

These notes relate to the Lords Amendments to the Welfare Reform Bill, as brought from the House of Lords on 31 January 2012 [Bill 302].

WELFARE REFORM BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Welfare Reform Bill, as brought from the House of Lords on 31 January 2012. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 75, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1

4. Clause 10 (responsibility for children and young persons) makes provision for an award of universal credit to include an element for children, which can include an additional amount for disabled children or qualifying young persons. Lords Amendment 1 would ensure that there are two such additional amounts for disabled children or qualifying young persons, a higher rate and a lower rate. The lower rate would have to be at a level set in regulations which is no less than two-thirds of the higher rate.

Lords Amendments 2 to 4

5. Lords Amendments 2 to 4 resulted from Government defeats.
6. Lords Amendments 2 and 3 would put a restriction on the circumstances in which the housing costs element of universal credit can be less than the actual liability of a claimant in respect of housing costs (to reflect under-occupation). The effect of the new subsection (3A) inserted into clause 11 would be that, where a claimant pays rent to a local housing authority or a registered provider of social housing, and no suitable alternative accommodation has been made available, the housing element can only be less than the actual amount of the rent if the tenant has more than one spare room.

7. Lords Amendment 4 would insert subsections (4A) and (4B) into clause 11. These amendments would also put a restriction on the circumstances in which the housing costs element of universal credit could be reduced to reflect under occupation. Subsection (4A) provides that, where a claimant pays rent to a local housing authority or a registered provider of social housing, the housing costs element may only be reduced because of actual or deemed under-occupation if the local housing authority or registered provider of social housing has offered suitable alternative accommodation which would avoid under-occupation. Subsection (4B) provides for the definition of suitable alternative accommodation to be defined in regulations.

Lords Amendments 5, 7 and 13

8. Clause 30 provides for “pilot schemes” for regulations under clauses 13 to 28. The purpose of these is to test whether the regulations would be likely to help people to remain in work, obtain work or increase their pay or hours.

9. Lords Amendments 5 and 7 would replace clause 30 with a wider clause applying to any regulations under Part 1 of this Bill, as well as to regulations relating to universal credit under other social security legislation. Under the new clause the purposes for which pilot schemes may be made would be extended to include testing whether they make universal credit easier to understand or administer or whether they affect the behaviour of claimants or others. Pilot schemes under the new clause would in the first place be limited to three years, although could be extended.

10. Lords Amendment 13 would secure that pilot schemes under the new clause would be subject to the affirmative resolution procedure.

Lords Amendments 6, 8, 14, 40 to 43 and 46

11. These would remove the provisions which give Scottish Ministers the power to make consequential, supplementary, incidental or transitional provisions, by regulations, in relation to universal credit and personal independence payment. This is to secure compliance with the Sewel Convention.

Lords Amendments 9 to 12

12. Following a recommendation of the Delegated Powers and Regulatory Reform Committee, Lords Amendments 9 to 12 would make certain regulations subject to the affirmative resolution procedure. The regulations in question are those dealing with: circumstances in which a person is treated as having accepted or not accepted a claimant commitment (clause 4(7)); cases in which a claimant’s award will not include a standard allowance (clause 9(3)) or amount for children and young persons (clause 10(4)); limitations on a work availability requirement (clause 18(3)); the definition of what is meant by a person being able and willing immediately to take up work (clause 18(5)).

Lords Amendments 15 to 23, 83, 84 and 100 to 104

13. These Lords Amendments relate to the time limiting of employment and support allowance (“ESA”) and also to entitlement to ESA by virtue of the youth condition (“ESA Youth”).

14. Of these Lords amendments, Government amendments 16, 19, 20, 21, 22, 83, 84 and 100 to 104 would collectively provide for-

- a further entitlement to contributory ESA after the 365 day time limit has expired for those individuals whose condition deteriorates to such an extent that they are, or are treated as being, in the support group; and
- the relocation of the content of clause 52 (condition relating to youth) partly into clause 51 (time limiting of existing ESA Youth claims) and partly into new section 1(3A) of the Welfare Reform Act 2007 (“WRA 2007”) inserted by a new clause (barring new claims to ESA Youth).

15. Specifically, the Government amendments would provide for the following:

16. Lords Amendment 21 would insert a new section 1B into the WRA 2007. New section 1B provides that where a claimant’s entitlement to ESA (by virtue of the conditions relating to national insurance or by virtue of the youth condition) has ceased as a result of the 365 day time limit, a further entitlement to ESA arises if the claimant’s condition has deteriorated such that they are in the support group (having, or being treated as having, limited capability for work related activity).

17. Lords Amendment 19 would insert a new subsection (2A) into section 1A of the WRA 2007 (inserted by clause 51). The new subsection replicates the provision for the 365 day time limit for ESA Youth which appears in clause 52. This is part of the restructuring of the provisions required as a result of new section 1B inserted by Lords Amendment 21. Lords Amendment 19 refers to a time limit of a prescribed number of days, which must be at least 730, rather than a time limit of 365 days. This is as a result of Amendment 19 having been agreed as amended by an opposition amendment which changed the time limit contained in the Government amendment.

18. Lords Amendment 16 follows from Lords Amendment 19. As already mentioned Lords Amendment 19 would insert the time limit for ESA youth into new subsection (2A) of section 1A of the WRA 2007. Lords Amendment 15 would clarify that subsection (1) of section 1A of the WRA 2007 is about time limiting for ESA where entitlement is based on national insurance conditions.

19. Lords Amendment 22 would relocate the remainder of the content of clause 52 (which provides for the barring of new claims to ESA youth) to section 1 of the WRA 2007.

20. Lords Amendment 20 would amend section 1A of the WRA 2007 (inserted by clause 51) which, by virtue of Lords Amendment 18, would be extended to cover the time limiting of ESA where entitlement is based on the youth condition as well as where it is based on national insurance conditions. Lords Amendment 20 covers both types of entitlement and is intended to secure that claimants whose capability for work-related activity is most severely affected by their health conditions would not be affected by the time-limiting measure in clause 51. This is explained further below.

21. Section 1A of the WRA 2007 as inserted by clause 51 already excludes days in a period in which a person is a member of the support group from counting towards the 365 day time-limit for contributory Employment and Support Allowance.

22. Lords Amendment 20 would provide for further days to be excluded in the following situations.

23. The first situation is where a claimant successfully appeals a decision arising from their initial Work Capability Assessment to place them in the Work-Related Activity Group. In this case the days in respect of which the claimant was not in the support group, but is entitled to the support component as a result of the appeal, would be excluded from the days counting towards the time-limit.

24. The second situation is where, immediately following the assessment phase, the claimant is placed in the support group, or is entitled to the support component as a result of an appeal as mentioned above. In this case the days in the assessment phase would be excluded from the time-limit.

25. Lords Amendments 83 and 84 would add to the consequential amendments which appear in Schedule 3 and which are required on the abolition of income-related employment and support allowance under clause 33. The additional amendments are required because a number of the Lords amendments relating to ESA contain references to contributory ESA which would need to be changed to become references simply to ESA on the abolition of income-related ESA.

26. Lords Amendments 100 to 104 would add further repeals to Part 1 of Schedule 14. The repeals are required to deal either with provision in the Lords amendments to contributory ESA (which will become reference simply to ESA when income-related ESA is abolished) or to deal with references to Part 1 of Schedule 1 to the WRA 2007 (which will become references simply to the Schedule to that Act when Part 2 of that Schedule is repealed due to the barring of new claims to ESA youth).

27. The remaining ESA Lords amendments (15, 17, 18 and 23) resulted from Government defeats.

28. Lords Amendment 15 would make the insertion of new section 1A of the WRA 2007 subject to clause 52.

29. Lords Amendment 17 would replace the 365 day time limit for contributory ESA in clause 51 with a time limit of a number of days to be prescribed in regulations, which must be at least 730.

30. Lords Amendment 18 would amend section 1A(1) of the WRA 2007 (inserted by clause 51) to insert two exceptions to the 365 day time limit for contributory ESA awards. The first would be where a person is receiving treatment for cancer, in which case entitlement to ESA would continue for as long as the person has or is treated as having limited capacity for work (subsection (1)(a)). The second would be where the person has or is treated as having limited capacity for work because of a cancer diagnosis (subsection (1)(b)).

31. Lords Amendment 23 would leave out clause 52 and insert a new clause amending paragraph 4 of Schedule 1 to the WRA 2007 to insert a further condition of entitlement for ESA Youth i.e. that after the assessment phase has ended, the claimant has limited capacity for work-related activity.

Lords Amendments 24 and 25

32. Lords Amendments 24 and 25 would remove the figure of £145.80 from clause 64 and replace it with ‘monetary amount specified’. This is because the figure has been uprated since the Bill was introduced and is likely to be uprated again before the provisions are commenced.

Lords Amendment 26

33. This resulted from a Government defeat. It would put a restriction on the circumstances in which appropriate maximum housing benefit (“AMHB”) can be less than the actual liability of a claimant in respect of housing costs (to reflect under-occupation). The effect of new subsection (7A) which would be inserted into section 130A of the Social Security Contributions and Benefits Act 1992 would be that, where a claimant pays rent to a local housing authority or a registered provider of social housing, and no suitable alternative accommodation has been made available, the AMHB of a claimant can only be less than the actual amount of the rent if the claimant has more than one spare room.

Lords Amendment 27

34. Following a recommendation of the Delegated Powers and Regulatory Reform Committee, Lords Amendment 27 would make regulations under section 130A(5) and (6) of the Social Security Contributions and Benefits Act 1992 (as substituted by clause 68 of the Bill) subject to the affirmative resolution procedure in the first instance.

35. These regulations are regulations providing that, for the purposes of calculating the appropriate maximum housing benefit of a claimant; the claimant’s liability to make payments in respect of a dwelling may be taken to be an amount other than the actual liability (and could be taken to be the amount of a rent officer determination).

Lords Amendments 28, 78 and 80

36. Lords Amendment 28 would insert a new clause that would modify the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 so as to change the rate at which Working Tax Credit is withdrawn from 39 per cent to 41 per cent for the tax year 2011/12. This modification would correct an omission in secondary legislation that amended the 2002 Regulations and would retrospectively have effect from 6 April 2011. Subsection (2) would ensure that decisions already taken by Her Majesty’s Revenue and Customs since 6 April 2011 on the basis of a 41 per cent withdrawal rate are treated as having been correctly made.

37. Lords Amendment 78 would add the new clause to the provisions extending to the whole of the United Kingdom. Lords Amendment 80 would ensure that the change regarding the withdrawal rate would come into effect from Royal Assent.

Lords Amendments 29 to 32

38. Lords Amendments 29 to 32, though non-Government amendments, were supported by the Government. They would amend the “required period condition”. As a result of these amendments, this 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 3 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 9 months following that date (the prospective test).

39. Without the amendments, clause 79 provides for a qualifying period of 6 months and a prospective test of 6 months.

Lords Amendments 33 to 37

40. Lords Amendments 33 to 36 would remove from clause 83 the power to provide by regulations that the mobility component of personal independence payment is not to be payable to care home residents while accommodation, board, personal care or other services are provided for them to any extent out of public or local funds.

41. These Lords Amendments would also have the effect of removing from clause 83 the power to make similar provision about payability of the daily living component and the mobility component in respect of hospital in-patients. Provision to that effect is made instead by the new clause that would be added by Lords Amendment 37.

Lords Amendments 38 and 39

42. These would require the Secretary of State to lay before Parliament two biennial independent reports into the operation of the assessments under clause 78 (assessments relating to ability to carry out daily living activities or mobility activities), rather than the single independent report for which clause 86 currently provides. The first report would be required to be laid before Parliament within 2 years of the date on which the first regulations under clause 78 come into force, and the second would be required to be laid within 4 years of that date.

Lords Amendments 44 and 45

43. Lords Amendments 44 and 45 would make regulations under 76(4) and 77(4) (powers to prescribe “daily living activities” and “mobility activities”) subject to the affirmative resolution procedure in the first instance. This follows a recommendation of the Delegated Powers and Regulatory Reform Committee.

Lords Amendment 47

44. This resulted from a Government defeat. It would exclude child benefit from calculations to determine a single person's or couple's total entitlement to welfare benefits for the purposes of applying the benefit cap.

Lords Amendments 48 and 49

45. Lords Amendments 48 and 49 would make regulations made under clause 94 (the benefit cap) subject to the affirmative resolution procedure in the first instance. This follows a recommendation of the Delegated Powers and Regulatory Reform Committee.

Lords Amendments 50, 52 and 53

46. Lords Amendment 50 is intended to ensure that where an overpayment or penalty is to be recovered by deduction from benefit, but all the debtor's benefit is being paid to a third party (for example housing credit), the Secretary of State would be able to make deductions from the benefit paid on the debtor's behalf to that third party.

47. Lords Amendments 52 and 53 are technical amendments which would make the wording of the provisions for recovery of civil penalties in new sections 115C and 115D consistent with the wording for recovery of overpayments in the provisions inserted by clause 102.

Lords Amendment 51

48. Lords Amendment 51 would make orders made under powers in section 115A of the Social Security Administration Act 1992 inserted by clause 112 (orders relating to changes in the amount of fraud penalties) subject to the affirmative resolution procedure. This follows a recommendation of the Delegated Powers and Regulatory Reform Committee.

Lords Amendment 54

49. Lords Amendment 54 would make regulations made under powers contained in new sections 115C and 115D of the Social Security Administration Act 1992 inserted by clause 114 (regulations relating to the amounts of civil penalties for incorrect statements and failures to disclose information) subject to the affirmative resolution procedure. This follows a recommendation of the Delegated Powers and Regulatory Reform Committee.

Lords Amendments 55, 56 and 79

50. Lords Amendment 55 would introduce a new clause authorising information-sharing between Department for Work and Pensions and the Crown Prosecution Service. This is intended to facilitate the sharing of information for the purposes of prosecution in England and Wales.

51. The new clause introduced by Lords Amendment 56 would prohibit the onward disclosure of information by the Crown Prosecution Service except in the circumstances specified.

52. These new clauses would, by virtue of Lords Amendment 79, extend to England and Wales only.

Lords Amendments 57, 59 to 63 and 65

53. Lords Amendments 57, 59 to 63 and 65 would allow the Secretary of State to supply social security benefit information to local authorities in connection with the administration of localised council tax benefit schemes. They would also allow for onward disclosure of the information in some circumstances. The offence in clause 127 would apply to unauthorised disclosures of such information by local authorities.

Lords Amendments 58, 64 and 66 to 69

54. Lords Amendments 58 and 67 would remove a requirement to prescribe benefits by reference to which information may be shared and substitute a reference to “relevant social security benefits”.

55. Lords Amendment 67 would change the definition of “relevant information”. “Relevant information” is information that can be shared under clause 126 with qualifying persons, such as local authorities, for purposes related to welfare services. The definition of “relevant information” currently lists six benefits and also includes any prescribed benefits. The intention is that all social security benefits should be included, so the new definition covers all “relevant social security benefits”. Amending the definition would have the effect of removing the need to prescribe each social security benefit individually in the regulations and would avoid the need to make changes in future years as the names of a benefit change or new benefits are introduced.

56. Lords Amendments 64, 66, 68 and 69 would make consequential changes.

Lords Amendment 70

57. Lords Amendment 70 would add information contained in a birth declaration to the information which may be transmitted to the Secretary of State, or verified for the Secretary of State, by the registration service.

Lords Amendments 71 to 73

58. Lords Amendments 71 and 72 would amend clause 134 to secure that the Child Maintenance and Enforcement Commission may, before accepting an application and with a view to reducing the need for applications to the statutory child support scheme, invite the applicant to consider with the Commission whether it is possible to make a family-based maintenance arrangement.

59. Lords Amendment 73 resulted from a Government defeat. It would prevent parents with care who have taken all reasonable steps to establish a family-based arrangement from being charged a fee to use the statutory child maintenance service.

Lords Amendment 74

60. Section 43 of the Child Support Act 1991 allows for child maintenance to be recovered from a non-resident parent’s benefits. Lords Amendment 73 would amend that section so as to remove a restriction preventing the recovery of child maintenance under section 43 from universal credit payments in the case of a non-resident parent who is in work. The amendment would also enable fees payable under section 6 of the Child Maintenance and Other Payments Act 2008 to be recovered from a non-resident parent’s benefits.

Lords Amendment 75

61. Lords Amendment 75 would require the Secretary of State to review the first set of regulations made under section 6 of the Child Maintenance and Other Payments Act 2008 in relation to the charging of fees for the statutory child maintenance service.

Lords Amendments 76 and 109

62. Section 81 of the Social Security Act 1998 requires the Secretary of State and the Child Maintenance and Enforcement Commission to report on the standards of their decision making in cases where those decisions may be appealed. Lords Amendments 76 and 109 would repeal the section.

Lords Amendments 77 and 110

63. Lords Amendment 77 inserts a new clause to amend section 9 of the Child Poverty Act 2010 so as to clarify the requirements relating to a UK strategy under that section. Lords Amendment 110 makes a consequential amendment to the long title.

Lords Amendment 81

64. Lords Amendment 81 would allow the Secretary of State to commence any provision of Part 4 (personal independence payment) on different days for different areas. This would enable a phased introduction of personal independence payment by reference to geographical area.

Lords Amendment 82

65. Lords Amendment 82 would allow for universal credit regulations to provide that claimants with a right to reside in the UK under EU treaties, and who would otherwise fall within sections 19 (claimants subject to no work-related requirements), 20 (claimants subject to work-focused interview requirement only) or 21 (claimants subject to work preparation requirement), may be treated as not falling into such groups, with the consequence that they will fall within section 22 (claimants subject to all work-related requirements).

Lords Amendments 85, 88 92 to 94 and 105 to 108

66. These would remove provisions relating to the taxation of personal independence payment (the intention being that any provision required will be included in a Finance Bill or Treasury Order). But provision to make personal independence payment exempt from income tax would remain in the Bill.

Lords Amendments 89 and 91

67. These would allow for decisions on payability of personal independence payment when a person is imprisoned or detained in legal custody to be subject to appeal to the First Tier Tribunal.

Lords Amendments 86, 87 and 90

68. Lords Amendment 86 would ensure that personal independence payment is to be treated as a benefit (as defined in section 122 of the Social Security Contributions and Benefits Act 1992) for all purposes of section 73 of the Social Security Administration Act 1992, so that the power to make regulations under that section adjusting payments is applicable generally to personal independence payment (including where a person is undergoing medical treatment as a hospital in-patient).

69. Lords Amendment 87 would ensure that the amendment made to section 124 of the Social Security Administration Act 1992 (provisions relating to age, death and marriage) by paragraph 19 of Schedule 9 to the Bill takes accurate account of the amendments to that section made by paragraph 17 of Schedule 2 to the Bill.

70. Lords Amendment 90 would confer a right to appeal to the First-tier Tribunal against a decision made under the new clause which would be inserted by Amendment 37 (Hospital in-patients), namely a decision that one or more components of personal independence payment are not payable to a hospital in-patient while the patient is receiving medical or other treatment, accommodation or related services paid for out of public funds. This amendment is needed in consequence of the relocation of provision regarding hospital in-patients that would be effected by Lords Amendments 33 to 37 (see above in relation to clause 83).

Lords Amendments 95 to 99

71. Lords Amendments 95 and 96 are concerned with the content of the Social Mobility and Child Poverty Commission's annual report. The requirement currently in the Bill is that the report should include the Commission's views on the progress made towards the implementation of the devolved administrations' child poverty strategies. The amendments would have the effect of requiring the report instead to describe the measures taken by the devolved administrations in accordance with their strategies. The report would only comment on the Northern Ireland Assembly strategy after the Northern Ireland had consented (and see Lords Amendment 99 for "appointed day for Northern Ireland").

72. Lords Amendment 97 would allow the relevant Northern Ireland Department to appoint a member to the Social Mobility and Child Poverty Commission only after the Northern Ireland Assembly had consented (and see Lords Amendment 99 for "appointed day for Northern Ireland").

73. Lords Amendment 98 would give Ministers an express power to carry out or commission research at the request of the Social Mobility and Child Poverty Commission, if Ministers so wish.

WELFARE REFORM BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These notes refer to the Lords Amendments to the Welfare Reform Bill as brought from the House of Lords on 31 January 2012 [Bill 302]

*Ordered, by The House of Commons,
to be Printed, 31 January 2012.*

© Parliamentary copyright House of Commons 2012
*This publication may be reproduced under the terms of the Parliamentary Click-Use
Licence, available online
through The National Archives website at
[www.nationalarchives.gov.uk/information-management/our-services/parliamentary-
licence-information.htm](http://www.nationalarchives.gov.uk/information-management/our-services/parliamentary-licence-information.htm)
Enquiries to The National Archives, Kew, Richmond, Surrey, TW9 4DU;
email: psi@nationalarchives.gsi.gov.uk*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON — THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by The Stationery Office Limited
£x.xx