same as or not more than a prescribed amount less than their current award. It also enables the amount of a person's universal credit award to be linked to the amount of an existing benefit award even where there is a short gap in entitlement before their universal credit award begins.

190. *Paragraph 5* includes transitional provisions relating to the imposition of work-related requirements and sanctions. This includes provisions under *sub-paragraphs (2)(a)* and *(b)* to allow claimant commitments or requirements that claimants have accepted in relation to JSA, ESA or IS to be treated as being for universal credit. *Sub-paragraph (2)(c)* allows compliance with a requirement for one of these benefits to be treated as compliance for universal credit. Under *sub-paragraph (2)(d)* requirements may also be withdrawn or not applied temporarily for the purposes of transition.

191. *Sub-paragraph (3)* makes provision relating to sanctions. In particular, *sub-paragraph (3)(a)* allows for a sanction applied to an existing award of JSA, ESA or IS to be continued when a person moves to universal credit. Under *sub-paragraph (3)(c)* provisions relating to universal credit sanctions may be disapplied temporarily.

192. *Sub-paragraph (4)* sets out the work-related requirements and sanctions to which these provisions may apply.

193. *Paragraph 6* allows for any provision of TCA 2002 (or regulations made under it) to be modified as necessary for the purposes of transferring people from working tax credit and child tax credit to universal credit. This may be used to align certain tax credit rules more closely with universal credit in advance to facilitate the transition process. Paragraph 6 also provides for overpayments of tax credits to be treated as overpayments of universal credit.

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194. *Paragraph 7* provides for regulations which will allow these transitional provisions to operate even if there is a gap in entitlement which would otherwise mean that they could not be used.

***Clause 38: Capability for work or work-related activity***

195. *Clause 38* provides powers relating to the determination of limited capability for work and limited capability for work-related activity owing to a physical or mental condition. A person's capability for work may determine the work-related requirements which may be imposed under chapter 2. The intention is that the clause allows for the same provision as for ESA in sections 8 and 9 of WRA 2007.

196. *Subsections (1) and (2)* define limited capability for work and limited capability for work-related activity for the purposes of universal credit. Regulations under *subsections (3), (4) and (5)* will set out how a person's capability for work is to be determined and provides powers for an assessment to be carried out, including a medical examination if required. It is intended that the work capability assessment will continue to be used to determine limited capability for work and limited capability for work-related activity for universal credit, as is currently the case for employment and support allowance.

197. Under *subsection (6)* regulations may provide for a claimant to be treated as having or not having limited capability for work or work-related activity. In particular, a claimant may be treated as not having limited capability for work or work-related activity if they fail without good reason to provide any evidence or information requested in the prescribed manner or to attend a medical examination when required to do so. Provisions on good reason are contained in paragraph 7 of Schedule 1.

198. *Subsection (8)* enables a person to be treated as having limited capability for work before they undertake an assessment or a decision is made to treat them as not having limited capability for work (if, for example, they fail to attend a work capability assessment). This will allow a claimant's work-related requirements to be decided initially on the basis of medical certificates while the assessment process is carried out. The intention is that this provision has the same effect as section 8(5) of WRA 2007.

199. *Subsection (9)* allows for an assessment of a person's capability for work to be made whilst they are being treated under subsection (6) as having limited capability for work or work-related activity.

***Clause 39: Information***

200. *Clause 39* ensures that, where there may otherwise be some doubt, certain information is to be considered social security information. The clause covers information relating to a claimant's work-related requirements (for example, information on employment which a claimant has given in the course of an interview) or medical information gathered on claimants whose capability for work or work-related activity has been assessed under clause 38.

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***Clause 40: Couples***

201. *Clause 40* sets out how a couple is to be defined for the purposes of universal credit. Regulations under *subsection (3)* may prescribe circumstances in which a married couple are to be treated as single people and in which two people are to be treated as living together as man and wife or civil partners or treated as being or not being in the same household.

***Clause 41: Interpretation of Part 1***

202. *Clause 41* provides details of how certain other terms are to be interpreted for the purposes of Part 1. In particular, regulations under this clause may prescribe what is meant by disabled or severely disabled, regular and substantial caring responsibilities, and work.

***Clause 42: Regulations: general***

203. *Clause 42* makes provision about the ways in which the powers to make regulations included in this Part may be used.

204. *Subsection (2)* enables regulations to make different provision through regulations for different cases or purposes and in relation to all or some particular cases or purposes. *Subsection (5)* allows for any amount that is to be set in regulations under Part 1 to be zero. This will, for example, enable the rates of any of the amounts to be included in a person's maximum amount to be zero or for the amount of a sanction to be zero. Amounts may be different for single people and couples or varied according to a person's age, as a result of *subsection (6)*.

205. *Subsection (7)* allows for regulations relating to the housing costs element or the element for other particular needs or circumstances to make different provision for different areas. For example regulations relating to support for housing costs will reflect the relative housing costs in different geographical areas in Great Britain.

***Clause 43: Regulations: procedure***

206. *Clause 43* provides that regulations made under Part 1 are subject to the negative resolution procedure in the Houses of Parliament, with certain exceptions. Regulations made under specified provisions will be subject, in the first instance, to the affirmative resolution procedure. Regulations made by the Secretary of State may be subject to the affirmative procedure if they relate to a pilot scheme under clause 30(1) or if they are combined in a single statutory instrument with any other provision attracting the affirmative procedure. Regulations made by Welsh Ministers will be subject to the affirmative procedure. *Subsection (8)* provides that regulations made by Scottish Ministers which amend or repeal primary legislation must be subject to the affirmative procedure in the Scottish Parliament.

**Part 2: Working-age benefits**

***Clause 44: Claimant commitment for jobseeker's allowance***

207. The claimant commitment will be introduced across JSA, ESA and IS before the introduction of universal credit, and will be a record of the responsibilities the claimant has to

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meet, including any requirements relating to work. Accepting a claimant commitment will be a condition of entitlement for all three benefits.

208. *Clause 44* makes amendments to JA 1995, WRA 2009 and SSA 1998 to introduce claimant commitments for people claiming JSA, replacing jobseeker's agreements.

209. *Subsection (2)* amends section 1(2)(b) of JA 1995 to make accepting a claimant commitment a condition of entitlement to JSA.

210. *Subsection (3)* substitutes a new *section 9* into the JA 1995 which explains the claimant commitment. As in universal credit, the claimant commitment will be a record of the responsibilities a claimant has to meet. *Subsection (2)* of the new section 9 explains that the commitment must be prepared by an employment officer and may include information prescribed in regulations and any other information the employment officer or the Secretary of State considers it appropriate to include.

211. *Subsection (3)(b)* of section 9 provides that, in particular, the commitment may include details of any requirements placed upon a claimant under section 8 or section 17A of JA 1995, or under a jobseeker's direction. Section 8 relates to attendance of interviews with advisers and provision of evidence that they are meeting the jobseeking conditions, and section 17A allows for claimants to be required to take part in employment programmes or schemes such as Mandatory Work Activity and the Work Programme.

212. *Subsection (3)(c)* of section 9 provides that the commitment may also contain details of the sanctions that result if any of the requirements are not met without good reason.

213. *Subsection (4)* of section 9 ensures that a claimant will only be asked to accept a claimant commitment if the employment officer is satisfied the claimant would meet the conditions of entitlement set out in section 1(2)(a) and (c) of JA 1995, to be available for employment and actively seeking employment, if they meet the requirements recorded within it.

214. *Subsections (5) and (6)* make provision for the employment officer to refer, or the claimant to request a referral, of a claimant commitment to the Secretary of State to determine whether the claimant would meet the requirements to be available for and actively seeking work if they comply with the proposed claimant commitment, and whether it is reasonable to expect the claimant to comply with the commitment in relation to meeting those conditions.

215. *Subsection (7)* enables the Secretary of State, following such a referral, to give directions about the terms on which the claimant commitment must be accepted and to direct that the proposed claimant commitment is to be treated as having been accepted by the claimant on a date specified in the direction (if the claimant has accepted the commitment).

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216. *Subsection (8)* enables regulations to set out the matters which the Secretary of State must take into account when giving a direction to treat the claimant commitment as having been accepted on a certain date, and the persons who must be notified of the Secretary of State's decision or any directions given by the Secretary of State.

217. *Subsection (9)* enables regulations to set out circumstances in which a person could be treated as having accepted a claimant commitment. This might be necessary if the claimant has satisfied all the other criteria, but is temporarily unable to formally accept the claimant commitment in the manner set out in regulations. In such circumstances, regulations could enable an adviser to treat the claimant as if they have met the condition of entitlement that they have accepted a claimant commitment. Payment of benefit could therefore begin immediately and the claimant could confirm acceptance in the prescribed manner as soon as they are able to do so.

218. *Subsection (10)* provides that a claimant must accept the most up-to-date version of a claimant commitment, and do so in the prescribed manner, to meet the relevant entitlement condition.

219. *Subsection (4)* of *clause 44* substitutes a new *section 10* into JA 1995 to allow for the commitment to be varied by the employment officer. Only in the case of variations relating to the jobseeking conditions is there a right of referral.

220. *Subsection (2)* of the new section 10 makes equivalent provision to subsection (4) of new section 9 where an employment officer proposes to vary a claimant commitment.

221. If a variation to a claimant commitment is proposed relating to the jobseeking conditions, the employment officer must notify the claimant. The employment officer may, and if the claimant so requests, refer the proposed variation to the Secretary of State. The unvaried claimant commitment will continue to have effect until such time as the referral is concluded.

222. *Subsections (5) to (7)* of the new section 10 make equivalent provision to subsections (5) to (8) of new section 9 relating to referrals of proposed variations. On a referral, the Secretary of State will have the same powers as under section 9 to give directions. Similarly, regulations may prescribe matters to be taken into account by the Secretary of State and who a determination or direction made under section 10 must be notified to.

***Clause 45: Interviews***

223. *Subsection (1)* of *clause 45* amends section 8 of JA 1995, which allows the Secretary of State to require a claimant to attend at a certain time and place. The clause amends this so that the Secretary of State may require a claimant to participate in an interview in other ways so allowing interviews to be conducted remotely.



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**Clause 46: Sanctions**

224. *Clause 46(1)* inserts new sections 19, 19A and 19B into the JA 1995, to replace current sanctions provisions, and provide for a new sanctions system which may be applied to claimants or joint claimants of JSA in the event that they fail to meet requirements. It also inserts new section 19C which enables regulations to be made providing for hardship payments to be payable where JSA is reduced under sections 19 to 19B.

225. These changes will take effect until income-based JSA is superseded by universal credit.

226. New *section 19* of JA 1995 provides for a claimant's award of jobseeker's allowance or joint-claim jobseeker's allowance to be reduced for up to three years in respect of any one failure where they have failed to meet the most important requirements placed upon them.

227. The failures which may be sanctioned for up to this duration are:

- losing a job through misconduct or leaving voluntarily;
- refusing or failing to apply for or accept a job of which an employment officer has informed the claimant;
- neglecting to avail themselves of a reasonable opportunity of employment, (for example, people who do not take an opportunity to return to work after being temporarily laid off); and
- failing to participate in prescribed schemes to assist them to obtain employment under section 17A(1) of JA 1995, inserted by section 1 of WRA 2009.

228. In all cases except losing a job through misconduct, a claimant will not be sanctioned if they can demonstrate good reason for the failure. A person will be treated as not having left work voluntarily in prescribed circumstances, which will include cases where the person has accepted voluntary redundancy.

229. The amount by which a claimant's award may be reduced, and the duration of any reduction will be specified in regulations under *subsection (4)* of the new section 19. A reduction for any single failure under this section may not last for longer than three years. The duration of a reduction may be determined by reference to previous failures within a prescribed period under *subsection (5)*. For example, regulations may provide that second and third failures will result in a longer-lasting reduction if they occur within a particular period of time after the previous failure.

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230. Regulations under *subsection (6)* may set out circumstances in which a claimant's benefit will not be reduced despite a sanctionable failure, and may allow for a sanction to be transferred to a new award of jobseeker's allowance if a claimant's award is terminated.

231. *Subsection (7)* makes provision for cases where joint-claim jobseeker's allowance is to be reduced under subsection (1), enabling a reduced amount of JSA to be paid to the other member of the couple where one member of the couple has been sanctioned for a failure.

232. New *section 19A* allows for a claimant's or joint-claimants' award to be reduced in the event that they fail to meet other requirements.

233. Failures which may be sanctionable under this provision are:

- failing to attend an interview or to provide information or evidence relating to the claimant's circumstances, availability for work and efforts to find work under section 8(1) or (1A) of JA 1995;
- failing to participate in schemes to assist them to obtain employment under section 17A, other than any schemes prescribed under the new section 19;
- refusing or failing to comply with a reasonable jobseeker's direction;
- neglecting to avail themselves of a reasonable opportunity to take part in a training scheme or employment programme;
- refusing or failing to apply for or accept a place on such a scheme which has been notified to him by an employment officer; or
- giving up a place or failing to attend a training scheme or employment programme, or losing a place through misconduct.

234. As with requirements under the new section 19, a sanction will not be applied if the claimant can demonstrate good reason for the failure (except in cases where the claimant loses a place on a training scheme or employment programme through misconduct). Any requirement which is sanctionable under section 19 cannot also be sanctioned under this section.

235. The amount of any reduction will be set out in regulations, along with the period for which a reduction is to apply. A sanction may be applied for an open-ended period until a claimant meets a particular compliance condition, for a fixed period up to a maximum of 26 weeks, or a combination of the two. The compliance condition may be to meet the original requirement; or relate to future compliance with a jobseeker's direction or any requirement under section 8(1),(1A) or 17(A); or relate to future avoidance of a failure which would be

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sanctionable under sections 19A(2)(d) to (g). For example, a person may be required to attend a training course and ensure that they do not give up their place or lose it as a result of their behaviour. This condition may be revoked or varied, and will be notified to the claimant in such manner as the Secretary of State may determine.

236. Under *subsection (8)* of section 19A the duration of a fixed period sanction may be determined by reference to previous failures under this section and the period between these failures. It is envisaged that second and third failures will result in a longer-lasting reduction, up to a maximum of 26 weeks for a single failure, if they occur within a particular period after the previous failure.

237. *Subsection (9)* makes equivalent provision to that in section 19(6) so that regulations may provide for a reduction not to be applied despite a sanctionable failure, and for a reduction period to apply to a new award of JSA made within a prescribed period, if the original award is terminated for any reason.

238. *Subsection (10)* makes equivalent provision to that in section 19(7) relating to sanctions applied to joint-claim couples.

239. The new *section 19B* allows for regulations to specify circumstances in which a claimant or joint claimant's award is to be reduced if, under a previous award as a single person or part of a joint-claim couple, they were disentitled for failing to comply with the jobseeking conditions to be available for and actively seeking employment.

240. The amount and period of a sanction will be set out in regulations. A reduction under this section cannot continue for longer than 13 weeks from the day on which the claimant's previous entitlement ceased.

241. Under *subsection (6)* of section 19B the duration of a fixed period sanction may be determined by reference to previous failures under this section and the period between these failures. It is envisaged that second failures will result in a longer-lasting reduction.

242. *Subsection (7)* makes provision for a reduction period to apply to a new award of JSA made within a prescribed period, where the original award was terminated.

243. New *section 19C* enables regulations to make provision for payments of JSA to be made in cases where a claimant or joint-claimant's award has been reduced under sections 19 to 19B and they can demonstrate that they are, or will be, in hardship. As with the universal credit provisions in clause 28, regulations may provide for circumstances in which such payments will be recoverable. This replaces the current provisions for payment of hardship payments in circumstances where a person is subject to a sanction under the JA 1995.

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244. *Subsection (2)* amends section 37 of JA 1995 to provide that the first regulations made under sections 19 to 19C will be subject to the affirmative resolution procedure.

245. *Subsection (3)* of the clause inserts a new *paragraph 14AA* into Schedule 1 of JA 1995 to provide for regulations to prescribe factors to be considered when determining whether or not a person had good reason for a particular act or omission. This replaces current provisions in the JA 1995 and changes references to good cause to good reason to align with the rules for the universal credit. Regulations may also prescribe circumstances in which a person is to be treated as having or not having good reason.

246. *Subsection (4)* repeals provisions in Schedule 3 of SSA 1998. Schedule 3 lists decisions against which an appeal lies and includes decisions to impose a sanction pursuant to section 19 or 17A JA 1995. Sanctions imposed under the new provisions will still be appealable under section 12(1)(a) of SSA 1998.

***Clause 47: Procedure for regulation-making powers***

247. *Clause 47* amends section 37 of JA 1995 so that regulations under sections 6 and 7, relating to the condition that a claimant must be actively seeking and available for employment, are no longer subject to the affirmative resolution procedure in the Houses of Parliament. The amendment would ensure that the Parliamentary procedure in relation to these aspects of JSA will be consistent with the similar regulations that may be made in relation to universal credit, so they will be subject to negative resolution.

***Clause 48: Consequential amendments***

248. *Clause 48* gives effect to *Schedule 7*.

***Schedule 7: Jobseeker's allowance in interim period: consequential amendments***

249. *Schedule 7* makes consequential amendments relating to the interim changes made to JSA. In particular, *paragraph 6* repeals sections 20C and 20D of JA 1995, inserted by section 25 of WRA 2009, which relate to sanctions for violent conduct in relation to a claim.

***Clause 49: Claimant responsibilities for jobseeker's allowance***

250. *Clause 49* replaces provisions in JA 1995 that relate to the responsibilities that JSA claimants must meet and the imposition of sanctions where JSA claimants fail to meet those responsibilities. These changes will be brought into force at the same time as universal credit and will relate only to contribution-based JSA.

251. The amendments ensure that the provisions to impose requirements on JSA claimants are the same as those for claimants who are subject to all work-related requirements in universal credit. The intention is that the provisions in this clause and clause 65 will create a single system of claimant responsibilities which are consistent across JSA, ESA and universal credit.

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252. *Subsection (2)* repeals the provisions that make actively seeking and being available for work conditions of entitlement to JSA. This is to ensure parity with the approach under universal credit where claimants in the group subject to all work-related requirements are required to meet work search and work availability requirements (in all but prescribed circumstances) but these are not conditions of entitlement.

253. *Subsection (3)* inserts new sections into JA 1995 which mirror the provisions for universal credit in Chapter 2 of Part 1 other than where there are necessary changes. These replace the jobseeking conditions in sections 6 to 10 of JA 1995.

254. New *sections 6B to 6E* set out the work-related requirements that can be imposed on a JSA claimant: a work-focused interview requirement, a work preparation requirement, a work search requirement and a work availability requirement. Clauses 15 to 18 make the same provision in relation to universal credit. *Section 6F(1)* provides that, in all but prescribed circumstances, claimants must be subject to work search and work availability requirements. Under *section 6F(2)* the Secretary of State may also impose work-focused interview or work preparation requirements.

255. Work-related requirements may be recorded in the claimant commitment under *section 6A*. *Section 6G* provides for other requirements which can be placed on claimants in connection to the work-related requirements, which include requiring claimants to participate in an interview with an adviser or providing evidence that they are meeting their work-related requirements. These provisions are the same as those which relate to universal credit in clauses 14 and 23.

256. *Sections 6J and 6K* make equivalent provision to that in clauses 26 and 27 which set out the sanctions which may result if a claimant fails without good reason to meet the requirements placed upon them. *Section 6J* covers the most serious failures, which may result in a sanction for up to three years. *Section 6K* allows for a claimant's benefit to be reduced for other failures, for an open-ended period until a compliance condition is met, for a fixed period of up to 26 weeks or a combination of both.

257. *Section 6L* allows for functions relating to the imposition of work-related and connected requirements to be contracted out. This power does not extend to functions relating to sanctions. *Section 6L* replicates clause 29 which allows for contracting out in relation to universal credit.

258. Section 37 of JA 1995 is amended to provide that the first regulations made under new sections 6J or 6K are subject to the affirmative resolution procedure.

***Clause 50: Dual entitlement***

259. *Clause 50* inserts a new *subsection (6A)* into section 1 of WRA 2007 to ensure that people who have limited capability for work may be entitled to contributory ESA in some

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circumstances where they are, at the same time, a member of a couple entitled to joint-claim JSA.

260. Section 1(3)(f) of WRA 2007 provides that a person is not entitled to ESA if they are a member of a couple who are entitled to joint-claim JSA.

261. The new subsection (6A) ensures that, for the purposes of section 1(3)(f), the reference to a couple does not include any couple entitled to joint-claim JSA by virtue of regulations made under paragraph 8A of Schedule 1 to JSA 1995.

262. Paragraph 8A of Schedule 1 to the JSA 1995 allows for regulations to prescribe circumstances in which a joint-claim couple may be entitled to joint-claim JSA without both members meeting the basic conditions of entitlement for JSA (for example, if one member of the couple has limited capability for work).

263. *Subsection (2)* of the clause has the effect that where ESA had been paid to a person before the amendment to section 1 of WRA 2007 came into force, and they were a member of a joint-claim couple by virtue of regulations made under paragraph 8A of Schedule 1 of the JSA 1995, the change should be treated as having already been in force. This will have the effect of regularising such payments, which should not have been made because the claimant was a member of a couple entitled to joint-claim JSA.

***Clause 51: Period of entitlement to contributory allowance***

264. *Clause 51* inserts a new *section 1A* to, and amends Schedule 4 of, WRA 2007. The provisions limit an award of contributory ESA to a maximum period of 365 days.

265. *New subsection (1)* of *new section 1A* provides that a period of entitlement to contributory ESA shall not exceed 365 days, even if the period of limited capability for work exceeds this period.

266. *New subsection (2)* provides that where an award has ended due to *new subsection (1)*, a person may begin a new period of entitlement to contributory ESA if they satisfy all of the national insurance contribution conditions in Part 1 of Schedule 1 of WRA 2007, and the two tax years for which the claimant satisfies these conditions (to give rise to this new entitlement) include at least one tax year which is later than the second of the two tax years which gave rise to the previous entitlement.

267. *New subsection (3)(a)* provides that claimants who are already receiving contributory ESA when the time limit is introduced will have the period that they have already spent on the benefit counted towards their 365 days of entitlement. For example, if a person had been entitled for six months before the introduction of the time limit then their entitlement would end after another six months.

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268. *New subsection (3)(b)* makes an exception to *new subsection (1)* - days during which a claimant is in the support group will not count towards the 365 days of entitlement. Therefore, if a claimant leaves the support group yet remains on ESA, at this point the 365 day time limit would start to apply. The support group are those assessed as having limited capability for work-related activity.

269. *Subsection (2)* of the clause allows regulations to modify the application of *new section 1A* when applied to ESA awards made to people previously entitled to an existing award of incapacity benefit or severe disablement allowance under transitional provisions in the WRA 2007. This regulation making power could be used, for example, to ensure that the 365 day time limit created by section 1A would also apply to those people who are transferred from incapacity benefit or severe disablement allowance to contributory ESA, including dealing with the point at which it would start.

***Clause 52: Condition relating to youth***

270. *Clause 52* abolishes the youth condition in contributory ESA. This condition allows claimants to qualify for contributory ESA without meeting the usual paid National Insurance contribution conditions. The youth condition is set out in full in paragraph 4 of Schedule 1 of WRA 2007. This requires that a claimant is under 20 (or in prescribed cases, up to 25), not in full time education and that the claimant has had limited capability for work for 196 consecutive days.

271. *Subsection (3)* provides that no new claims to ESA may be made on the grounds of youth. Those who would have otherwise applied on these grounds will instead be required to meet the usual National Insurance contribution conditions for a claim to contributory benefit as set out in conditions in Part 1 of Schedule 1 of WRA 2007, or the means test should they apply for income-related ESA.

272. *Subsection (4)* provides that where a person is entitled to ESA on grounds of youth after clause 49 comes into force the period of entitlement to ESA will not exceed 365 days.

273. *Subsection (5)(a)* provides for days before, as well as after *subsection (4)* comes into force, to count towards the 365 day limit provided by *subsection (4)*. *Subsection (5)(b)* provides that the 365 day time limit will not apply to anyone in the support group. These people are those assessed as having limited capability for work-related activity.

274. *Subsections (1) and (2)* repeal the appropriate part of section 1(2)(a) of and paragraph 4 of Schedule 1 to WRA 2007.

***Clause 53: Claimant commitment for employment and support allowance***

275. *Clause 53* amends WRA 2007 to introduce claimant commitments for people claiming ESA.

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276. Accepting a claimant commitment is a condition of entitlement for ESA under *subsection (2)*.

277. *Subsection (3)* inserts new *section 1B* into WRA 2007. Section 1B provides that the claimant commitment is a record of the claimant's responsibilities and may contain particular prescribed information as well as any other information the Secretary of State considers it appropriate to include. This may include information about any requirement which can be imposed on a claimant of ESA, such as the requirement to take part in a work-focused interview or undertake work-related activity and the consequences of failing to comply with these requirements.

278. *Subsections (2) and (5)* of the new section 1B allow for the commitment to be reviewed and updated by the Secretary of State, and provide that to meet the conditions of entitlement the claimant must accept the most up-to-date version. *Subsection (6)* enables the Secretary of State to make regulations setting out circumstances in which a person may be treated as having accepted a claimant commitment.

279. *Subsection (4)* of clause 53 amends section 15(2)(b) of WRA 2007, inserted by section 10 of WRA 2009, to enable the Secretary of State to include directions about work-related activity in the claimant commitment or in an action plan or communicate them in such other manner as the Secretary of State thinks fit.

280. *Subsection (5)* allows for any function relating to claimant commitments to be carried out by third party providers.

281. *Subsection (6)* inserts a new *paragraph 4A* into Schedule 2 of WRA 2007 to enable the Secretary of State to make regulations setting out circumstances in which a person can be entitled to ESA without having accepted a claimant commitment.

*Subsection (7)* amends WRA 2009 so that the wellbeing of any child affected must be considered when a claimant commitment is prepared.

***Clause 54: Work experience etc***

282. *Clause 54* amends section 13 of WRA 2007 to make clear that a claimant with limited capability for work may be required to undertake work experience or a work placement. Any requirement imposed under this provision will need to be reasonable in the claimant's circumstances.

***Clause 55: Hardship payments***

283. *Clause 55* enables regulations to provide for circumstances in which payments will be made to a claimant where their benefit has been reduced as a result of a failure to take part in a work-focused interview, a work-focused health-related assessment, or work-related activity and they are or will be in hardship. In particular, regulations may prescribe the circumstances



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in which a person will be treated as being in hardship and the amounts and duration of any payments and conditions which claimants will have to satisfy to become and remain eligible. Hardship payments for ESA will not be recoverable.

***Clause 56: Claimant responsibilities for employment and support allowance***

284. *Clause 56* makes equivalent amendments to WRA 2007 as clause 49 does to the JA 1995. As with the changes to JSA, these will be introduced in respect of any claimant once ESA is only available to them as a contributory benefit as a result of universal credit coming into force.

285. *Subsection (2)* inserts new sections which replace sections 11 to 16 of WRA 2007. In general these new sections mirror the provisions for universal credit claimants who are assessed as having limited capability for work or limited capability for work-related activity. No ESA claimant will be required to look for or be available for work so the new sections do not include a work search or work availability requirement. As a result the higher level sanctions which apply under universal credit (set out in clause 26), do not apply to ESA.

286. *Sections 11B and 11C* set out the work-related requirements which may be imposed on a claimant: a work-focused interview requirement or a work preparation requirement. These mirror the equivalent provisions in universal credit.

287. *Sections 11D, 11E and 11F* explain what requirements may be imposed on different groups of ESA claimants. *Section 11D* provides that the Secretary of State may not impose either requirement on any claimant with limited capability for work and limited capability for work-related activity, lone parents with a child under one and any other group prescribed in regulations. The first regulations made under this new section will be subject to the affirmative resolution procedure. *Section 11E* provides that lone parents with a child who is at least one but below a prescribed age which may not be less than three can only be subject to a work-focused interview requirement, as well as any other prescribed categories of people. Under *section 11F* the Secretary of State may impose a work preparation requirement and a work-focused interview requirement on any claimant who does not fall into section 11D or 11E. In effect this will be claimants who have limited capability for work (but not those with limited capability for work-related activity).

288. Work-related requirements may be recorded in the claimant commitment under *section 11A*. *Section 11G* provides for other requirements which can be placed on claimants in connection to the work-related requirements, which include requiring claimants to participate in an interview with an adviser or providing evidence that they are meeting their work-related requirements. These provisions are the same as those which relate to universal credit in clauses 14 and 23.

289. *Section 11J*, which mirrors clause 27, provides for a claimant's award to be sanctioned if they fail without good reason to meet the requirements placed upon them. Claimants receiving ESA may be subject to a sanction for an open-ended period until a compliance

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condition is met, for a fixed period of up to 26 weeks or a combination of both. The first regulations made under this new section will be subject to the affirmative resolution procedure.

290. *Section 11K* allows for functions relating to the imposition of work-related and connected requirements to be contracted out. Section 11K replicates clause 29 which allows for contracting out in relation to universal credit.

291. *Subsection (3)* of clause 56 amends the piloting provision in WRA 2007 to the effect that the purpose of a pilot scheme must be to test whether the provision being piloted is likely to promote people increasing their hours or finding better-paid work, as well as remaining in or obtaining work, or being able to do so. This mirrors the purpose of pilot schemes in relation to universal credit, set out in clause 30.

292. *Subsection (7)* inserts a *new paragraph 10* into Schedule 2 of WRA 2007 which makes provision for regulations to set out the circumstances in which there is or is not be good reason and the factors which must or must not be considered when determining whether or not a person had good reason for a particular act or omission. This replaces similar provisions in WRA 2007 but changes references to good cause to good reason to be consistent with universal credit provisions.

***Clause 57: Entitlement of lone parents to income support etc***

293. *Clause 57* amends provisions in WRA 2009 concerning lone parents.

294. Section 3(1) of that Act inserts provisions under new *subsection (1A)* of section 124 of SSCBA 1992 so that regulations must provide for IS to be available on grounds of lone parenthood where a lone parent has a child under seven. *Subsection (2)* amends section 3(1) to provide for IS to be available on the grounds of lone parenthood where a lone parent has a child under five. Lone parents who wish to continue receiving an income-replacement benefit after that point will need to claim JSA, if they are capable of work, or ESA, if they have limited capability for work, unless they qualify for IS on some other ground such as receiving Carer's Allowance.

295. *Section 8(1)* of WRA 2009 requires that regulations which impose a requirement to undertake work-related activity on a lone parent with a child under seven are subject to the affirmative resolution procedure. This requirement applies to regulations made under *section 2D(1)* of SSAA 1992, *section 18B* of the JA 1995 and *section 13* of WRA 2007 before 12 November 2014. *Subsection (3)* amends this so that the requirement applies to regulations which affect a lone parent with a child under five.

***Clause 58: Claimant commitment for income support***

296. *Clause 58* amends SSCBA 1992 and SSAA 1992 to introduce claimant commitments for people claiming IS.

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297. *Subsection (2)* amends section 124 of SSCBA 1992 to make accepting a claimant commitment a condition of entitlement for IS. Regulations may allow for circumstances in which a claimant may be entitled without having accepted a claimant commitment.

298. *Subsection (3)* inserts new a new *section 124A* into SSCBA 1992 which provides that the claimant commitment is a record of the claimant's responsibilities and may contain particular prescribed information as well as any other information that the Secretary of State considers it appropriate to include. This may include information about any requirement which may be imposed on a claimant of IS, such as a requirement to take part in work-focused interviews.

299. New *subsection (2)* provides that the claimant commitment may be reviewed and updated by the Secretary of State. Under new *subsection (5)* the claimant must accept the most up-to-date version of the claimant commitment to meet the condition of entitlement.

300. *Subsection (6)* of the new section 124A provides that regulations can set out circumstances in which a claimant is to be treated as having accepted a claimant commitment (and therefore meeting the relevant condition of entitlement).

301. *Subsection (4)* of the clause amends section 2F(3)(b) of SSAA 1992 to the effect that directions about work-related activity for claimants of IS may be notified to a claimant in such manner as the Secretary of State thinks fit. This enables any such directions to be notified through the claimant commitment.

302. *Subsection (5)* amends section 2G of SSAA 1992 to enable functions relating to the claimant commitment to be contracted out.

***Clause 59: Claimants dependent on drugs etc***

303. *Clause 59* repeals section 17C of, and Schedule A1 to, JSA 1995, section 15A of, and Schedule 1A to, WRA 2007, and section 11 of, and Schedule 3 to, WRA 2009. *Part 6 of Schedule 13* makes minor consequential repeals to those Acts and the SSA 1998.

304. The repeals remove in their entirety provisions in, or inserted by, the WRA 2009 which apply to persons claiming JSA or ESA who are dependent on, or have a propensity to misuse drugs, where their condition affects their prospects of obtaining or remaining in work. These provisions include requirements placed on claimants to engage in certain activities and also provisions in relation to voluntary and mandatory rehabilitation plans.

***Clause 60: Entitlement to work: jobseeker's allowance***

305. *Clause 60* introduces a requirement for claimants of JSA to have an entitlement to work in the United Kingdom. The intention is to prevent people from accessing contributory benefits if they do not have a current entitlement to work in the United Kingdom. This

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requirement will apply after the introduction of the universal credit, once JSA is a contributions-based benefit.

306. *Clause 60* amends the JA 1995 to create a new condition of entitlement for JSA, requiring a claimant to be entitled to be in employment in the United Kingdom. *Subsection (2)* inserts this requirement into the conditions of entitlement for JSA set out in section 1(2) of JA 1995.

307. *Subsection (3)* inserts new *subsection (3A)* into JA 1995 which provides that a person is entitled to be in employment if they are either not subject to immigration controls or have leave to enter or remain in the United Kingdom which is not subject to any restrictions preventing them from taking up work.

308. *Subsection (4)* allows for regulations to prescribe circumstances in which exceptions may be made to this condition.

***Clause 61: Entitlement to work: employment and support allowance***

309. *Clause 61* introduces a requirement for ESA claimants to have an entitlement to work in the United Kingdom. The intention is to prevent people from accessing contributory benefits if they do not have a current entitlement to work in the United Kingdom. This requirement will apply after the introduction of the universal credit, once ESA becomes a contributions-based benefit.

310. *Subsection (2)* inserts this requirement into the conditions of entitlement for ESA set out in section 1(3) of the WRA 2007.

311. *Subsection (3)* inserts new *subsection (3A)* into the WRA 2007 which provides that a person is entitled to be in employment if they are either not subject to immigration controls or have leave to enter or remain in the United Kingdom which is not subject to any restrictions preventing them from taking up work.

312. *Subsection (4)* allows for regulations to prescribe circumstances in which exceptions may be made to this condition.

***Clause 62: Entitlement to work: maternity allowance and statutory payments***

313. *Clause 62* makes amendments to SSCBA 1992 to introduce a new condition of entitlement into statutory payments and maternity allowance, ensuring that a claimant must be entitled to be in employment in the United Kingdom.

### **Part 3: Other benefit changes**

Clause 63: Injuries arising before 5th July 1948

314. *Clause 63* repeals the legislation that maintains the existence of two separate schemes for providing State compensation for work injuries occurring before 1948.

315. At present there is separate provision for State compensation to be paid for accidents and diseases at work occurring before 5th July 1948 through the Workmen’s Compensation (Supplementation) Scheme 1982 and the Pneumoconiosis Byssinosis and Miscellaneous Diseases Benefit Scheme 1983. These two schemes are known collectively as the “pre-1948 schemes”. This legislation was left in place when the Industrial Injuries scheme was introduced in 1948.

316. This clause will mean that all claims for State ‘no-fault’ compensation for work injuries will be dealt with as claims under the main Industrial Injuries Disablement Benefit (IIDB) scheme regardless of when the disease or accident occurred.

317. *Subsection (3)* enables the Secretary of State to provide in regulations for all claims – new and outstanding – under the pre-1948 schemes to be treated as claims under the equivalent IIDB scheme. It is intended that such regulations will result in all claims being made, decided and appealed under the same rules that apply to IIDB.

#### ***Clause 64: Trainees***

318. *Clause 64* means that from the commencement date trainees will be paid under the main IIDB scheme rather than by the current separate ‘analogous’ scheme that exists solely for trainees.

319. As trainees are not ‘employed earners’ they are not currently entitled to IIDB through the main scheme. The Analogous Industrial Injuries (AIIS) scheme is a separate scheme for trainees who suffer an accident at work whilst participating in certain training schemes or courses that are funded out of public funds by the Young People’s Learning Agency and Skills Funding Agency in England (and equivalent bodies in Scotland and Wales).

320. *Subsection (1)* inserts a new *section 95A* into the SSCBA 1992 which will treat trainees as if they were in employed earner’s employment. This means that any trainees, who are injured by accident or disease whilst participating in prescribed training schemes or courses, will be able to access benefit under the main IIDB scheme, instead of the AIIS scheme.

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321. *Subsection (2)* removes the powers in section 11(3) of the Employment and Training Act 1973 of the Secretary of State and Industrial Training Boards to make payments equivalent to those which might be paid for IIDB.

322. *Subsection (3)* enables the Secretary of State to provide in regulations for all claims – existing, and new - under the AIIS scheme to be treated as claims for industrial injuries benefits. It is intended that such regulations will result in all claims being made, decided and appealed under the same rules that apply to IIDB.

***Clause 65: Persons under 18***

323. *Clause 65* will remove the significance of age 18 in Industrial Injuries Benefits legislation. This means all successful claims - existing and new - by under 18s will be paid at the normal IIDB scheme rate after the coming into force of the clause.

***Clause 66: Restriction on new claims for industrial death benefit***

324. *Clause 66* means that no claims can be made for Industrial Death Benefit (IDB) from the commencement date.

325. At present IDB is paid to widows or widowers in respect of industrial deaths occurring before 10 April 1988. Claims in respect of deaths in general after this date are paid under the Bereavement Benefit (BB) provisions. From the commencement date this clause means claims for deaths due to industrial causes before 10th April 1988 will be considered under the BB legislation.

326. It is many years since any such claims have been made for IDB. New claims are now extremely unlikely as the death would have had to occur before 1988 – over 20 years ago.

***Clause 67: Determinations***

327. *Clause 67* abolishes the right to request an accident declaration. At present people are able to apply for a declaration that an industrial accident has occurred separately from making a claim for benefit and consequently may apply for IIDB many years after the accident occurred, relying on the accident declaration as evidence that a work-related accident occurred.

328. *Subsection (1)* repeals section 29(2) of the SSA 1998. This provides that people can apply for an accident declaration, confirming and recording an accident has occurred, even though they do not wish to claim Industrial Injuries Disablement Benefit (IIDB) at the time. *Subsection (2)* repeals the subsequent references to section 29(2).

329. The repeals mean that all accident declarations made prior to commencement remain final and that no further requests for an accident declaration can be made. If an accident causes disability at a later date, the status of the accident as an industrial accident will be

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investigated and decided in the usual manner by the decision-maker at the same time as the claim and the assessment of disability.

***Clause 68: Housing benefit: determination of appropriate maximum***

330. *Clause 68* amends section 130A of the SSCBA 1992. Section 130A provides for the appropriate maximum housing benefit (AMHB) to be determined in accordance with regulations, including by reference to rent officer determinations. It is necessary to know the AMHB in a person's case in order to determine whether they are entitled to housing benefit, and how much they are entitled to.

323. The amendments made by clause 68 generalise section 130A to reflect the Secretary of State's intention to exercise the powers in that section to provide for AMHB to be determined by methods other than by reference to rent officer determinations.

324. The Housing Benefit Regulations provide for AMHB to be determined by reference to a claimant's eligible rent. Calculating a claimant's eligible rent can involve treating the claimant's liability to pay rent as something other than it actually is. The amendments made by clause 68 generalise section 130A(5) and (6) to reflect the intention that regulations will provide for a claimant's liability to pay rent to be treated as an amount other than the actual amount of the liability (whether that deemed amount is determined by reference to a rent officer determination or otherwise).

325. Using these powers the Secretary of State will bring forward regulations that will:

- set out that eligible rent may be determined by reference to either rent officer determinations or the rate of CPI. Currently local housing allowance (LHA) determinations are made by rent officers. The amendments made by clause 68 will ensure the Secretary of State has the power to set LHA rates from April 2013, by reference to the lower of either the CPI or the bottom 30th percentile of private sector rents.
- introduce size criteria into the calculation of housing benefit for working age tenants in the social rented sector. The Secretary of State will prescribe the amount by which the claimant's actual rent liability is to be reduced to reflect the additional bedrooms within the property; the claimant's eligible rent will be restricted if their dwelling is larger than they need. A percentage reduction will be made based on the numbers of extra bedrooms, which will be prescribed in secondary legislation.

***Clause 69: Ending of discretionary payments***

331. *Clause 69(1)* repeals section 138(1)(b) of the SSCBA 1992, which provides for payments of crisis loans, community care grants and budgeting loans from the discretionary social fund. Community care grants and crisis loans other than those currently available to

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applicants pending payment of benefit (“alignment loans”) will cease. Instead, in England, new locally-administered assistance will be provided by local authorities. In Scotland and Wales the Devolved Administrations will decide the most appropriate arrangements for assistance. Budgeting loans and alignment loans will be replaced by payments on account (see *clause 98*).

332. The Social Fund Commissioner heads the Independent Review Service (IRS) whose inspectors carry out independent reviews of decisions on applications for discretionary social fund payments. The Commissioner and the IRS will no longer have this role when section 138(1)(b) is repealed and *subsection (2)* makes provision for the abolition of the office of the Commissioner. *Subsections (6) and (7)* enable the Secretary of State to make provision by order for the transfer of property, rights and liabilities from the Social Fund Commissioner.

333. *Subsections (3) to (5)* make provision for the transfer of monies from the social fund into the Consolidated Fund as the social fund is wound down. The Secretary of State will be able to transfer unused social fund monies into the Consolidated Fund, as well as monies received into the social fund as repayments of loans or repayment of overpayments of social fund payments. Under *subsection (5)* the Secretary of State will continue to be able to re-allocate for crisis loans, community care grants or budgeting loans purposes any amounts which had previously been allocated for other payments under section 138(1)(b).

334. *Subsection (9)* introduces *Schedule 8* which makes consequential amendments resulting from the repeal of section 138(1)(b), including in *paragraph 3* providing for recovery of Northern Ireland payments to continue by deduction from benefits. *Paragraph 4* makes consequential amendments as a result of the abolition of discretionary social fund payments and the ending of the office of the Social Fund Commissioner to ensure that the Social Fund Commissioner and other former officers remain subject to the penalty for disclosure despite the office having ceased to exist.

***Clause 70: Purposes of discretionary payments***

335. Section 138 of the SSCBA 1992 makes provision for social fund payments. Subsection (1)(a) provides for payments of prescribed amounts in respect of maternity and funeral expenses, while subsection (1)(b) allows the award of discretionary payments by way of community care grants, crisis loans or budgeting loans to meet other needs, which suggests that needs covered by payments under section 138(1)(a) may not be met by discretionary payments. Pending abolition of the discretionary social fund this clause makes an amendment to section 138 (and *clause 71* makes amendments to section 140). *Clause 70* amends section 138(1)(b) to enable payment of budgeting loans for maternity and funeral expenses. Thus a person who applies for a maternity or funeral payment under the prescribed scheme may be able to apply for a budgeting loan to meet costs also covered by the prescribed payment.

***Clause 71: Determination of amount or value of budgeting loan***

336. Section 140(1A) of the SSCBA 1992 sets out the factors to which decision makers are to have regard when considering applications for payments by way of social fund budgeting



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loans. Section 140(2) provides that the decision maker shall determine questions in accordance with the directions issued by the Secretary of State. For budgeting loans, the decision maker is required by section 140(1A)(b) to have regard, subject to directions and guidance under subsection (2), to any relevant allocation made by the Secretary of State under section 168 of the SSAA 1992. Using this allocation, the Secretary of State sets a national loans budget, and issues directions and guidance to decision makers who are required to apply a baseline figure when calculating the amount of a budgeting loan.

337. *Clause 71(2)* amends section 140 to state in subsection (4) that the amount of a budgeting loan may be restricted to a maximum sum as specified in a direction made by the Secretary of State and *subsection (3)* inserts new *subsection (4ZA)* to provide that directions may require the maximum sum to be arrived at by reference to the baseline figure which is described in new *subsection (4ZB)*.

***Clause 72: External provider social loans and community care grants***

338. Provision was made in the WRA 2009 for loans to be made by external lenders in place of loans from the social fund and for awards of community care grants to be of items covered by contracts entered into by the Secretary of State. These provisions have not been commenced and the Government does not intend to use them, given its intention to abolish the discretionary social fund (see clause 69). *Clause 72* therefore repeals sections 16 to 21 of the WRA 2009. Budgeting loans and those crisis loans called “alignment loans” (which are available pending payment of benefit) will be replaced by payments on account (see *clause 98*). The Government intends that, when community care grants and those crisis loans which are not alignment loans cease to exist, assistance will instead be administered locally. Local authorities in England will be free to deliver support in whatever form they consider is most appropriate. The Devolved Administrations will determine the most appropriate arrangements for Scotland and Wales.

***Clause 73: State pension credit: carers***

339. *Clause 73* amends SPCA 2002 to change the entitlement conditions for the additional amount of the guarantee credit in respect of caring responsibilities, to remove the explicit link to carer’s allowance in that Act.

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

***Clause 74: State pension credit: capital limit***

341. When housing benefit is abolished, housing support for claimants above the qualifying age for state pension credit will be provided through the housing credit, by virtue of clause

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35. While there is currently no capital limit for entitlement to state pension credit a claimant may only be entitled to housing benefit if they have capital below a certain level. *Clause 74* allows for a capital limit to be applied to state pension credit. Section 19 of SPCA 2002 is amended to provide that the first regulations made under the new subsection 1(2)(d) inserted into SPCA 2002 will be subject to the affirmative resolution procedure.

**Part 4: Personal independence payment**

342. The Government is replacing disability living allowance with a new cash benefit called personal independence payment. The purpose of the benefit is to contribute to the extra costs of overcoming the barriers faced by long-term disabled people to leading full and active lives.

343. Personal independence payment will consist of two components – the daily living component and the mobility component. For each component there will be two rates – standard and enhanced. Entitlement to either of the components (and the applicable rate) will be determined with reference to a new objective assessment, the details of which will be set out in secondary legislation.

344. The new assessment will assess the ability of an individual to perform specified activities and will take into account the impact of physical, sensory, mental, intellectual and cognitive impairments on the individual in undertaking the specified activities.

345. Personal independence payment is to be a non-contributory benefit, and is neither taxable nor means-tested.

***Clause 75: Personal independence payment***

346. *Clause 75* sets out the basic structure and certain conditions of entitlement to personal independence payment. Entitlement to personal independence payment may be an entitlement to either, or both, of the daily living and mobility components of the benefit. *Subsection (3)* provides that a person is not entitled to personal independence payment unless they satisfy prescribed conditions of residence and presence in Great Britain.

***Clause 76: Daily living component***

347. *Clause 76* sets out the entitlement conditions to the different rates of the daily living component of personal independence payment.

348. *Subsection (1)* provides that a person is entitled to the standard rate of the daily living component if their ability to carry out daily living activities is limited by their physical or mental condition. If a person's ability is severely limited by their physical or mental condition *subsection (2)* provides for that person to be entitled to the enhanced rate. Whether an individual has limited ability or severely limited ability will be determined by an assessment

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set out in regulations made under *clause 78*. Sensory, intellectual and cognitive impairments may be relevant to a person's physical or mental condition and therefore to the question of whether the person's ability to carry out daily living activities is limited or severely limited.

349. *Subsections (1)(b) and (2)(b)* provide that to be entitled to either the standard or enhanced rate of the daily living component, the person must also meet the required period condition. This is outlined in the notes relating to *clause 79*. The required period condition also applies where personal independence payment is subject to review, subject to certain exceptions which will be set out in regulations under powers in *clause 79*.

350. *Subsection (3)* provides that the standard and enhanced rates are weekly rates which are to be specified in regulations.

351. *Subsection (4)* provides for the activities relating to the daily living component – “daily living activities” - to be prescribed in regulations. It is envisaged that these may include, but not be limited to, activities relating to accessing food and drink; managing personal health needs; managing personal care needs; and communication.

352. *Subsection (5)* refers to *clauses 78 and 79* which set out how a person's ability to carry out daily living activities is to be assessed and how the required period condition operates.

353. *Subsection (6)* makes clear that this clause is subject to other provisions of Part 4, or to regulations under it, for example in circumstances when the person is terminally ill (see *clause 80*).

***Clause 77: Mobility component***

354. *Clause 77* sets out basic entitlement conditions to the different rates of the mobility component of personal independence payment.

355. *Subsection (1)* provides that a person is entitled to the standard rate of the mobility component if they are of or over an age prescribed in regulations and if their ability to carry out mobility activities is limited by their physical or mental condition. If a person's ability is severely limited by their physical or mental condition and they are over an age prescribed in regulations *subsection (2)* provides for that person to be entitled to the enhanced rate. Whether an individual has limited ability or severely limited ability will be determined by an assessment set out under *clause 78*. Sensory, intellectual and cognitive impairments may be relevant to a person's physical or mental condition and therefore to the question of whether the person's ability to carry out mobility activities is limited or severely limited.

356. *Subsections (1)(c) and (2)(c)* provide that to be entitled to either the standard or enhanced rate of the mobility component, the person must also meet the required period condition. This is outlined in the notes relating to *clause 79*. The required period condition

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also applies where personal independence payment is subject to review, subject to certain exceptions which will be set out in regulations made under powers in *clause 79*.

357. *Subsection (3)* provides that the standard and enhanced rates are weekly rates which are to be specified in regulations.

358. *Subsection (4)* provides for the activities relating to the mobility component – “mobility activities” - to be prescribed in regulations. It is envisaged that these may include, but not be limited to, activities relating to the ability of the individual to get around both inside and outside their home. The ‘mobility activities’ could include, for example, planning a journey or using transport.

359. *Subsection (5)* refers to *clauses 78* and *79* which set out how a person’s ability to carry out mobility activities is to be assessed and how the required period conditions operate.

360. *Subsection (6)* makes clear that this clause is subject to other provisions of Part 4, or to regulations under it. For example if a person is over pensionable age, it is not normally the case that they would be entitled to the mobility component.

361. *Subsection (7)* provides that regulations may specify when a person is not entitled to the mobility component for a period, despite fulfilling the eligibility requirements. For example, while a person in a coma or vegetative state clearly has severely limited mobility they would not be in a position to benefit from mobility assistance.

***Clause 78: Ability to carry out daily living activities or mobility activities***

362. The clause provides for the making of regulations to determine the main conditions of entitlement to the two components of personal independence payment. For the purposes of personal independence payment a new assessment and process will be developed. *Subsection (1)* provides for the questions whether an individual’s ability to carry out daily living activities or mobility activities is limited or severely limited by their physical or mental condition to be determined in accordance with regulations. This then determines which of the components a person is entitled to, and whether that person is entitled to the standard or enhanced rate for each component. Under *subsection (2)* regulations must also make provision for determining whether a person meets the required period condition. Further details on the required period condition can be found in *clause 79*.

363. *Subsection (3)* provides for regulations to be made about what is considered during the assessment process to determine entitlement to each component and rate, and how the assessment is to be carried out. This will involve considering and weighting a person’s ability to perform prescribed activities. Prescribed thresholds will determine entitlement to each component and rate. The activities, how they will be measured, their weightings and the component thresholds will all be prescribed in regulations. Regulations may also provide for the assessment process not to be applied in prescribed circumstances.

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364. As information and evidence will be required and sought at various stages in a claim, *subsection (4)* allows regulations to specify which sources of information are appropriate (for example, evidence or information from the individual themselves; the individual's General Practitioner, supporting healthcare professionals, social workers etc.), along with details as to how and when information or evidence is to be provided. Most individuals will be asked to attend a face-to-face consultation with a trained independent assessor, such as a healthcare professional.

365. Under *subsection (5)* regulations can provide for the consequences of failure without good reason to comply with a requirement imposed under *subsection (4)* e.g. a failure to provide information or evidence or to participate in a face-to-face consultation. In the event of such a failure, a negative determination can be applied to an individual's claim if there is no good reason for the failure. Regulations will provide for what is considered to be good reason.

366. *Subsection (6)* defines the term "negative determination" used in *subsection (5)(a)*.

***Clause 79: Required period condition: further provision***

367. *Clause 79* makes further provision about the making of regulations to determine whether a person meets the required period condition. The required period condition will generally be that it is likely that the individual would have met the condition of limited or severely limited ability to carry out daily living activities or (as the case may be) mobility activities during the 6 months before the date they would become entitled (the qualifying period) and that there is an expectation that they will meet that condition for a further six months following that date (the prospective test). The qualifying period can include a period before the claim is made.

368. It is intended that the required period condition must be met both when a claim is made and at any review; this will be set out in regulations.

369. *Subsection (4)* allows for the required period condition to be altered in certain cases, for instance to allow the qualifying period to be disapplied where there has been a short break in entitlement.

***Clause 80: Terminal illness***

370. *Clause 80* makes provision about entitlement for people who are terminally ill (as defined in *subsection (4)*) who make a claim to personal independence payment expressly on the grounds that they are terminally ill.

371. *Subsection (2)* automatically entitles a terminally ill person to the enhanced rate of the daily living component, as defined in *clause 76*, and accordingly removes the requirement for them to undergo an assessment or to meet the required period condition. *Subsection (3)* disapplies the required period condition for the mobility component. However a terminally ill

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person is not automatically entitled to the mobility component and will have to satisfy the other conditions of entitlement for that component.

372. *Subsection (4)* defines a person as being terminally ill for the purposes of this clause if the person can reasonably be expected to die from a progressive disease within the next 6 months.

373. *Subsection (5)* provides that where a claim is made on behalf of a terminally ill person, the terminally ill person is regarded as making the claim, notwithstanding that the claim is made without their knowledge or authority. The intention is to allow terminally ill people to be able to benefit from personal independence payment whether or not they know their prognosis.

***Clause 81: Persons of pensionable age***

374. *Clause 81* concerns entitlement to the daily living or mobility components for persons of pensionable age. *Subsection (1)* provides that a person is not entitled to either the daily living component or the mobility component after they reach the relevant age. *Subsection (2)* defines the relevant age as the age of 65 or pensionable age (as defined in paragraph 1 of Schedule 4 to the Pensions Act 1995), whichever is higher.

375. *Subsection (3)* provides that regulations may specify exceptions to this. For example, regulations may provide that if a person is in receipt of personal independence payment before reaching the relevant age, they may continue to receive this benefit.

***Clause 82: No entitlement to daily living component where UK is not competent state***

376. *Clause 82* provides that entitlement to the daily living component is limited to people for whom the United Kingdom is the competent state for payment of cash sickness benefits under either of the European Union Regulations mentioned in *subsection (2)*.

377. This provision is intended to prevent a person who comes to the United Kingdom from another Member State of the European Economic Area or Switzerland, and for whom another Member State is the competent State for payment of sickness benefits (because the person is insured for sickness benefits there), being entitled to the daily living component of personal independence payment (irrespective of whether they meet the domestic entitlement conditions under the Bill). This is primarily to prevent a person receiving double provision of benefits.

***Clause 83: Persons receiving certain services***

378. *Clause 83* relates to the payability of personal independence payment when a person is in a hospital or similar institution, or a resident of a care home (which includes certain residential schools and colleges).

379. *Subsections (1)* and *(2)* provide that if a person is an in-patient of a hospital or similar institution, or resident in a care home, and receives “qualifying services” (as defined in

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*subsection (4)*), which are paid for to any extent out of public or local funds, regulations may provide that no amount of the daily living or mobility components of personal independence payment is payable to the person for the period in question. However, persons will retain an underlying entitlement to the benefit and payment can be reinstated when they leave the hospital or care home, providing they continue to satisfy the entitlement conditions.

380. Payment of the respective components only ceases where the funding (in part or in full) comes from public funds or local funds. For example it does not apply to people who pay all of the cost of their care and accommodation themselves or to those whose care costs are met by relatives or charities.

381. It is intended that the regulations will provide that generally for the first 28 days after a claimant becomes an in-patient of a hospital or similar institution, or resident in a care home, they will continue to receive the existing benefit to cover continuing costs. This approach also avoids interference with a claimant's award during short periods of hospitalisation or respite care in a care home.

***Clause 84: Prisoners***

382. With a view to avoiding duplication of funding, *clause 84* provides that personal independence payment ceases to be payable to those imprisoned or detained in legal custody. Regulations may make exceptions to this general rule in certain circumstances.

***Clause 85: Claims, awards and information***

383. *Subsection (1)* of *clause 85* sets out that a person cannot establish entitlement to personal independence payment for a period before they make or are treated as making a claim.

384. *Subsections (2) and (3)* set out that an award of personal independence payment will normally be for a fixed period except where the person making the award considers that a fixed term award would be inappropriate (in which case an award would be made for an indefinite period). The person making the award is required to have regard to guidance issued by the Secretary of State in deciding on the appropriateness or otherwise of a fixed term award. A fixed or indefinite period award applies to the benefit as a whole rather than to either component of it.

385. *Subsection (4)* ensures that all information supplied for the purposes of personal independence payment is social security information for the purposes of data-sharing. This subsection covers, for example, medical information relating to a claimant.

***Clause 86: Report to Parliament***

386. *Clause 86* provides that the operation of assessments for personal independence payment (see *clause 78*) will be the subject of an independent report prepared by a person

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appointed by the Secretary of State. The Secretary of State is required by *subsection (2)* to lay the report within the 3 years beginning with the coming into force of clause 78.

***Clause 87: Abolition of disability living allowance***

387. *Clause 87* provides for the repeal of sections 71 to 76 of SSCBA 1992, which are the key provisions relating to disability living allowance. It does not provide for the immediate abolition of disability living allowance and will be brought into force on such day as the Secretary of State may appoint in accordance with *clause 140(3)*. There is no time period in which the disability living allowance provisions must be repealed, it will be done as and when the entire caseload moves over to personal independence payment.

***Clause 88: Amendments***

388. *Clause 88* gives effect to Schedule 9 which contains amendments relating to Part 4.

***Schedule 9: Amendments relating to Part 4***

***Transport Act 1982***

389. Section 70 of the Transport Act 1982 allows the Secretary of State to make money available to people who apply for medical certificates in relation to exemptions from the obligation to wear seat belts. One such category of persons is those in receipt of disability living allowance. *Paragraph 1* adds persons in receipt of personal independence payment.

***Inheritance Act 1984***

390. Sections 74, 89 and 89A of the Inheritance Tax Act 1984 define a “disabled person” with reference to whether a person is in receipt of the highest or middle rate of the care component of disability living allowance for the purposes of trusts for disabled people and settlements. *Paragraphs 3 to 5* extend these definitions to those in receipt of the daily living component of personal independence payment at a rate designated by regulations.

***Child Support Act 1991***

391. Section 8 of the Child Support Act 1991 makes an exception to the limitations on courts making maintenance orders in relation to a child who receives disability living allowance. *Paragraph 6* adds someone in receipt of personal independence payment to that exception.

***Social Security Contributions and Benefits Act 1992***

392. *Paragraph 8* amends section 30B in relation to the benefit rate for incapacity benefit. This currently provides that those who terminally ill or in receipt of the highest rate of the care component of disability living allowance are entitled to a particular rate of incapacity



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benefit. The amendment extends this provision to include personal independence payment at a rate to be designated by regulations.

393. *Paragraph 9* amends section 64 to provide that entitlement to attendance allowance is not permitted where a person is entitled to personal independence payment so that a person does not become entitled to both benefits.

394. Disability living allowance is a qualifying benefit for the purpose of eligibility for a Christmas bonus. *Paragraph 10* amends section 150 so as to make personal independence payment a qualifying benefit for that purpose.

*Social Security Administration Act 1992*

395. Section 1 of SSAA 1992 provides that entitlement to benefits is dependent upon a person making a claim in such manner and at such time as the Secretary of State may prescribe. *Paragraph 12* extends the scope of the benefits that are subject to this provision to include personal independence payment.

396. Section 5 of SSAA 1992 provides that specified benefits are subject to regulations in relation to claims, payments and the provision of information. *Paragraph 13* extends the scope of the benefits that are subject to this provision to include personal independence payment.

397. Section 71 of SSAA 1992 provides that where a specified benefit has been subject to an overpayment through a misrepresentation or a failure to disclose information that overpayment may be recoverable by the Secretary of State. *Paragraph 14* extends the scope of the benefits that are subject to this provision to include personal independence payment.

398. Section 73 of SSAA 1992 provides that benefit payment can be adjusted where another benefit is payable to a person or where a person is in hospital. Disability living allowance is such a benefit; *paragraph 15* adds personal independence payment but excludes it from the provisions applying to hospitals as powers have already been taken at *clause 83* to adjust benefit in these circumstances.

399. Section 121DA of SSAA 1992 sets out the provisions that fall within the definition of “the relevant social security legislation” in Part 6 of the Act, which relates to enforcement. The provisions relating to disability living allowance fall within that definition; *paragraph 16* extends the definition to include Part 4 of the Bill.

400. Sections 122B and 122C of SSAA 1992 apply to the supply of Government information for various purposes including the prevention of fraud, the purpose of verification and the administration of benefits. Information supplied under those sections is, by virtue of

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the amendments made by *paragraphs 17 and 18*, to be capable of being further disclosed for the purposes of any civil or criminal proceedings relating to Part 4 of the Bill.

401. Sections 124 and 125 relate to registrations of birth, marriage and death where evidence of such an event is necessary for the purpose of benefit administration. The provisions relating to disability living allowance are within the ambit of sections 124 and 125. *Paragraphs 19 and 20* extend the ambit of those sections to Part 4 of the Bill.

402. Under SSAA 1992, the Secretary of State has an obligation to review the amount paid in benefits, which allows for benefit uprating. Section 150 makes provision for which amounts are to be reviewed. For disability living allowance this is currently provided under section 150(1)(b); *paragraph 21* extends this to provide the same for personal independence payment.

403. Section 159 of SSAA 1992 provides that if there is an alteration in the figures which affect a person's income for the purposes of income support, then any consequent change in the amount of income support which is payable takes effect automatically without the need for a decision by an adjudication officer. Disability living allowance is relevant by virtue of the definition of "benefit income"; *paragraph 22* adds personal independence payment to that definition.

404. Section 160 of SSAA 1992 extends the process begun by section 159 of taking routine adjustments in the amount of income support out of the ordinary mechanism for review. *Paragraph 26* extends the scope to personal independence payment.

405. Sections 159A and 160A of SSAA 1992 have the same effect as sections 159 and 160 but relate to jobseeker's allowance. *Paragraphs 23 and 27* extend the scope of these provisions to personal independence payment.

406. Section 159B of SSAA 1992 has the same effect as section 159 but relates to state pension credit. *Paragraph 24* extends the definition of "benefit income" to include personal independence payment.

407. Sections 159C and of 160B of SSAA 1992 have the same effect as section 159 and 160 but relate to employment and support allowance. *Paragraphs 25 and 28* extend the scope of these provisions to include personal independence payment.

408. Section 165 of SSAA 1992 makes provision for adjustments between the National Insurance Fund and the Consolidated Fund. *Paragraph 29* amends section 165(1)(a)(iii) so that it applies to personal independence payment.

409. Section 170 of SSAA 1992 makes provision for referring matters to the Social Security Advisory Committee, including consideration and advice on questions relating to the

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operation of any of the relevant enactments. *Paragraph 30* makes an insertion to include personal independence payment under the definition of “the relevant enactments” and “the relevant Northern Ireland enactments”.

410. Section 179 of SSAA 1992 provides a power to make orders to modify or adapt legislation in its application to cases affected by agreements with the government of a country outside the United Kingdom in matters set out under this section. The modifications that may be made include in relation to the subject matter of disability living allowance; *paragraph 31* makes an amendment to include the subject matter of personal independence payment.

411. Section 180 of SSAA 1992 enables the Secretary of State to pay travelling expenses in connection with requirements for claimants to attend interviews in connection with benefits. *Paragraph 32* provides that personal independence payment will be relevant for this purpose.

412. Section 182B of SSAA 1992 provides that the Secretary of State or the Northern Ireland Department may require the Post Office to provide details relating to the redirection of post to either the Secretary of State or the Department for use in the prevention, detection, investigation or prosecution of offences relating to social security, or for use in checking the accuracy of information relating to benefits, contributions or any other matter relating to social security and amending or supplementing such information. Subsection (5) prohibits that information from being supplied to anyone else unless it could either be supplied under subsection (1) or (2) of that section, or where it is supplied for the purpose of civil or criminal proceedings relating to a range of legislation including SSCBA 1992 which includes provisions relating to disability living allowance. *Paragraph 33* adds Part 4 of this Bill to the list of legislation.

413. Section 184 of SSAA 1992 enables regulations to be made requiring persons to be examined periodically and to furnish information required for the purposes of such examination, in connection with suspension from or suitability for employment in an occupation where a person has been found to suffer from or to be at risk of pneumoconiosis. It also enables regulations to be made disqualifying a person from benefit if they fail without good cause to comply with such requirements. *Paragraph 34* amends section 184(c) to include personal independence payment as a benefit that can be subject to disqualification under this section.

414. A person is prevented from assigning or charging benefit to a trustee or other person acting on behalf of the beneficiary’s creditors under section 187 of SSAA 1992. *Paragraph 35* makes provision for personal independence payment to be included.

415. *Paragraph 36* extends the definition of “benefit” in SSAA 1992 to include personal independence payment.

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416. Part 1 of Schedule 7 to SSAA 1992 lists regulations which do not require prior submission to Social Security Advisory Committee. The weekly rates of disability living allowance are set out in regulations which do not need to be referred to the Committee; *paragraph 37* adds a similar provision for the regulations which will set out the weekly rates of the components of personal independence payment.

*Taxation of Chargeable Gains Act 1992*

417. Section 169D of and Schedule 1 to the Taxation of Chargeable Gains Act 1992 defines a “disabled person” with reference to whether the person is in receipt of the highest or middle rate of the care component of disability living allowance. *Paragraphs 39 and 40* extend these references to a person in receipt of the daily living component of personal independence payment at a rate designated by regulations.

*Finance Act 1994*

418. Paragraph 3(2)(a) of Schedule 7A to the Finance Act 1994 makes provision about vehicles used by a ‘handicapped person in receipt of a disability living allowance’. The provision applies only if the letting of the vehicle is done on “qualifying terms” one of which is that the payments for the vehicle are made by various Government Departments of the disability living allowance to which the lessee of the vehicle is entitled. *Paragraph 41* makes an amendment to add into paragraph 3 of Schedule 7A references to personal independence payment.

*Vehicle Excise and Registration Act 1994*

419. Paragraph 19 of Schedule 2 to the Vehicle Excise and Registration Act 1994 refers to “vehicles for disabled people” by reference to whether a person is in receipt of the higher rate of the mobility component of disability living allowance. *Paragraph 42* extends these references to the mobility component of personal independence payment at a rate designated by regulations.

*Value Added Tax Act 1994*

420. Schedule 7A to the Value Added Tax Act 1994 provides that certain goods and services attract a reduced rate of VAT. This includes grant-funded installation of heating equipment or security goods or the connection of a gas supply to “a qualifying person”. *Paragraph 44* extends the scope of “qualifying person” to recipients of personal independence payment.

421. Schedule 8 to the Value Added Tax Act 1994 provides that certain goods and services are zero-rated for the purposes of VAT. This includes “drugs, medicines and aids for the handicapped” including “the letting on hire of a motor vehicle for a period of not less than 3

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years to a handicapped person in receipt of a disability living allowance by virtue of entitlement to the mobility component”. *Paragraph 45* provides that the scope is extended to include recipients of the mobility component of personal independence payment.

*Social Security (Recovery of Benefits) Act 1997*

422. The Social Security (Recovery of Benefits) Act 1997 provides for the recovery of benefits paid to those who are injured or made ill from those who cause personal injury or disease. *Paragraph 47* applies these provisions to personal independence payment.

423. Schedule 2 to the Act makes provision for how benefits should be taken into account for different heads of compensation. *Paragraph 48* amends that Schedule to include references to personal independence payment.

*Social Security Act 1998*

424. Section 2 of SSA 1998 provides that decisions, determinations and assessments in relation to specified benefits may be issued by someone acting on behalf of the Secretary of State or by a computer that they are responsible for. *Paragraph 50* extends the scope of the benefits that are subject to this provision to include personal independence payment.

425. Section 8 of SSA 1998 provides that decisions on any claim to a specified benefit or under a specified enactment are to be made by the Secretary of State. *Paragraph 51* extends the scope of the benefits that are subject to these provisions to include personal independence payment. As a result of this amendment, provisions in relation to changing a decision (by way of revision or supersession) and rights of appeal are also extended to include personal independence payment.

426. Section 11 of SSA 1998 allows for provision to be made in regulations with respect to decisions made by the Secretary of State in relation to specified legislation. *Paragraph 52* extends the scope of the legislation to include Part 4 of the Bill.

427. Sections 27 and 28 of SSA 1998 allow for restrictions on entitlement to benefit made under specified enactments in circumstances relating to cases of error following an appeal to the Upper Tribunal or to the courts and correcting accidental errors or setting aside decisions where it appears justifiable to do so. *Paragraphs 53 and 54* extend the scope of the legislation to include personal independence payment and the legislation under which it is created.

428. Schedule 3 to SSA 1998 makes clear that decisions on payability of the care component of disability living allowance when someone is in a care home are subject to rights of appeal. *Paragraph 55* ensures that similar decisions for the purposes of personal independence payment under *clause 83* are also subject to rights of appeal.

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*Immigration and Asylum Act 1999*

429. Section 115 of the Immigration and Asylum Act 1999 excludes certain people subject to immigration control from receiving certain benefits. One of these is disability living allowance, and the amendment in *paragraph 56* extends the exclusion to personal independence payment.

*Capital Allowances Act 2001*

430. Section 268D of the Capital Allowances Act 2001 refers to a “hire car” for a disabled person and a “disabled person” is defined by reference to them receiving “a disability living allowance” under the SSCBA 1992 because of entitlement to the mobility component. *Paragraph 57* makes provision to include someone in receipt of the mobility component of personal independence payment.

*Social Security Fraud Act 2001*

431. SSFA 2001 makes provision in relation to obtaining and disclosing information, restricting payment of social security benefits in the case of persons convicted of offences relating to such benefits and for related purposes. These provisions currently apply to disability living allowance; *paragraphs 59 and 60* provide that the same provisions will apply to personal independence payment so that it is included in the definitions of “disqualifying benefit”, “sanctionable benefit” and “social security benefit” for the purposes of particular provisions of that Act.

*Income Tax (Earnings and Pensions) Act 2003*

432. Section 318B of the Income Tax (Earnings and Pensions) Act 2003 provides for what constitutes employer-provided and employer-contracted childcare and defines a “child”. This is normally up to the 1st September after the child’s fifteenth birthday but this is extended to the sixteenth birthday in the case of a disabled child. Under section 318B(3) a child is disabled if “a disability living allowance is paid in respect of him”. *Paragraph 62* extends this to where personal independence payment is paid.

433. Section 677 and Part 1 of Schedule 1 provide that disability living allowance is wholly exempt from income tax. *Paragraphs 63 and 64* similarly sets out that the personal independence payment is exempt from income tax.

*Finance Act 2005*

434. Section 38 of the Finance Act 2005 defines a “disabled person” by reference to whether a person is in receipt of the highest or middle rate of the care component of disability

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living allowance. *Paragraph 65* extends these references to persons in receipt of the daily living component of personal independence payment at a rate to be designated by regulations.

***Clause 89: Power to make supplementary and consequential provisions***

435. *Clause 89* enables regulations to make consequential, supplementary or incidental provision relating to Part 4 of the Bill. *Subsections (2) and (3)* extend the power to the Scottish Ministers so that they may also make such provision if it would fall within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.

436. Regulations under this clause may amend, repeal or revoke any relevant primary or secondary legislation already existing or amend or repeal any provision of an Act passed in the same Parliamentary session, and will be subject to the negative resolution procedure in Parliament or (as the case may be) the Scottish Parliament (see the notes on *clause 91*), except that regulations made by the Scottish Ministers which amend or repeal primary legislation will be subject to the affirmative resolution procedure in the Scottish Parliament.

***Clause 90: Transitional***

437. *Clause 90* provides for transitional arrangements for the coming into force of Part 4 of the Bill.

438. *Subsection (1)* provides a general power allowing the Secretary of State to make transitional arrangements through regulations such as he considers necessary or expedient. *Subsection (2)* gives effect to *Schedule 10*.

***Schedule 10: Personal independence payment: transitional***

439. *Schedule 10* makes more detailed provision as to how the general regulation-making power in *clause 90* may be exercised.

440. *Paragraph 1* allows regulations to make provision relating to the replacement of disability living allowance with personal independence payment. The “appointed day” means the date that *clause 75* comes into force.

441. *Paragraph 2* contains provisions relating to claims made before the personal independence payment provisions come into effect. *Sub-paragraph (1)(a)* enables a claim for personal independence payment to be made before the appointed day. *Sub-paragraph (1)(b)* allows a claim for personal independence payment made before the appointed day to be treated as a claim for disability living allowance. This might be used if the person making the claim fell into a group which had yet to begin the transition process. *Sub-paragraph (1)(c)* allows for a claim for disability living allowance made before the appointed day to be treated as a claim for personal independence payment, which could be used if an individual submits a claim for disability living allowance shortly before the introduction of personal independence payment.

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442. *Sub-paragraph (2)* allows for an award of personal independence payment to be made in respect of a period before the appointed day. This might be used if a person made a claim to disability living allowance shortly before the appointed day, and their claim was treated as a claim to personal independence payment and an award was made in respect of that period.

443. *Paragraph 3* contains provisions relating to claims made after the appointed day. It allows for a phased transition from disability living allowance to personal independence payment.

444. Claimants may not be able to move voluntarily from disability living allowance to personal independence payment. *Sub-paragraph (1)(a)* provides that regulations may exclude temporarily or permanently anyone receiving disability living allowance from making a claim for personal independence payment. The power to exclude a person permanently could be used, for example, where a claimant is approaching state pension age and so will soon not meet the conditions of entitlement for personal independence payment.

445. *Sub-paragraph (1)(b)* allows for a temporary delay before a person can make a claim for personal independence payment. *Sub-paragraph (1)(c)* allows for a person to be excluded from entitlement temporarily or for a particular period.

446. *Sub-paragraphs (1)(d)* and *(1)(e)* allow for a claim for personal independence payment to be treated as a claim for disability living allowance and for a claim for disability living allowance to be treated as a claim for personal independence payment during the transitional period. This may apply particularly in cases where the claimant is excluded from claiming personal independence payment under *sub-paragraph (1)(a)*.

447. *Sub-paragraph (2)* allows for an award of personal independence payment to be made in respect of a period before the appointed day. This follows the provision in *paragraph 2(2)* with the same effect for claims during the transitional period. It enables provision to be made on the conditions of entitlement to, and the amount of, an award, in such a situation.

448. *Paragraph 4* enables regulations to make provision relating to ongoing awards of disability allowance and the making of awards for personal independence payment.

449. *Sub-paragraph (1)* allows for the termination of an award of disability living allowance and the making of an award of personal independence payment in its place. An award of personal independence payment may be made with or without the claimant having to apply.

450. Under *sub-paragraphs (2)(a)* and *(b)* regulations may require claimants to follow a certain procedure, provide information or undergo an assessment before a new award of personal independence payment begins, and may set out the consequences if a person fails to do so.



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451. *Sub-paragraph (2)(c)* allows for regulations temporarily or permanently to alter the conditions of entitlement for people moving onto personal independence payment. This means that some people who are entitled to disability living allowance but would not otherwise meet the conditions of entitlement for personal independence payment could be treated as entitled to personal independence payment.

452. The sub-paragraph also allows for regulations temporarily or permanently to alter the conditions of entitlement for the assessment set out in subsections (1) and (2) of clause 78.

453. *Sub-paragraph (2)(d)* enables regulations to make provision for the amount of an award of personal independence payment made by virtue of paragraph 4.

454. *Paragraph 5* enables regulations to disregard any gap in entitlement to disability living allowance in cases where the exercise of the power to make transitional regulations would otherwise be prevented. Paragraph 5 also enables provision to be made modifying the operation of the “required period condition” in transitional cases.

***Clause 91: Regulations***

455. *Clause 91* makes additional provision relating to the regulation-making powers in Part 4 of the Bill. In particular, *subsection (2)* enables regulations to make different provision for different cases or purposes. It also enables provision to be made in relation to some or all of the cases or purposes within its scope.

456. The regulations may also make different provision for different ages, together with incidental or consequential provisions. This could include saving some provisions (for example, in relation to disability living allowance) where they continue to be required.

457. *Subsection (7)* provides that regulations under Part 4 are to be subject to the negative resolution procedure in the Houses of Parliament. The exceptions to this are set out in *subsection (6)* (which requires the first regulations made under clause 78, and the first regulations under that clause that address the assessment for those under 16, to be subject to the affirmative resolution procedure in each House of Parliament); and in *subsection (8)*, which makes provision as to procedure in the Scottish Parliament where regulations are made by the Scottish Ministers under clause 89.

***Clause 92: Interpretation of Part 4***

458. *Clause 92* defines certain expressions for the purposes of Part 4.

## **Part 5: Social security: General**

### ***Clause 93: Benefit cap***

459. *Clause 93* provides for the amount of welfare benefits a claimant or a couple receives to be capped by reference to the average earnings of working households in Great Britain.

460. *Subsections (1) to (3)* allow for regulations to apply a cap to the total amount of welfare benefits an individual or couple receives. Where total entitlement is higher than the level of the cap, entitlement to benefits may be reduced by up to the excess.

461. *Subsection (4)* illustrates the way in which the power can be used. In particular, it enables regulations to specify how a person's total entitlement to welfare benefits is to be calculated and how the amount of any reduction should be determined. Regulations may prescribe the benefits from which a reduction can be made, make provisions for the period over which it will be determined, provide for circumstances in which the cap will not apply and make provision for its relationship with any other reductions of benefit.

462. The level of the cap will be set in regulations under *subsection (5)*, and must (as a result of *subsection (6)*) be determined by reference to the estimated average earnings of working households. Under *subsections (7) and (8)*, the Secretary of State may determine how best to estimate average weekly earnings in Great Britain after tax and National Insurance Contributions.

463. *Subsection (9)* provides that the application of the cap may not reduce any welfare benefit which falls within the legislative competence of the Scottish Parliament or the National Assembly for Wales. The same applies to any welfare benefit which is provided for by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

464. *Subsection (10)* allows regulations to prescribe which benefits, allowances, payments or credits may be considered welfare benefits for the purposes of calculating and applying the cap, and defines other terms for the purposes of this section. *Subsection (11)* ensures that this list of welfare benefits may not include state pension credit or state retirement pensions.

### ***Clause 94: Benefit cap: supplementary***

465. *Clause 94* makes supplementary provision relating to the cap on welfare benefits.

466. *Subsection (1)* allows regulations under clause 93 to make different provision for different purposes or cases. This may, for example, allow for the level of the cap to differ for single people and couples. *Subsections (2) and (3)* provide that any regulations under clause 93 will be made by statutory instrument and will be subject to the negative resolution procedure in the Houses of Parliament.

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467. *Subsection (4)* amends SSAA 1992 to provide that the level of the cap must be reviewed each tax year to see whether it has maintained its relationship with estimated average earnings. If the Secretary of State decides that it is appropriate to change the level of the cap, this may be done through an up-rating order.

468. *Subsection (5)* inserts a new paragraph 8A into Schedule 2 of SSA 1998 so that a decision that the benefit cap applies to a particular award of benefit may not be appealed. If the benefit cap is applied incorrectly, leading to an incorrect award of benefit, then that will be appealable to the usual extent, but whether or not the benefit cap is to apply will be a matter of law.

***Clause 95: Claims and awards***

469. *Clause 95* amends section 5(1) of SSAA 1992, which makes common provision about claims for all relevant social security benefits dealt with under the Act.

470. *Subsection (2)* amends section 5(1)(d) of SSAA 1992. Section 5(1)(d) allows advance claims to benefit to be made. An advance claim may be made in a situation where a claimant does not presently but soon will meet the conditions of entitlement for a benefit. This might be used, for example, in cases where a person is working out a notice period and is shortly to become unemployed.

471. This amendment ensures that the power at section 5(1)(d) includes the power to make an advance award of benefit, where a claimant would not be entitled to benefit at the point of claim, but would become entitled at a prescribed time after the award were made. This provides for situations where a person may become entitled to a higher amount of benefit at a certain point in a benefit award, which would mean that an award became payable only at that stage. For example, a person with income above a certain level may not be entitled to income-related ESA during the assessment phase until they have completed the work capability assessment and become entitled to either the work-related activity or support components.

472. The effect of subsection (2) is that the power under section 5(1)(d) allows for a claim to be made and an award to arise at a future date where a claimant meets the conditions of entitlement at a prescribed time after the making of the award, or where other prescribed conditions are met.

473. *Subsection (3)* allows for an advance award to be reviewed if these conditions are not met. It is consequential upon the amendment made by subsection (2).

474. *Subsection (4)* amends section 5(1)(g) to allow regulations to provide for one member of a couple to make a claim for benefit on the behalf of both members jointly.

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475. *Subsection (5)* amends section 5(1)(j) of SSAA 1992 to allow the Secretary of State to prescribe in regulations changes of circumstances that must be reported by claimants and others.

***Clause 96: Powers to require information relating to claims and awards***

476. *Clause 96* amends SSAA 1992 to enable regulations to require prescribed people to supply information that is or could be relevant to potential or current claims and awards of relevant benefits. New *section 5(1A)* of SSAA 1992 will ensure that the Secretary of State can make regulations to obtain information.

Examples of how this might be used are:

- using information from other Government departments to enable DWP to undertake campaigns to ensure people are aware that they could receive particular benefits;
- using information held by other Government departments, agencies and service providers that could be used to determine entitlement to, and maintain accurate assessment of a social security benefit;
- to assist in the transition from existing benefits onto the universal credit;
- to obtain information and facilitate the localisation of benefits and services where it would be right for DWP to do so.

477. *Subsections (2), (4) and (5)* make consequential amendments resulting from these changes and repeal legislation replaced by the new section 5(1A). *Part 10* of Schedule 13 contains consequential repeals.

478. *Subsections (2), (4) and (5)* make consequential amendments resulting from these changes and repeal legislation replaced by the new section 5(1A). *Part 10* of Schedule 13 contains consequential repeals.

***Clause 97: Payments to joint claimants***

479. *Clause 97* amends section 5 of SSAA 1992. The amendment will apply in respect of the payment of all relevant social security benefits dealt with under the Act.

480. The clause inserts a new *subsection (3B)* into section 5 allowing regulations to set out the person to whom a benefit is paid where the benefit is awarded to a couple jointly. *Subsection (3B)* provides that the Secretary of State may determine that the couple should nominate a lead individual to receive payment of the benefit. Alternatively the Secretary of State may determine to which member of the couple the payment will be made.

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**Clause 98: Payments on account**

481. *Clause 98* substitutes section 5(1)(r) of the SSAA 1992, which makes provision for payments on account of benefit.

482. In its current form, section 5(1)(r) allows the Secretary of State to make payments on account on a discretionary basis in cases where a claim cannot be made or determined immediately (because further information is needed, for example); where a claim has been made and it is impracticable for the claim or an appeal, reference, review or application on it to be determined immediately; or where an award has been made but it cannot be paid immediately (when a national or local emergency prevents claims being handled normally, for example). *New section 5(1)(r)(i)* maintains this position. Payments on account are recovered from ongoing payments of benefit, or where this is not possible, directly from the claimant.

483. The substitution will allow for a payment on account to be made in additional circumstances. *New section 5(1)(r)(ii)* provides for a payment to be made where a claimant is in need – examples of how it might be applied include where benefit has been claimed, but the first payday has not yet been reached, or where a claimant is receiving benefit, but encounters difficulty in budgeting between benefit payments for example, where there is a change in their award. Regulations will make provision for the test of need.

484. *New section 5(1)(r)(iii)* will enable the Secretary of State to make a payment on account where, subject to criteria set out in regulations, it can reasonably be expected to be recovered. These recoverable payments are intended to help towards meeting expenses which are difficult to budget for out of normal benefit income (such as a fridge or cooker breaking down and needing fixing or replacing), or for which the claimant has been unable to save, or to deal with fluctuations in expenditure throughout the year, for example where children in the household who would normally have free school meals are on summer holidays. Such payments will replace the existing social fund budgeting loans – see *clause 69*.

485. Section 22 of the WRA 2009 has not been commenced. Had it been, it would have extended the range of situations in which a payment on account could be made beyond existing section 5(1)(r) of the SSAA 1992. It would have extended making payments on account to situations similar to those that will be covered by new section 5(1)(r)(ii). As section 22 would not have provided for payments on account in those situations that will be covered by new section 5(1)(r)(iii), *subsection (2)* repeals it.

**Clause 99: Power to require consideration of revision before appeal**

486. Section 12 of SSA 1998 makes provision for a claimant (or any other prescribed person) to appeal to the First-tier Tribunal against a decision of the Secretary of State. Although the claimant (or other person) could ask initially for the decision to be reconsidered with a view to revision (under section 9 of the Act), in practice many people do not do so and make an appeal from the outset.

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487. In order to resolve more disputes with claimants through the internal reconsideration process before an appeal to the tribunal is made, *subsections (2) and (3) of clause 99* amend section 12 to enable the Secretary of State to make regulations setting out the cases or circumstances in which an appeal can be made only when the Secretary of State has considered whether to revise the decision.

488. New *section 12(3B)*, which is inserted by *subsection (3)*, contains examples of how the new power might be used. In particular, regulations may provide that there is to be a right of appeal only where the Secretary of State has considered whether to revise the decision as a result of an application having been made for that purpose.

489. In certain cases, the regulation-making powers under section 12 of SSA 1998 are exercisable by a person other than the Secretary of State (for example, functions relating to child benefit and guardians allowance are exercisable by HMRC). New *subsection (3C)*, which is also inserted by *subsection (3)*, makes it clear that in any particular case the new powers in *section 12(3A)* are to be exercisable by the person responsible for making regulations under section 12 in that case.

490. Where there is no right of appeal as a result of regulations made under the new provisions, *subsection (4)* enables provision to be made in regulations for treating any purported appeal as an application for revision.

491. *Subsection (5)* provides that regulations to be made under new *subsection 12(3A)* will be subject to the affirmative procedure.

492. *Subsection (6)* introduces *Schedule 11* which makes equivalent provision in the case of certain other appeals. These relate to vaccine damage payments, child support, the recovery of benefits, housing benefit and council tax benefit, and payments in respect of mesothelioma.

493. *Clause 136(4)(b)* enables regulations made under the new provisions to be brought into force in different areas at different times, which enables a phased implementation. The new regulations under *section 12(3A)* may need to be accompanied by changes to other regulations relating to decisions and appeals. But such other regulations cannot normally be made so as to apply only to a limited area. *Subsections (7) to (9) of clause 99*, therefore, enable other provisions in legislation relating to decisions and appeals, if made in connection with regulations requiring consideration of revision before appeal, to apply only in relation to a limited area.

***Clause 100: Supersession of decisions of former appellate bodies***

494. In November 2008 the Ministry of Justice legislated to abolish the old social security appeal tribunals, the Child Support and the Social Security Commissioners and transferred their functions to the new appeals system: the First-tier Tribunal and the Upper Tribunal.

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495. Under the old system, the Secretary of State, local authorities and the Child Maintenance and Enforcement Commission (“the Commission”) could change (supersede) a decision of an appeal Tribunal or a Commissioner in limited situations set out in legislation. The ability to supersede decisions of the former appeal bodies is crucial so that decision-makers can properly adjust the person's award to take account of a change of circumstances or new facts which come to light after the appeal body's decision – which may be beneficial to the individual as well as disadvantageous.

496. Whilst the legislation ensured that the Secretary of State, local authorities and the Commission could supersede decisions made under the new appeals system, the need to supersede decisions made under the old system was inadvertently overlooked. The legislation changed references to the former appeal bodies in primary and secondary legislation to references to the new appeal bodies, when it should have contained a reference to both.

497. *Clause 100* introduces *Schedule 12*. This amends provisions in Acts by inserting references to the old appeals bodies. This, taken together with *subsection (2)(a)* of this clause, ensures that the legislation is restored to the position that it should have been when the old appeal bodies were abolished and their functions transferred.

498. A regulation-making power is needed to correct the same errors in subordinate legislation concerning supersession decisions. It is envisaged that the regulations would, for example, insert references to the former appeals bodies in provisions relating to the cases or circumstances in which supersession decisions can be made. *Subsection (2)* enables regulations made possible by virtue of the amendments in *Schedule 12* to take effect as if they too had come into force when the old appeals bodies were abolished.

***Clause 101: Electronic communications***

499. *Clause 101* applies where regulations under SSAA 1992 or SSA 1998 require or authorise the use of electronic communications. Examples could be regulations which make provision about the manner in which a claim for benefit must be made or relevant information or evidence must be provided. Section 189(5) of SSAA 1992 and section 79(6) of SSA 1998 ensure that regulations made under those Acts may include incidental and supplementary provision.

500. This clause makes it clear that these powers include, in the case of regulations to which this clause applies, provision of a kind set out in sections 8(4), (5) and 9(5) of the Electronic Communications Act 2000. These cover, for example, provision as to:

- the form which electronic communications must take;
- the conditions under which electronic communications are allowed the use of intermediaries in the transmission or authentication of electronic communications; and

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- the method of determining (and proving in legal proceedings) whether, when, where, and by whom an electronic communication was made.

501. The clause also enables conditions or requirements concerning the use of electronic communications to be framed with reference to directions given by the Secretary of State.

***Clause 102: Recovery of benefit payments***

502. *Clause 102(1)* sets out provisions concerning the recovery of overpaid universal credit, JSA, ESA and the housing credit element of state pension credit (housing credit) that are inserted into the SSAA 1992.

503. *New section 71ZB* sets out the general provisions about the recovery of overpaid universal credit, JSA, ESA and the housing credit element of state pension credit.

504. *Subsection (1)* gives the Secretary of State the power to recover any amount of universal credit, JSA and ESA, which has been paid in excess of entitlement. It also gives the Secretary of State the power to recover any amount of the housing credit, which has been paid in excess of entitlement, except in circumstances that will be prescribed in regulations.

505. *Subsection (2)* provides that the overpayment is recoverable from any person to whom it was paid (including a landlord to whom benefit was paid), and/or such other person as may be prescribed in regulations.

506. *Subsection (3)* provides that except in prescribed circumstances, an amount paid in pursuance of an award cannot be a recoverable overpayment under *subsection (1)* unless the determination forming the basis for the overpayment has been reversed on appeal or has been revised or superseded respectively under section 9 or 10 of the SSA Act 1998. The subsection will not apply in cases of a pure overprovision or irregular encashment because these are not payments in pursuance of an award.

507. *Subsection (4)* provides that regulations may prescribe the manner in which the amount of the overpayment to be recovered is calculated or estimated.

508. *Subsection (5)* means that where another income or benefit that would affect the award of universal credit is paid late, any amount of universal credit which would not have been paid had the other income or benefit been paid on time, is treated as an overpayment and is recoverable from the universal credit recipient.

509. *Subsection (6)* allows for an amount paid to one member of an award which is made to persons jointly to be recovered from the other by any method (as listed in *subsection (7)*).



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510. *Subsection (7)* provides that overpayments may be recovered by deducting from benefit, by deduction from earnings, through the courts, or by adjustment of subsequent payments of benefit.

511. *New section 71ZC* relates to recovery of overpayments under new *section 71ZB* by the method of deduction from benefit.

512. *Subsection (1)* provides that overpayments of universal credit, JSA, ESA and the housing credit can be recovered by making deductions from payments of prescribed benefits payable to the person the overpayment is recoverable from.

513. *Subsection (2)* provides that where universal credit, JSA, ESA or the housing credit is paid to a third party (for example a landlord) on the benefit claimant's behalf, overpayments of those benefits may be recovered from:

- prescribed benefits to which the third party is entitled;
- ongoing payments of prescribed benefits to the third party being made on the benefit claimant's behalf; or
- ongoing payments of prescribed benefits paid to the third party on other benefit claimants' behalf (for example, if a landlord has other tenants who are in receipt of universal credit or housing credit).

514. *Subsection (3)* provides that in circumstances to be prescribed in regulations, where deductions are made from payments of prescribed benefits to the third party on the claimant's behalf, the claimant's obligations to the third party will be discharged, for example the landlord would not be able to put the claimant into arrears with their rent.

515. *Subsection (4)* provides that in all cases where deductions are made from payments of prescribed benefits to the third party on other benefit claimants' behalf, the other claimants' obligations to the third party will be discharged, for example the landlord would not be able to put the other claimants into arrears with their rent.

516. *New section 71ZD* relates to the recovery of overpayments under *new section 71ZB* by deduction from earnings.

517. *Subsection (1)* allows the Secretary of State to make regulations so as to allow amounts recoverable under new *section 71ZB* to be recovered by deduction from earnings.

518. *Subsection (2)* allows the Secretary of State to prescribe in regulations the definition of 'earnings' for the purpose of this clause.

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519. *Subsection (3)* describes the related issues for which the Secretary of State may prescribe in regulations under *subsection (1)*. These include preventing an employer from making deductions from earnings where they would take earnings below a specified level, allowing for an employer to deduct a prescribed sum from earnings in respect of the employer's administration costs, providing for a criminal offence for non-compliance with certain of the obligations under those regulations and legislating as to priorities of deductions from earnings made under these powers as against those made under other legislation.

520. New *section 71ZE* relates to recovery of overpayments under *new section 71ZB* through the courts.

521. *Subsection (1)* provides that overpayments are recoverable through the county court system for persons residing in England and Wales. *Subsection (2)* provides that overpayments are recoverable through the sheriff court system for persons residing in Scotland.

522. It is standard practice for the Secretary of State to seek to recover court costs when there is a court judgment in his favour. There is no mechanism at present however for the Secretary of State to recover any costs associated with civil recovery of overpayments in the same way as if they formed part of the overpayment debt, by deduction from benefits, or by adjustment of subsequent payments of benefit. *Subsection (3)* allows the Secretary of State to recover costs by the same method as the overpayment is recovered.

523. *New section 71ZF* relates to recovery of overpayments under *new section 71ZB* using the method of adjustment of subsequent payments of benefit.

524. It provides that the Secretary of State may prescribe in regulations that in certain circumstances, amounts paid but subsequently determined as not payable, can be treated as properly paid and be set against future payments of benefit or against certain payments to third parties.

525. *New section 71ZG* makes provision enabling the Secretary of State to recover any amount paid by way of payments on account.

526. *Section 71ZG(2)* provides that the payment on account is recoverable from the person to whom it was paid, or another prescribed person. This includes the benefit claimant and also the benefit claimant's partner or an appointee who appropriates excess benefit for their own use.

527. *Subsection (3)* allows regulations to calculate or estimate, where appropriate, the amount of a payment on account to be recovered.

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528. *Subsection (4)* allows for an amount paid to one member of an award which is made to persons jointly to be regarded as paid to the other. This will ensure that the payment on account can be recovered from either of them.

529. *Subsection (5)* enables the methods of recovery set out in *new sections 71ZC to 71ZE* of the SSAA 1992 to be applied to recover payments on account in the same way as they allow for the recovery of overpayments of benefit. While the Secretary of State may choose, in many cases, to recover payments on account from ongoing payments of benefit, there will be circumstances where other methods of recovery are necessary, for example, where a payment on account is made at the beginning of a benefit claim but the claimant ceases to receive benefit before the payment has been fully repaid to the Secretary of State.

530. *New section 71ZH* relates to the recovery of payments made to people in or facing hardship.

531. *Subsection (1)* provides that the new subsection applies to hardship payments which are recoverable. This may include payments made under section 28 of this Act to universal credit claimants who are subject to a sanction or under the equivalent provisions for JSA in section 19C of the JA 1995, inserted by section 55 of this Act. It may also apply to payments made to JSA claimants in cases where they are entitled to a prescribed rate of benefit despite not meeting the jobseeking conditions, or where their claim is yet to be determined. Any hardship payments made to claimants subject to a sanction for fraud under the listed sections of SSFA 2001 may also be covered by these provisions.

532. The amount recoverable may be determined in regulations, and may be recovered from the person the payment was made to or any other person specified in regulations. *Subsection (4)* provides that for the purposes of universal credit or joint-claim JSA a hardship payment paid to one member of a couple may be considered as paid to the other.

533. *Subsection (5)* enables the methods of recovery set out in sections 71ZC to 71ZF to be applied to hardship payments in the same way as overpayments of universal credit, JSA, ESA or the housing credit.

534. As overpayments of the housing credit will be recoverable in accordance with section 71ZB instead of section 71, *clause 102(2)* makes the required consequential amendment to section 71.

535. *Clause 102(3) and (4)* respectively make consequential amendments to sections 115A and 115B SSAA 1992 to ensure that the provisions relating to civil penalties apply where sums are recoverable under new section 71ZB.

536. Paragraph 9 of Schedule 1 to JA 1995 provides that regulations may provide for an income-based JSA to be payable at a prescribed rate and for a prescribed period in relation to

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cases where regulations under paragraph 8 provide for entitlement to JSA despite a claimant not meeting all of the jobseeking conditions, or regulations under paragraph 8A provide for a joint-claim couple to be entitled to a joint-claim JSA without both members of the couple meeting all of the conditions of entitlement in section 1(2B) of the Act, or in some circumstances without both members having to have made the claim. *Clause 102(5)* amends paragraph 9 to allow the regulations to provide for the whole or part of such payments of JSA to be recoverable in prescribed circumstances.

537. *Clause 102(6) and (7)* amend the SSA 1998 in two respects. Firstly, to ensure that any person from whom it is determined that an overpayment is recoverable under new sections 71ZB, 71ZG or 71ZH, has the same right of appeal against that determination as a claimant. Secondly, to provide that in respect of overpayments under section 71ZB (other than overpayments of the housing credit) and amounts recoverable under sections 71ZG and 71ZH, appeals lie only in relation to decisions as to the amount of the payment recoverable under those sections. In respect of overpayments of the housing credit, the amendments provide that appeals lie both in respect of the decision on whether the overpayment is recoverable and the amount recoverable.

***Clause 103: Deductions from earnings: other cases***

538. *Clause 103* amends sections 71, 71ZA, 75 and 78 of the SSA Act 1992 to provide for the recovery of social security debt not covered by the equivalent provisions in clause 102 to be recovered by deduction from earnings.

**Section 71**

539. *New subsection (9A)* allows regulations to provide that amounts recoverable under section 71(8) (i.e. overpayments of benefits not covered by section 71ZB) may be recovered by deduction from earnings.

540. *New subsection (9B)* allows the Secretary of State to prescribe in regulations the definition of ‘earnings’ for the purpose of this clause.

541. *New subsection (9C)* describes the related issues for which the Secretary of State may prescribe in regulations under *subsection (9A)*. These include preventing an employer from making deductions from earnings where they would take earnings below a specified level, allowing for an employer to deduct a prescribed sum from earnings in respect of the employer’s administration costs, providing for a criminal offence for non-compliance with certain of the obligations under those regulations and legislating as to priorities of deductions from earnings made under these powers as against those made under other legislation.

## **Section 71ZA**

542. *New subsection (2A)* is inserted into *section 71ZA* to allow for the recovery of overpaid discretionary social fund payments which are recoverable by virtue of that section to be recovered by deduction from earnings.

## **Section 75**

543. *New subsection (8)* allows regulations to provide that overpaid housing benefit recoverable by virtue of *section 75(4)* may be recovered by deduction from earnings.

544. *New subsection (9)* allows the Secretary of State to prescribe in regulations the definition of ‘earnings’ for the purpose of this clause.

545. *New subsection (10)* describes the related issues for which the Secretary of State may prescribe in regulations under *subsection (8)*. These include preventing an employer from making deductions from earnings where they would take earnings below a specified level, allowing for an employer to deduct a prescribed sum from earnings in respect of the employer’s administration costs, providing for a criminal offence for non-compliance with certain of the obligations under those regulations and legislating as to priorities of deductions from earnings made under these powers as against those made under other legislation.

## **Section 78**

546. *New subsection (3C)* allows regulations to provide that repayable social fund awards may be repaid by deduction from earnings.

547. *New subsection (3D)* allows the Secretary of State to prescribe in regulations the definition of ‘earnings’ for the purpose of this clause.

548. *New subsection (3E)* provides for the same related issues for which the Secretary of State may prescribe in regulations under *section 71(9C)* to apply to those social fund amounts recoverable under *section 78(3C)*.

### ***Clause 104: Recovery of child benefit and guardian’s allowance***

549. *Clause 104* amends *section 71(8)* of SSAA 1992. *Section 71* provides the statutory basis for dealing with overpayments of prescribed social security benefits (which include Child Benefit and Guardian’s Allowance) that have occurred where a person has misrepresented or failed to disclose anything relevant to their claim and the overpaid sum would not have been paid but for that misrepresentation or failure to disclose. *Section 71(8)* of SSAA 1992 allows overpayments made in those circumstances to be recovered from future payments of prescribed benefits. The amendment in *clause 104* will allow overpaid child

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benefit or guardian's allowance to be recovered from future payments of those benefits (but not other prescribed benefits).

***Clause 105: Application of Limitation Act 1980***

550. Section 9 of the Limitation Act 1980 ("the 1980 Act") imposes a time limit of six years on any "action" to recover a sum recoverable by virtue of an enactment (in England and Wales). *Clause 105* amends the section 38 of the 1980 Act (interpretation) for the avoidance of doubt; references in that Act to "action" do not include recovery under social security and tax credits legislation by means other than proceedings in a court of law.

551. *Clause 105(2) and (3)* puts beyond doubt that the Secretary of State may recover social security overpayments and social security debt (including social fund debts) under the SSAA 1992 or the SSCBA 1992, and that HMRC Commissioners may recover overpayments of tax credit under TCA 2002 and overpayments of child benefit and guardian's allowance under the SSAA 1992, by means other than court action. Accordingly it secures that the time limits do not apply, for example, to recovery by deduction from benefit.

552. *Subsection (4)* provides that this amendment is to be regarded as always having formed part of the 1980 Act but this does not apply in respect of proceedings brought before the commencement of this provision.

***Clause 106: Recovery of fines etc by deductions from employment and support allowance***

553. The introduction of ESA by the WRA 2007 required consequential amendments to other legislation. *Clause 106* corrects an error in those consequential amendments relating to deductions from benefit for the payment of fines. As a result of the error, secondary legislation which allowed deductions for fines from both the income-related and contributory elements of ESA was not supported by the primary legislation, which allowed deductions from the income-related element only. The effect of the clause is to give retrospective legal authority to the secondary legislation.

554. *Subsection (1)* removes references in the Criminal Justice Act 1991 which allow deductions for fines to be taken from only the income-related element of ESA. *Subsection (2)* removes a corresponding reference in Schedule 3 to WRA 2007.

555. *Subsection (3)* provides that the repeals in subsections (1) and (2) have retrospective effect from 27th October 2008, the ESA implementation date.

***Clause 107: Powers to require information relating to investigations***

556. Section 109B (power to require information) of the SSAA 1992 specifies from whom the Secretary of State can require information when investigating whether benefit is properly payable.

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557. *Clause 107* inserts *new subsection (2)(ia)* into existing section 109B(2) to add a regulation making power to prescribe persons from whom an authorised officer under existing section 109B (1) can require information. An example of how this might be used would be to require information from those who presently are asked to provide information for tax credits (for example persons providing child care).

558. *Clause 107(b)* amends existing section 109B(2)(j) to include new subsection (2)(ia). Existing section 109B(2)(j) states that the persons from whom the Secretary of State may require information under section 109B(2)(a) to (i) includes their servants and agents. The amendment allows it to extend to new subsection (2)(ia).

***Clause 108: Time limits for legal proceedings***

559. *Clause 108* amends section 116(2) of the SSAA 1992 (legal proceedings). Section 116(2) permits the Secretary of State to issue a certificate allowing proceedings for a summary only offence to be commenced later than 12 months from the date an offence was committed if it is within the period of 3 months from the date on which evidence comes to the Secretary of State's knowledge, and this evidence is, in his opinion, adequate to justify a prosecution for the offence.

560. The Secretary of State will now be able to issue a certificate to extend the period when proceedings may be commenced where: a claimant is to be prosecuted for a housing benefit or council tax offence; that benefit is administered by a local authority; and although the 12 month period after the offence was committed has expired, the date is within 3 months of the date on which evidence came to the Secretary of State's knowledge that is, in his opinion, adequate to justify a prosecution.

***Clause 109: Prosecution powers of local authorities***

561. *Clause 109* inserts a *new section 116ZA* (Local authority powers to prosecute housing benefit and council tax benefit fraud) into SSAA 1992 to restrict local authority powers to bring proceedings relating to housing benefit and council tax benefit offences following the introduction of the Single Fraud Investigation Service. The purpose of the new section is to prepare for the Single Fraud Investigation Service to assume sole responsibility for the investigation of all suspected benefit fraud.

562. *New section 116ZA(2)* provides that an authority may not bring a prosecution for suspected benefit offences unless certain circumstances apply.

563. Under *new section 116ZA(2)(a)*, where a local authority has already started an investigation in relation to a suspected fraud of housing benefit and/or council tax benefit, the authority may prosecute that offence. Where there is an existing investigation by a local authority, under *section 116ZA(2)(b)* if it applies to housing benefit, and under *section 116ZA(2)(c)*, if it applies to council tax benefit, the local authority can bring proceedings against the same person for a fraud in respect of the other benefit if necessary. These are

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subject to the power of the Secretary of State at new subsection (3) to direct that the local authority may not bring proceedings, even if an investigation has already started.

564. *Section 116ZA(2)* also includes a regulation-making power under *116ZA (2)(d)* to prescribe circumstances in which the local authority can bring proceedings for housing benefit or council tax benefit fraud.

565. Where the Secretary of State has given specific authorisation, *new section 116ZA(2)(e)* provides that local authorities will be allowed to prosecute fraud concerning housing benefit and council tax benefit where the Secretary of State has authorised such proceedings. *New section 116ZA(4)* allows the Secretary of State to specify a specific authority or type of authority or particular proceedings or description of proceedings in a direction under new subsection (2)(e) or (3).

566. *New section 116ZA(5)* provides that where, for the purposes of this section, the Secretary of State prescribes conditions to be fulfilled in order for a local authority to bring proceedings, the local authority may only bring proceedings if those conditions are satisfied. *New section 116ZA(6)* makes equivalent provision to that in section 116A(4) which provides that the Secretary of State may, in prescribed circumstances take over proceedings a local authority has commenced in relation to an alleged benefit offence. This also gives the Secretary of State a power to discontinue proceedings in prescribed circumstances, including where he withdraws his authorisation that the local authority can commence proceedings.

567. *New section 116ZA(7)* makes equivalent provision to that in existing Section 116A(5), which sets out, in the context of prosecutions by local authorities, the different circumstances in which a local authority must adhere to the Code for Crown Prosecutors issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.

568. *New section 116ZA(8)* provides a regulation making power to define, for the purposes of *section 116ZA* what would constitute “an investigation in respect of benefit fraud” so as to trigger subsections (2)(a) to (c) of *new section 116ZA*.

569. *New section 116ZA(9)* makes clear that *new section 116ZA* does not extend to Scotland. This is because only the Procurator Fiscal may prosecute benefit offences in Scotland and *new section 116ZA* therefore has no application to Scottish local authorities.

570. *Subsections (3) to (6)* amend section 116A (local authority powers to prosecute benefit fraud) of SSAA 1992. Section 116A applies in the case of local authorities prosecuting benefit fraud other than housing benefit fraud or council tax benefit fraud. *Subsection (4)* inserts the word “other” after “prosecute” to clarify that the section applies to benefit fraud other than that addressed by *new section 116ZA*. *Subsection (5)(a) and (b)* as amended makes clear that a local authority may bring proceedings for benefit offences other than housing benefit or council tax benefit fraud, only if the Secretary of State provides for this in



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regulations or where the Secretary of State has directed that a local authority may bring those proceedings. *Subsection (6)* substitutes the word “withdraws” for “gives” in section 116A (4)(b) so language is consistent given the changes made to section 116A so that it applies to limit all benefit prosecutions by local authorities unless the Secretary of State prescribes or directs they may be brought.

***Clause 110: Penalty in respect of benefit fraud not resulting in overpayment***

571. *Clause 110* amends section 115A of SSAA 1992 (penalty as alternative to prosecution).

572. Existing subsection (1) of section 115A of SSAA 1992 provides for a penalty as an alternative to prosecution, in cases where the Secretary of State considers there is sufficient evidence to prosecute for benefit fraud. At present, the financial penalty may only apply if an overpayment of benefit has actually been obtained. *Subsection (2)* of this clause inserts a *new section (1A)* to cover cases where a person has claimed benefit falsely but has not obtained a benefit overpayment.

573. This allows for a minimum financial penalty in all cases of false claims for benefit including where they are detected before any payment is made and therefore do not result in an overpayment of benefit.

574. *Subsections (3) to (8)* make consequential amendments in the remainder of Section 115A and in the loss of benefit provisions in SSFA 2001.

***Clause 111: Amount of penalty***

575. *Clause 111* replaces subsection (3) of section 115A of SSAA 1992 (penalty as alternative to prosecution). The purpose is to provide for a minimum financial penalty to apply to all cases of benefit fraud where a claimant is offered the penalty to avoid prosecution.

576. *New subsection (3)* provides that in the event of a fraud resulting in an overpayment, the penalty will be £350 or 50% of the amount overpaid whichever is greater up to a maximum of £2000. *Subsection (3A)* provides that, in cases where there is no overpayment, the penalty will be fixed at £350.

577. *New subsection (3B)* gives the Secretary of State the power to amend, by order, either the percentage of the amount of overpayment, or the minimum and maximum amounts that can be offered as a penalty.

***Clause 112: Period for withdrawal of agreement to pay penalty***

578. *Clause 112* amends sections 115A(5) and 115B(6) of SSAA 1992 to reduce the cooling-off period for agreeing to pay a penalty to avoid prosecution, from 28 days to 14 days. The cooling-off period is the time during which a claimant or, in section 115B, an employer, may withdraw from his or her agreement to pay the financial penalty. A withdrawal

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means that the penalty need not be paid, but also that the Secretary of State's agreement not to prosecute will no longer apply.

***Clause 113: Civil penalties for incorrect statements and failures to disclose information***

579. *Clause 113* inserts new sections 115C (incorrect statements etc) and 115D (failure to disclose information) into SSAA 1992. The purpose is to provide for a civil penalty where claimants fail to disclose information that would affect benefit entitlement or the amount of benefit payable, fail without reasonable excuse, to report changes of circumstances or negligently provide incorrect information.

**115C Incorrect statements etc**

580. *New section 115C(1)* sets out the circumstances in which a penalty can be applied under section 115C. It applies to a person negligently giving incorrect statements or representations, or negligently giving information or evidence either in connection with a claim for, or an award of a benefit, when the person does not take reasonable steps to correct the error. The act or omission must have resulted in an overpayment of benefit which is not being dealt with through fraud action.

581. *New section 115C (2)* provides for the amount of the penalty to be prescribed in regulations. *Section 115C(2)(a)* provides that a penalty imposed under section 115C may be imposed on the person who acted negligently in the various ways set out in section 115C(1)(a). Alternatively, in the case of a claim for benefit made jointly, under *section 115C(2)(b)* the penalty may be imposed on the other member of the joint couple. This is, however, subject to the limitation in *section 115C(3)* that it cannot apply if the other member was not, and could not reasonably have been expected, to be aware that the negligent statement, representation or incorrect information had been given by the other person.

582. *Section 115C(4)* provides for the penalty to be recovered from the person on which it is imposed under section 115C(2). Sections 71ZC to 71ZE of SSAA inserted by clause 102 provide powers to provide for different methods of recovery by way of deduction from benefit, deduction from earnings and court action. *New section 115C(5)* allows the appropriate authority referred to in *new section 115C (4)* to recover penalties by these means.

583. *New section 115C(6)* provides definitions of "appropriate authority", "overpayment" and "relevant social security benefit" for the purposes of new sections 115C and 115D.

**115D Failure to disclose information**

584. *New section 115D* allows for a penalty to be imposed where a person, without reasonable excuse, fails to provide information required either in relation to a claim or an award or to notify relevant changes of circumstances (defined in *new section 115D (6)*) that affect their claim, and the person does not take reasonable steps to correct the error. Both

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situations must result in an overpayment being made before the penalty would be imposed. The act or omission must have resulted in an overpayment of benefit which is not being dealt with through fraud action.

585. *Subsections (1) and (2) of new section 115D* set out the circumstances in which a penalty under section 115D may be imposed.

586. *New section 115D(3)* provides that in the case of a joint claim where both members of the joint claim couple fail to meet requirements described in new sections 115D(1) and (2), only one penalty will be imposed for the failure.

587. *New section 115D(4)* provides that the Secretary of State can recover the penalty from the person on which it was imposed. *New section 115D(5)* has the effect that the methods by which this can be done include, as with *new section 115C*, deduction from benefit, deduction from earnings and court action.

***Clause 114: Benefit offences: disqualifying and sanctionable benefits***

588. *Clause 114* amends section 6A (meaning of “disqualifying benefit” and “sanctionable benefit”) of the SSFA 2001 for the purposes of sections 6B (loss of benefit in case of conviction, penalty or caution for benefit offence) and 7 (loss of benefit for second or subsequent conviction of benefit offence) of that Act.

589. *Subsection (2)* adds child tax credit and working tax credit to the benefits listed as a disqualifying benefit under section 6A. Benefit offences involving disqualifying benefits trigger a loss of benefit payment sanction. This sanction is applied against any benefits that are sanctionable. Sanctionable benefits are those which can be withdrawn or reduced.

590. Under section 6A, disqualifying benefits are sanctionable unless specified otherwise. *Subsection (3)* adds child tax credit and working tax credit to the list of benefits in section 6A(1) that are specified as non-sanctionable. As a result of the amendments to the TCA 2002 made by *clause 117*, working tax credit will be sanctioned under that Act in appropriate cases.

***Clause 115: Benefit offences: period of sanction***

591. *Clause 115* amends the SSFA 2001. It changes the benefit payment disqualification period for the purposes of section 6B (loss of benefit in case of conviction, penalty or caution for benefit offence) of the SSFA 2001.

592. *Subsection (3)* amends the definition of “the disqualifying period” in section 6B(11) changing the length of the disqualifying period from “the period of four weeks” to “the relevant period”. *Subsection (4)* inserts a *new subsection (11A)* into section 6B to define what the relevant period is.

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593. *New subsection (11A)(a)* introduces a new 3 year loss of benefit sanction where the benefit offence is a relevant offence, defined at *new subsection (14)*. Relevant offences will include serious organised fraud and serious identity fraud relating to social security.

594. *New subsection (11A)(b)* introduces a 13 week loss of benefit sanction for claimants who are convicted of a first benefit offence (presently a 4 week loss of benefit sanction).

595. *New subsection 11A(c)* retains the existing 4 week loss of benefit sanction for claimants who accept the offer of an alternative penalty rather than prosecution or are cautioned.

596. *Subsection (5)* inserts *new subsection (14)* into section 6B to provide a definition of ‘relevant offence’ which determines whether an offence falls into this category.

597. *Subsection (6)* gives the Secretary of State the power to amend, by order, the periods and amounts that are in new subsections 11A(a) to (c) and new subsections 14(b)(i) to (iii).

598. *Subsection (7)* inserts a new *subsection (1A)* into section 7 of the SSFA 2001 to ensure that convictions for relevant offences will always be dealt with under section 6B of that Act (attracting the 3 year loss of benefit sanction). This includes second and subsequent convictions which would otherwise be dealt with under section 7 of the SSFA 2001.

***Clause 116: Benefit offences: sanctions for repeated benefit fraud***

599. *Clause 116* amends section 7 (loss of benefit for second or subsequent conviction of benefit offence) of the SSFA 2001 to increase the periods of benefit payment disqualification following repeated benefit fraud. The benefit payment disqualifications will escalate according to the number of offences that have been committed, rather than according to the number of convictions. This means where there is a conviction, earlier offences counting toward escalation of the benefit payment disqualification would include offences dealt with by an agreement to pay a penalty under section 115A of SSAA 1992 (or the corresponding Northern Ireland provision) as an alternative to prosecution or dealt with by a caution.

600. *Subsection (5)* lists the conditions which must be satisfied for a payment disqualification for repeated benefit fraud to apply.

601. *Subsection (7)* inserts a *new subsection (6A)* into section 7 to define the “relevant period” of benefit payment disqualification for section 7, which will differ according to the number of repeated benefit offences committed.

602. *New subsection (6A)(a)* introduces a three year loss of benefit sanction for claimants convicted of a benefit offence preceded by two previous offences (disqualifying events). It only applies where the earliest offence occurs within five years of the second offence (which must have occurred within five years of the current offence). *New subsection (6A)(b)*

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introduces a 26 week period, to apply in all other cases, meaning cases where a claimant is convicted of a benefit offence preceded by one disqualifying event within five years of the current offence.

603. *Subsection (8)* inserts new *subsection (7A) and (7B)* which provide for payments and adjustments where the agreement of a person to pay a penalty under section 115A of the SSAA 1992 (or the corresponding Northern Ireland provision) is taken into account for the purposes of section 7, but at a later date the agreement is withdrawn, or it is decided that the overpayment to which the notice relates is not recoverable or due, or the amount of the overpayment to which the penalty relates is revised and there is no new agreement in relation to the revised overpayment.

604. *New subsection (8A)* inserted by *subsection (10)*, provides that where a person is convicted of more than one offence in a set of proceedings, those offences are only counted once as a disqualifying event for the purposes of section 7.

605. *Subsection (11)* inserts *new subsections (10A) and (10B)* so that the Secretary of State has the power, by order, to amend the period of the benefit payment disqualification and to provide for different periods of payment disqualification to apply according to the type of earlier disqualifying events.

***Clause 117: Loss of tax credits***

606. *Clause 117* inserts various loss of tax credit provisions into the TCA 2002. The purpose of this clause is to allow a more uniform imposition of penalties following convictions for benefits and tax credits fraud. The new provisions inserted into the TCA 2002 follow the loss of benefits regime under the SSFA 2001 (as amended by clauses 114, 115, 116 and 118).

**36A: Loss of working tax credit in case of conviction or penalty for benefit offence**

607. The combined effect of *subsections (1) and (4)* is for payment of working tax credit to be withdrawn for the disqualification period where the offender has been convicted of one or more benefit offences in any proceedings, or accepted a penalty under section 115A SSAA 1992 (“an administrative penalty”) or a caution as an alternative to prosecution. In the case of a single claim, *subsection (4)* provides that the withdrawal will apply to the offender. In the case of a joint claim the withdrawal will apply to either member of the couple. *Subsection (3)* of *new section 36A* provides that where a person is convicted of one or more benefit offences, a sanction will not apply here if they are being sanctioned under new section 36C for repeated benefit fraud.

608. *Subsection (5)* allows HMRC to make regulations which prescribe how working tax payments to a couple may be reduced rather than withdrawn.

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609. *Subsection (6) of new section 36A* defines the disqualification period for the purpose of this section. The disqualification period is the amount of time the benefit can be disqualified for and the length depends on the reason why the person was disqualified. The disqualification period begins at a prescribed time after conviction or the agreement of an administrative penalty or caution. The disqualification periods are set out in *subsection (7)*. *Subsection (7)(a)* sets out the loss of benefit sanction for relevant offences defined in *subsection (5) of clause 115*. This will result in a three year loss of benefit sanction, irrespective of whether it is a first, second or third offence. *Subsection (7)(b)* introduces a 13 week loss of benefit sanction for claimants who are convicted of a first benefit offence. *Subsection (7)(c)* introduces a four week loss of benefit sanction for claimants who accept the offer of an alternative penalty rather than prosecution.

610. *Subsection (8)* gives the Treasury the power to amend by order the periods of sanction that are in *subsection (7)(a) to (c)*.

**36B: Section 36A: supplementary**

611. Section 36B provides for payments and adjustments to be made if necessary to take account of subsequent events such as when a conviction taken into account for the purposes of section 36A is later quashed or an agreement to pay a penalty under section 115A of the SSAA 1992 is similarly taken into account but is later withdrawn.

**36C Loss of working tax credit for repeated benefit fraud**

612. *Subsection (1) of new section 36C* lists conditions which must be satisfied for a loss of benefit sanction for repeated benefit fraud to apply. Where these are fulfilled, *subsection (3)* provides that other than for a relevant offence, working tax credit will not be paid during the disqualification period. In the case of a joint claim, this will apply to one or the other person.

613. The effect of *subsection (2)* is that persons convicted of a relevant offence defined in section 6B(14) of the Social Security Fraud Act 2001 (as inserted by *subsection (5) of clause 115*) are subject to the three year loss of benefit sanction under section 36A, irrespective of the number of previous offences.

614. *Subsection (4)* allows HMRC to make regulations which prescribe how working tax payments to a couple may be reduced rather than withdrawn.

615. *Subsection (5) of new section 36C* defines the disqualification period for the purposes of this section. The disqualification period is the amount of time the benefit can be disqualified for and the length depends on the reason why the person was disqualified, and begins at a prescribed time (which will be defined in regulations). *Subsection (6) of new section 36C* defines what the relevant periods (time for which the benefit can be disqualified) are in relation to this. *Subsection 6(a) of new section 36C* introduces a three year loss of benefit sanction for claimants who are convicted of a benefit offence preceded by two

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previous offences (disqualifying events). It only applies where the earliest offence occurs within five years of the second offence (which must have occurred within five years of the current offence). *Subsection 6(b)* of new section 36C introduces a 26 week loss of benefit sanction for all other offence convictions.

616. *Subsection (8)* of new section 36C means that where a person is convicted of more than one offence in a set of proceedings, those offences are only counted once for the purposes of section 36C under the TCA 2002.

617. *Subsections (9)* and *(10)* of new section 36C give the Treasury the power to amend the period of sanction by order, and to specify different periods depending on previous disqualifying events.

### **36D Section 36C: Supplementary**

618. *Section 36D* provides for payments and adjustments to be made if necessary to take account of subsequent events such as when a conviction taken into account for the purposes of section 36C is later quashed or an agreement to pay a penalty under section 115A of the SSAA 1992 is similarly taken into account but is later withdrawn.

#### ***Clause 118: Cautions***

619. *Clause 118* amends the SSFA 2001 and the TCA 2002 to remove all references in these Acts to the consequences of accepting a caution, as DWP will no longer offer cautions to benefit fraud offenders.

620. *Subsection (2)* of the clause repeals references to cautions that appear in the loss of tax credits provisions which are being inserted by the Bill into the TCA 2002. Those references are being included so that the disqualification of payment of working tax credit would apply in a case where a body with the power to prosecute a person for a benefit offence decides to administer a caution, notwithstanding DWP policy is no longer to give cautions. But the intention is to repeal the references when they are no longer required.

#### ***Clause 119: Tax credit fraud: investigation***

621. Sections 109A (authorisations for investigators), 109B (power to require information) and 109C (right of entry) of the SSAA 1992 provide a framework within which authorised persons can investigate whether social security benefit is properly payable.

622. As TCA 2002 is not social security legislation, tax credits are not classed as relevant social security benefits. Therefore the definition of benefit offence does not apply to them under the SSAA 1992. This means that, at present, the Secretary of State's powers to investigate do not extend to investigating whether tax credit fraud is or has been committed.

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623. *Clause 119* extends the Secretary of State's powers of investigation to cover investigations in respect of the commission, or suspected commission, of tax credit fraud by inserting *new subsection (9)* into section 109A (authorisations for investigators). New subsection (9) also applies to sections 109B (power to require information), 109BA (power to require electronic access to information) and 109C (right of entry). To achieve this, new subsection (9) treats TCA 2002 as relevant social security legislation and also treats child tax credit and working tax credit as relevant social security benefits in defining what is meant by benefit offence.

***Clause 120: Information-sharing for prevention etc of tax credit fraud***

624. *Clause 120* amends existing section 122B of SSAA 1992 (supply of government information for fraud prevention etc). Section 122B allows DWP to receive, from Government departments and those providing services to them, information listed in section 122B(1) for use in the prevention, detection, investigation or prosecution of offences relating to social security. The clause extends section 122B(2) to include the prevention, detection, investigation or prosecution of offences relating to tax credits.

625. Section 122B(3) places certain limitations on the onward disclosure by DWP of information received under section 122B(2). *Clause 120* amends section 122B(3)(b) so that DWP's ability to forward information that is being supplied for the purposes of any civil or criminal proceedings will include proceedings under TCA 2002 and to ensure that the limitations of section 122B(3) do not prevent DWP from sharing information with HMRC under the data sharing gateway being provided by *clause 124*.

***Clause 121: Tax credit fraud: prosecution and penalties***

626. Section 35 of the TCA 2002 provides a criminal offence where a person is knowingly concerned in fraudulent activity in connection with obtaining payments of tax credit.

627. Section 35 is presently triable either way, meaning it could be tried in the Magistrates' Courts or in the Crown Court. This means that even low value tax credit offences must be tried in the Crown Court where a claimant elects to be tried there.

628. The purpose of *clause 121* is to provide, in certain circumstances, for tax credit offences to be summary only offences, tried before the magistrates.

629. *New section 35(2)* provides that tax credit offences involving payments of up to £20,000 will be summary only offences and tried before the magistrates. Upon conviction for this type of case, *new sections 35(3) and (4)* provide that the penalties applicable are a maximum of 51 weeks imprisonment for conviction in England and Wales, 6 months for conviction in Scotland or Northern Ireland and/or a fine not greater than level 5 on the standard scale. *Subsection 35(8)* provides that for England and Wales, the period of 51 weeks is to be read as 6 months until section 281(5) of the Criminal Justice Act 2003 ("the 2003 Act") is commenced. When section 281(5) is commenced, it will increase the existing maximum terms of imprisonment for offences tried summarily only, to 51 weeks.



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630. *New section 35(5)* provides that in all cases other than subsection (2), (meaning those where the payment involved exceeds £20,000), the tax credit offence provided under section 35(1) will be triable either way.

631. *New section 35(6)* sets out the penalties that will apply where a triable either way tax credit offence is convicted before either the magistrates' Court (*section 35(6)(a)*) or the Crown Court (*section 35(6)(b)*).

632. As with subsection (3), the maximum term of imprisonment expressed in subsection (6)(a) is expressed for England and Wales by reference to a relevant provision of the 2003 Act; section 154(1) of the 2003 Act provides that the maximum term of imprisonment for summary conviction of a triable either way offence in England and Wales is to be 12 months. Section 154(1) has not yet been commenced. *New section 35(9)* therefore provides that until section 154(1) has been commenced, the 12 month maximum term of imprisonment is to be read in England and Wales as being 6 months.

633. *New section 35(7)* provides that in Scotland the maximum term of imprisonment for summary conviction of the triable either way tax credit offence is 12 months and for Northern Ireland it is 6 months. The maximum fine applicable in all three jurisdictions is the statutory maximum.

634. *New section 35(10)(a)* provides that the existing provision in section 116(1) of SSAA 1992 applies to proceedings where the tax credit offence is tried before the magistrates. This means that for tax credit offences tried before the magistrates in England and Wales, any person authorised by the Secretary of State may conduct any proceedings before a magistrates' Court although not a barrister or solicitor.

635. *New section 35(10)(b)* applies the time limits provisions for summary only offences in section 116 to the new summary only version of the tax credit offence in section 35(2) of the TCA 2002. Section 116 provides, in principle, for a time limit of 12 months from the date an offence was committed, allowing, however, for prosecutions after that date, if they are within 3 months of the date on which evidence, adequate in the opinion of the Secretary of State to justify a prosecution, came to his attention about a benefit offence. This ensures consistent time limits operate for summary only tax credit offences as for summary only social security benefit fraud offences.

636. *New section 35(11)* provides for the equivalent of the above time limits in relation to Scotland.

637. *New section 35(12)(a)* applies section 110 of the Social Security Administration (Northern Ireland) Act 1992 to tax credit offence proceedings, where appropriate. *New section 35(12)(b)* applies the time limits provisions for summary only offences in section 110(2)(a) and (3)(a) to the new summary only version of the tax credit offence in section 35(2) of the TCA 2002. It also provides that for tax credit offences tried before the magistrates the

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equivalent legislative provision in Northern Ireland to section 116(1), applies in relation to allowing a person to conduct the proceedings before a magistrates' Court although not a barrister or solicitor.

***Clause 122: Unauthorised disclosure of information relating to tax credit offences***

638. *Clause 122* makes an insertion into paragraph 1 of Part 2 of Schedule 4 to the SSAA 1992 (persons employed in social security administration or adjudication) so the scope of Part 1 of that Schedule includes the investigation or prosecution of offences relating to tax credits as well as social security benefits. Part 1 of Schedule 4 is relevant to section 123 of the SSAA 1992, which makes it an offence to disclose information unlawfully. This helps safeguard against inappropriate disclosure of information that DWP staff receive during the course of their employment.

***Clause 123: Tax credits: transfer of functions etc***

639. The Commissioners for Revenue and Customs Act 2005 amended the Ministers of the Crown Act 1975 such that certain functions of the HMRC Commissioners could not be transferred by an Order in Council under the 1975 Act, including those relating to the payment and management of working tax credit and child tax credit. *Clause 123* removes this statutory bar in relation to tax credits. Further, it allows for an Order in Council to be made, transferring any tax credit function of the Treasury or the HMRC Commissioners to the Secretary of State, or directing that any such function shall be exercisable concurrently with the Secretary of State, or cease to be so exercisable.

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

641. *Subsection (6)* provides that provision under *subsection (3)* may extend an offence provided for under primary or secondary legislation or extend any conduct in respect of which a civil penalty may be imposed, but may not increase the scope of punishment for which a person may be liable or the maximum amount of a penalty.

642. Any Order may also make such consequential, supplementary, incidental or transitional provision as Her Majesty considers appropriate, such as transferring property, rights or liabilities. *Subsection (9)* enables the Order to amend, repeal or revoke primary or secondary legislation.

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643. *Subsection (10)* provides that a statutory instrument containing an Order under the clause is subject to the negative resolution procedure.

644. *Subsection (14)* amends the Ministers of the Crown Act 1975 to remove the statutory bar referred to above.

***Clause 124: Information-sharing between Secretary of State and HMRC***

645. *Clause 124* provides for the sharing of data between the Secretary of State and the HMRC Commissioners.

646. *Subsections (1) and (2)* allow for information held for the purposes of HMRC functions by the Commissioners (or providers of services to them) to be supplied to the Secretary of State, a specified Northern Ireland Department or any providers of services to the Secretary of State or specified Northern Ireland Department (including, for example, those authorised to exercise the Secretary of State's functions under clause 29) for use for the purposes of departmental functions.

647. *Subsections (3) and (4)* allow for information held by the Secretary of State or the Northern Ireland Department (or providers of services to them) for the purposes of any departmental functions to be supplied to the Commissioners (or providers of services to the Commissioners) for the purposes of HMRC functions.

648. *Subsection (7)* defines the departmental and HMRC functions for the purposes of which data may be provided and specifies the Northern Ireland Departments which are included in these provisions.

649. Information supplied under this clause must not be passed on to another person or body without the authority of the original supplier, as a result of *subsection (5)*.

650. Once the information has been used for the purposes for which it has been supplied, *subsection (6)* allows this information to be used for any purposes for which information held for those purposes could be used.

651. *Subsection (8)* provides that the provisions in this clause may apply to statutory payments, such as statutory sick pay or statutory maternity pay, as functions relating to such payments are functions relating to social security for the purposes of this clause.

652. *Subsection (9)* ensures that the provision in this clause does not limit other powers to supply information.

653. *Subsection (10)* amends section 3(1A) of SSA 1998 to add as a new matter information in relation to the investigation or prosecution of tax credit fraud. This means that

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such information can be used for any of the matters referred to in section 3(1A) (for example social security or war pensions).

***Clause 125: Information-sharing in relation to provision of overnight care etc***

654. *Clause 125* allows information to be used and supplied for the purpose of ensuring the correct amount of housing benefit is awarded in relation to people who are entitled to overnight care in their own homes; and for the purpose of assessing awards of benefit when a person is admitted or discharged from hospital or residential care.

655. Claimants of certain social security benefits have their benefit awards reassessed when they go into or are discharged from hospital or care. Claimants are already required to report such changes. This provision will allow local authority teams to use that information themselves, or supply the information to the Secretary of State, for purposes relating to the payment of benefits. Local authorities will therefore be able to inform the Secretary of State or their own teams dealing with a relevant benefit such as housing benefit and council tax benefit teams when a person has been, or is likely to be, admitted to or discharged from residential care or hospital. This will allow reassessment of benefit awards that are affected by these changes. *Subsection (2)(c)* also permits regulations to prescribe other information local authorities can supply to the Secretary of State relating to the funding regime covering a person's residential care or hospital stay as this can affect for example, their rate of personal independence payment.

656. People who are disabled and require an overnight carer will also be able to qualify for a higher rate of housing benefit if they have an extra room which is used by a carer or team of carers. This provision will also allow local authority housing benefit teams to use information from local authority social services teams to confirm whether a person does or may require an overnight carer; if social services are providing the carer; and confirmation that the care has been provided.

657. *Subsection (8)* provides that regulations made under *subsection (7)* may not prescribe any benefit which falls within the legislative competence of the Scottish Parliament.

***Clause 126: Information-sharing in relation to welfare services etc***

658. *Clause 126* replaces the information sharing gateway in section 42 of the WRA 2007 and broadens the scope of data sharing that is provided for under the existing section 42. It also extends these provisions to Scotland. It allows 'relevant information' to be shared between the Secretary of State, local authorities, and authorities administering housing benefit, while housing benefit continues, including their service providers and persons exercising their functions. It can be shared in relation to the provision of a welfare service and for certain housing benefit purposes. It also allows the supply of relevant information in connection with the provision of assistance under arrangements made by local authorities in England or others once community care grants and crisis loans that are not alignment loans cease to be provided by the discretionary social fund (see clause 69).

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659. Welfare services are defined in *subsection (13)*. Welfare services include Supporting People services in England and Wales (these provide counselling, help managing day to day life, and security alarms for people who live at home); Housing Support services in Scotland (similar to Supporting People); domiciliary care in the UK (covers support such as day care, meals, and home helps for people who live at home); and residential care in the UK (provided for people who cannot manage to live independently at home). For each of these types of welfare service there is a means tested charge.

660. In addition the definition covers other types of welfare service such as assistance provided once community care grants and those crisis loans that are not alignment loans cease. Further services covered are Disability Facilities Grants, Blue Badge parking permits and Discretionary Housing Payments, where eligibility may be linked to being on a low income, or being in receipt of a social security benefit.

661. *Subsection (1)* will allow the Secretary of State, or a person providing services to him, to supply relevant information to the persons or bodies listed in *subsection (11)* for certain purposes relating to a welfare service. This will, for example, help local authorities decide if a person is liable to pay towards a service such as a home help or day care, and if so how much they should contribute towards its cost. It will also help local authorities assess how much a person is able to pay towards the cost of residential care. The information may also be needed for decisions on whether to provide assistance under localised schemes.

662. *Subsection (2)* allows a local authority providing welfare services (and others such as service providers) to supply relevant information to the Secretary of State (or the Secretary of State's service providers) in certain circumstances. This information can only be supplied for a prescribed purpose. This subsection may be used, for example, to allow local authorities administering Supporting People grants to advise DWP whether a person is vulnerable and requires housing costs to be paid direct to the landlord.

663. Relevant information is defined in *subsection (12)* and includes information about certain social security benefits, as well as welfare services.

664. *Subsection (3)* replaces and extends the regulation-making power in section 42(2). The power may be used to enable qualifying persons (the persons listed in *subsection (11)*) to use information held for one purpose for other purposes, subject to those purposes being purposes relating to welfare services or housing benefit. The power may also be used to enable information to be supplied to another such person for use in the same or another circumstance relating to housing benefit or welfare services. This will be used to allow the types of information exchange that take place between local authority Supporting People teams and Housing Benefit teams. These teams may use the information to help them decide if a person is entitled to free help from Supporting People, or when making certain decisions relating to a person's housing benefit. It may also be used for the purpose of calculating any charges for a welfare service and to help decide whether to provide assistance once certain discretionary social fund payments cease.

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665. *Subsections (6) and (8)* provide that the Secretary of State must not use the power provided by subsection (3) to enable the supply for an excepted purpose of excepted information held by a Welsh body or a Scottish body. *Subsections (7) and (9)* define excepted information and excepted purposes for Wales and Scotland respectively.

***Clause 127: Unlawful disclosure of information***

666. Section 43 of the WRA 2007 made it an offence for a person to disclose without lawful authority information supplied by virtue of section 42 of the WRA 2007. *Clause 127* creates a similar unlawful disclosure provision in relation to information received by virtue of clause 126.

667. *Subsection (2)* sets out to whom this section applies. Relevant persons in DWP are not covered by this new section as there is an existing unlawful disclosure provision in section 123 of the SSAA 1992 which applies to them.

668. Unauthorised disclosure is an offence subject to a fine or imprisonment or both.

669. This section complements section 123 of the SSAA 1992.

***Clause 128: Sections 125 to 127: supplementary***

670. *Clause 128* enables regulations under clause 125 (data-sharing in relation to the provision of overnight care etc) and clause 126 (data-sharing in relation to welfare services etc) to make consequential, supplementary incidental, transitional or saving provision. It also provides a power to make different provision for different purposes, cases and areas.

671. *Subsection (4)* provides that all regulations under clauses 125 and 126 will be subject to the negative resolution procedure in the Houses of Parliament.

***Clause 129: Information-sharing for social security or employment purposes etc***

672. *Clause 129* amends section 72 of the Welfare Reform and Pensions Act 1999. This section, as amended by section 34 of the WRA 2009, enables the Secretary of State to make regulations allowing certain persons, including the Department for Work and Pensions, to share social security and employment and training information with other Government Departments and their service providers, certain types of local authorities and their service providers and with persons designated by an order. Regulations can also make provisions about the use of such information and its supply by such persons.

673. *Subsection (2)* inserts the words “(specifically or by description)” into section 72(2)(b) of the Welfare Reform and Pensions Act 1999 so that it now expressly provides for a Minister of the Crown by order to designate by *description* as well as retaining the ability to specify individual organisations. Organisations such as those delivering skills, employment and training services to Jobcentre Plus customers in England, Scotland and Wales are

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continuously changing. The express power to designate by description makes it absolutely clear the Secretary of State does not have to continually update the designation order.

674. *Subsection (3)* amends section 72(6) and repeals section 72(6A) of the Welfare Reform and Pensions Act 1999, to remove the restrictions relating to circumstances in which information may be used and supplied by county councils in England. Subsection (6A) allows social security information to be used and supplied by County Councils in England only where they are providing support services for 13-19 year olds and young adults aged 20-24 with learning difficulties. However, County Councils in England are increasingly involved in delivering employment, skills and training services to jobseekers at a local level. The repeal will remove the requirement that information is only shared where they are providing support services for 13-19 year olds and young adults aged 20-24 with learning difficulties, to allow the flexibility to be able to use and pass on information about persons falling outside of this group, to facilitate the provision of employment, skills and training services without having to seek written consent from customers.

## **Part 6: Miscellaneous**

### ***Clause 130: Functions of registration service***

675. *Clause 130* inserts *section 19A*, “Functions relating to transmission of information to Secretary of State” into the Registration Service Act 1953.

676. This clause creates a function allowing the Registrar General, superintendent registrars and registrars of births and deaths to transmit information entered in a register of births to the Secretary of State, and to verify such information for the Secretary of State, for certain purposes.

677. *Subsection (1)* confers a new function on registrars of births and deaths, superintendent registrars and the Registrar General, that will enable them to transmit and verify information for the purposes of the service set out in *subsection (2)*.

678. *Subsection (2)* specifies that the service referred to in subsection (1) is a service whereby individuals can pass birth information (which includes the fact that a birth has been registered and other information about that birth) to the Secretary of State, and the Secretary of State can pass that information on to other persons. The persons that the Secretary of State will pass the information to may include other government departments and Local Authorities. The service referred to in subsection (2) is also known as ‘Tell Us Once’.

679. *Subsection (3)* makes it clear that references to the Secretary of State include persons providing services to the Secretary of State for the purpose of the service referred to in subsection (2). It therefore includes any organisation providing that service on behalf of the Secretary of State.

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680. *Subsection (4)* provides that nothing in the clause authorises any disclosure which is otherwise unlawful.

681. The Tell Us Once programme provides a means by which the citizen can inform Government once about a birth or a death. It is a voluntary service, running alongside as an alternative to conventional notification channels. Tell Us Once shares the data, with the person's consent, with other parts of the DWP and other organisations such as HMRC, Local Authorities' Family Information Services and Library Services.

682. The policy intention behind this clause is that the individual will inform Government (through the Tell Us Once service) once of a birth. Tell Us Once will, with a person's consent, retrieve birth data from the General Register Office to share with other parts of DWP and other organisations. This will mean a person does not have to provide the same information to multiple organisations themselves. Drawing the data from the General Register Office enables those services to accept the birth registration as verified for the purpose of assessing changes to entitlement to benefits and services and also removes the reliance on paper certificates.

683. The data that is transmitted would include the date of birth, full name and sex of the child and the registration district of the birth. It may include additional related data such as the full name of the mother of the child, and her usual address. Only data that is entered on the birth register will be transmitted.

***Clause 131: Supporting maintenance agreements***

684. Section 9 of the Child Support Act 1991 makes clear that parents may make arrangements for child maintenance outside the statutory scheme, but that if they have done so, none of the parties to that agreement are then prevented from applying to the statutory scheme. The Government's intention is to support parents in making such arrangements wherever possible, and asking them whether they could reach their own collaborative arrangements.

685. *Clause 131(1)* inserts a new *subsection (2A)* into section 9 which will introduce a gateway to the statutory scheme, whereby a person applying for a maintenance calculation may be required to take reasonable steps to establish whether it is possible or appropriate to make a family-based maintenance agreement before the application can be accepted by the Child Maintenance and Enforcement Commission. In considering what reasonable steps should be taken the Commission will look at each case individually. There will be some circumstances where a family-based maintenance arrangement is unsuitable, for example where the applicant does not know the whereabouts of the other person, or where there has been a separation due to violence or the risk of abuse. In those circumstances there would be no reasonable steps that the applicant could undertake. The requirement will apply to applications from persons with care, non-resident parents, and, in Scotland, a qualifying child aged over 12. The new provision will also allow the Child Maintenance and Enforcement



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Commission to take appropriate steps to encourage the making and keeping of maintenance agreements.

686. *Subsection (2)* amends paragraph 3 of Schedule 5 to the Child Maintenance and Other Payments Act 2008 which deals with the transfer of cases in the existing child support schemes to the new scheme, which is due to start for new customers in 2012. Where an individual decides that they wish to apply to the new scheme the amendment will ensure that they will also be required to take reasonable steps to try to make a family-based arrangement first.

***Clause 132: Collection of child support maintenance***

687. Section 4 of the Child Support Act 1991 provides that a person with care or a non-resident parent may apply for a maintenance calculation under that Act. Section 4(2) provides that once a calculation has been made, it is open to either the person with care or the non-resident parent to ask the Child Maintenance and Enforcement Commission to arrange for the collection of the maintenance payable.

688. *Clause 132(2)* repeals some of the wording in section 4(2), and inserts a new *subsection (2A)*. Taken together, the changes mean that if a person with care asks the Commission to collect the maintenance payable, the Commission will only do so if the non-resident parent agrees, or where it is satisfied that the non-resident parent is unlikely to make payments.

689. *Clause 132(3)* makes corresponding amendments to section 7 of the Child Support Act 1991 which relates to an application for a maintenance calculation made by a child in Scotland.

***Clause 133: Indicative maintenance calculations***

690. To support the making of maintenance arrangements outside the statutory scheme, the Government will provide a service which will give parents an indication of the amount of maintenance which would be payable under the statutory child scheme if an application were to be made. *Clause 133* therefore inserts new *section 9A* into the Child Support Act 1991 making provision for such a service. The provision will enable an application for an indicative maintenance calculation to be made to the Child Maintenance and Enforcement Commission by a person with care, non-resident parent or a qualifying child aged 12 or over in Scotland.

691. An indicative calculation will be made on exactly the same basis as a maintenance calculation would be were an application made to the statutory scheme, but will not create any liability to pay maintenance. Where parentage of the child or children is denied, *section 9A(6)* will prevent the Child Maintenance and Enforcement Commission from providing an indicative maintenance calculation, unless the person who denies parentage has been shown, through a DNA test, to be the parent of that child or children. Instead the applicant will be advised to make a full application to the statutory scheme.

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***Clause 134: Exclusion from individual voluntary arrangements***

692. An individual voluntary arrangement (IVA) is a legally binding arrangement supervised by a Licensed Insolvency Practitioner, the purpose of which is to enable an individual, sole trader or partner to reach a compromise with his creditors and avoid the consequences of bankruptcy.

693. *Clause 134(1)* amends section 382 of the Insolvency Act 1986 (“bankruptcy debt etc.”), to make it clear that a liability under the Child Support Act 1991 to pay child support maintenance is not a debt or liability which can be included in an IVA. Thus a non-resident parent who owes arrears of child support maintenance will not be able to reduce his liability by means of an IVA.

694. *Subsection (2)* amends the heading to section 382 of the Insolvency act 1986 to more accurately reflect the content of the section after the amendment in *subsection (1)*.

695. This measure will not apply in Scotland, as the Insolvency Act 1986 applies only to England and Wales.

***Clause 135: Use of jobcentres by sex industry***

696. *Clause 135* inserts a new section, *section 2A*, into the Employment and Training Act 1973, removing the obligation for the Secretary of State, via Jobcentre Plus, to advertise certain types of vacancies or opportunities in the sex industry.

697. Under the Employment and Training Act 1973 the Secretary of State is obliged to help employers to fill vacancies and jobseekers to find jobs. *Subsection (1)* qualifies this obligation and states that the Secretary of State must not help employers to fill vacancies and jobseekers to find jobs in respect of employment for sexual purposes.

698. *Subsection (2)* sets out when a job would be considered as employment for sexual purposes. This includes vacancies which involve performing activities to sexually stimulate others, but would not cover, for example, jobs involved in the retail or manufacture of sexual products.

699. *Subsection (3)* enables the Secretary of State to make an order to provide exceptions to *subsection (1)*, as necessary.

700. *Subsection (4)* states that regulations made under *subsection (3)* will be subject to the negative resolution procedure.

***Clause 136: Social Mobility and Child Poverty Commission***

701. *Clause 136* gives effect to *Schedule 13*.

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***Schedule 13: Social Mobility and Child Poverty Commission***

702. As originally enacted, the Child Poverty Act 2010 made provision for the establishment of a Child Poverty Commission. *Schedule 13* amends the Act so as to establish instead a Social Mobility and Child Poverty Commission.

703. *Part 1* makes provision for the establishment of the Social Mobility and Child Poverty Commission and sets out its functions. Section 8 and Schedule 1 of the Child Poverty Act 2010 are replaced with new *sections 8 to 8C* and new *Schedule 1*.

704. New *section 8* extends the scope of the ‘Child Poverty Commission’ legislated for in the Child Poverty Act 2010 to that of the ‘Social Mobility and Child Poverty Commission’.

705. New *section 8A* mandates the Commission to provide advice, on request, to a Minister of the Crown on how to measure socio-economic disadvantage, social mobility and child poverty. Any such advice must be published.

706. *Subsections (1) and (2)* of new *section 8B* require the Commission to publish annual reports assessing the progress made towards improving social mobility and reducing child poverty in the United Kingdom. The first report has to be published within a year of the provision coming into force. Subsequent reports are required on an annual basis.

707. *Subsection (3)* of new *section 8B* provides flexibility over the form that the annual report takes. For example, it would allow for one report covering social mobility and child poverty or two separate reports, one on social mobility and one on child poverty.

708. *Subsection (4)* allows a Minister of the Crown to delay the publication of any annual report by up to 9 months, at the request of the Commission. This is to allow for a situation where, for example, a delay to some relevant government statistics would prevent the Commission’s report from being as informative as it should be, unless the report could be delayed accordingly.

709. New *section 8C* allows a Minister of the Crown to ask the Commission to undertake other activities relating to the goals of improving social mobility in the UK and reducing child poverty in the UK.

710. New *Schedule 1* includes provisions on the structure and membership of the Commission, including terms of office, staff and facilities.

711. *Paragraph 1* enables a Minister of the Crown to appoint a Chair and such other members as he may determine. He may also appoint a Deputy Chair. In addition, it requires Scotland, Wales and Northern Ireland each to appoint a member of the Commission.

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712. *Paragraph 8* provides that a Minister of the Crown may provide the Commission with the staff and facilities necessary for the Commission to carry out its role.

713. *Paragraph 9* enables a Minister of the Crown to provide remuneration to Commission members as appropriate. This is to ensure that Commission members' expenses can be covered and that there is provision for particular members to be paid if they are asked to carry out extensive analysis or research on behalf of the entire Commission.

714. *Part 2* sets out further amendments to the Child Poverty Act 2010.

715. *Paragraph 5* repeals section 6(6)(b). This means that the consent of Commission is not required for the Secretary of State to change the definition of persistent poverty to be used for the persistent poverty target in section 6 (and as a consequence the target itself).

716. *Paragraph 6* repeals section 10(1) to (3) and changes the heading preceding it accordingly. This removes the obligation for the Secretary of State to request advice from the Commission and have regard to that advice when developing the UK Child Poverty Strategy.

717. *Paragraph 7* repeals section 13(1) to (2) and changes the heading preceding it accordingly. This means that Scottish Ministers and the relevant Northern Ireland Departments no longer have to request advice from the Commission and have regard to that advice when developing their devolved child poverty strategies.

718. *Paragraph 8* repeals section 14 and changes the heading preceding it accordingly. This removes the requirement for the Secretary of State to provide an annual report for Parliament detailing progress made towards the child poverty targets, progress made towards implementing the child poverty strategy, and the measures taken by Ministers in the devolved administrations, in accordance with their respective child poverty strategies.

719. *Paragraph 9* amends section 15 so that the Secretary of State is still required, after the end of 2020 (the "target year") to produce a statement as to whether the targets have been met, even though before 2020 he does not have to produce annual progress reports.

720. *Part 3* of new *Schedule 1* contains consequential amendments to other legislation.

## **Part 7: Final**

### ***Clause 137: Repeals***

721. *Clause 137* gives effect to *Schedule 14* which makes provision for repeals resulting from provisions in the Bill. The Schedule is divided into 13 Parts, as follows:

- Part 1 – Abolition of benefits superseded by universal credit

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- Part 2 – Entitlement to jobseeker’s allowance without seeking employment
- Part 3 – Jobseeker’s allowance: responsibilities for interim period
- Part 4 – Jobseeker’s allowance: responsibilities after introduction of universal credit
- Part 5 – Employment and support allowance: responsibilities after introduction of universal credit
- Part 6 – Claimants dependent on drugs etc
- Part 7 – Industrial injuries arising before 5 July 1948
- Part 8 – Social fund: ending of discretionary payments
- Part 9 – Disability living allowance
- Part 10 – Powers to require information relating to claims and awards
- Part 11 – Recovery of benefit payments
- Part 12 – Loss of benefit: cautions
- Part 13 – Information-sharing between Secretary of State and HMRC.

***Clause 139: Extent***

722. *Clause 139* sets out the territorial extent of the Bill, which is described in paragraphs 21 to 29 of these Notes

***Clause 140: Commencement***

723. *Clause 140(1)* provides that clause 100 and Schedule 12, clause 105, clause 106, clause 123 and Part 7 (with the exception of Schedule 14) will come into force on Royal Assent.

724. *Subsection (2)* lists those provisions which will come into force at the end of two months after the date of Royal Assent.

725. The remaining provisions will be brought into force by means of commencement orders made by the Secretary of State as a result of *subsection (3)*. The orders may appoint different days for different purposes; different areas in relation to provisions in Part 1 (universal credit), Part 1 of Schedule 14, section 60 or 61 (entitlement to work: jobseeker’s allowance and employment and support allowance) or section 99 (power to require

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consideration of revision before appeal); and make necessary or expedient transitory, transitional or savings provisions.

## **FINANCIAL EFFECTS OF THE BILL**

726. The Government estimates the net effect of the Bill on benefit expenditure will be as follows:

- savings of £960m in the financial year 2012/13;
- savings of £2,510m in the financial year 2013/14;
- savings of £3,870m in the financial year 2014/15.

727. Unless otherwise stated, these fiscal impacts refer to GB rather than UK.

728. In addition there is a further £2bn set aside in the Spending Review to cover the costs of implementing Universal Credit.

729. These estimates are highly dependent on a number of variables including economic growth rates, labour market conditions and future inflation rates. They are dependent on assumptions about the policy design and the timetable for implementation; these assumptions are set out in more detail in the Impact Assessments for the specific policies.

730. These costs and savings are in cash terms, so they represent the actual amount of money expected to be spent and saved in each year. They differ from those in the Impact Assessments which are expressed in constant prices in order to inform the Net Present Value calculations.

731. The Impact Assessments capture economic as well as fiscal costs and benefits where monetisation is possible. For example, where a measure reduces benefit entitlement it will generate a fiscal saving (a gain to the taxpayer) and an offsetting economic cost to the benefit recipient.

732. The estimated fiscal impacts of specific measures are set out in the table below. In general the numbers are consistent with estimates which were published in the autumn 2010 statement (**minus sign before a figure denotes a fiscal saving**).

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MEASURE	2011/12	2012/13	2013/14	2014/15
<b>Lone Parent Conditionality<sup>1</sup></b>	<b>£0</b>	<b>-£70</b>	<b>-£220</b>	<b>-£300</b>
<b>Housing Benefit - size restrictions in social sector</b>	<b>£0</b>	<b>£0</b>	<b>-£470</b>	<b>-£470</b>
<b>Uprating Local Housing Allowance by CPI</b>	<b>£0</b>	<b>£0</b>	<b>-£40</b>	<b>-£240</b>
<b>DLA Reform</b>	<b>£0</b>	<b>£0</b>	<b>-£350</b>	<b>-£1040</b>
<b>Benefit Cap</b>	<b>£0</b>	<b>£0</b>	<b>-£220</b>	<b>-£260</b>
<b>ESA Time-limiting<sup>1</sup></b>	<b>£0</b>	<b>-£860</b>	<b>-£1,130</b>	<b>-£1,430</b>
<b>ESA Youth Provisions</b>	<b>£0</b>	<b>-£10</b>	<b>-£10</b>	<b>-£10</b>
<b>Other</b>	<b>£0</b>	<b>-£20</b>	<b>-£60</b>	<b>-£110</b>
<b>Total</b>	<b>£0</b>	<b>-£960</b>	<b>-£2,510</b>	<b>-£3,870</b>

733. In addition there will be impacts on DWP administrative costs which are estimated to be approximately £1bn across the period of the Spending Review. These costs have been funded as part of DWP's SR10 settlement. All of the impacts set out in this section are estimates.

## **EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

734. The Department is not forecasting any specific change in public sector manpower. Some of the provisions relating to universal credit, JSA and ESA will demand more interaction between DWP staff and recipients of benefit, so to that extent may have an impact on public sector manpower in the short term. But the aim of those measures is to secure that people return to work more quickly, thus reducing demands on public sector manpower in the long run.

## **IMPACT ASSESSMENT**

735. The BIS guidance requires the Government to publish an Impact Assessment when it introduces any legislation likely to—

- impose a cost on the private sector in any one year;

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<sup>1</sup> The lone parent conditionality and ESA time-limit measures will also have impacts on tax credit expenditure and receipts of tax and national insurance : these are not included in this table.

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- cost the public sector more than £5m; or
- attract high levels of political or media interest.

736. Impact Assessments have been prepared in respect of 20 provisions in the Welfare Reform Bill. The level of detail in each Impact Assessment will depend on the measure and available evidence; in general they cover the following areas:

- Fiscal impacts, covering both Annually Managed Expenditure and Departmental Expenditure Limit,
- Impact on individuals, for example changes in benefit entitlement,
- Economic impacts, for example impacts on work incentives.

737. The costs and benefits identified in Impact Assessment cover wider economic impacts, whereas the Financial Statement above provides the expected benefit expenditure impacts of the Welfare Reform Bill. Equality Impact Assessments will also be published which identify any risk of differential impact in relation to gender (including gender assignment), age, ethnicity, and disability.

738. Impact Assessments have been carried out for the following provisions—

- Universal Credit,
- Benefit Cap,
- Housing Benefit – under-occupancy of social housing,
- Housing Benefit – CPI uprating for Local Housing Allowance,
- Employment and Support Allowance – time limiting of contributory element,
- Employment and Support Allowance – changes to youth provisions,
- Lone Parent Conditionality – reducing Income Support threshold age to 5,
- Disability Living Allowance reform,
- Single Fraud Investigation Service,
- Fraud and Error sanctions,



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- Data Sharing,
- Social Fund,
- Payment on accounts,
- Industrial Injuries reform,
- Introduction of considerations,
- Entitlement to work as a condition of claiming contributory benefits,
- Tell us Once – enable registrars to share birth data with DWP,
- Child Maintenance proposals.

739. The detailed impacts of each measure are set out in the Impact Assessments, which will be available in the Vote Office. They will also be available on the DWP website.

The detailed impacts of each measure are set out in the Impact Assessments, which will be available in the Vote Office. They will also be available on the DWP website: [www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011](http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011)

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

740. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The statement has to be made before Second Reading of the Bill. The Parliamentary Under-Secretary of State and Minister for Welfare Reform (Lords), Lord Freud has made the following statement:

“In my view, the provisions of the Welfare Reform Bill are compatible with the Convention rights.”

### ***Consideration of the European Convention on Human Rights***

741. Although of the view that the Bill is compatible with the rights in the European Convention on Human Rights (“ECHR”), the Government has considered the arguments which might be made in relation to the potential engagement of the ECHR by the provisions in the Bill. The main issues that may arise are considered below. Issues relating to Article 1 Protocol 1 (protection of property) will arise most frequently and this is considered first.

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There is then a discussion of issues that may arise under Article 14 (prohibition of discrimination) combined with Article 1 Protocol 1. Other articles which may be relevant are then considered sequentially.

***Article 1 Protocol 1***

742. Article 1 Protocol 1 may be relevant in connection with the clauses which deal with:

- entitlement to universal credit;
- changes to the rules on entitlement to the current benefits;
- clauses which allow for entitlement to be reduced or end in certain circumstances;
- recovery of benefit payments;
- reduction to benefit payments;
- entitlement to personal independence payment.

743. The Government acknowledges that welfare benefits, including universal credit, are “possessions” for the purposes of Article 1 Protocol 1. However, that Article does not guarantee the content of any such right or possession (*Marckx v Belgium* (1979) 2 EHRR 330, confirmed in the admissibility decision in *Stec v UK* 67531/01 (2005) ECHR 724). Thus where a person does not meet the conditions of entitlement to benefits (such as universal credit, or a personal independence payment) this cannot be incompatible with Article 1 Protocol 1. Similarly, where a person ceases to meet the conditions of entitlement, that person will no longer have a possession for the purposes of Article 1 Protocol 1, which only applies so long as the statutory conditions of entitlement are met. The Government also considers that it is legitimate to make changes to the existing conditions of entitlement. For example, clause 49 provides for there to be no new claims to contributory employment and support allowance on the grounds of youth. Young people will be able to access contributory employment and support allowance on the basis of their National Insurance contributions if available, and if not will be able to access income-related employment and support allowance should they meet the means test. This ensures that the public purse continues to support those with limited funds who are less able to help themselves.

744. Even if the changes proposed were held to be interferences with the rights protected by Article 1 Protocol 1, the Government considers that the measures will be for a legitimate aim and proportionate to that aim. In general, the measures will be for the economic well-being of the country and will be within the wide margin of appreciation afforded to states in relation to Article 1 of Protocol 1. With regard to proportionality, it is in particular relevant to note that:

- Transitional protection will be considered as appropriate (see clause 37 in relation to universal credit and clause 90 in relation to the personal independence payment).

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- Measures which reduce the amount of an award for non-compliance with claimant responsibilities (see, for example, clauses 26-27, and clause 46 which relate to sanctions), or which suppress payment of benefit as a result of the commission of benefit fraud (see clauses 114 to 116), will be proportionate to the actions and circumstances which have led to their imposition, and will contain appropriate safeguards.
- The introduction of a condition of entitlement to work in relation to certain (non-means tested) benefits (see clauses 60 to 62) puts the benefits in question on a par with most means-tested benefits. It is legitimate for access to benefits which are acquired by virtue of a person’s employment to be limited to those who are entitled to work.
- With regard to the power to set a cap on the total amount of benefit received from the State (see clauses 93 to 94): the amount of the cap will be proportionate; it will be based on average household earnings; claimants will be notified of the cap and given time to adjust their spending to reflect their new levels of benefit; and the households it affects will already have a substantial income from benefits. There will also be a power to allow for exceptions (see clause 93(3)(c)).
- With regard to the changes to enable regulations to be made so that lone parents with children aged five or six will no longer be entitled to income support (see clause 57), it is reasonable to expect claimants to be prepared to work when their youngest child is of school age. The change is also expected to lead to greater employment of lone parents which would have a positive effect on lone parent poverty. There will also be flexibility in the system, as there is now, to ensure that any requirements imposed take account of the lone parent’s caring role.
- In relation to the replacement of disability living allowance by a personal independence payment (see Part 4), the intention is to target payments to ensure that disabled people most in need of help with meeting additional costs receive assistance.

745. Recovery of benefit payments (see clauses 102 and 103) – the Government considers that the provisions dealing with overpayment recovery, and the recovery of payments on account and recoverable hardship payments, are compatible with Article 1 Protocol 1. An overpayment (which by definition is a payment in excess of entitlement) will not be a “possession” for these purposes, and nor will payments made on the basis that they are recoverable. Even if Article 1 of Protocol 1 is engaged, the Government considers that the recovery provisions contained in the Bill strike a fair balance. To ensure that public monies are correctly delivered to those who are lawfully entitled, it is legitimate in principle for overpayments to be made recoverable. The same applies to payments (namely payments on account and recoverable hardship payments) which are initially made on the clear basis that they would be recoverable. The Secretary of State will have a discretion as to whether to in

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fact recover and if so, how much to recover, and will exercise that discretion in accordance with publicly available guidance, as is currently the case.

746. The following clauses have retrospective effect and may raise issues under Article 1 Protocol 1:

- Clause 100, which will reinstate references to former appellate bodies in legislation setting out powers to supersede their decisions. The clause remedies an evident drafting error to restore the legislation to what it clearly should have been, confirming that awards of the former appeal bodies can be updated to reflect changes in a person's circumstances. Such supersession decisions may be beneficial as well as adverse to the individual. Against this background the Government considers that any interference involved in making these changes retrospective pursues a legitimate aim (legal certainty and consistency) and strikes a fair balance between the interests of the individual and the wider public interest in ensuring that social security awards and child maintenance payments accurately reflect legal entitlements.

- Clause 105, which will allow for the recovery of overpayments by deduction from benefits where more than six years has passed (note that this clause will not have retrospective effect in relation to cases where legal proceedings have already been commenced). The Government considers that this amendment is justified so as to maintain the original policy intention of the legislation (which was to spread the burden of recovery over a longer period of time), to prevent any unfair enrichment through the benefit system and to ensure certainty in the operation of that system. It is also relevant that the right to appeal against the overpayment decision is preserved and that the retrospective effect of the clause will not extend to persons who have brought court proceedings before its commencement.

- Clause 106, which provides legal authority for the Secretary of State to make deductions from contributory employment and support allowance for the payment of fines. The policy intention since the introduction of employment and support allowance in 2008 has always been to allow for such deductions, but this was not reflected by the legislation. The retrospective provision gives authority to justifiable reductions that were intended to assist claimants where the consequences of non-payment of a fine could potentially have had significant consequences for the claimant and their family. Its effect is also proportionate to a legitimate aim of protecting the public purse. Claimants will suffer little or no unfairness as they will not be financially disadvantaged by the retrospective provision. It is notable that failure to make the provision retrospective would require the Department for Work and Pensions to repay the benefit deductions already made, and it would then be administratively very difficult for the Courts Services to re-impose the fines. The practical effect would be the Department for Work and Pensions paying the fine, and a windfall gain for claimants.

***Article 14 combined with Article 1 Protocol 1***

747. A number of clauses may result in a difference in treatment between different groups of people. This could give rise to issues under Article 14, combined in particular with Article 1 Protocol 1. (As stated above, the Government is confident that Article 1 Protocol 1 will not in itself be breached. However the Government acknowledges that questions as to social security entitlement will be within the ambit of Article 1 Protocol 1 for the purposes of Article 14.)

748. In many cases, the claimants in question will not be in an analogous position. Where the claimants are in a comparable situation, the Government believes that any differences in treatment will be justified and no breach of Article 14 will occur. The following proposals are mentioned in particular in this respect:

- The conditions of entitlement to universal credit and the calculation of the award amount will treat certain groups of people differently, such as on the basis of their financial circumstances, age or health (see Chapter 1 of Part 1). The Government considers that it is reasonable to limit financial support to those who need it most, by imposing a capital and earnings limit and to have regard to the different issues that generally apply to those of different ages. And it is justifiable to provide more support to those with particular health or disability related needs.
- It is reasonable to include a right to reside test as part of the basic conditions of entitlement (see clause 4(1)(c) and (5)). The Government considers that, as was accepted in the EU context by the Supreme Court in the case of *Patmalniece v Secretary of State for Work and Pensions* [2011] UKSC 11, the State is entitled to protect its public finances by requiring a degree of social and economic integration as a condition of access to income related benefits.
- The proposed benefit cap is likely to apply more frequently to larger households. For similar reasons to those given in relation to Article 1 Protocol 1, the Government believes that any difference in treatment in relation to persons living in such households will be justifiable. In particular, it promotes fairness with similar-sized households which are just outside entitlement to benefit.
- The proposed three year loss of benefit sanction for serious offences of organised benefit fraud or identity benefit fraud (“relevant offence”- see clause 116) might apply to a benefit offender who is convicted of the same statutory offence as another offender who, if the offence is not a ‘relevant’ offence, could receive a benefit sanction for a shorter period. The Government believes that any difference in treatment in relation to such offenders will be justifiable. In particular, it is in the public interest not to grant financial support from the State to those who have both defrauded the State and set out to do so in an organised way or through identity benefit fraud.

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- Under the new personal independence payment (clause 83) claimants whose stay in a care home is funded by a local authority will lose the right to receive the mobility component of their payment. They will therefore be treated differently from other claimants who are living in the community. The Government acknowledges that there may be a risk that some care homes will not provide assistance which meets mobility needs in exactly the same way as the DLA mobility component currently does. However, it considers that the measure can be justified. In particular, the aim is to ensure that there is no overlap in provision and, inevitably, given the current lack of uniformity between care homes, some individuals will be affected more than others. The Government considers that this result will be proportionate to the overall reason for the change.

### **Article 3**

749. The Bill contains clauses which allow for benefits (including universal credit) to be reduced, including to zero in certain circumstances; which could raise issues under Article 3 (prohibition of torture and inhuman or degrading treatment). This might happen-

- where a claimant fails to comply with their work-related responsibilities (see clauses 26 and 27, and 46 which relate to sanctions);
- where the increased penalties for benefit fraud apply (see clauses 115-117).

750. Other clauses change the conditions of entitlement to existing benefits or remove entitlement. Thus clauses 60 to 62 introduce a condition of entitlement to work for certain contributory benefits and clause 51 will time-limit contributory employment and support allowance for claimants who are not in the support group.

751. Under clause 69, the discretionary social fund will cease to exist. Instead of community care grants and crisis loans other than those currently available to applicants pending payment of benefit – (“alignment loans”), assistance will be provided by local authorities in England and under such arrangements as the Welsh Assembly Government and the Scottish Executive decide on. Payments on account under clause 98 will be used to address similar situations to those currently met by budgeting loans and alignment loans under the social fund.

752. Although the changes referred to above could give rise to issues under Article 3, the Government considers that the proposals are compatible with Article 3. The Government considers first that the proposed changes to benefit entitlement or availability will not amount to “treatment” for the purposes of Article 3.

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753. Even if a reduction in benefit does amount to “treatment”, the very high threshold as to what is “inhuman or degrading treatment” will not be met. Relevant considerations here are:

- In relation to the imposition of reductions for non-compliance with work-related responsibilities, the most severe sanction will only apply to claimants who do not face significant barriers to finding work (such as significant ill health) and all claimants will be fully aware of the consequences of non-compliance and will be able to avoid them if they choose to. There will be a hardship regime to protect the most vulnerable claimants and their dependants (see clauses 28 and 46).
- In relation to the proposal to introduce a condition of entitlement to work for certain benefits, other means of support will be available where necessary to ensure compliance with Article 3.
- Similarly, in relation to the removal of discretionary social fund payments other means of assistance (for instance, by virtue of the powers of local authorities in England and Wales under section 2 of the Local Government Act 2000, or in England, under the Localism Bill) will be available to ensure compatibility with Article 3. In addition, the power to make payments on account of benefit is broadened by clause 98.

***Article 4***

754. Article 4 (prohibition of slavery and forced labour) may be relevant in connection with the provisions which allow a person to be required to undertake work experience or a work placement (see clause 16(3)(e) in relation to universal credit and clause 54 in relation to employment and support allowance). Similar powers exist in current legislation relating to jobseeker’s allowance (see, for example, section 17A of JA 1995). The Government does not consider that this will be contrary to Article 4. Such an obligation will only be imposed in a suitable case (taking full account of the circumstances of the claimant) and the aim will be to make it more likely that the claimant will obtain or remain in work, not to punish the claimant.

***Article 6***

755. A number of clauses in the Bill could raise issues under Article 6 (right to a fair trial). As explained below, the Government considers that these clauses are compatible with Article 6.

756. The Government is confident that the provisions on claimant responsibilities are compatible with Article 6. In particular, there will (as now) be a right of appeal against any decision to apply a benefit sanction as a consequence of a failure to meet a work-related or

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connected requirement. The Government does not consider that it is necessary to provide a right of appeal against determinations made prior to the sanction decision as they do not directly affect the claimant's civil rights.

757. The exercise of the power to provide that there is only a right of appeal in social security and certain other cases if the Secretary of State (or other body responsible for the decision) has considered whether to revise the decision (clause 99) will not be contrary to Article 6. The intention is to be able to require a person who is dissatisfied with a decision to exhaust other remedies before being permitted to appeal to the First-tier Tribunal. Therefore, in such cases, only disputed decisions which have not been resolved by these means would proceed to appeal. The Government accepts that disputes about entitlement to benefit must be determined within a reasonable time and considers that the powers provided for in this clause are capable of being exercised compatibly with this aspect of Article 6.

758. The changes relating to the circumstances in which collection via the Child Maintenance and Enforcement Commission will take place (clause 132) do not raise Article 6 issues as the provisions for collection of child maintenance do not relate to the determination of civil rights and collection is not a service that the State needs to provide in order to comply with the ECHR.

759. The proposal that, before the Child Maintenance and Enforcement Commission accepts an application under the statutory scheme (clause 131), it may require the applicant to take reasonable steps to see if it is possible to make a family-based maintenance agreement, may raise issues under Article 6. However the Government does not consider that the provision will be an unlawful restriction on the rights protected by Article 6, particularly the right of access to a court or tribunal. In this regard, the proposal is similar to current practices whereby the courts encourage parties to explore alternative means of resolving the dispute before proceeding to a court adjudication.

### ***Article 8***

760. Article 8 (right to respect for private and family life) is arguably relevant in connection with clauses which-

- alter or reduce the amount of benefit to which a claimant is entitled (in particular, the proposed sanctions regime, the proposals to increase penalties for benefit fraud, the new powers to set housing benefit entitlement and the benefit cap);
- allow work-related requirements to be imposed on benefit claimants;
- expand or change information gateways between the Department for Work and Pensions and other persons or bodies and between the Child Maintenance and Enforcement Commission and HMRC.



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761. In relation to those clauses which alter or reduce entitlement, the Government notes that Article 8 does not require the State to provide financial assistance at any particular level (*Anufrijeva v LB of Southwark* [2003] EWCA Civ 1406). Even if Article 8 is engaged, the Government considers that any interference will be for a legitimate aim and will be proportionate. For example, the imposition of sanctions for a failure to comply with claimant responsibilities will be for the economic well-being of the country. The highest level of sanction will apply only to the most serious failures and there will be safeguards for vulnerable claimants. A similar analysis applies to the proposals to increase penalties for benefit fraud.

762. The Government does not consider that the imposition of work-related requirements (see clauses 15 to 22 in relation to universal credit) would be an interference with the rights protected by Article 8. Even if there is an interference, the Government believes that the interference would be for a legitimate aim and would be justifiable. It is reasonable to expect those who are able to work, or who may become fit for work in due course, to do all they reasonably can to find work or to increase their chances of doing so. The Government also notes here that different work-related requirements will be appropriate for the particular groups of claimants to which they relate, and within those broad parameters, each case will be considered individually.

763. In relation to information gateways, it is proposed to repeal some existing gateways between DWP and HMRC and provide for a specific gateway to cover purposes for which information exchange may be necessary in connection with the administration of benefits, including universal credit, and for other benefit-related purposes (see clause 124 and Part 13 of Schedule 14). It will also be possible for the Secretary of State to require information from any person where that information is or could be relevant to awards and claims or potential awards and claims (see clause 96).

764. These data-sharing provisions will be exercised compatibly with Article 8. Any data-sharing will be for the economic well-being of the country, the prevention of crime or the protection of the rights and freedoms of others. If DWP and HMRC could not share data, especially with regard to changes in income, the efficient and accurate administration of benefits would be harder to achieve. The well-defined and tested checks and balances that already exist will continue to apply and unlawful disclosure will be a criminal offence, as it is now.

765. The Government considers that the other data-sharing provisions (which deal with certain information sharing gateways between DWP and local authorities- see clauses 125-129) are also compatible with Article 8. The use of these gateways, which are intended to be for the benefit of the people in relation to whom information is disclosed, is unlikely to result in an interference with the rights protected by Article 8. Even if it does, any data exchange will be proportionate to a legitimate aim, namely the economic well-being of the country and the protection of health.

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766. In relation to the child support maintenance proposals, the Bill will enable data from HMRC to be obtained (without needing the taxpayer's consent) in relation to an indicative maintenance calculation (section 133). This is justified as the information is needed in order to fully protect the legal rights of the parties involved. There will be safeguards to ensure that the information is disclosed only to the non-resident parent, or the person with care of the child in question.

***Article 10***

767. The restriction on the Secretary of State's duties relating to advertising job vacancies (see clause 135), so as to clarify that the Secretary of State is not obliged to advertise jobs in the sex industry, might raise issues under Article 10 (freedom of expression). The Government considers that the measure is compatible with that Article. It is for the dual legitimate aim of protecting morals and the rights of others. It is also proportionate to that aim, particularly as it is carefully limited to certain activities only.

**COMMENCEMENT DATES**

768. Details of the commencement dates are provided in paragraphs 723 to 725 of these Notes.

# WELFARE REFORM BILL

## EXPLANATORY NOTES

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