

WELFARE REFORM AND WORK BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Welfare Reform and Work Bill as brought from the House of Lords on 9 February 2016.
- 2 These Explanatory Notes 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 the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 69, the Bill as first printed for introduction in the Lords.
- 4 These Explanatory 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 Lords amendments.
- 5 Lords Amendments 2 to 7 and 10 to 57 were tabled in the name of the Minister.
- 6 Lords Amendment 1 was tabled by the Lord Bishop of Durham, Baroness Sherlock, and the Earl of Listowel, and was opposed by the Government.
- 7 Lords Amendment 8 was tabled by Lord Low of Dalston, Baroness Meacher, Lord McKenzie of Luton, and Baroness Manzoor, and was opposed by the Government.
- 8 Lords Amendment 9 was tabled by Lord Low of Dalston, Baroness Sherlock, Baroness Meacher, and Baroness Manzoor, and was opposed by the Government.
- 9 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords Amendments

Lords Amendment before Clause 4

Lords Amendment 1 *

- 10 Lords Amendment 1 would impose an additional reporting duty on the Secretary of State to lay before each House of Parliament an annual report on child poverty. The report would include data on the percentage of children living in households in relative low income, combined low income and material deprivation, absolute low income, and persistent low income.

Lords Amendment to Clause 7: Benefit cap

Lords Amendment 2, 3 and 4

- 11 Lords Amendment 2 would amend clause 7 subsection 4 to remove Carer's Allowance from

the definition of “welfare benefit”. The effect of this is that Carer's Allowance would not be taken into account when the benefit cap is calculated.

- 12 Lords Amendment 3 would amend clause 7 subsection 4 to remove Guardian's Allowance from the definition of “welfare benefit”. The effect of this is that Guardian's Allowance would not be taken into account when the benefit cap is calculated.
- 13 Lords Amendment 4 would be consequential on the removal of section 97(3) of the Welfare Reform Act 2012, which provided that the first regulations under section 96 should be affirmative. As the first set of regulations has already been made, the removal of "other" from section 97(4) of the Welfare Reform Act 2012 is consequential to the removal of section 97(3) of that Act.

Lords Amendments to Clause 8: Review of benefit cap

Lords Amendments 5 and 6

- 14 Lords Amendment 5 would provide that any regulations to alter the level of the cap, made under section 96A of the Welfare Reform Act 2012 (which is inserted by clause 7 of this Bill), will be subject to the affirmative Parliamentary procedure. Lords Amendment 6 would be consequential on Lords Amendment 5.

Lords Amendment after Clause 8

Lords Amendment 7

- 15 Lords Amendment 7 would insert a new clause into the Bill to provide that sections 96-97 of the Welfare Reform Act 2012 are included within the definition of “relevant enactments” in section 170 of the Social Security Administration Act 1992 (“Act”). It would also amend Schedule 7 to the Act. This would mean that regulations made pursuant to those powers are required to be referred to the Social Security Advisory Committee for consideration pursuant to section 172 of the Act, with the exception of section 96A. This is because the amendment to Schedule 7 of the “Act” provides that the requirement does not apply to regulations made under section 96A.

Lords Amendments to Clause 13: Employment and support allowance: work-related activity component

Lords Amendments 8*

- 16 Lords Amendment 8 would remove clause 13 and therefore prevent removal of provision for the work-related activity component, which is currently paid to ESA claimants with limited capability for work.

Lords Amendments to Clause 14: Universal credit: limited capability for work element

Lords Amendments 9*

- 17 Lords amendment 9 would remove clause 14. Clause 14 amends section 12(2) of the Welfare Reform Act 2012 by omitting paragraph (a) which enables an additional payment to be paid to universal credit claimants with limited capability for work.

Lords Amendments to Clause 18: Consequential amendments

Lords Amendments 10 to 12

- 18 Lords Amendment 10 would amend Section 170 (5) of the Social Security Administration Act 1992 so that the definition in that Act of “the relevant enactments”, and “relevant Northern Ireland enactments” includes the provisions in the Welfare Reform and Work Bill 2016 relating to Support for Mortgage Interest (SMI) loans. This would mean that regulations relating to SMI loans will be referred to the Social Security Advisory Committee.
- 19 Lords Amendment 11 would amend provisions of Chapter 2 of Part 1 of the Social Security Act 1998 to include a reference to SMI loans. This would have the effect that certain provisions relating to decision-making apply to decisions about SMI loans in the same way as they apply to decisions about benefits. In particular, it would enable an appeal to be brought against a decision relating to an SMI loan in the same way as an appeal may be brought against a decision relating to a benefit.
- 20 Lords Amendment 12 would amend section 131 of the Welfare Reform Act 2012 (which concerns the supply of information relating to relevant social security benefits and welfare services) so that the definition of “relevant social security benefit” in subsection (12) includes a reference to SMI loans. By changing the definition in this way, it would in particular be possible for the Secretary of State to supply information about SMI loans to persons who are concerned with the provision of welfare services such as free school meals and health benefits such as free prescriptions. Welfare services of this sort are known as passported benefits.

Lords Amendments to Clause 21: Reduction in social housing rents

Lords Amendments 13 and 14

- 21 Lords Amendment 13 would amend clause 21(5) and bring within its scope tenancies that began at the beginning of 8 July 2015. The effect of this would be to bring any such tenancies which began at that time but less than 12 months before the beginning of a provider’s relevant year within the scope of clause 21. Clause 21 of the Bill requires registered providers of social housing to reduce social housing rents by at least 1% in each of four relevant years starting from April 2016.
- 22 Lords Amendment 14 would be consequential on Lords Amendment 27 which would insert a new clause that potentially changes the rent review cycle. The amendment would require a registered provider's practice as regards its tenancies to be determined by reference to its practice in the year ending with 31 March 2016. It would also clarify that the reference to a private registered provider's practice as regards its tenancies in clause 26(6)(a) relates to its practice as regards the tenancies of its social housing.

Lords Amendments to Clause 22 and Schedule 2, Paragraph 5: Exceptions

Lords Amendments 15, 16, 17, 49, 50 and 51

- 23 Lords Amendments 15, 16, and 17 would amend clause 22(2) and (3) (exceptions from clause 21). Lords Amendments 49, 50 and 51 would make equivalent amendments to paragraph 5(2) and (3) of Schedule 2 (exceptions from Part 1 of Schedule 2). The purpose of the amendments is to clarify that these exceptions apply only when the relevant steps are taken in connection with the enforcement of a mortgage, charge or other security over the registered provider’s interest in the property.

These Explanatory Notes relate to the Lords Amendments to the Welfare Reform and Work Bill as brought from the House of Lords on 9 February 2016 (Bill 132)

- 24 Amendments 15 and 49 would ensure that the exceptions in clause 22(2)(a) and paragraph 5(2)(a) of Schedule 2 apply only when the mortgagee in possession is the mortgagee of the registered provider's interest in land. (In amendments 17 and 51 'mortgage' is defined as including a charge or other security and 'mortgagee' as including a person entitled to take steps to enforce a charge or other security.)
- 25 These amendments would also narrow the clause 22(2)(b) and paragraph 5(2)(b) exceptions applicable to receivers appointed by the court to those appointed in connection with enforcing the mortgage. The amendments would also clarify that for the purposes of clause 22(2)(c) and paragraph 5(2)(c) the appointment of an administrator under Paragraph 14 of Schedule B1 of the Insolvency Act 1986 is a step which triggers the exception.
- 26 Amendments 16 and 50 would align the drafting of clause 22(3) and paragraph 5(3) with clause 22(2) and paragraph 5(2) as amended and would have the effect of narrowing and clarifying those exceptions in the same way.

Lords Amendments to Clause 24: Enforcement

Lords Amendments 18 to 23

- 27 Lords Amendments 18 to 22 would put enforcement of Part 1 of Schedule 2 and of regulations under clause 26 on the face of the Bill (aligning provision for enforcement of Part 1 of Schedule 2 and regulations under clause 26 with that of clause 21).
- 28 Lords Amendment 23 would transpose clause 24 on enforcement to later in the Bill and would be consequential on Lords Amendments 18 to 22.

Lords Amendment to Clause 25: Further provision about social housing rents

Lords Amendment 24

- 29 Lords Amendment 24 would be consequential on Lords Amendment 54 which removes provision for enforcement from Schedule 2.

Lords Amendments to Clause 26: Provision about excepted cases

Lords Amendment 25 and 26

- 30 Lords Amendment 25 would restrict the use of the regulation making power in clause 26 (which allows flexibility to put in place alternative rules for how maximum rents should be determined in special cases) so that it may not be used to increase the annual 1% reduction specified on the face of the Bill or to impose a maximum rent below the social rent rate in a case where an exception from Part 1 of Schedule 2 applies. The amendment would also provide clarity regarding how the power may be used to apply modifications of the provisions by inserting new sub-section (3A) which provides that regulations under clause 26 may in particular provide for clause 21 or Part 1 of Schedule 2 to have effect with modifications and new-subsection (3B) which lists the modifications which may, in particular, be applied.
- 31 Lords Amendment 26 would remove subsection 8 of clause 26 (the power to provide for enforcement of regulations under clause 26) and would be consequential on Lords Amendments 18 to 22 which put enforcement of such regulations on the face of the Bill.

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Lords Amendments after Clause 26

Lords Amendment 27, 28 and 29

- 32 Lords Amendment 27 would insert a new clause into the Bill, 'Implied terms'. The effect of this is to imply a term into tenancy agreements that rents may be reduced, without notice, to comply with the requirements of the social rent reduction provisions. Such an implied term would override any express provision of an agreement regarding rent review dates and thus help registered providers comply more easily with the rent reduction policy.
- 33 Lords Amendment 28 would insert a new clause into the Bill, 'Change of registered provider'. This new clause, which applies where social housing subject to a tenancy transfers from one registered provider to another, clarifies how the rent reduction policy applies if there is a change in the registered provider.
- 34 Subsection 2 of the new clause would ensure that four years of rent reductions apply to a tenant whether or not the initial provider and transferee have corresponding relevant years and that when rent reductions are calculated rent paid to the transferor should be taken into account.
- 35 Subsections 3 and 4 of the new clause would provide that if the former registered provider had an exemption in place, by virtue of a direction under section 23, paragraph 6 of Schedule 2, or regulations under section 26, then this continues in relation to the new provider until the end of the relevant year or, if earlier, that tenancy comes to an end.
- 36 Lords Amendment 29 would insert a new clause into the Bill, 'Transitional provision'. This new clause seeks to prevent extended impact on registered providers that have tenancy agreements in place that provide for rent reviews on fixed dates. It therefore enables, but does not require, providers to review rents more quickly after the rent restrictions come to an end.

Lords Amendments to Clause 27: Rent standards

Lords Amendment 30

- 37 Lords Amendment 30 would be consequential on Lords Amendment 28 and would make the powers of the social housing regulator to set and revise standards relating to levels of rent subject to that new clause.

Lords Amendments to Clause 28: Interpretation

Lords Amendments 31 to 34

- 38 Lords Amendment 31 would be consequential on Lords Amendment 34. It would remove references to "affordable rent" and "affordable rent housing" as these terms are no longer used apart from in Schedule 2.
- 39 Lords Amendment 32 would be consequential on Lords Amendment 25 and adds "social rent rate" to the list of terms set out in the Interpretation clause. Social rent rate has the meaning given to it in Schedule 2.
- 40 Lords Amendment 33 would clarify how to determine the maximum amount of rent payable if, at the beginning or the end of a tenancy, a tenant was a tenant for a period of less than a day.

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- 41 Lords Amendment 34 would amend the provision regarding when service charge is or is not taken to be included in a reference to the rate of rent payable. It would provide that where service charge is part of the rent then the 1% reduction applies to the sum inclusive of service charge.

Lords Amendments to Clause 30: Extent

Lords Amendment 35

- 42 Lords Amendment 35 would clarify that the new clause to be inserted after clause 8, to bring regulations made under the benefit cap provisions within the remit of the Social Security Advisory Committee, extends to England and Wales and Scotland.

Lords Amendments to Clause 31: Commencement

Lords Amendments 36, 37 and 38

- 43 Lords Amendments 36, 37 and 38 would ensure that the Secretary of State's powers to grant consents to the use by a registered provider of an alternative 'permitted review day' under clause 21 and paragraph 10 of Schedule 2 come into force on Royal Assent.

Lords Amendments to Schedule 2

Lords Amendments 39 to 48 and 52 to 56

- 44 Lords Amendment 39 would modify the principles for determining the assumed rent to avoid disadvantaging providers who implement their annual rent increases later in the year than 8th July in a case where either there was no tenancy of the property on 8th July 2015, or there was a tenancy of the property on 8th July 2015 but that tenancy did not continue to a later relevant date.
- 45 Lords Amendment 40 would provide that the power to define formula rent may, in particular, provide that it is a rent set in accordance with a method specified in the regulations and enables reference to the relevant standards and guidance applicable on 8th July (the date for which formula rent must be determined in order to calculate the social rent rate).
- 46 Lords Amendment 41 would be consequential on Lords Amendment 32.
- 47 Lords Amendments 42 to 44 would enable a provider to set the rent of affordable rent housing at the social rent rate if this is higher than the rate determined in accordance with paragraph 3(2) or (3) of Schedule 2. Similarly, Lords Amendment 45 would provide that in a case where an affordable rent property was not let before or at the beginning of the first relevant year or at the beginning of the 2nd or 3rd relevant year, the maximum rent for the relevant year following the beginning of the tenancy is determined in accordance with the same principle but with a 1% reduction applied.
- 48 Lords Amendment 46 would add an example to the list, in paragraph 4(4) of Schedule 2, of types of arrangements and agreements to which the definition of affordable rent housing may refer.
- 49 Lords Amendment 47 would provide that the power to determine affordable rent may, in particular, provide that it is a rent set in accordance with a method specified or of a description specified in regulations. The methods that may be specified include methods that

provide for a maximum level of rent to be set by reference to a percentage of market rent. It removes the previous provision in paragraph 4(6) of Schedule 2 which enabled regulations defining affordable rent to make provision by reference to rent standards issued by the regulator or guidance issued by the Secretary of State.

- 50 Lords Amendment 48 would clarify that reference to an amount of market rent includes a reference to an amount payable by way of service charge.
- 51 Lords Amendment 52 and 53 would enable the Regulator of Social Housing or the Secretary of State to issue a direction that the social rent rate be uplifted by a percentage specified in the direction in a case where an exemption is granted under powers in paragraph 6 of Schedule 2.
- 52 Lords Amendment 54 would remove paragraph 7 from Part 2 of Schedule 2 and would be consequential on Lords Amendments 18 to 22.
- 53 Lords Amendments 55 and 56 would be consequential on Lords Amendment 39.

Lords Amendment to the Title

Lords Amendment 57

- 54 Lords Amendment 57 would amend line 5 of the long title to include “and other liabilities” after “mortgage interest”. Claimants are able to get an SMI loan in respect of their liabilities to make owner-occupier payments. This change would ensure that the long title accurately reflects the content of the relevant clauses in the Bill.

Financial Effects of Lords Amendments

- 55 On current best estimates, the savings attributable to both measures in clauses 13 and 14, which Amendments 8 and 9 remove, total £55 million in 2017/18 rising to £640 million by 2020/21 and, as the number of Universal Credit (UC) claimants increases, it is anticipated that about two thirds of the savings by 2020/21 will be attributable to UC.

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