

# **BENEFIT CLAIMANTS SANCTIONS (REQUIRED ASSESSMENT) BILL**

## **EXPLANATORY NOTES**

### **What these notes do**

These Explanatory Notes relate to the Benefit Claimants Sanctions (Required Assessment) Bill as introduced in the House of Commons on Wednesday 29 June 2016 (Bill 11).

- These Explanatory Notes have been produced by the Public Bill Office on behalf of Mhairi Black MP 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 as a whole.
- These Explanatory Notes explain what each part of the Bill will mean in practice and provide background information on the development of policy.
- These Explanatory Notes are best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill is made up of 11 clauses and it makes changes to the current legislation on the administration of certain social security benefits. It prevents a claimant in receipt of certain social security benefits having their benefits reduced or restricted unless two requirements have been met. First, the claimant's circumstances have to be assessed. Second, a number of conditions set out in the Bill have to be met. These focus on the claimant's situation, in particular the claimant's caring responsibilities, mental and physical health and well-being and housing position and whether, in the light of the circumstances, the imposition of the sanction is justified. Where, following the assessment, a claimant is to have a sanction on their benefits, the Bill requires that they must be assessed for hardship payments.

## Policy background

- 2 A benefit sanction is the withdrawal of benefit or a reduction in the amount of benefit paid for a certain period. It may be imposed if a claimant is considered not to have complied with a condition for receiving the benefit in question. Benefit sanctions are not a new feature of the social security system. Currently, sanctions are applied to claimants for Jobseekers Allowance, Employment Support Allowance and Universal Credit, which are covered by this Bill. While the rules on sanctions vary between the benefits, they have some common features.
  - a. If a claimant is deemed to have failed to meet a condition—for example, the claimant failed to attend an interview—a sanction may be imposed.
  - b. A sanction should not be imposed on a person if they can show that they had justification (“good reason” or “just cause”) for behaving in the way they did.
  - c. Where a sanction is imposed, a person may be able to get reduced-rate hardship payments.
- 3 Hardship payments are reduced-rate payments made to claimants of certain benefits who have been subject to a benefit sanctions. Hardship payments are neither assessed nor made automatically; claimants have to be aware that payments are available, how to apply for them, and what the eligibility criteria are. Different rules apply to Jobseekers Allowance, Employment Support Allowance and Universal Credit.
- 4 Details of the arrangements that apply to Jobseekers Allowance, Employment Support Allowance and to Universal Credit, along with statistics, are set out in a House of Commons Library briefing paper, *Benefit sanctions*, produced in December 2015.<sup>1</sup>

## Territorial extent and application

- 5 Clause 11 states that the Bill would extend to England and Wales, and Scotland.
- 6 As the Bill is a Private Members' Bill, the new English votes provisions in the House of Commons Standing Orders do not apply.
- 7 Clauses 1 to 10 extend and apply to England and Wales, and Scotland.

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<sup>1</sup> *Benefit sanctions*, House of Commons Library, Debate Pack, Number CDP-0132, 14 December 2015, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2015-0132>

- 8 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament or the National Assembly for Wales. If there are amendments relating to such matters that fall within the convention, the consent of these legislatures (as appropriate) would be expected to be sought for them.

# Commentary on provisions of Bill

## Clause 1: Pre-sanctions assessment of benefits claimants' circumstances

- 9 Clause 1 defines a benefits sanction as a reduction or restriction on a person in receipt of social security benefits. The clause stipulates that before a sanction can be imposed two requirements have to be met. First, an assessment of the circumstances of the person in receipt of benefits has to be made. Second, the conditions set out in the Bill have to be met. Where these are met and a person is to be sanctioned, the clause also requires that they must be assessed for hardship payments, which will include an assessment of the consequence of the imposition of the proposed sanction.

## Clause 2: Pre-sanctions assessment: code of conduct

- 10 Clause 2 requires the Secretary of State, through regulations, to issue a code of conduct governing the procedures, tests and standards to be followed and applied in carrying out the assessments of circumstances. Specifically, the clause provides that the code requires the person who is liable to be sanctioned to be given written guidance on their rights and entitlements. In addition, the code gives guidance to those carrying out the assessment on—
  - a. taking account of claimant's caring responsibilities, mental and physical health and well-being and housing situation,
  - b. how to apply the good reason consideration for not applying a benefits sanction,
  - c. the determination of the good reason requirement for not imposing a sanction in respect of certain benefits (see clause 5) and
  - d. the right of a claimant subject to sanctions to an assessment for hardship payments.

## Clause 3: Claimant commitment

- 11 Clause 3 amends section 14 of the Welfare Reform Act 2012 which provides for the claimant commitment. The commitment is a record of a claimant's responsibilities in relation to an award of Universal Credit. The first amendment is that a claimant commitment may only be prepared, reviewed and updated after the claimant has discussed it with the relevant job centre and after the claimant has received advice on their rights and entitlements from the job centre. The second change is a requirement that the commitment must include details of the claimant's caring responsibilities, mental and physical health and well-being, and housing situation.

## Clause 4: Claimant commitment: good reason

- 12 Clause 4 amends section 26 of the Welfare Reform Act 2012 by inserting into the definition of failure by a claimant for Universal Credit eligible for the imposition of sanction an exemption for reasons of mental ill health, homelessness or caring responsibilities.

## Clause 5: Just cause

- 13 Clause 5 inserts a new section (27A) into the Welfare Reform Act 2012. The new section requires an assessment of whether a claimant has just cause in relation to the act or omission that gave rise to consideration of a sanction. The assessment is made in relation to sanctions applying to Jobseekers Allowance, Employment Support Allowance, Income Support, Universal Credit and any associated social security benefit.
- 14 Subsection (2) requires the assessment to be made by the relevant job centre.
- 15 Subsection (3) requires the following matters to be taken into account in the assessment. First are any caring responsibilities which make it unreasonable for the claimant to undertake

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particular employment or carry out a jobseeker's direction. (A direction is a written notice requiring the claimant to undertake a specific activity with a view to helping them to find employment or improving their prospects of being employed.) Second is the time normally taken for the claimant to travel from their home to the place of the employment or to a place set out in the claimant commitment and back to their home by a route and a means appropriate to their circumstances.

- 16 The third matter to be taken into account is whether the expenses incurred by the claimant, together with any travelling expenses, represent an unreasonably high proportion of their expected income. Fourth are whether any child care expenses which the claimant necessarily incurred as a result of their being in the employment or of carrying out the claimant commitment would represent an unreasonably high proportion of their expected income. Fifth are whether the claimant's child caring responsibilities make it unreasonable for them to undertake a particular employment or carry out the claimant commitment where child care was not reasonably available or where the available child care was unsuitable due to the particular needs of the claimant or of the child. Sixth are caring responsibilities in relation to a child where the claimant is a lone carer. Seventh is the degree to which the claimant is at risk of homelessness. The final matter to be taken into account is whether there are any other conditions or personal circumstances which indicate that a particular employment or carrying out the jobseeker's direction would cause significant harm to the claimant's physical or mental health or subject them to excessive physical or mental stress.
- 17 Subsection (4) provides that the clause applies without prejudice to any other circumstances in which the claimant may be regarded as having good reason under any guidance issued by the Secretary of State relating to any act or omission or the claimant regards as meriting favourable treatment under existing discretion for exceptions exercised by job centre advisory staff, or their future equivalents.

#### Clause 6: Advice

- 18 Clause 6 applies where an assessment under section 1 has been carried out. The claimant must be provided at three points in the process with advice in writing on the terms and conditions of a claimant commitment, potential financial sanctions and access to hardship payments. The three stages are—
  - a. before signing a claimant commitment,
  - b. before any sanction is imposed and
  - c. (on request) after the imposition of a sanction.
- 19 The clause also empowers the Secretary of State to make regulations about the terms and conditions of access to advice when an assessment is carried out.

#### Clause 7: Hardship payments: duty to assess eligibility

- 20 Clause 7 imposes a duty on the Secretary of State to ensure that a claimant subject to a sanction which reduces or stops their payment of benefits is assessed for eligibility for hardship payments within a reasonable period.

#### Clause 8: Training

- 21 Clause 8 requires that the Secretary of State to satisfy himself or herself that adequate guidance and training has been provided to the staff of the agencies implementing and carrying out the provisions set out in the Bill.

#### Clause 9: Financial provision

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22 The Bill will require a money resolution to cover increased expenditure under the Bill.

### Clause 10: Regulations

23 Clause 10 requires a statutory instrument containing regulations under a provision of the Bill shall only be made after it has been laid in draft before each House of Parliament and approved by a resolution of each.

## Commencement

24 Clause 11 covers extent and commencement. The legislation extends to England and Wales and Scotland. The Bill comes into force on the day after it receives Royal Assent.

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