

WELFARE REFORM BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Welfare Reform Bill as introduced in the House of Commons on 14 January 2009. 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 2008 the Government published a consultation paper on proposals for welfare reform *No one written off: reforming welfare to reward responsibility* (Cm 7363). Over 1,000 consultation responses were received; four national consultation events were held; Ministers and officials participated in regional and local events to allow stakeholders and clients opportunity to voice their views. At the end of the consultation period, and following the publication of an independent review of conditionality in the benefits system by Professor Paul Gregg *Realising potential: A vision for personalised conditionality and support*, a White Paper *Raising expectations and increasing support: reforming welfare for the future* (Cm 7506) was published. This sets out the Government's proposals for the continuing reform of the welfare state. These started with the introduction of Jobcentre Plus and the New Deals, and have progressed most recently to the introduction of the employment and support allowance in October 2008 and new obligations for lone parents with older children in November 2008.
4. Not all of the proposals set out in the White Paper require primary legislation. But this Bill will give effect to those proposals that do.

5. This Bill also fulfils the commitment made in the White Paper *Joint birth registration: recording responsibility (Cm7293)* to legislate in order to make joint birth registration by unmarried couples the normal, default position, thereby enabling unmarried fathers to have their names entered on the birth register and to gain parental responsibility by this route. The aim of increasing parental responsibility is also the reason for including further changes to child maintenance legislation, building on the Child Maintenance and Other Payments Act 2008.

6. The Bill consists of five Parts:

Part 1 – Social security

Part 2 – Disabled people: right to control provision of services

Part 3 – Child maintenance

Part 4 – Birth Registration

Part 5 – Miscellaneous and supplementary

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

Part 1 – Social security

8. The aim of much of this Part of the Bill is to move towards greater flexibility and personalisation of benefit conditionality and to reduce the number of working age benefits by abolishing income support. The Bill contains provisions and confers regulation-making powers which will be used to increase support for benefit claimants and, where relevant, their partners with a view to improving their employment prospects or preparing them for work in the future. The provisions also set out the framework necessary for the future abolition of income support, and the movement of claimants of that benefit to jobseeker's allowance with differing degrees of conditionality, or to employment and support allowance.

9. 'Work for your benefit schemes' will be piloted for long-term jobseekers who have received increasingly intensive support from Jobcentre Plus and specialist back-to-work providers. They will give jobseekers the opportunity to develop their work skills through undertaking full time work-experience. Work for your benefit schemes will also be piloted for some jobseekers who are likely to benefit from the scheme at an earlier stage of unemployment.

10. The schemes will be mandatory and aim to help jobseekers find sustained work in the open labour market. Some jobseekers are likely to face particular

barriers due to the length of time they have been away from employment. Work for your benefit schemes will enable them to benefit from the opportunity to develop work habits and routines that they may not have experienced for some time.

11. All lone parents on income support are required to participate in work-focused interviews (WFIs) as part of their claim. The lone parent WFI regime has been expanded over time and since April 2008 has required all lone parents to undergo regular interviews, generally every six months.

12. The WFIs aim to encourage more lone parents to take up sustainable work and ensure that all lone parents are aware of the help and support available to them. Since October 2005 lone parents have been required to agree a mandatory action plan with their Jobcentre Plus Personal Advisor as a condition of completing their initial WFI, helping lone parents and their advisors concentrate on their longer-term goals and set the steps they can take or are taking to prepare for work.

13. Lone parents who wish to take up the offer of greater support to move towards employment can volunteer for the New Deal for Lone Parents (NDLP) programme. This aims to help and encourage lone parents to improve their job readiness and employment opportunities and gain independence through working. This is achieved through providing access to various elements of assistance and provision made available through a New Deal Personal Adviser.

14. The Government has already started to increase the obligation for lone parents with older children to look for work. By 2010 this will extend to lone parents with a youngest child aged seven and over by removing entitlement to income support solely on the grounds of being a lone parent. Those who are able to work can claim jobseeker's allowance instead, and those with a disability or health condition may claim employment and support allowance.

15. Partners of jobseeker's allowance claimants with children are also required to take part in a compulsory WFI every six months, whilst partners of benefit claimants in receipt of income support, incapacity benefit or employment and support allowance are required to attend only one WFI six months into their partner's claim. Similarly to lone parents, a partner who wishes to volunteer for extra support following a WFI is able to take up the New Deal for Partners (NDP) programme. To support more partners into employment, there are powers in this Bill which may be applied to require more activity from partners in return for benefits.

16. Acknowledging that more needs to be done to support parents with younger children, the Government proposes to evaluate and introduce new measures for lone parents and partners of benefit recipients with younger children, in line with the long-term vision for personalised conditionality proposed by Professor Paul Gregg in his independent report *Realising potential: A vision for personalised conditionality and support*.

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17. The proposed powers in the Bill will underpin Professor Gregg's recommendation that in the long-term parents with younger children should generally be part of a 'Progression to Work' group, for whom an immediate return to work is not appropriate, but is a genuine possibility with time, encouragement and support.

18. The intention is to establish a personalised conditionality regime which is tailored to the individual's circumstances, so that preparation for work becomes a natural progression rather than a sudden step up. The Bill includes provision that will ensure lone parents and partners of benefit recipients in the Progression to Work group are required to undertake action planning and work-related activities. These actions and activities are broadly defined to ensure they are appropriate to the needs and circumstances of each individual. In instances where work-related activity is identified which will improve their employment prospects, for example as a result of a skills health check, individuals may be directed to carry this out.

19. Provision is also made to direct an employment and support allowance (ESA) claimant to undertake a specific work-related activity in certain circumstances. This extends the provision in section 13 of the Welfare Reform Act 2007 which requires ESA claimants (with the exception of those in the support group) to undertake a work-related activity of their choice.

20. The White Paper set out the Government's view that for a number of people the biggest barrier to work was their drug use. *Clause 9 and Schedule 3* provide for problem drugs users to be directed to make, and comply with, a rehabilitation plan. In some circumstances they could also be required to undergo drug testing.

21. In addition to making provision concerning conditionality, this Part also amends the contribution conditions for both contributory jobseeker's allowance and employment and support allowance. This will mean that in order to qualify, new claimants will normally need to have paid national insurance contributions for at least 26 weeks in one of the last two tax years prior to the claim. There is also provision to remove an adult dependency increase from maternity allowance and from carer's allowance.

22. This Part of the Bill also includes measures to reform the Social Fund. The discretionary Social Fund is a cash-limited system of one-off payments, mainly to people receiving pension credit, income support, income-related employment and support allowance or income-based jobseeker's allowance — although crisis loans are available to anyone, whether on benefit or not, who are without the resources to meet their immediate, urgent needs.

23. In November 2008 the Government published a consultation document *The Social Fund: A new approach*, which sought views on the merits of taking legislative powers to allow some credit unions, and similar organisations from the third sector, to take over the provision of credit to social fund customers in their areas, under contract to the Department for Work and Pensions. Following the end of that consultation the

decision was taken to implement this proposal, and clauses are therefore included in the Bill allowing for the provision of ‘external provider social loans’.

24. Every year thousands of people make a social fund application because they are without funds but are awaiting the award or payment of benefit. This Part includes a provision which extends the existing provisions for making and recovering a payment of benefit on account. This will replace the need for people to apply for social fund crisis loans on the grounds that their health or safety is at risk.

25. Part 1 also includes amendments to the current provisions dealing with the consequences of benefit fraud. The amendments allow for the loss of benefit following one or more conviction, penalty or caution for benefit fraud. *Clause 20* also introduces a new sanction provision for those in receipt of jobseeker’s allowance who have been convicted or cautioned for violence against anyone exercising functions under the Jobseekers Act 1995.

Part 2 – Disabled people: right to control provision of services

26. In 2005, the Prime Minister’s Strategy Unit published the report ‘*Improving the Life Chances of Disabled People*’. This report set out a cross-government strategy to improve disabled people’s opportunities and quality of life, with the commitment of achieving full equality for disabled people by 2025. The report recognised that disabled people are often expected to fit into an inflexible framework of service provision, rather than services being personalised to respond to individual need. Subsequent publications including the concordat ‘*Putting People First*’ (2007) and the ‘*Independent Living Strategy*’ (2008) have outlined commitments to creating a system that allows disabled people to have maximum choice and control over the support services they receive.

27. Part 2 confers regulation-making powers that can be used to give adult disabled people greater choice and control over the way in which relevant services (defined in clause 29) are provided by relevant authorities (defined in clause 30). The Government intends that regulations should initially make pilot schemes having temporary effect, so Part 2 includes provisions allowing this. It also introduces a statutory requirement to consult over specified draft regulations.

Part 3 - Child maintenance

28. In both the Welfare Reform Green and White Papers the Government said it wished to look at the enforcement of child maintenance. Currently the courts have the power to disqualify from driving or commit to prison non-resident parents who have failed to pay child maintenance. The Child Maintenance and Other Payments Act 2008 added to these powers the ability to curfew or to disqualify from holding or obtaining travel authorisation. This Part makes provision to allow the Child

Maintenance and Enforcement Commission to make the decision in the case of disqualification for holding or obtaining a driving licence or travel authorisation, with the court dealing with appeals against the Commission's decision.

29. This Part also includes amendments to the current statutory provisions relating to information offences.

Part 4 – Birth registration

30. In June 2008 the Government announced in the White Paper *Joint birth registration: recording responsibility* its intention to promote child welfare and parental responsibility by ensuring, where possible, that unmarried parents jointly register the birth of their children. In order to achieve this objective, the Bill makes a number of amendments to the Births and Deaths Registration Act 1953 ('the 1953 Act') and amendments to the Children Act 1989 relating to how parental responsibility is acquired by unmarried fathers.

31. Whereas a man who is married to a child's mother has an automatic right to be recorded as the father of the child on the birth register (since he is presumed in law to be the father), this is not the case for unmarried fathers. Under existing legislation, a father who is not married to the mother of his child at the time of the child's birth may have his details entered on the birth register only with the co-operation of the child's mother or where there is a court finding of his paternity.

32. The amendments increase the ways in which an unmarried father may register jointly with the child's mother. They provide for a new form of declaration which the father may complete, and which may be countersigned by a broader range of witnesses than the current statutory declaration, making the process less costly and bureaucratic than the current system. In addition, they make provision for the registrar to include a man's details on the birth register where a paternity test carried out by an accredited body shows him to be the father.

33. As well as widening the routes through which unmarried couples may jointly register, the provisions included in Part 1 of Schedule 6 confer (and contain regulation-making powers which will allow to be conferred) additional rights and duties on both unmarried mothers and fathers, in order to ensure that unmarried fathers' details are entered on the birth register in as many cases as possible.

34. In the majority of cases, unmarried parents will continue to register jointly in co-operation with each other. In most of the remaining cases, the mother will be required to provide the father's details to the registrar, in order to enable the registrar to contact the father and ascertain and include his details on the birth register. Similarly, an unmarried father will have a corresponding right to provide his details to the registrar independently of the mother, and to have his name entered on the register subject to acknowledgement by the mother that he is the child's father. Whilst in practice such approaches should be the exception, the provisions allow in this way for

joint registration by couples who are not co-operating with each other. There will, however, be some cases where a mother will be exempt from the duty to provide the father's details, in which case sole registration will take place. These will include, for example, cases where the mother does not know the identity of the father (or his whereabouts), or where she fears that her safety – or that of her child – might be put at risk were the father to be contacted.

35. The structure of the proposed new legislation reflects the practical differences between registration by a married father and an unmarried father, not least the difficulty in identifying a man as the father where he is not married to the child's mother. When the 1953 Act was introduced as a consolidation of legislation dating from the 19th century, the birth of a child to unmarried parents was very much the exception. Although amendments made by the Children Act 1989 and other family law measures have extended the provisions for registering unmarried fathers the existing legislative framework assumes that a majority of parents will be married to each other and, if not, will co-operate with each other in registering their child's birth. It does not adequately address the problems which may arise when this is not the case. In addition to introducing new rights and responsibilities for unmarried mothers and fathers, the Government is therefore seeking through the amendments to the 1953 Act to clarify the legal position for parents and to bring the legislation up to date.

36. The proposed amendments contain provisions which would enable regulations to be made conferring new duties on an (alleged) father who is not married to the mother to provide information concerning a birth, and would strengthen his right to provide such information. The 1953 Act already treats an unmarried father as a qualified informant concerning the birth in certain circumstances. Under the proposed new provisions, a man will also be a qualified informant if he is shown through an accredited paternity test to be the father. Where this is the case, regulations may provide for his details to be recorded on the register.

37. The new provisions will allow regulations to provide that where a man has been named as the father by the child's mother, he will be under a duty to provide the information requested by the registrar and – if he acknowledges that he is the father – to have his details recorded on the register.

38. Both the 1953 Act and the Children Act 1989 refer to a child whose father and mother were, or were not, married to each other at the time of the child's birth. Such references are to be read in accordance with section 1 of the Family Law Reform Act 1987 ('the 1987 Act') which imports a wider meaning than the words alone suggest. For example, in accordance with the 1987 Act, a time of a child's birth extends to include any time beginning with the insemination or conception and ending with the child's birth. The effect of this is that where a child's parents were married at the time of that child's conception, the provisions under the 1953 Act relating to the parents of a child who were married to each other at the time of the child's birth will apply even if the parents are no longer married at the time of the child's actual birth. The 1987 Act also treats a person who has a parent by virtue of provisions of the

Human Fertilisation and Embryology Act 2008 ('the HFE Act') who is the civil partner of the child's mother, as a person whose father and mother were married to each other at the time of that person's birth.

39. As a result of provisions in the HFE Act, the civil partner of a child's biological mother who is treated as a parent under that Act has similar rights to a married father in relation to birth registration. A second female parent who is a parent by virtue of section 43 of the HFE Act has rights in relation to birth registration in line with those of an unmarried father.

40. Under section 43 of the HFE Act, for a woman who is not the civil partner of the mother to be regarded as the second female parent, both the woman and the mother must have consented to the woman being treated as the second parent of any child resulting from licensed treatment.

41. Where relevant, the new provisions relating to joint birth registration that are applicable to unmarried fathers will also apply to a woman who is a parent by virtue of section 43 of the HFE Act.

Part 5 – Miscellaneous and supplementary

42. This Part contains clauses dealing with consequential amendments, repeals and revocations of other legislation, financial provisions, the extent of the Bill, commencement of provisions of the Bill, and the short title.

TERRITORIAL EXTENT

43. Most provisions in this Bill extend to England and Wales and Scotland, but not to Northern Ireland. Although the provisions in this Bill are transferred matters under the Northern Ireland Act 1998 and Northern Ireland has its own social security legislation, there is a long-standing policy of parity in this area.

44. *Clause 19 and Schedule 4* (loss of benefit provisions), extend to England and Wales, Scotland and Northern Ireland.

45. *Part 4 and Schedule 6*, which relate to birth registration, extend to England and Wales only.

46. The other provisions of the Bill extend to England and Wales and Scotland.

47. In general, the provisions of the Bill apply to Wales in the same way as they apply to England. The exception is that clause 35 enables regulations under clause 31 to be made by the Welsh ministers in certain cases.

48. Amendments, repeals and revocations made by this Bill have the same extent as the provision which is being amended, repealed or revoked. The only exception is that the amendment of the Population (Statistics) Act 1938 in Schedule 6 does not extend to Scotland.

49. At Introduction this Bill contains provisions that trigger the Sewel Convention. The provisions confer regulation-making powers relating to control by disabled people over the way in which services are provided for them. 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: Social security

Clause 1: Schemes for assisting persons to obtain employment: ‘work for your benefit’ schemes etc.

50. This clause inserts two new sections, *section 17A* (schemes for assisting persons to obtain employment: ‘work for your benefit’ schemes etc.) and *section 17B* (*section 17A: supplemental*) into the Jobseekers Act 1995 (c. 18).

51. *Section 17A(1)*, which is inserted by *subsection (2)*, enables the Secretary of State to make provision in regulations for or in connection with imposing a requirement on jobseeker’s allowance claimants to participate in schemes that are designed to assist them to obtain employment.

52. In particular, these regulations may impose a requirement on claimants to undertake work or work-related activity as part of a ‘work for your benefit’ scheme.

53. The intention is to pilot ‘work for your benefit’ schemes in limited geographical areas from 2010 in order to assess their effectiveness. This would be achieved by making regulations using the powers in *section 29* (pilot schemes) of the Jobseekers Act 1995 (as amended - *see clause 21*). Subsequent implementation would be subject to the outcome of the pilots and affordability.

54. *Section 17A(1)* provides for the regulations to set out the circumstances in which jobseeker’s allowance claimants are required to participate in schemes under this section. The Government intends to use these powers to require a proportion of long-term unemployed claimants who reach the end of a Flexible New Deal programme without finding work to take part in a ‘work for your benefit’ pilot

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scheme. The Government envisages that Jobcentre Plus personal advisers will be able to require other jobseeker's allowance claimants to take part in a pilot scheme if the adviser considers that participation would benefit the individual concerned.

55. As well as undertaking full-time work or work-related activity it is also envisaged that participants in 'work for your benefit' pilot schemes will be provided with relevant employment support.

56. *Section 17A(2)* makes it clear that the regulations may require claimants to undertake work or a work-related activity during a prescribed period with a view to improving their chances of finding employment. The Government envisages that claimants may participate in 'work for your benefit' pilot schemes for up to six months.

57. *Section 17A(3)* defines 'work-related activity' as activity which would make it more likely that the participant will obtain or remain in work or be able to do so.

58. *Section 17A(4)* precludes regulations made under *subsection (1)* from applying to jobseeker's allowance claimants who are not required to satisfy the jobseeking conditions. These are the conditions set out in section 1A(5)(a) to (c) of the Jobseekers Act 1995 (see *clause 3(3)* – namely that a person is available for work, has a current jobseeker's agreement, and is actively seeking employment). The Government envisages the precluded groups will include lone parents with younger children who are moved to jobseeker's allowance after the abolition of income support (see *clause 7*).

59. *Section 17A(5)* provides examples of provisions that may be included in regulations made under section 17A(1).

60. *Section 17A(5)(d)* enables regulations to provide that benefit payments may be withheld or reduced where a claimant has failed to comply with the regulations and he or she does not show good cause for the failure within the period specified in regulations. If good cause is shown, benefit will continue to be paid. The Government intends that good cause for not participating in a 'work for your benefit' scheme will be consistent with the good cause provisions currently contained in regulations relating to jobseeker's allowance. An example of good cause would be dealing with a domestic emergency.

61. *Subsection (6)* provides that a jobseeker's allowance is not payable for a period specified in regulations where a claimant has failed to comply with regulations made under *section 17A*. This subsection also provides that the period specified in the regulations in respect of which a jobseeker's allowance is not payable must be at least one week and not more than 26 weeks.

62. *Section 17A(7)* provides that the appropriate consequence if a member of a joint-claim couple fails to comply with regulations is that he or she be treated as

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subject to sanctions for the purpose of *section 20A*. The period for which the full allowance is not payable must be at least one week and not more than 26 weeks.

63. *Subsections (8) and (9) of section 17A* make provision for claimants to receive an income-based jobseeker's allowance even though provision made by the regulations may prevent it. This is to enable claimants who are subject to a sanction to receive hardship payments. Regulations may prescribe the rate and period of such payments and the circumstances in which they are payable. *Subsection (8)* does not apply in the case of a joint-claim jobseeker's allowance. Provision for such payments is contained in *section 20B(4)* of the Jobseekers Act 1995.

64. *New section 17B*, which is also inserted in the Jobseekers Act 1995 by *subsection (2)*, contains provisions that are supplemental to *section 17A*. These provisions relate to the practical operation of schemes prescribed under *section 17A* and provide support for any contractual arrangements the Secretary of State may make regarding their delivery.

65. *Subsection (1)* enables the Secretary of State to associate himself, financially or otherwise, with any scheme falling within *section 17A(1)*. For example, 'work for your benefit' pilot schemes may involve contracting with non-Government organisations and providing funding for relevant work-related activity and employment support. The Secretary of State may also wish to make payments to persons participating in the schemes to cover certain expenses, such as the cost of public transport to the host organisation.

66. *Subsections (2) to (5)* allow the Scottish and the Welsh Ministers to continue to make payments to those delivering schemes (including the Secretary of State) under *section 17A*. Payments made in this way must be for facilities considered capable of supporting the training in Scotland or Wales of persons for employment. This means that Scottish and Welsh Ministers retain current powers in relation to schemes made under *section 60* (special schemes for claimants for jobseeker's allowance) of the Welfare Reform and Pensions Act 1999 (c. 30). Provision is made for the repeal of *section 60* in *clause 43 and Part 3 of Schedule 7*.

67. *Subsection (6)* enables the Secretary of State, where necessary, to use existing powers in *section 26* (status of trainees etc.) of the Employment Act 1988 to make an order dealing with the employment status of claimants participating in schemes under *section 17A* and detailing how any income gained while on a scheme should be treated for the purpose of other relevant legislation (for example, legislation relating to tax or National Insurance contributions). This follows the same approach as in *section 60(8)* of the Welfare Reform and Pensions Act 1999.

68. *Subsections (3) to (5) of clause 1* make other amendments which are consequential on new *section 17A*.

69. *Subsection (3)* inserts a new subsection (4A) in *section 36* (regulations and

orders) of the Jobseekers Act 1995 to make it clear that regulations made under new *section 17A* may make different provision for different areas and that they may make provision only in relation to an area or areas specified in the regulations.

70. *Subsection (4)* amends Schedule 3 to the Social Security Act 1998 (c. 14) to provide that a decision relating to non-payment of benefit under *section 17A* may be appealed.

Clause 2: Work-related activity: income support claimants and partners of claimants

71. This clause amends the Social Security Administration Act 1992 by inserting *new sections 2D to 2G*.

72. *New section 2D* allows the Secretary of State to make regulations which may require a person in receipt of income support (*subsection (1)*), or the partner of a person receiving income support, income-based jobseeker's allowance or income-related employment and support allowance (*subsections (2) and (3)*) to undertake work-related activity, as part of their progression to work outlined in Professor Gregg's recommendations, as a condition of continuing to receive the full amount of benefit. The regulations made under this section will make provision for –

- the circumstances in which a person is to be subject to any requirement to undertake such activity;
- notifying a person of such a requirement;
- prescribing the time and amount of work-related activity which a person is required to undertake;
- detailing the circumstances in which a person is or is not to be regarded as undertaking such activity;
- determining, in the case of a claimant in a polygamous marriage, which of the partners is required to undertake work-related activity;
- imposing a sanction where a person required to undertake work-related activity has failed, without good cause, to comply with the requirement. The regulations will prescribe which matters are, or are not, to be taken into account when determining good cause for such failure. Where a sanction is imposed, the regulations will make provision for benefit to be reduced, and prescribe the amount and period of the reduction;
- definitions for the purposes of this section and for *new sections 2E and 2F*. In particular 'work-related activity' is defined as activity which makes it

more likely that the person will obtain or remain in work or be able to do so;

- information supplied under the regulations made under this section to be taken to be information relating to social security. This will enable the exchange of information with, for example, training providers.

73. *New section 2E* relates to persons in receipt of certain benefits and to the partners of such people who are required to attend a work-focused interviews under the provisions of section 2A and section 2AA of the Social Security Contributions and Benefits Act 1992. The benefits in question are income support, income-based jobseeker's allowance or an income-related employment and support allowance and their partners. The provision requires the Secretary of State, in circumstances to be specified in regulations, to provide such people with an action plan. Regulations made under this section will provide for the form, content and review and updating of action plans. Where a person is required under the provisions of *section 2D* to undertake work-related activity, the action plan will contain details of the activities which will allow that requirement to be met. The regulations will also allow a person provided with an action plan to ask for it be reconsidered, and set out the circumstances and time in which such a request may be made; the matters to be considered when deciding on reconsideration; notification of the reconsideration decision, and directions giving effect to the decision on reconsideration.

74. *New section 2F* allows the Secretary of State, in circumstances to be set out in regulations, to issue a direction to a person required to undertake work-related activity under *section 2D*. The direction will specify either –

- the *only* activity, in that case, which will be regarded as work-related activity, or
- activity which, in that person's case, will *not* be treated as work-related activity.

75. The regulations will provide that any direction must be reasonable, taking into account an individual's circumstances, must be included in an action plan given under *section 2E* and may be varied or brought to an end by a subsequent direction made under *section 2F(1)*. Where a direction is varied or ended by a subsequent direction, that change may have retrospective effect.

76. *New section 2G* will allow the Secretary of State to authorise staff of contracted out suppliers to carry out his functions in issuing action plans under new *section 2E* and issuing directions under new *section 2F*. In addition regulations may provide for those persons to carry out the functions of the Secretary of State in revising or superseding decisions made under those sections. However, they will not be able to make decisions about whether a person has failed to comply with a requirement to undertake work-related activity, whether that person had good cause

for such a failure or whether benefit should be reduced as a result of that failure. Those decisions will remain with the Secretary of State.

77. Regulations made under new *section 2G* will further specify the extent to which a contractor and its staff may be authorised to carry out functions of the Secretary of State and the duration of the authorisation. The Secretary of State will be able to revoke the authorisation at any time, and will not be prevented from exercising any function himself. Any action or omission by the authorised person is to be treated as an action or omission of the Secretary of State, except where it relates to the exercise of the function, or where criminal proceedings are brought in respect of anything done by the authorised person.

78. *Subsections (3) to (6) of clause 2* make minor consequential amendments to the Social Security Administration Act 1992 and the Welfare Reform and Pensions Act 1999.

Clause 3: Entitlement to jobseeker's allowance without seeking employment etc.

79. *Subsections (1) to (3)* amend the Jobseekers Act 1995 by inserting *new sections 1A and 1B* to provide entitlement to jobseeker's allowance for different categories of claimant including groups who would currently claim income support.

80. *New section 1A* makes provision for claimants who are not a member of a joint-claim couple. It re-states the existing basic conditions under which people who are not in remunerative work can qualify for contribution-based or income-based jobseeker's allowance if they satisfy jobseeking conditions (such as to be available for and actively seeking work.) It creates a new entitlement for people of a description provided in regulations, who are not required to meet the jobseeking conditions but meet the other basic conditions of entitlement, such as presence in Great Britain and satisfy an income test. This will enable income-based jobseeker's allowance to be extended to groups who currently qualify for income support

81. *New section 1B* ensures that the existing provision in section 3A of the Jobseekers Act 1995 (the conditions for claims by joint-claim couples) can continue to operate in the light of the amendments made to the Jobseekers Act by the new section 1B above. Where a person is a member of more than one couple, regulations will make provision for deciding which couple is included for the purposes of a joint claim. This would apply, for example, to someone in a polygamous marriage.

82. *Subsection (4)* introduces Schedule 1, which includes amendments to the Jobseekers Act 1995 to support these changes.

Clause 4: Couples where at least one member capable of work

83. This clause amends the law relating to certain claimants who are members of a

couple.

84. *Subsection (1)* amends the Social Security Contributions and Benefits Act 1992 by inserting new regulation-making powers into section 124(1) of that Act (entitlement to income support) and by inserting new subsections (6A), (6B) and (7) (employment and support allowance).

85. *Subsection (2)* amends paragraph 6 of Schedule 1 to the Welfare Reform Act 2007 (the conditions for entitlement to income-related employment and support allowance).

86. The purpose of these provisions is to remove entitlement to income support and income-related employment and support allowance for couples where one member is capable of work. This will mean that the only route to income-related support for such couples will be through income-based jobseeker's allowance and the member of the couple who is work ready will be required to fulfil the jobseeking requirements in section 1 of the Jobseekers Act 1995.

87. Regulations will prescribe the circumstances in which a member of a couple will not be treated as being capable of work, for example, he or she has claimed or is receiving employment and support allowance or he or she is in receipt of carer's allowance.

Clause 5: Statutory sick pay and employment and support allowance

88. This clause amends section 20(1) of the Welfare Reform Act 2007 which prevented eligibility for employment and support allowance by those entitled to statutory sick pay. That section is amended to include a regulation-making power to allow people who are receiving statutory sick pay to claim income-related employment and support allowance, instead of income support. Currently people may receive income support in addition to statutory sick pay. In order to abolish income support, alternative provision needs to be made for this group of people.

Clause 6: Transitional provision relating to sections 3 to 5

89. This clause makes provision for the transition of people who move from income support to employment and support allowance or jobseeker's allowance as a result of the provisions in *clauses 3 to 5*. This includes stopping awards of income support or employment and support allowance, where it is appropriate. A transitional allowance can be paid for a time and an amount prescribed in regulations.

Clause 7: Abolition of income support

90. This clause provides for the abolition of income support and the repeal of its associated references if, as a result of changes made in this Bill or otherwise, there are no longer any groups of people that require income support. There is scope in

subsection (4) to provide any transitional protection necessary.

Clause 8: Power to direct claimant to undertake specific work-related activity

91. *Clause 8* allows the Secretary of State to specify a work-related activity which a claimant of employment and support allowance, in the work-related activity group, must undertake to meet the requirements of the claim. Work-related activity is activity aimed at helping the claimant obtain work, remain in work or to be more likely to obtain or remain in work. This will not apply to claimants whose condition limits them to the extent that they could not reasonably be required to undertake work-related activity as a condition of receiving their benefit.

92. *Clause 8* amends section 15 of the Welfare Reform Act 2007 which provides a power for the Secretary of State to direct that a specific activity in the case of an individual is not to count as work-related activity under the requirements imposed by section 13 of that Act. This is intended to stop claimants seeking to satisfy the requirement to undertake work-related activity by undertaking activity considered inappropriate for their circumstances.

93. New *subsection (1)(a)* provides that in addition to the existing power under section 13 of the Welfare Reform Act 2007, the Secretary of State can, in prescribed circumstances, direct that a specific activity is the only activity which can, in the person's case, be regarded as work-related activity. This is intended to enable the Secretary of State to require claimants to undertake a specific activity in certain circumstances.

94. New *subsection (2)(a)* requires that any direction given to the claimant must be reasonable, having regard to the person's circumstances. New *subsection (2)(b)* requires that any direction given to the claimant under *subsection (1)* must be recorded in the claimant's action plan. Failure to undertake the specified activity without showing good cause for this within the allowed time would be sanctionable.

Clause 9: Claimants dependent on drugs

95. This clause and Schedule 3 make provision in relation to persons claiming jobseeker's allowance and employment support allowance who are dependent on, or have a propensity to misuse, drugs. They will be required to engage in certain activities if their condition affects their prospects of finding work. The Schedule also contains a power to extend the provisions to those who misuse alcohol.

Clause 10: Conditions for contributory jobseeker's allowance

96. This clause amends the contribution conditions for jobseeker's allowance. It amends the Jobseekers Act 1995 so that the first contribution condition for jobseeker's allowance is met by the claimant having paid, or being treated as having paid, at least 26 weeks of Class 1 contributions on relevant earnings at the base year's

lower earnings limit (£90 per week in 2008/09) in one of the two tax years prior to the claim. Class 1 national insurance contributions are those paid on earnings from employment. Relevant earnings are those upon which contributions have been paid and which count towards establishing entitlement.

97. *Subsection (3)* introduces a regulation-making power which will be used to set out the detail of the calculation to determine whether a person has paid contributions on enough earnings to be entitled to the contributory benefit. A further regulation-making power is introduced by *subsection (5)* to allow for prescribed categories of claimants to satisfy the first contribution condition by alternative criteria. This new provision in the Jobseekers Act 1995 for jobseeker's allowance will parallel the provision in the Welfare Reform Act 2007 in respect of employment and support allowance.

Clause 11: Conditions for contributory employment and support allowance

98. This clause amends the contribution conditions for employment and support allowance. The clause amends the Welfare Reform Act 2007 so that the number of tax years in which a person can pay national insurance contributions and qualify for employment and support allowance is reduced from three years to two. This aligns the period for employment and support allowance with that for jobseeker's allowance.

99. The clause further amends the Welfare Reform Act 2007 to provide that the first contribution condition for employment and support allowance is met by the claimant having paid, or being treated as having paid at least 26 weeks of Class 1 or Class 2 contributions on relevant earnings at the base year's lower earnings limit (£90 per week in 2008/09) in one of the two tax years prior to the claim. Class 1 national insurance contributions are those paid on earnings from employment. Class 2 national insurance contributions are those paid on earnings from self-employment. Relevant earnings are those upon which contributions have been paid and which count towards establishing entitlement.

100. The clause provides a regulation-making power which will be used to set out the detail of the calculation to determine whether a person has paid contributions on enough earnings to be entitled to the contributory benefit. The existing regulation-making power in the Welfare Reform Act 2007 is amended to allow for further prescribed categories of claimants, for example partners of overseas service personnel, to satisfy the first contribution condition by alternative criteria.

Clause 12: Maternity allowance and carer's allowance

101. This clause repeals sections 82 and 90 of the Social Security Contributions and Benefits Act 1992 which make provision for Adult Dependency Increases (ADIs) to be paid with maternity allowance and carer's allowance respectively, in circumstances where the claimant has an adult dependant.

102. The clause will abolish the payment of ADIs for all new claims to maternity

allowance and carer's allowance at the same time as they cease to be available on new claims to state pensions in 2010.

103. ADIs in payment with carer's allowance at the time of change will be phased out between 2010 and 2020. This will be in line with the arrangements for phasing out the existing ADIs paid with the state pension. Phasing out will not apply to maternity allowance as this is a short-term benefit paid for 39 weeks. Payment of ADI for existing maternity allowance claims will therefore cease when the maternity allowance entitlement ends.

Clause 13: External provider social loans

104. *Clause 13(1)* inserts *new sections 140ZA, 140ZB and 140ZC* into the Social Security Contributions and Benefits Act 1992.

105. *New section 140ZA* will allow the Secretary of State, with the agreement of the Treasury, to make arrangements with external providers to make loans to individuals who are receiving prescribed benefits or have prescribed needs. Arrangements under this section may have effect in particular areas, or throughout Great Britain. Under *subsection (9)* loans made under these arrangements are to be referred to as external provider social loans.

106. *Subsections (4) to (6)* set out matters which may be covered by the arrangements made under *new section 140ZA*. These include power for the Secretary of State to make payments to the lender. *Subsections (7) and (8)* provide for certain payments to be made out of and into the social fund.

107. *New section 140ZB* will allow the right to repayment of loans to be transferred between the Secretary of State and an external provider. So a social fund loan which is outstanding when the arrangements come into force could be transferred to the external provider. Similarly, where arrangements with an external provider cease any outstanding repayments in respect of an external provider social loan could be transferred to the Secretary of State.

108. *Section 140ZC* will require the Secretary of State to publish a report annually on the operation of arrangements under *section 140ZA*.

109. *Clause 13(2)* inserts *new section 78A* into the *Social Security Administration Act 1992*. It is a regulation-making power which will enable the Secretary of State to collect repayments due on an external provider social loan (by way of deduction from benefit or other methods) and to pay these over to the lender, except where the regulations make other provision. The regulations may apply to the collection of repayments of equivalent loans made in Northern Ireland.

Clause 14: Power to restrict availability of social fund loans

110. This clause inserts into section 138 of the Social Security Contributions and

Benefits Act 1992 a provision which will enable access to crisis loans or budgeting loans from the social fund to be restricted in any area in which external provider social loans are available.

Clause 15: Supply of information to or by lenders making external provider social loans

111. *Clause 15* inserts a new *section 122G* into the Social Security Administration Act 1992 which allows regulations to provide for the exchange of information between the Secretary of State and an external provider with whom arrangements have been made under new *section 140ZA*, and for the use or disclosure of such information including provision for a criminal offence for unauthorised disclosure.

Clause 16: Community care grants relating to specified goods or services

112. Under the existing law, successful applicants for community care grant may be provided with cash to obtain the goods or services that the award covers. At the discretion of the appropriate officer, a payment may be made to a third party to provide the goods or services. These amendments to the Social Security Contributions and Benefits Act 1992, taken with those in clause 17, enable the Secretary of State to require that, where the goods or services are covered by arrangements the Secretary of State has made with a supplier, the award made must relate to specified goods or services and the payment would be made to the supplier. It is expected that these arrangements will involve the supply of white goods and furniture at a discounted rate.

Clause 17: Community care grants: reviews and information

113. *Clause 17 (1) and (2)* preclude an application for review being made where goods or services have been awarded as set out in clause 16. *17(3)* inserts a new *section 122H* into the Social Security Administration Act 1992 which allows regulations to provide for the exchange of information between the Secretary of State and relevant suppliers and for the use or disclosure of such information, including provision for a criminal offence for unauthorised disclosure. There is power by regulations to make exceptions to this.

Clause 18: Payments on account

114. *Clause 18(2)(a)* repeals section 5(1)(r) of the Social Security Administration Act 1992, which enables regulations to be made providing for the making of a payment on account of benefit where it is impracticable for a claim to be made immediately, where it is impracticable for a claim to be determined immediately or where an award of benefit has been made, but it is impracticable to pay the whole immediately. *Subsection (2)(b) of clause 18* inserts a new subsection (1A) into section 5 of that Act. It provides a regulation-making power to allow a payment on account of benefit to be made where –

- no claim has been made or a claim has been made

(including where a claim has been determined and an award made) and, in either case, a person who is or would be covered by such a claim would be in need if no payment on account was made, and

- an award has been made but it is impracticable for the full amount of the benefit to be paid immediately.

115. The new subsection broadens the range of situations in which a payment on account may be made before an award has been made. It enables these payments to be made on a need basis rather than in situations where it is impracticable to make a claim, determine a claim or pay benefit. It provides the Secretary of State with improved flexibility to address short-term hardship.

116. The *new subsection (1B)* enables regulations to make provision about the manner in which payments on account of benefit are to be set against subsequent payments of benefit and to prescribe circumstances in which they are not to be set against subsequent payments and are not otherwise recoverable.

117. *Subsections (3) to (5)* of clause 18 make consequential changes to references to section 5(1)(r) in other sections of the Social Security Administration Act 1992.

Clause 19: Loss of benefit provisions

118. Section 7 of the Social Security Fraud Act 2001 ('the 2001 Act') enables certain specified benefits to be withdrawn, or reduced payments to be made, for a period of 13 weeks (known as the disqualification period) where a person is convicted of benefit fraud on two occasions, and the second offence was committed within five years of the date of conviction for the first. These loss of benefit provisions are commonly referred to as the 'two strikes' rule.

119. *Clause 19* extends the loss of benefit provisions by introducing a similar benefit sanction for the same specified benefits to be applied following a first conviction for benefit fraud, or following a first (or subsequent) agreement to pay a penalty or acceptance of a caution.

120. Where such an offence comes to light, the offender may be prosecuted, agree to an administrative penalty as an alternative to prosecution under section 115A of the Social Security Administration Act 1992, or agree to be given a caution.

121. *Subsection (1)* inserts new *sections 6A, 6B and 6C* into the 2001 Act. *New section 6A* defines, for the purposes of *section 6B* and section 7, the meaning of 'disqualifying benefit' and 'sanctionable benefit'. In Northern Ireland, the references in new *section 6B* and section 7 to 'sanctionable benefit' relate only to a war pension. This preserves the existing position under section 7 as it stands.

122. *New section 6B* introduces the new benefit sanction to apply after the first

conviction, or after any administrative penalty or caution. The combined effect of *subsections (1), (4) and (5)* is for benefit to be reduced or withdrawn for the disqualification period where the offender has –

- been convicted of one or more benefit offences in any proceedings;
- accepted an administrative penalty as an alternative to prosecution; or
- agreed to be given a caution.

123. The disqualification period is defined in *subsection (11)* as a period of four weeks beginning at a prescribed time after conviction or the agreement of an administrative penalty or caution.

124. *Subsection (2) of new section 6B* provides that a sanction under the new rules will not apply where a conviction would be the second conviction for the purposes of section 7 ('two strikes').

125. *Subsections (6) to (9) of new section 6B* provide that the amounts by which income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit are to be reduced will be prescribed in regulations. These amounts will be the same as those currently prescribed for the purposes of section 7.

126. *Subsection (13) of new section 6B* sets out definitions of terms used within new sections 6B and 6C; in particular, the definition of 'benefit offence' means that the provisions will only apply to offences committed after the section comes into force.

127. *Subsection (1) of new section 6C* provides that in the event that a conviction is quashed all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

128. *Subsection (2)(a) of new section 6C* provides that where the person had agreed to pay an administrative penalty but has withdrawn that agreement, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

129. *Subsection (2)(b) of new section 6C* provides that where, following a review or appeal, it is decided that there was no overpayment or that it is not recoverable, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

130. *Subsection (3) of new section 6C* provides for subsection (4) to apply where the person had agreed to pay an administrative penalty, but following a review or

appeal the amount of the overpayment is revised.

131. *Subsection (4)* provides that where there is a new penalty or caution relating to the same offence, the new disqualification period is to be reduced by the length of the old disqualification period and that in any other case the necessary adjustments are to be made to reverse the effects of the sanction.

132. *Subsection (4)(b) of new section 6C* provides that if a new agreement to pay an administrative penalty is not made then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed and the Government can proceed to prosecute the offence.

133. *Subsection (2) of clause 19* introduces *Schedule 4* which contains further amendments to the Social Security Fraud Act 2001 and related amendments to other legislation.

Clause 20: Jobseeker's allowance: sanctions for violent conduct in connection with claim

134. This clause inserts into the Jobseekers Act 1995 two new sections, new *section 20C* (sanctions for violent conduct in connection with claim) and new *section 20D* (*section 20C* supplementary).

135. *Subsection (1) of new section 20C* makes provision for a benefit sanction of one week to be applied to jobseeker's allowance claimants who are successfully convicted of or, in England and Wales, cautioned for violent or threatening behaviour towards Jobcentre Plus or contracted out staff. In addition, for the sanction to apply it is necessary that –

- the violent conduct was towards Jobcentre Plus staff or contracted out staff at DWP providers;
- the offence took place on the Jobcentre Plus premises or those of contracted out providers while the offender was there for the purpose of a jobseeker's allowance claim;
- the offender is a person or a member of a joint claim couple who satisfies the conditions of receiving jobseeker's allowance.

136. *Subsection (2)* provides for (a) benefit not to be payable for a period of one week in the case where the jobseeker's allowance claim is not a joint claim even if the conditions of entitlement are satisfied; and (b) the period of any other sanction also to be extended by five weeks on the first occasion that the other sanction applies to the claimant.

*These notes refer to the Welfare Reform Bill
as introduced in the House of Commons on 14 January 2009 [Bill 8]*

137. Under *Subsection (3)*, for the purposes of *subsection (2)* the reference to another sanction is to any other sanction arising as a result of the Jobseekers Act 1995 and during which jobseeker's allowance is not to be payable. It explains that the sanctions period which is to be extended by five weeks is the period of that other sanction arising out of the Jobseekers Act 1995.

138. Under *Subsection (4)* for joint claim jobseeker's allowance the offender will be treated in the same way as in *subsection (2)* above, namely a sanction of one week will be applied, and that if another sanction is imposed it will be increased by five weeks in the same way.

139. *Subsection (5)* explains in relation to a joint claim jobseeker's allowance that the reference to another sanction is to any other sanction arising as a result of the Jobseekers Act 1995 and during which jobseeker's allowance is not to be payable. It also explains that the sanctions period which is to be extended by five weeks is the period of that other sanction arising out of the Jobseekers Act 1995.

140. *Subsection (6)* provides for regulations to set out that after a certain period the sanctions in *subsections (2)* and *(4)* will not apply to the claimant of jobseeker's allowance or that in certain circumstances the sanction will not apply to the claimant.

141. *Subsection (7)* makes provision for hardship payments to be made during the sanction period. This does not apply in the case of a sanction of a joint-claim jobseeker's allowance as in *subsection (4)*. Corresponding provision is made for them by section 20B(4).

142. *Subsection (8)* provides that regulations may be made for hardship payments in *subsection (7)* to be paid as follows –

- only if the information required from the claimant has been provided;
- payable at a reduced rate;
- payable only for part of the week.

143. *Subsection (9)* provides that where a conviction is subsequently overturned the amount of sanctioned benefit would be repaid as if the person had never been convicted of the offence in the first place.

144. *New section 20D* sets out in *subsection (1)* the offences involving violence in England and Wales in respect of which the sanction will be applied. These are—

- common assault or battery;
- threats to kill, wounding with intent to do grievous bodily

*These notes refer to the Welfare Reform Bill
as introduced in the House of Commons on 14 January 2009 [Bill 8]*

harm, inflicting bodily injury with or without a weapon, and assault occasioning bodily harm (under sections 16,18,20 or 47 of the Offences Against the Person Act 1861);

- the offences of affray, fear or provocation of violence, intentional harassment, alarm or distress and harassment, alarm or distress (under sections 3, 4, 4A or 5 of the Public Order Act 1986);
- the offence of harassment and putting people in fear of violence – (under sections 2 or 4 of the Protection from Harassment Act 1997);
- racially or religiously aggravated assaults, public order offences or harassment (under sections 29, 31 or 32 of the Crime and Disorder Act 1998);
- the ancillary or preparatory offences related to the offences above, namely aiding, abetting, counselling or procuring the commission of the offence, encouraging or assisting the commission of the offence, or attempting or conspiring to commit the offence.

145. *Subsection (3)* sets out that in Scotland the offences in respect of which the sanction will be applied are assault, a relevant breach of the peace, and racially aggravated harassment under section 50A of the Criminal Law (Consolidation) Scotland Act 1995. The sanction will also be applied to the ancillary and preparatory offences in Scotland which are being art and part in the commission of the offence, inciting a person to commit the offence, or attempting or conspiring to commit the offence.

146. *Subsection (4)* states that a breach of the peace in Scotland is relevant if it involves acts which, if committed in England and Wales, would be equivalent to the offences of threats to kill, affray, fear or provocation of violence, intentional harassment, alarm or distress, harassment, alarm or distress, or the offences of harassment or putting people in fear of violence.

147. *Subsection (6)* explains the meaning of ‘cautioned’ in England and Wales only.

148. *Subsection (7)* provides for regulations to be made for requiring prescribed persons (such as the police or the prosecuting agencies) to notify the Secretary of State of any offences set out in new *section 20D* in respect of which a sanction may be applied, as in new *section 20C*.

149. *Subsection (8)* provides for amendments to be made by regulation to *subsections (1) to (5)* by removing or adding offences.

150. *Subsection (3)* of clause 20 amends section 37(1)(c) of the Jobseekers Act

1995 so that the regulation making power found in *subsection (8) of new section 20D* will be subject to the affirmative resolution procedure.

151. *Subsection (4)* makes a consequential amendment to paragraph 3(d) of Schedule 3 to the Social Security Act 1998. This will give those whose benefit is sanctioned a right of appeal about the payability of their benefit.

Clause 21: State pension credit: pilot schemes

152. This clause inserts new *section 18A* into the State Pension Credit Act 2002. It makes provision to pilot, for a period of up to two years, ways in which state pension credit entitlement may be calculated and paid in order to increase the numbers of eligible persons receiving benefit.

153. To achieve this, the clause allows regulations to be made which would permit the payment of state pension credit without a claim being made and with modified rules concerning how the entitlement is determined.

154. *Subsection (3)* specifies that these regulations can be made in order to ascertain whether they would lead to more people claiming state pension credit who may be entitled to it, or would make it more likely that people who are entitled to state pension credit will receive it.

155. *Subsections (5) and (6)* allow for the normal rules relating to the need for a claim, and the detailed rules about the calculation of entitlement to be modified for the purposes of the pilot.

156. *Subsection (7)* provides that this does not affect a person's entitlement to other benefits, such as housing benefit, or a person's tax liabilities.

157. *Subsection (8)* allows regulations to specify who the pilot applies to.

158. To ensure people are not disadvantaged by the pilot coming to an end, *subsection (9)* makes provision to allow transitional arrangements to be made.

Clause 22: Period for which pilot schemes have effect

159. This clause amends section 29 of the Jobseekers Act 1995 and section 19 of the Welfare Reform Act 2007 which allow for the piloting of regulations made under specified enactments relating to working-age benefits. Piloting regulations can have effect only in specified areas and in relation to specified classes of persons. Persons can be selected for participation in schemes on a sampling basis. At the moment, piloting regulations can only have an effect for a maximum of 12 months under section 29(1) of the 1995 Act and a maximum of 24 months under section 19(1) of the 2007 Act. *Subsections (1)(a) and (2)* extend and align both these time limits to 36 months. *Subsection (1)(b)* amends section 29 of the 1995 Act to mirror the language used in section 19 of the 2007 Act so as to create consistency and to ensure that

regulations which are aimed at making it more likely that persons will obtain or remain in work or be able to do so can be piloted.

Clause 23: Contracting out functions under Jobseekers Act 1995

160. This clause provides a general provision to allow the contracting out of certain functions of the Secretary of State under the Jobseekers Act 1995.

161. *Subsection (2)* of clause 23 inserts new *section 20E* before section 21 of the 1995 Act. This provides for particular functions of the Secretary of State and the functions of the officers of the Secretary of State to be carried out by authorised persons.

162. *Subsection (3)* provides for regulations to enable the relevant functions to be contracted out and *subsections (5) and (6)* provide for those regulations to include the extent to which the contracting out arrangements are to apply.

163. Some types of decisions, for example failure to comply with requirements, good cause for failure, and any reductions in jobseeker's allowance are excluded and cannot be contracted out. Under these provisions any authorisation to a contractor may specify the duration for which the authorisation applies. The clause also makes provision for the revocation of an authorisation and deals with the limits of any liabilities arising out of functions carried out by an authorised person.

164. *Subsection (3)* substitutes references to 'employment officers' with 'officer of the Secretary of State' in other parts of the 1995 Act so that it is aligned with the new terminology. *Subsections (4) and (5)* include further consequential changes.

Clause 24: Attendance in connection with jobseeker's allowance: sanctions

165. This clause amends section 8 of the Jobseekers Act 1995. Section 8 allows regulations to be made providing for entitlement to jobseeker's allowance (JSA) to cease for between one and five days if the claimant fails to attend a mandatory interview and subsequently makes contact with Jobcentre Plus within a prescribed period of the date of the mandatory interview without showing good cause for the failure to attend. Regulations set out that the prescribed period is five working days.

166. This new provision will mean that in the above circumstances, JSA entitlement will continue but will not be payable for a fixed period of at least one week and not more than two weeks.

167. In addition, regulations will provide that if a person fails to attend a mandatory interview for the second or subsequent time, a fixed sanction of two weeks will be applied whilst keeping the claim open.

168. If the person makes contact with Jobcentre Plus within the prescribed period of five working days and shows good cause in both circumstances, a sanction would

not be imposed.

169. Example: If Mavis Jones fails to attend a mandatory interview on Monday and attends the Jobcentre Plus office on Wednesday of the same week but fails to demonstrate good cause for failing to attend, a sanction of the loss of a week's JSA would be imposed but Mavis's claim will remain open. If she fails to attend a mandatory interview for the second time in respect of the same claim and cannot show good cause, she would lose two weeks' JSA but her claim would remain open.

170. The usual appeal rules apply for both cases.

171. This clause also amends section 8 of the 1995 Act to allow regulations to provide that if the claimant fails to make contact with Jobcentre Plus within the prescribed period of five working days from the failure to attend, his or her claim would be closed.

172. Example: If John Smith fails to attend a mandatory interview on Tuesday and makes contact with Jobcentre Plus on Wednesday the following week, his claim will be closed.

Clause 25: Social security information and employment or training information

173. The new paragraph being inserted into Schedule 1 to the Jobseekers Act 1995 expands the scope of data-sharing powers under that Act to enable information sharing which is relevant for any provision in or made under the Act. It does this by providing that such information should be taken to be social security information. This is linked to the Welfare Reform and Pensions Act 1999, in which section 72 deals with data-sharing for social security purposes, between Ministers of the Crown, people carrying out functions on their behalf, or designated by a Minister of the Crown, and local authorities.

174. The new subsections being inserted into sections 2A and 2AA of the Social Security Administration Act 1992 relates to the use of that section of the Welfare Reform and Pensions Act 1999 and broadens the definition of social security information to include information not just related to work-focused interviews, but information shared for the purposes of any provision made by or under the Act, including in regulations.

175. *Subsection (4)* amends section 72 of the Welfare Reform and Pensions Act 1999, to reflect this change. The amendments would also allow the Secretary of State to make regulations concerning the sharing and use of employment and training information. For example, regulations could permit a person providing a training course for a jobseeker's allowance claimant pursuant to arrangements made by Jobcentre Plus to provide information to Jobcentre Plus about the claimant's record of attendance and levels of attainment.

Clause 26: Persons under pensionable age to take part in work-focused interviews

176. Section 2A of the Social Security Administration Act 1992 allows regulations to be made requiring a person who is under 60 years of age who is claiming any one of a number of specified benefits to take part in a work-focused interview, as a condition of continuing to receive the full amount of that benefit. Section 2AA of the Social Security Administration Act 1992 extends this requirement so that where the claimant has a partner, and both are under 60 years of age, they are both required to attend work-focused interviews.

177. From April 2010 the process of equalising state pension age at 65 (as provided by the Pension Act 1995) for both men and women will begin. The state pension age for women will gradually be increased over a 10 year period until it reaches 65.

178. To reflect these changes, the age at which a person will be required to take part in a work-focused interview will also increase.

179. *Clause 26* removes the references in sections 2A and 2AA to a person being under 60 years of age, and replaces them with references to a person who has not attained pensionable age. *Subsections (2)(c) and (3)* provide a definition of when a man born before 6 April 1955 will be treated as having attained pensionable age.

Clause 27: Minor amendments

180. Section 80 of the Social Security (Contributions and Benefits) Act 1992 provided that incapacity benefit, severe disablement benefit, state pension, carer's allowance, widow's benefit and bereavement benefit could be increased where a person was receiving child benefit in respect of a child, defined as a person under the age of 16, or a person under the age of 19 who was still in full time education.

181. When child tax credits were introduced in 2003, child dependency increases ceased and section 80 was repealed; however it was preserved for those cases where the increase was already in payment, until such time as the child reached the age of 16, or 19 where he or she remained in full-time education.

182. The definition of a child was amended to a person who has not attained the age of 16 from 10 April 2006 when the Child Benefit Act 2005 came into force. A new definition of 'qualifying young person' applies to a person over 16 years of age who meets certain conditions set out in the Child Benefit (General) Regulations 2006 (SI 2006 No. 223).

183. No amendments were made to change the definitions for the purposes of preserved child dependency increases, with the consequence that these may only be paid in respect of a child who has not reached the age of 16.

184. *Subsections (1) and (2)* of clause 27 will ensure that the preserved right to a child dependency increase under sections 80 and 81 of the Social Security

Contributions and Benefits Act 1992 can continue for a child over 16 who meets the relevant conditions.

185. *Subsection (3)* of clause 27 amends section 150(2) of the Social Security Contributions and Benefits Act 1992 (interpretation of Part 10: Christmas bonus) to amend a provision of the Welfare Reform Act 2007. This resulted in entitlement to a Christmas bonus to all claimants of employment and support allowance, including income-related employment and support allowance. This did not achieve the policy intention of taking forward the existing distinction between contributory incapacity benefit and income-related income support.

186. Incapacity benefit can be increased for adult dependants aged 60 or over or who are caring for children. This applies to a spouse or civil partner aged 60 or over with care of a child or qualifying young person (the adult must be residing with or maintained by the claimant) and an adult with care of a child (the adult must be residing with or maintained by the claimant). Section 88 of the Social Security Contributions and Benefits Act 1992 prevented more than one increase being paid to one person. Without it a person might be able to claim more than one increase on the basis that he or she has a spouse or civil partner who meets the relevant conditions and that there is another adult who also meets the relevant conditions as the carer of a child. Section 89 of the 1992 Act provides for occupational pensions to be treated as earnings, which in some cases means that an increase is not payable. Without it, the increase would become payable in some cases. Both sections 88 and 89 of the 1992 Act have been erroneously repealed by the Welfare Reform Act 2007. This means that in some circumstances people may be paid more than one increase and that some increases will be due since occupational pensions can no longer be treated as earnings. The amendment in *clause 27(4)* restores the policy intention and will ensure that a person can get an increase for only one adult dependant and that occupational pensions are treated as earnings.

Part 2: Disabled people: right to control provision of services

Clause 28: Purpose of part

187. This clause sets out the purpose of the Part: namely to enable disabled people aged 18 or over to have greater choice and control over the way certain services are provided to or for them by defined public authorities. The clause does not create a right to control. This Part of the Bill contains a series of enabling powers which will allow the making of regulations that confer new rights on disabled people. These rights are together referred to in these Notes as ‘the right to control’

Clause 29: Relevant services

188. *Subsections (1) and (2)* define as ‘relevant services’ the services to which regulations under this Part may relate.

189. *Subsection (3)* extends the definition of relevant services to include

the provision by a relevant authority (defined in *clause 30*) of grants or loans to a disabled person.

190. *Subsection (4)* provides that relevant services do not include ‘excluded services’. Excluded services are defined in *subsections (5) and (6)*. The excluded services are services which are already the subject of a ‘direct payments’ scheme.

Clause 30: Relevant authority

191. This clause defines the public authorities who administer the services that could be brought within the scope of the right to control.

Clause 31: Power to make provision enabling exercise of greater choice and control

192. *Subsection (1)* provides a general power for an appropriate authority (defined in *clause 35*) to make regulations for the purpose set out in *clause 28*.

193. *Subsections (2) to (6)* give details of particular matters for which regulations under *subsection (1)* may provide. *Subsection (2)(a) to (c)* enables regulations to be made that require an authority to not only assess a disabled person’s needs, but to prepare, in consultation with the disabled person, a plan outlining how the authority proposes to meet the disabled person’s needs as well as reviewing and revising that plan when necessary (for example after a change in needs). *Subsection (2)(d)* enables regulations to require the authority to make payments to the disabled person (at his or her request) to secure provision of an equivalent service instead of providing the service itself.

194. *Subsection (3)* sets out further details of the provisions that may be included in regulations. *Paragraph (a)* provides that regulations may specify who is or is not to be treated as a disabled person for the purpose of the regulations. *Paragraph (b)* enables regulations to make provision to determine whether a public authority has exercised its discretion to provide a service to a person. The need for this power arises from the fact that the disabled person’s rights to a different service or to a direct payment may depend on whether such a decision has been made. *Paragraph (c)* gives a power to prescribe the matters which a public authority should take into account when making a decision under this Part of the Bill. *Paragraph (d)* gives a power to make provision about the steps this public authority must take when making a decision regarding its duties under this Part of the Bill.

195. *Subsection (4)* enables regulations to allow information to be shared between authorities for the prescribed purposes of the regulations.

196. In *subsection (5)*, *paragraph (a)* enables regulations to vary conditions attached to any grant made by a relevant authority to a disabled person where it is necessary for the operation of the right to control. *Paragraph (b)* enables regulations to vary conditions attached to any power of a relevant authority to provide financial assistance to another relevant authority in connection with the provision of relevant

services. An example of this would be the variation of grant conditions in relation to a grant from a central government department to a local authority.

Clause 32: Provision that may be made about direct payments

197. This clause makes detailed provision about the provisions that may be included in regulations that provide for direct payments to disabled people. These regulations (which are defined as ‘direct payments regulations’) are made under *clause 31(2)(d)*. So they are merely a special type of regulations under *clause 31*. *Subsection (2)* provides that direct payments regulations may—

- specify when an authority is or is not required to comply with a request for a direct payment,
- outline how the request for a direct payment can be made,
- enable a disabled person to require an assessment of the amount of direct payment to which that person would be entitled, if that person was to request a direct payment,
- require a mixture of direct payments and services to be made by an authority, should the disabled person request this,
- make provision that displaces the function or obligation of the authority if a direct payment is made. Where a providing authority has made a direct payment under regulations made under *clause 31*, regulations would provide that it does not remain under a statutory obligation to provide the service or services to which the payment relates.

198. *Subsection (3)* requires direct payments regulations to provide that where a request for a direct payment places an unreasonable financial burden on an authority it will not have a duty to comply with the request.

199. *Subsection (4)* enables direct payments regulations to make provision—

- for a power to provide for authorities to make direct payments instead of providing services;
- to prescribe conditions that the disabled person or other payee must comply with in order to receive the direct payment;
- for authorities to terminate the making of direct payments;
- for the authority to recover over-payments;
- for the authority to recover payment where the individual

fails to meet conditions attached to receipt of the direct payment;

- to ensure that an authority can write off any debt arising from an overpayment;
- for direct payments to be made to a person on behalf of the disabled person.

200. *Subsection (5)* specifies the types of conditions that regulations may require the disabled person or other payee to comply with. These conditions would be designed to secure that any direct payment was used for the purpose for which it was intended.

Clause 33: Exercise of rights on behalf of persons who lack capacity

201. This clause enables regulations which make provision for the right to control to be exercised on behalf of a disabled person where the person lacks mental capacity to take decisions. It defines this concept by reference to the Mental Capacity Act 2005 (c.9) in relation to England and Wales and the Adults with Incapacity (Scotland) Act 2000 (asp 4) in relation to Scotland.

Clause 34: Pilot schemes

202. *Clause 34* enables the making of regulations having temporary effect and constituting pilot schemes. The duration of a pilot scheme is not to exceed 36 months, though it may be replaced by a further pilot scheme. *Subsection (7)* requires the Secretary of State (or other appropriate authority) to publish a report on the operation of a pilot scheme.

Clause 35: The appropriate authority by which regulations under section 31 are made

203. This clause defines the appropriate authority which is to have power to make regulations under *clause 31*. The Secretary of State will be the appropriate authority except in cases where the provisions to be made would be within the legislative competence of either the Scottish Parliament or the National Assembly for Wales. If the provision would be within the devolved competence of either of those bodies, powers are conferred on the Scottish Ministers and the Welsh Ministers respectively. Regulations made by the Secretary of State will require the consent of the Treasury.

Clause 36: Regulations under section 31: supplementary provisions

204. *Clause 36* makes supplementary provision about regulations made under *clause 31*. In particular, it allows regulations to make different provision in respect of different circumstances. It also enables the regulations to include incidental, supplementary, consequential or saving provisions, and to amend or repeal any enactment.

Clause 37: Consultation

205. This clause requires proposed regulations under *clause 31* to be published in draft and consulted on for a period of not less than 12 weeks.

Clause 38: Regulations under section 31: control by Parliament or other legislature

206. This clause provides that regulations made under *clause 31* are to be subject to the affirmative resolution procedure in Parliament, the Scottish Parliament and the National Assembly for Wales.

Part 3: Child maintenance

Clause 40: Disqualification for holding etc. driving licence or travel authorisation

207. Sections 39B to 39G of the Child Support Act 1991 ('the 1991 Act') (inserted by section 27 of the Child Maintenance and Other Payments Act 2008) allow the Child Maintenance and Enforcement Commission ('the Commission') to apply to a court for an order disqualifying a person, who has arrears of child maintenance which the Commission is enforcing, from holding or obtaining a travel authorisation (a passport or ID card). This disqualification could be for a period of up to two years.

208. Section 40B of the 1991 Act allows the Commission to apply to a court for an order disqualifying a person from holding a driving licence. This disqualification could also be for a period of up to two years.

209. *Clause 40 and Schedule 5* amend sections 39B to 39G to allow the Commission itself to make such orders, without having to apply to a court.

210. *Subsection (2)(a) of clause 40* amends section 39B so that the Commission may make a disqualification order if:

- it has sought to recover the arrears through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;
- the whole or any part of the arrears remains unpaid; and
- it is of the opinion that that the person has wilfully refused or culpably neglected to pay maintenance.

211. *Subsection (2)(b)* substitutes subsections (3) to (13) of section 39B with *new subsections (3) to (8)*.

212. *New subsection (3)* provides that the person against whom an order is made will be subject to disqualification for holding or obtaining a driving licence and/or travel authorisation for the period the order has effect.

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as introduced in the House of Commons on 14 January 2009 [Bill 8]*

213. *New subsection (4)* requires the Commission, before making a disqualification order, to consider whether the non-resident parent requires a driving licence or travel authorisation in order to earn a living.

214. *New subsections (5) and (6)* set out that the disqualification order must specify the amount in respect of which it is made. This will be an aggregate of the amount stated in a liability order, or the amount that remains unpaid, and the costs incurred by the Commission in making the order.

215. *New subsection (7)* provides that the Commission must serve the person with a copy of the disqualification order, together with any order for costs made under *new section 39DA(1)*.

216. *New subsection (8)* defines ‘driving licence’ and ‘travel authorisation’.

217. *Clause 40(3) amends* section 39C of the 1991 Act, which concerns the duration of an order made under section 39B of that Act. This states that the duration of the order may not exceed 12 months, subject to any extension by the courts under *new sections 39CA and 39CB*.

218. *Subsection (4)* inserts *new sections 39CA and 39CB*. *Section 39CA* relates to the surrender of a driving licence or travel authorisation after the Commission has made a disqualification order.

219. *Subsections (1) to (5) of new section 39CA* provide that a person subject to such an order who holds a driving licence or travel authorisation document must surrender it in a prescribed manner to a prescribed person within a period of seven days starting on the date the order has effect, or has effect again following a period of suspension. If immediately before the end of the seven day period, the person who is subject to a disqualification order has presented good reason for not surrendering his or her driving licence or travel authorisation, that person will be allowed to surrender his or her documents as soon as is practicably possible after the end of the seven day period. Regulations will set out in what circumstances a person can, or cannot, be regarded as having good reasons. If the disqualification period ends or is suspended, the person will not be required to surrender the travel authorisation document.

220. *Subsections (6) and (7)* set out that a person who refuses to surrender his or her documents to the prescribed person will be committing an offence, and liable on summary conviction to a fine (currently not exceeding level 3 on the standard scale (£1000)).

221. *Subsections (8) and (9)* set out that where a person is sentenced for non-surrender of documentation under *subsection (5)*, the court may extend the effective period of the original disqualification order. The effective period of the order, including any extension, may not exceed two years.

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222. For the avoidance of doubt, *subsection (10)* sets out that ‘relevant document’ has the same meaning as in *section 39* of the 1991 Act.

223. *Subsection (11)* makes clear that, prior to the coming into force of Schedule 3 to the Road Safety Act 2006, ‘relevant document’ includes a counterpart driving licence.

224. *New section 39CB* provides a right of appeal to the magistrates’ court (or, in Scotland, the sheriff) for a person against whom an order is made to disqualify him or her from holding or obtaining a travel authorisation.

225. *Subsection (1) of section 39CB* states that the period in which a person may appeal to a magistrates’ court (or, in Scotland, the sheriff) is to be prescribed by regulations, and that period begins with the first date the person has actual notice of the order.

226. *Subsection (2)* suspends the implementation of the order until the appeal has been determined, withdrawn or discontinued.

227. *Subsections (3) and (4)* allow the court to grant leave to appeal after the period specified in *subsection (1)* has expired and if other prescribed conditions are satisfied. If leave is granted, the court may suspend the order on such conditions as it thinks just.

228. *Subsection (5)* states that when an appeal is made to the court, the court will reconsider the original order, and may either affirm, vary or revoke the order.

229. *Subsection (6)* prevents a court, when hearing such an appeal, from questioning the liability order upon which an order for disqualification is made, or the maintenance calculation which is the basis of the liability order.

230. *Subsection (7)* prevents the court, when varying an order, from extending the order so that it has effect for more than two years in total.

231. Under *subsection (8)* if on appeal the court affirms or varies an order, the court can replace the amount specified in the order with an amount equal to the total of –

- the amount of arrears outstanding on the date the order is affirmed or varied;
- the amount of costs specified in relation to the making of the order which are outstanding;
- the amount of costs specified in relation to the appeal; and

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- if a liability order has been made since the disqualification order was made, any amount specified in the liability order which remains unpaid.

232. *Subsections (9) and (10)* lift the suspension of the order as soon as a court affirms or varies an order, unless the court considers that the suspension is justified for exceptional circumstances, or the non-resident parent has agreed to pay the amount specified in the order.

233. *Subsections (11) and (12)* provide that should the court revoke an order, it will also revoke the order for costs, unless, having regard to all the circumstances, it considers it reasonable to require the non-resident parent to pay the costs.

234. *Subsection (13)* defines ‘the court’ for the purposes of this section as –

- a magistrates’ court in relation to England and Wales;
- the sheriff in relation to Scotland.

235. *Subsection (5) of clause 40* inserts new *section 39DA* into the 1991 Act, which will allow the Commission, when making a disqualification order against a person, to make a further order requiring the person to pay an amount in respect of the Commission’s costs.

236. *Subsection (2) of new section 39DA* provides that where a person has appealed, and the court affirms or varies the disqualification order, the court shall also make an order for the amount of the costs incurred by the Commission in connection with the appeal.

237. *Subsection (3)* provides that where the court revokes a disqualification order, and it considers it reasonable in all the circumstances, it shall also make an order to require the person to pay an amount in respect of the Commission’s appeal costs.

238. *Subsection (4)* provides that any order for costs made under this section must specify the amount, which will be determined in accordance with regulations made by the Secretary of State.

239. Under *subsection (5)* the normal rules relating to the collection and enforcement of child maintenance will also apply to any amounts in respect of an order made under *section 39DA*.

240. *Subsection (6) of clause 40* introduces *Schedule 5*, which contains consequential amendments to the 1991 Act and the Child Maintenance and Other Payments Act 2008.

Clause 41: Report on operation of driving licences amendments

241. Clause 41 makes provision for the Commission to pilot, for a period of two years, the power to disqualify the non-resident parent from driving. Clause 41(1) requires the Secretary of State to prepare and lay before Parliament a report on the operation of the driving licence amendments during the ‘review period’. Under clause 41(2) the ‘review period’ is the period of 24 months beginning with the day that the amendments relating to driving licences come into force. The report must be laid before parliament within six months of the end of the review period (clause 41(3)).

242. At the end of the review period the Secretary of State must decide whether to continue to operate the amendments providing for the administrative removal of driving licences, or whether to restore the law to the existing position (namely, the court based removal of driving licences). Under clause 41(4) and (5) the Secretary of State may make an order providing for the amendments to continue to have effect. This order shall be subject to affirmative resolution, and must be made within 30 days from the date on which the report is laid before parliament. Under clause 41(6), if no order is made under clause 41(4), the Secretary of State may make an order reinstating the law as it would have been but for the amendments. This order is to be made using the negative resolution procedure.

Clause 42: Payments of child support maintenance

243. Section 29 of the 1991 Act provides a general power to make regulations as to the payment of child support maintenance. These regulations allow the Child Maintenance and Enforcement Commission (‘the Commission’) to specify the intervals at which payments are to be made, having regard to the circumstances and preferences indicated by the non-resident parent. Many non-resident parents prefer to pay calendar monthly, in line with when they receive earnings. Precisely matching payments to weekly liabilities may not be straightforward and may be unclear to parents.

244. *Clause 42* amends section 29 of the 1991 Act, extending the provisions which may be made by regulations in relation to payments of child support maintenance. *Subsection (2)* allows for regulations making provision for determining the total amount of maintenance payments due in a reference period (a period of 52 weeks or, in some circumstances, a different period – see *subsection (3)*), and requiring payments to be made, by reference to that amount and that period, at prescribed intervals.

245. This will enable the notification of the maintenance calculation, issued to each parent to show an annual rather than weekly amount. Where the payment interval is to be monthly, the schedule of payments due will show 12 equal monthly amounts. It will therefore be much easier for the non-resident parent to see what payments are due to be made, on what date, and how they relate to the maintenance liability. This will also facilitate the making of payments by regular direct debit because the amounts

will be the same each month. Annual amounts will be adjusted if a relevant change in circumstances occurs during the year, requiring a new weekly liability to be calculated.

Clause 43: Child support maintenance: offences relating to information

246. *Clause 43* amends section 14A of the Child Support Act 1991, which deals with offences relating to the provision of information.

247. Section 14A(3A) of the 1991 Act currently provides that a person commits an offence if he or she fails to notify the Child Maintenance and Enforcement Commission of a change of address. *Clause 43(2)* inserts a new subsection (3A), which extends this offence to a failure to report other changes of circumstances. These other changes of circumstances will be specified in regulations made under the provisions of section 14(1) of the 1991 Act.

248. Section 14A(2) provides that it is an offence for a person to knowingly make a false statement or representation or knowingly provide, or cause or allow to be provided, a document or other information which is false. *Clause 43(3)* inserts new subsections (6) to (8) into section 14A of the 1991 Act, setting the time limit for bringing such a case to 12 months from the date the false information was provided. Currently section 127 of the Magistrates Courts Act 1980 and section 136 of the Criminal Procedure (Scotland) Act 1995 (in Scotland) limit the time in which a prosecution can be brought to 6 months. The amendment brings the time limits broadly in line with those for benefit fraud, and increases the likelihood of successful prosecutions under section 14A(2) of the 1991 Act due to the increased time in which the offence can be discovered and investigated by the prosecutor.

Part 4: Birth registration

Clause 44: Registration of births

249. This clause gives effect to *Schedule 6* which amends the Births and Deaths Registration Act 1953 to make provision for the joint registration of births where the parents of a child are not married to each other nor are civil partners of each other.

Part 5: Miscellaneous and supplementary

Clause 45: Consequential amendments of subordinate legislation

250. This clause enables the Secretary of State to amend or revoke by way of regulations any statutory instruments made under other enactments before this Bill receives Royal Assent, where such amendments and revocations are necessary as a consequence of a provision of this Bill (other than any provision in Part 2 of the Bill). Regulations made under this power may include transitional provisions and savings, and provisions conferring discretion on any person. Regulations made under this power are subject to negative resolution procedure.

Clause 46: Repeals and revocations

251. This clause gives effect to the repeals and revocations in Schedule 7. It lists provisions in Part 2 of Schedule 7 that will have effect on 6 April 2010. It protects the operation of article 3 of the Tax Credit Act 2002 (Commencement No. 3 and Transitional Protections and Savings) Order 2003 – (savings in relation to the abolition of child dependency increases).

Clause 48: Extent

252. Clause 48 sets out the territorial extent of the Bill, which is described in paragraphs 43 to 49 of these Notes.

Clause 49: Commencement

253. Clause 49 provides that clauses 1 and 2, 9, 21 and 22, 27, 45, 47 and 48, 50 and Schedule 3 will come into force on Royal Assent (as will clause 49).

254. Clauses 12 and 25, Part 2, clause 46(2) and (3) and Part 2 of Schedule 7 relating to the repeals and revocations mentioned in clause 46(2) will come into effect at the end of two months after the date of Royal Assent.

255. The remaining provisions will be brought into force by means of commencement orders made by the Secretary of State. The orders may appoint different days for different areas and purposes and make necessary transitory, transitional or savings provisions.

256. Before making any commencement order relating to the registration of births under Part 1 of Schedule 6, the Secretary of State is required to consult with the Registrar General for England and Wales.

SCHEDULES

Schedule 1 – Amendments connected to section 3

Part 1

257. *Paragraph 2* amends *section 8* of the Jobseekers Act 1995 so that only those persons on jobseeker's allowance who are required to meet the jobseeking conditions, rather than those who have moved from income support, will be required to attend an interview with an employment officer and provide information and evidence of their circumstances, availability for employment and the extent to which they are actively seeking work.

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258. *Paragraph 3* of Schedule 1 inserts new *sections 11A, 11B and 11C* into the Jobseekers Act 1995.

11A Persons not required to meet the jobseeking conditions

259. This section provides for regulations to be made which would require people who are not required to meet the jobseeking conditions, and who are not a member of a joint-claim couple, to undertake work-focused interviews. The purpose of the interview is to consider a person's existing and future employment and training prospects or needs.

11B Provision which may be made by regulations under section 11A

260. This section details some of the things which can be specified in regulations made under *new section 11A*. This includes provision to sanction people who fail to comply and do not take part in a work-focused interview without having good cause. Matters to be considered as relevant in determining whether a person has shown good cause are to be prescribed in regulations. Where a person does not meet an interview requirement that is made as a condition of becoming entitled to benefit, the appropriate sanction will be to treat that person as not having made a claim. Where compliance with an interview requirement applies as a condition of entitlement to benefit continuing, the appropriate sanction will be to reduce the benefits paid to that person by an amount specified in regulations.

261. *Subsection (4)* allows for the requirement to undertake a work-focused interview to be waived if it is not considered appropriate for the claimant. Under *subsection (6)*, benefit can still be awarded in this situation.

262. The meaning of 'relevant benefit' in *subsection (7)* currently applies to income support, housing benefit, council tax benefit, widows and bereavement benefits, carer's allowance, severe disablement allowance and incapacity benefit.

11C Action plans in connection with work-focused interview

263. This provision requires a person, in prescribed circumstances, to be provided with an action plan.

264. *Paragraph 4* of Schedule 1 inserts new *sections 18A and 18B* into the Jobseekers Act 1995.

18A: Requirements imposed on claimants by officers of the Secretary of State

265. This makes provision for jobseeker's directions to require the claimant to take part in any activity, particularly some form of activity related to finding employment,

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becoming more employable or remaining in employment, such as improving skills, which an employment officer considers relevant. This direction can be included in an action plan.

266. If the person is notified of a place on a training scheme, he or she can be required to apply for such a vacancy and if offered a position the person can be required to accept and attend. A person required to meet the jobseeking conditions can be required to apply for a place on an employment programme, or for a vacant job. This can also apply to those who are not required to meet the jobseeking conditions if they so agree.

267. *Subsection (8) of new section 18A* makes provision to allow for the requirement for those not required to meet the jobseeking conditions to undertake a direction to be suspended in particular circumstances.

268. Claimants who fail to comply with these requirements will incur a sanction.

18B: Work-related activity: section 1A(4) claimants

269. This is a regulation-making power which allows for regulations to require those on jobseeker's allowance ('JSA') who do not have to meet the jobseeking conditions to undertake work-related activity as a condition of continuing to receive their full amount of benefit. Work-related activity will be detailed in an action plan, and will be reasonable and have due consideration to a person's circumstances. The requirement to undertake such activity can be suspended in specific circumstances, which will also be prescribed in regulations.

270. *Subsection (4)* provides that in circumstances prescribed in regulations, only a specific activity specified in the direction is to be regarded as a work-related activity. The provision also allows for specified activities to be deemed not to be work-related activity.

271. Claimants who fail to comply will incur a sanction.

272. Paragraph (5) of *Schedule 1* inserts new *sections 18C* and *18D* before section 19 of the Jobseekers Act 1995.

18C: Definitions for purposes of sections 19 and 20A

273. *Section 18C* to the Jobseekers Act 1995 defines the circumstances in which claimants may be sanctioned for failing to satisfy conditionality requirements. *Subsection (2)* provides that a claimant is in breach of a jobseeker's direction if he or she has without good cause, refused or failed to carry out a direction. *Subsection (3)* explains when a claimant will have failed to cooperate with a requirement to attend a training scheme and *subsection (4)* explains when a claimant will be in breach of an employment programme requirement. *Subsection (5)* deals with those who have failed

to fulfil an employment requirement, and *subsection (6)* explains when a claimant will have failed to comply with a work-related activity requirement.

274. The circumstances in which people who are required to satisfy jobseeking conditions may be sanctioned are the same as they are now. People who are not required to satisfy jobseeking conditions will only be liable to sanctions if they are in breach of a jobseeker's direction, a training scheme requirement, or a work-related activity requirement.

18D: Section 18C: supplemental

275. *Subsection (2)* states that those who are subject to a jobseeker's direction under section 16 of the Jobseekers Act 1995 are not regarded as having breached a direction under the requirements in *sections 18A and 18B* of that Act. Section 16 allows the Secretary of State to provide JSA to 16 to 17 year olds on grounds of hardship, and *section 16(3)(b)* allows that payment to be revoked if the person is seen to have failed to avail himself or herself of a place on a training scheme, or has lost that place, without demonstrating good cause for doing so, under section 17(3)(b) of the 1995 Act.

276. Regulations can prescribe circumstances in which a person can be considered not to have left employment voluntarily.

277. Regulations must provide that those claiming the form of JSA where they do not have to satisfy the jobseeking conditions are not sanctioned for leaving employment after taking a job and may provide that they are not sanctioned for not completing a training scheme.

278. *Subsections (7) and (8) of new section 18C* are regulation-making powers which will prescribe what can be considered good cause for failing to carry out a jobseeker's direction. The amount of payment for the employment cannot be considered good cause through regulations made under these powers.

279. *Paragraph 6 of Schedule 1* substitutes new provisions for sections 19 and 20 of the Jobseekers Act 1995.

19: Certain circumstances in which a jobseeker's allowance is not payable

280. *New section 19* of the Jobseekers Act 1995 describes circumstances in which JSA can be disallowed for a 'relevant period' because the claimant has failed to satisfy the requirements under sections 18A and 18B of that Act even though the claimant may meet the other conditions for entitlement to the benefit. This applies to claims which are not part of a joint-claim.

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281. *Subsections (2) and (3)* list the circumstances in which JSA can be disallowed under this section with respect to claimants who are required to meet the jobseeking conditions and to those claimants who are not so required.

282. *Subsections (4) and (5)* provide a power that will enable regulations to be made to determine the ‘relevant period’ over which the sanction is to apply. That period must be at least one week and not more than 26 weeks.

283. *Subsection (6)* provides for regulations to prescribe circumstances which must be taken into account and those which must not be taken into account in determining the sanction period.

284. *Paragraph 7 of Schedule 1* replaces sections 20 and 20B of the Jobseekers Act 1995 with new provisions.

20: Exemptions from section 19

285. *New section 20* provides for regulations to be made to prescribe possible exemptions from *new section 19*.

20A: Certain circumstances in which a jobseeker’s allowance is not payable: joint-claim jobseeker’s allowance

286. *New section 20A* prescribes conditions in which a member of a joint-claim couple may be sanctioned for a breach of a requirement under section 18A of the Jobseekers Act 1995.

287. If both members of the couple are sanctioned, no allowance is paid. If one member is sanctioned the amount paid is reduced by the method prescribed in *subsection (6)*. Other provisions are similar to those that apply under *new section 19* of the 1995 Act.

20B: Exemptions from section 20A

288. *New section 20B* of the 1995 Act makes exemptions from *new section 20A*, in the same manner that *new section 20* makes exemptions from *new section 19*.

289. *Paragraphs 8 to 13 of Schedule 1* amend the Jobseekers Act 1995 so that the new provisions are properly cross-referenced throughout that Act and deal with some consequential matters.

290. *Paragraph 15 of Schedule 1* amends section 14 of the Jobseekers Act to provide that except in prescribed circumstances a single person who is involved in a trades dispute will not qualify for jobseeker’s allowance. The exceptions to the general rule are to be prescribed in regulations.

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291. *Paragraphs 16 and 17 of Schedule 1* amend sections 15 and 15A of the Jobseekers Act 1995 to provide that in trades dispute cases involving couples a claim may be accepted from either member of the couple subject to the other conditions in those provisions applying. The claimant can only receive a reduced amount of benefit while either member of a couple is involved in the trades dispute.

292. *Paragraph 18 of Schedule 1* inserts new *section 15B* into the Jobseekers Act 1995. The provisions will specify that when the person involved in a trades dispute returns to work, the person (or the person's partner) may be able to receive the full normal rate of jobseeker's allowance that would apply to his or her circumstances for the first 15 days following the person's return to work. The normal rules which prevent jobseeker's allowance being paid when a person is in remunerative work are suspended for the 15 day period to ensure that the claimant cannot be excluded under those provisions. Any benefit awarded under this rule will be recoverable from the claimant or, where the claim is from a couple, the other member of the couple. These provisions are similar to those which currently apply in respect of income support.

293. *Paragraphs 19 to 22 of Schedule 1* make further minor amendments to the Jobseekers Act 1995 to take account of the new provision.

294. *Paragraph 23(2) of Schedule 1* inserts provision into the 1995 Act to allow regulations to be made to ensure that in some circumstances a person who has limited capability for work can claim jobseeker's allowance ('JSA'). There are some people who do not have to meet the jobseeking conditions who will have a choice over which benefit to claim. For example, a disabled lone parent who has a child under seven years of age could claim either employment and support allowance ('ESA'), and be subject to full ESA conditionality, or he or she could claim JSA without the jobseeking conditions. The regulations will give these groups a choice as to which benefit they would prefer to claim.

295. *Paragraph 23(3) of Schedule 1* is intended to amend an existing provision in Schedule 1 of the Jobseekers Act 1995, which allows people to continue to receive JSA temporarily without being available for work, having entered into a jobseeker's agreement, or actively seeking employment. The amendment reflects the fact that in the future these conditions are going to be referred to as the jobseeking conditions.

296. *Paragraph 23(5)(b) of Schedule 1* provides for regulations to prescribe circumstances in which a person who is in relevant education and who is not required to meet the jobseeking conditions may claim jobseeker's allowance. There are similar provisions relating to income support for this group of persons.

297. *Paragraph 23(6) of Schedule 1* provides for regulations to prescribe circumstances in which people who are not required to meet the jobseeking conditions will be required to be under the qualifying age for state pension credit in order to

qualify for jobseekers allowance. These rules are similar to those that apply in relation to income support.

298. *Part 2 of Schedule 1* makes consequential amendments to other Acts, including the Social Security Act 1998, the Social Security Fraud Act 2001 and the Welfare Reform Act 2007.

Schedule 2 – Abolition of income support: consequential amendments

299. *Schedule 2* makes consequential amendments that are required for the abolition of income support. It amends references to income support in a number of Acts and where appropriate, inserts a new reference to jobseeker's allowance instead.

Schedule 3 – Claimants dependent on drugs etc.

Part 1 – Jobseeker's allowance

300. *Paragraphs 1 and 2 of Schedule 3* make provision to impose certain requirements on persons claiming jobseeker's allowance (JSA) who have a propensity to misuse drugs by inserting new *section 17C* and new *Schedule A1* into the Jobseekers Act 1995.

SCHEDULE A1

Claimants dependent on drugs etc.

301. In *paragraph 1, sub-paragraphs (1), (2) and (3)* make provision for regulations to require claimants, who are required to meet the job-seeking conditions (to be available for employment; to be actively seeking employment; and to have agreed and signed a jobseeker's agreement), to answer questions, at a specific time and place, about their use of drugs and whether it affects their chances of finding work. They can also be required to answer questions about any treatment they may be receiving.

302. *Paragraph 2* is a regulation-making power which may require someone to undertake a substance-related assessment. This applies where there are reasonable grounds for suspecting they may have a drug problem which is affecting their prospects of finding work. The assessment would be carried out by an approved person with the necessary qualifications or experience, for example a doctor or registered nurse.

303. Those who fail to take part in a substance-related assessment, without good cause, can be required by regulations to take part in one or more drugs tests under *paragraph 3*, where this will assist in determining whether a person is dependent on,

or has a propensity to misuse any drug. *Sub-paragraphs (7) and (8)* set out the types of test that can be prescribed in regulations.

Paragraph 1 to 3: supplementary

304. *Paragraph 4* applies to information provided by claimants under *paragraphs 1 to 3*. It ensures that such information or evidence of drug possession, or drug use cannot be used in criminal proceedings against the claimant unless the claimant, or a person acting on the claimant's behalf, chooses to refer to it. *Sub-paragraph (3)* excludes from this provision criminal proceedings for offences under section 112 of the Social Security Administration Act 1992, and offences under section 5 of the Perjury Act 1911 and its Scottish equivalent.

305. *Paragraph 5* will allow the Secretary of State to make regulations authorising information to be obtained from the police, the probation service or other prescribed body, to check the accuracy of the information provided by claimants under *paragraphs 1 to 3*. Regulations may also make provision allowing the Secretary of State to share this information with other relevant persons.

Requirement to comply with a rehabilitation plan

306. *Paragraph 6* provides regulation-making powers to require compliance with a rehabilitation plan if a person is dependent on or has a propensity to misuse drugs, the person's condition is treatable, and it is affecting the person's ability to find work.

307. During the period in which a rehabilitation plan is in place the person must submit to the treatment specified in the plan, as well as taking part in interviews, assessments and other steps which may be specified. *Sub-paragraph (6)* provides powers to make regulations which suspend the jobseeking conditions whilst a rehabilitation plan is in place; suspend any existing jobseeker's agreement; provide that a person is not required to submit to certain types of treatment without consent; and provide for the agreement, form, signature, review, variation and revocation of rehabilitation plans. Regulations may also be made which will require claimants to provide information or evidence about their compliance with the plan. *Sub-paragraph (7)* provides for JSA to be referred to as a "treatment allowance" in cases where a claimant, who is not part of a joint-claim couple, is required to comply with a rehabilitation plan. *Sub-paragraph (8)* ensures that only those who are required to meet the job-seeking conditions in JSA can be required to comply with a rehabilitation plan.

Sanctions

308. *Paragraph 7(1)* provides powers to prescribe the sanctions which will apply to people who, without good cause, fail to comply with the requirements to attend an interview and answer questions about drug use, take part in a substance-related assessment, take part in a drug test or comply with a rehabilitation plan. What

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constitutes good cause will be set out in regulations. Under *sub-paragraphs (2) and (3)* benefit will cease where a claimant is not part of a joint-claim couple, or where both claimants are part of such a couple. If only one member of a joint-claim couple is required to comply their JSA will be reduced and paid to the other member of the couple. In all cases the sanction may last for up to 26 weeks.

309. *Sub-paragraphs (4) and (5)* are regulation-making powers which allow for income-based JSA to be payable at a prescribed rate even though the sanctions might have otherwise prevented payment. This will allow for payments on the ground of hardship.

310. *Paragraph 8* provides a definition of “drug” and also provides a power to set out in regulations which drugs the provisions described above will apply to.

311. The jobseeking conditions are defined as being actively seeking and available for work and having agreed a Jobseeker’s Agreement.

Powers to extend provisions to persons dependent on alcohol

312. *Paragraph 9* would allow the Secretary of State to make regulations extending these provisions to those who misuse alcohol.

Consequential Amendments

313. *Paragraphs 3 and 4 of Schedule 3* makes consequential amendments to the Jobseekers Act 1995. *Sub-paragraph (3)* would enable the drugs provisions to be rolled-out gradually across different areas of Great Britain. Under *sub-paragraph (4)* all regulations made under *Schedule A1* are subject to affirmative resolution. *Paragraph 4* amends Schedule 3 to the Social Security Act 1998 so that there would be a right of appeal to a first-tier tribunal against a decision to impose a benefit sanction on a person who fail to comply with a requirement imposed by regulations under *Schedule A1*, for example by not complying with the terms of a rehabilitation plan.

Part 2 – Employment and support allowance

314. *Paragraphs 6 and 7 of Schedule 3* amend the Welfare Reform Act 2007 by inserting a new *section 15A* and *Schedule 1A* into that Act, which largely mirror the amendments made to the Jobseeker’s Act 1995 as described above and which apply to those in the employment and support allowance (‘ESA’) work-related activity group. The new provisions do not apply to those who are in the Support Group.

315. In line with other ESA provisions, the sanction is not a complete withdrawal of benefit, but rather, a reduction in benefit, by an amount and for a period of time prescribed in regulations.

Consequential Amendments

316. *Paragraph 8 of Schedule 3* makes amendments to the 2007 Act in consequence of the drugs provisions. In particular, it amends section 16 of that Act to permit some of the Secretary of State's functions under the drugs provisions to be contracted out. It also provisions for the affirmative Parliamentary procedure to apply to all regulations made under the new Schedule 1A inserted by paragraph 7.

Report on initial operation of drugs provisions

317. *Paragraphs 5 and 9 of Schedule 3* provide for a type of "sunset" clause. The Secretary of State has to report to Parliament on the operation of the drugs provisions within 30 months of their coming into operation. He must then table an order either continuing or repealing the provisions. The affirmative procedure applies to an order continuing the provisions, and the negative procedure to an order repealing the provisions.

Schedule 4 – Loss of benefit provisions: further amendments

318. *Part 1 of Schedule 4* makes further amendments to sections 7 to 11, 13 and 21 of the Social Security Fraud Act 2001. These are related to the amendments made by clause 19.

319. *Paragraph 1 of Part 2 of Schedule 4* makes consequential amendments to the Social Security Administration Act 1992. *Paragraph 2* amends the Social Security Act 1998 to ensure that there is a right of appeal against the decision under the new section 6B of the Social Security Fraud Act 2001 that a benefit is to be reduced or withdrawn.

Schedule 5 – Section 40: consequential amendments

320. *Paragraph 3* amends section 39C of the Child Support Act 1991 ('the 1991 Act') to reflect the making of disqualification orders by the Commission.

321. *Paragraph 4* amends section 39D to provide that where a person appeals against the making of a disqualification order, the court may order that person to be searched. Any money found during that search will be counted towards payment of the amount due after affirmation or variation of the order, unless the court directs otherwise.

322. *Paragraph 4* amends section 39E of the 1991 Act, replacing references to 'orders under section 39B' and 'the court' with 'disqualification order' and 'the Commission' as appropriate. A new *subsection (1A)* is inserted, allowing the court, where an appeal is pending, to reduce the period of the order or revoke it, where part of the amount specified in the order is paid.

323. Subsections (3) to (5) of section 39E are repealed.

324. *Paragraph 5* substitutes section 39F of the 1991 Act, giving the Secretary of State powers to make regulations relating to disqualification orders, appeals against disqualification orders and orders for costs under section 39DA.

325. *Paragraphs 6 to 8* make other minor amendments.

Schedule 6 – Registration of births

326. References to ‘the 1953 Act’ are references to the Births and Deaths Registration Act 1953.

327. *Paragraph 2* amends section 1 of the 1953 Act. In the 1953 Act as it stands, section 1(2) of that Act sets out those persons who are qualified to give information about a birth, and includes (in section 1(2)(a)) ‘the father and mother of the child.’ But this provision is qualified by the opening words of section 10(1), which relates to unmarried fathers, and the relationship between the two is hard to follow.

328. *Paragraph 2* amends section 1(2) of the 1953 Act so that it is clear that the mother of the child is a qualified informant in all cases and the father is a qualified informant either where he is married to the child’s mother (or, in the case of a second female parent, in a civil partnership with the child’s mother), or where he registers the child’s birth jointly with the mother and section 10(2)(a) of the 1953 Act applies, or where he has been identified as the father following a paternity test. Second female parents who are not in a civil partnership with the child’s mother but who are parents by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 (‘the HFE Act’) are treated in the same way as fathers who are not married to the mother of the child (except that the provision relating to paternity tests will not be relevant).

329. *Paragraph 2(4)* inserts an interpretative provision corresponding to that made by section 10(3) of the 1953 Act as it stands. The new section 1(4) provides that in Part 1 of the Act references to a child whose father and mother were, or were not, married to each other at the time of the child’s birth are to be read in accordance with section 1 of the Family Law Reform Act 1987. The HFE Act amended section 1(3) of the 1987 Act in order to give a child who has a parent by virtue of provisions of the HFE Act relating to treatment provided to a woman who is in or becomes a party to a civil partnership the same status as the child of married partners.

330. Section 2 of the 1953 Act places a duty on informants to give information about the birth to the registrar for births and deaths for the sub-district in which the child was born within 42 days of the birth. *Paragraph 3* amends section 2(1) to refer specifically to the birth of a child whose mother and father were married to each other at the time of the birth. It also makes amendments consequential on those made to section 1(2). A new section relating specifically to births where the mother and father were not married at the time of the birth is inserted by *paragraph 4*.

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331. *Paragraph 4* inserts new *sections 2A, 2B, 2C, 2D and 2E* into the 1953 Act.

332. *New section 2A* relates to the registration of births in cases where the parents are not married. It places a duty on the mother – and on certain other qualified informants – to provide the registrar within 42 days with information concerning the birth of a child, and to sign the register. This is similar to the existing duty of married parents.

333. Where the father is a qualified informant, he can discharge the duty of the mother under new *section 2A* to sign the register and provide information and the duty of other qualified informants listed in section 1(2)(b) to (e) to sign the register and provide information in the event that the mother is dead or unable to act. However, the provision of information by the mother does not affect any duty imposed on the father by virtue of regulations made under *section 2C* or any duty by virtue of regulations made under *section 2E*.

334. In cases where an inquest finds a child to have been still-born, within the 42 day time limit for registration, the duty on the parents and on other qualified informants to provide relevant information ceases to apply since the information is provided to the registrar direct by the coroner. This is consistent with existing provisions for mothers and married fathers.

335. *New subsection (4)* extends the provisions relating to fathers in this section to women who are parents by virtue of section 43 of the HFE Act.

336. *New section 2B* relates to the duties of an unmarried mother when acting alone. Where the father's details have not been given to the registrar under any one of paragraphs (a) to (g) of section 10(1) or by virtue of regulations made under *section 2E*, the child's mother is required to provide prescribed information about him. The form and manner in which such information is to be provided may be prescribed under *subsection (2)*. In practice the effect of requiring the mother to provide information is to enable the father to be contacted by the registrar, with the aim of entering his details on the register. Sole registration is, however, permissible where the mother states that one of the exemptions set out in *subsection (4)* applies. These are as follows–

- where the child has no father by virtue of section 41 of the HFE Act (namely because the child was conceived using donor sperm in a case where the HFE Act does not treat anyone else as the father);
- where the child's father has died;
- where the mother does not know the identity of the father;
- where the mother does not know the whereabouts of the father;

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- where the father lacks capacity, within the meaning of the Mental Capacity Act 2005);
- where the mother has reason to fear for her safety or that of her child if the father is contacted – either by herself or by the registrar.

337. In addition, *subsection (4)(g)* includes a power for further exemptions to be set out in regulations.

338. A mother is not required to provide information about the father in cases where either the birth was a still-birth or the child has died before the birth is registered. In these cases therefore, sole registration would take place unless the parents co-operate to register jointly.

339. In cases where a man comes forward independently of the mother and provides his details to the registrar in accordance with the procedure set out in *section 2D*, the duty on the mother to provide his details does not apply where she acknowledges that this man is the father. If she does not, then she must provide the true father's details, unless one of the conditions for an exemption applies in respect of him.

340. *Subsection (6)* provides that, where a mother has given information about the father under *subsection (1)*, the registrar must wait until a prescribed period of time has elapsed before registering the birth. This provision enables the registrar to take steps to contact the father and obtain his details within a period of time set out in regulations, so that the birth can be jointly registered. However, this subsection includes the power for regulations to set out exceptions to this (for example, where registration needs to take place urgently). In such cases, the birth would be sole registered in the mother's name and the father's details requested with the aim of re-registering the birth to add the father's details.

341. *Subsection (7)* provides that information given by the mother but relating to the father cannot be entered on the register merely because the mother has provided it, ensuring that there has to be some form of acknowledgement of paternity by the father.

342. The provisions relating to fathers also (where relevant) relate to women who are parents by virtue of section 43 of the HFE Act.

343. New *section 2C* relates to the confirmation of parentage information given by the mother. It provides for a power to set out in secondary legislation the process to be followed in cases where the mother provides the registrar with the father's details but where the parents are not co-operating with each other in order to register. Consequently it is intended to be an exceptional process.

344. The process to be set out in secondary legislation will in particular allow for the registrar to require the man named by the mother to acknowledge whether or not he is the child's father. If he acknowledges that he is the father then he will be required to provide his details to the registrar and his name must then be entered in the register. If the birth has already been registered (for example because the mother had come forward on or close to the 42 day limit for registering the birth, or because the birth had been sole registered for reasons of urgency) then it would be re-registered to have the father's details added.

345. The provisions relating to fathers in this section also apply to women who are parents by virtue of section 43 of the HFE Act.

346. *Subsection (4)* provides that regulations made under new *section 2C* can prescribe the form or manner in which actions under this section are taken, require anything to be done in the presence of the registrar and set out the timescales within which steps taken under this section can or must take place.

347. New *section 2D* provides for a power to set out, in secondary legislation, a process for enabling a man who believes himself to be the father of a child, to be entered on the register as the child's father, subject to acknowledgement by the child's mother that this is the case. As in *section 2C*, this process would be followed in cases where the parents were not co-operating with each other to register jointly and should therefore be seen as an exceptional process. The process to be set out in secondary legislation will in particular enable a man who believes himself to be the father of a child, to make a declaration to that effect to the registrar, before the birth has been registered. The child's mother will then be required to state whether or not she acknowledges that he is the father; where she does so, his name will be entered on the register. If the mother does not acknowledge the man to be the father, then his details will not be entered on the register.

348. The provisions relating to fathers in this section also apply to women who are parents by virtue of section 43 of the HFE Act.

349. New *section 2E* contains a power to make regulations relating to the use of paternity tests ('scientific tests') in connection with the registration or re-registration of a birth, providing that the child's birth has not previously been registered or – if it has already been registered by the mother – no person is registered as the father.

350. Undertaking a paternity test is purely voluntary and a matter for the individuals concerned; no-one may be required to undertake such a test. A paternity test may only be used for the purposes of registration if the individuals concerned consented to the test being carried out and agreed to have the man's details entered in the register if the results of the test show him to be the father.

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351. Regulations made under this section may set out the way in which certain actions must be performed and set time limits on steps to be taken. They may also enable or require either parent to apply for registration (or re-registration) if the test is positive and impose obligations on the registrar in relation to registration or re-registration. Regulations may also provide that a man who applies for registration in this way following a positive result from a paternity test is treated as a qualified informant concerning the birth.

352. Under *subsection (2)*, a scientific test must be performed by an accredited person and (under *subsection (5)*) it must indicate to a particular degree of certainty that the man concerned is the father. This degree of certainty will be prescribed in regulations.

353. The effect of *subsection (7)* is to prevent a man being registered as the father following a positive result from a paternity test if it appears to the registrar that, by virtue of any of the provisions of sections 35 to 47 of the HFE Act, the man is not the father of the child. For example, a man who donated his sperm anonymously under the provisions of the HFE Act is not under that Act to be treated as the father of the child.

354. *Paragraphs 5, 6 and 7* contain amendments to the 1953 Act to remove the requirement for a superintendent registrar to take a declaration about a birth and sign the birth register in addition to the registrar where the birth is registered or re-registered after more than three months (but less than 12 months) have expired from the date of the birth. This requirement was introduced largely as an audit check at a time when births were not notified to registrars by the health service as they are today and registrars were paid a fee for each registration.

355. *Paragraph 8* amends section 7 of the 1953 Act (registration after 12 months from date of birth) to remove the references to a still-birth. This change will mean that in those cases where an investigation or coroner's inquest has prevented registration of a still-birth within 12 months, a late registration will be possible with the authority of the Registrar General.

356. *Paragraph 9* is a minor consequential amendment to section 8 of the 1953 Act which removes the penalty for registering a birth more than three months after the event otherwise than under the provisions of the sections amended or repealed in paragraphs 5 to 7.

357. *Paragraph 10* contains a number of amendments to section 9 of 1953 Act in consequence of new *section 2B*, and of regulations made under new *sections 2C, 2D, 2E, 10B and 10C*. It ensures that regulations can provide that steps under these new sections that would usually need to be taken in relation to the registrar responsible for registering the birth can be carried out by a registrar for a district other than the one in which the birth took place.

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358. *Paragraph 11* amends section 10 of the 1953 Act, which deals with registration of a father where the parents are not married or of a second female parent where the parents are not in a civil partnership.

359. *Sub-paragraph (2)(a)* amends section 10(1) so that there are circumstances in which a father who is not married to the child's mother will be under a duty to provide information to enable his details to be recorded in the register. The circumstances are where, under new *section 2C*, a mother indicates that he is her child's father and he confirms this, or under new *section 2E*, where he consents to a paternity test under that section and the results show him to be the father.

360. Currently, where parents are not married to each other, section 10(1)(b) to (g) of the 1953 Act allow the mother or father to attend the register office alone and, in certain circumstances, to give information about themselves and the other parent so that the birth can be registered. Section 10(1)(b) and 10(1)(c) currently involve either the mother or father making a statutory declaration. *Sub-paragraphs (2)(b) and (2)(c)* amend section 10(1)(b) and (c) to allow an alternative form of declaration. It is intended that these alternative declarations may be witnessed by a broader range of responsible people.

361. *Sub-paragraph (2)(d)* inserts section 10(1)(h) so that a registrar can enter the name of a man as the father in accordance with regulations under *section 2C* (where father confirms paternity), *2D* (where mother confirms paternity) or *2E* (where the results of a paternity test show the man to be the father).

362. *Sub-paragraph (3)* makes similar amendments to subsection 10(1B) so that the changes relating to unmarried fathers in section 10(1) are extended to women who are parents by virtue of section 43 of the HFE Act. This includes allowing the use of an alternative form of declaration.

363. *Paragraph 12* amends section 10A of the 1953 Act, which deals with re-registration of a birth where the parents are not married to each other or in a civil partnership, and no person has been registered as the father or other parent. It provides that the mother, father or second female parent, may re-register a child's birth using the new alternative declaration. Further detail about the alternative declaration is given above.

364. The amendments to section 10A(2)(d) reflect the amendments made in paragraphs 5 to 7 and ensure that re-registrations which take place more than three months but less than 12 months after the birth do not have to involve a superintendent registrar as well as a registrar.

365. *Paragraph 13* inserts new *sections 10B and 10C* into the 1953 Act. These sections confer new regulation-making powers which will be used to set out the processes by which a parent of a child whose birth has been the subject of a sole registration can initiate a process independently of the child's other parent, with the

aim of re-registering the birth so that the father's details are added to the register. A re-registration would take place if the information given by one parent is confirmed by the other parent.

366. These sections apply only to births which have been sole registered. Therefore, they apply only to births where the parents were not married at the time of the birth and the father's details have not been entered on the register and no woman has been registered as the parent of the child by virtue of section 42, 43 or 46(1) or (2) of the Human Fertilisation and Embryology Act 2008. They will apply to all births which meet these criteria, regardless of the date of initial registration.

367. The scope of the regulations and the processes they will prescribe are similar to those in new *sections 2C* (confirmation of parentage information given by mother) and new *section 2D* (declaration before registration by person claiming to be other parent). As with new *sections 2C and 2D*, the Government's intention is for these processes to be treated as exceptional procedures to be used only where the parents are not co-operating with each other to re-register by section 10A (re-registration where parents neither married nor civil partners).

368. New *subsections 10B(4) and 10C(4)* extend the provisions relating to fathers in these sections to women who are parents by virtue of section 43 of the Human Fertilisation and Embryology Act 2008.

369. Under section 34 of the 1953 Act (entry in register as evidence of birth or death), if a birth is registered more than three months but within 12 months after the date of birth, the entry or a certified copy of the entry of the birth of the child in the register, or in a certified copy of the register, is not evidence of the birth unless the entry has either been signed by the superintendent registrar as well as the registrar or has been made with the authority of the Registrar General.

370. *Paragraph 14* amends section 34(3) of the 1953 Act to take account of the repeal of section 6 of 1953 Act. The repeal of section 6 removes the requirement for the register to be signed by both the registrar and the superintendent registrar if a birth is registered between three and 12 months after the birth. It has the effect that for births registered after 42 days but within 12 months, the registrar has to sign the register but not the superintendent registrar as well. *Paragraph 14* therefore removes the requirement that, if a birth is registered after section 6 has been repealed and within 12 months of the birth, the superintendent registrar as well as the registrar must sign the entry for it to be evidence of the birth. It retains the requirement that the register is signed by both the registrar and the superintendent registrar in order for it to be considered evidence of the birth if the entry is made before the repeal of section 6.

371. *Paragraph 15* amends section 36 of the 1953 Act (penalties for failure to give information, etc) by extending the existing sanctions to apply to the new processes that will be set up through regulations. It extends the offence for failure to answer any question put by the registrar in relation to the particulars required to be registered, or

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failure to comply with any requirement of the registrar made under the 1953 Act, to include questions and requirements made by regulations under *section 2C, 2D, 2E, 10B or 10C*. It also creates a new offence for refusal or failure (without reasonable excuse) to do anything within a particular time which is required by regulations under *section 2C, 2D, 2E, 10B or 10C*. Anyone who commits this new offence will be liable to the same penalty as for the other offences covered in section 36 (apart from the offence under section 36(c), which remains different).

372. Under section 39 of the 1953 Act, the Registrar General, with the approval of the Minister, may make regulations prescribing anything in the Act which is required to be prescribed. *Paragraph 16* amends section 39 to exclude from this section regulations made under *sections 2B(4) and (6), 2C, 2D, 2E, 10B or 10C* of the 1953 Act. It is for the Secretary of State to make regulations under these powers.

373. *Paragraph 17* inserts into the 1953 Act new *section 39A* which sets out the regulation-making powers of the Secretary of State, including power for the regulations to contain transitional provisions and savings. The power to make regulations is exercisable by statutory instrument, subject to the negative resolution procedure.

374. *Paragraph 18* makes a consequential amendment arising from the amendments to section 39, which exclude from section 39 regulations made under *sections 2B(4) and (6), 2C, 2D, 2E, 10B or 10C* of the 1953 Act. *Paragraph 18* amends section 41 of the 1953 Act so that the definition of 'prescribed' (prescribed by regulations made under section 39 of this Act) does not apply to the sections excluded from section 39.

375. *Paragraph 19* amends section 4 of the Perjury Act 1911 to widen the meaning of 'information concerning a birth'. This is to reflect the widening of the information which may be requested by the registrar in relation to the registration of a birth and to ensure that the provision of this additional information will be subject to the provisions of the Perjury Act 1911.

376. Under the Population (Statistics) Act 1938, statistical information (such as the mother's age) is collected at birth registration. Under the current legislation only married women are asked about how many births they have had previously and whether they have been married before. *Paragraph 20* of Schedule 6 amends the Population (Statistics) Act 1938 to provide that all women will be asked about previous births and previous marriages and civil partnerships. The key purpose of the amendment is to collect better statistical information on previous births and previous marriages and civil partnerships, given that a large proportion of births now occur outside marriage.

377. *Paragraph 21* makes amendments to the Children Act 1989. In section 4 of the Children Act 1989 (acquisition of parental responsibility by the father of a child who is not married to the mother) subsection (1)(a) and (1A) provide that a father

shall acquire parental responsibility for the child if he becomes registered as the child's father under section 10(1)(a), (b) or (c) (registration of father where parents not married) or 10A(1)(a), (b) or (c) (re-registration where parents not married) of the 1953 Act.

378. This paragraph amends section 4 of the Children Act 1989 so as to provide that a father acquires parental responsibility if he becomes registered as the child's father by virtue of regulations under *section 2C, 2D, 2E, 10B or 10C* of the 1953 Act.

379. This paragraph further amends section 4 for cases where, before a father becomes registered under the 1953 Act or another of the enactments specified in 4(1A), a court has already considered an application by him to obtain parental responsibility for the child and did not make such an order or the father has previously acquired parental responsibility and a court has ordered that he was to cease to have that responsibility. The amendments ensure that in these cases the father does not acquire parental responsibility when he becomes registered as the child's father.

380. *Paragraph 22* amends section 4ZA of the Children Act 1989 (acquisition of parental responsibility by second female parent). It has the effect that a woman who registers as the other parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 is treated in the same way as an unmarried father in respect of the acquisition of parental responsibility.

381. *Paragraphs 24, 25 and 26* make consequential amendments to the corresponding legislation relating to parental responsibility for Scotland and Northern Ireland. They preserve the effect of registration as a parent in England and Wales on family law in Scotland and Northern Ireland.

Schedule 7 – Repeals and revocations

382. This Schedule provides for repeals and revocations consequential on the provisions in the Bill.

FINANCIAL EFFECTS OF THE BILL

383. The Government estimates the total net effect of the Bill on public finances to be –

- savings of £10m in the financial year 2009/10 (total estimated costs of £0m and total offsetting savings of £10m);
- costs of £6m in the financial year 2010/11 (total estimated costs of £29m and total offsetting savings of £24m);
- savings of £7m in the financial year 2011/12 (total estimated costs of £60m

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and total offsetting savings of £67m);

- savings of £46m in the financial year 2012/13 (total estimated costs of £95m and total offsetting savings of £142m);
- savings of £84m in the financial year 2013/14 (total estimated costs of £135m and total offsetting savings of £219m).

384. Some of these sums may appear not to add up exactly. This is because all figures are estimates and have been rounded up or down as the Government considers appropriate.

385. These estimates are based on behavioural assumptions and are therefore uncertain. In addition, both costs and savings are highly subject to a number of variables including economic growth rates, labour market conditions and future inflation rates, and assume the policies will be implemented as set out in the White Paper *Raising expectations and increasing support: reforming welfare for the future* (Cm 7506). As such, they are dependent on the timescales for, and specific nature of, implementation.

386. The main financial implications of the Bill for the public sector lie in the following areas:

PART 1: Social security

387. The Government estimates that the social security provisions in the Bill will produce the following net costs –

- savings of £10m in the financial year 2009/10 (total estimated costs of £0m and total offsetting savings of £10m);
- costs of £3m in the financial year 2010/11 (total estimated costs of £26m and total offsetting savings of £24m);
- savings of £9m in the financial year 2011/12 (total estimated costs of £58m and total offsetting savings of £67m);
- savings of £46m in the financial year 2012/13 (total estimated costs of £95m and total offsetting savings of £142m);
- savings of £84m in the financial year 2013/14 (total estimated costs of £135m and total offsetting savings of £219m).

*These notes refer to the Welfare Reform Bill
as introduced in the House of Commons on 14 January 2009 [Bill 8]*

388. Some of these sums may appear not to add up exactly. This is because all figures are estimates and have been rounded up or down as the Government considers appropriate.

389. Costs are incurred as a result of an increase in the resources required to deliver work-related activity for some claimants of employment and support allowance, implementing the drugs provisions and piloting 'work for your benefit' provisions and increased conditionality for some lone parents and partners. Offsetting savings occur as a result of reduced benefit expenditure.

390. Provisions to increase work-related activity for some claimants of employment and support allowance and to increase conditions upon some lone parents and partners of benefit claimants are all expected to increase employment which will reduce benefit expenditure. Removing Adult Dependency Increases (ADIs) in carer's allowance and maternity allowance and provisions to increase the qualifying period of contribution conditions required to claim contributory jobseeker's allowance and employment and support allowance will also deliver some benefit savings. Small savings are also estimated as a result of increased fraud penalties and a stricter sanctions regime.

PART 2: Right to control

391. £5 million has been allocated to meet the costs of pilot schemes for the 'right to control' provisions. This will provide funding for participating authorities and for evaluation of the pilot schemes. Evaluation of the initial phase, taking into account a variety of factors, including outcomes and cost effectiveness, will be used to inform a Government decision on the wider application of these provisions.

PART 3: Child maintenance

392. The Government estimates that the child maintenance provisions will have a negligible impact on public finances.

PART 4: Joint birth registration

393. The Government expects that costs for the joint birth registration provisions will arise from supporting the implementation, monitoring and evaluation of the policy. This will include training registrars, ensuring that prospective parents are informed of the changes, developing appropriate documentation and collecting relevant data to monitor the impact of the policy. Current assumptions indicate that the impact of the policy on the courts will be modest or negligible and that the legal aid impact will be less than £1m. More details about the expected costs and benefits are provided in the Impact Assessment accompanying the Bill.

General

394. 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 vary from those in the Impact Assessment which are Net Present Value calculations and represent how individuals value the costs now. For example, costs/savings in the future are not worth as much to individuals as the costs/savings now, so the future costings are adjusted for inflation and then reduced by the social rate of time preference (3.5% per annum). The Impact Assessment also captures economic, rather than fiscal, costs and benefits. Economic costs and benefits are defined as those that have a real impact on the economy and include income transfers (benefit expenditure) only in so far as they could reduce or increase the efficiency loss of taxation.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

395. Increases in the number of work-focused interviews resulting from the measures in this Bill are likely to mean an increase in the amount of work for staff within Jobcentre Plus. However, as some measures will be piloted initially, and some will not take effect immediately, it is not possible to quantify at this stage what the likely effect on staffing will be.

IMPACT ASSESSMENT

396. The Better Regulation Executive guidance requires the Government to publish an Impact Assessment (IA) when it introduces any legislation likely to—

- impose a cost on the private sector in any one year,
- cost the public sector more than £5m, or
- attract high levels of political or media interest.

397. IAs have been prepared in respect of 14 provisions in the Welfare Reform Bill. The remaining provisions in the Bill did not fulfil the criteria for requiring an IA.

398. The costs identified in IAs are economic rather than financial - the Financial Statement above provides the expected costs of the Welfare Reform Bill. Equality Impact Assessments have also been carried out to identify any risk of differential impact in relation to gender, ethnicity, disability, and where possible, age, sexual orientation or religious beliefs.

399. An Impact Assessment and Equality Impact Assessment have been carried out for the following provisions—

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- Part 1 – Social security
 - Clause 1: ‘Work for your benefit’ schemes
 - Clauses 2 and 4 to 6: Revised system of working-age benefits
 - Clauses 3 and 7: Person’s entitled to jobseekers’ allowance without meeting jobseeking conditions, and abolition of income support
 - Clause 8: Work-related activity for claimants of employment and support allowance
 - Clause 9: Claimants dependant on drugs
 - Clauses 10 and 11: Contributory jobseekers’ allowance and employment and support allowance
 - Clause 12: Abolition of Adult Dependency Increases
 - Clause 19: Loss of benefits provision
 - Clause 21: State pension credit: pilot schemes
 - Clause 22: Period for which pilot schemes have effect
 - Clause 24: Attendance in connection with jobseekers’ allowance: sanctions
- Part 2 – Rights for disabled people in relation to the provision of services: clauses 28 to 39
- Part 3 – Child maintenance: clauses 40 to 43
- Part 4 – Birth registration: clause 44.

EUROPEAN CONVENTION ON HUMAN RIGHTS

400. 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 Rt Hon James Purnell MP, Secretary of State for the Department for Work and Pensions has made the following statement:

401. 'In my view, the provisions of the Welfare Reform Bill are compatible with the Convention rights.'

Part 1 Social security

'Work for your benefit' schemes, etc

402. A potential human rights issue raised by *clause 1* is whether a power which may be exercised so as to require jobseeker's allowance claimants to undertake work or work-related activity with a view to improving their employment prospects is in breach of the prohibition of forced or compulsory labour in Article 4(2) of the European Convention on Human Rights ('ECHR'). *Clause 1* makes provision for specific schemes aimed at providing assistance to persons who are unemployed and who are required to look for employment as a condition of entitlement or continued entitlement to benefit. The Government envisages that the work and other activity that claimants participating in a "work for your benefit" programme and other schemes under new *section 17A* of the Jobseekers Act 1995 would be required to undertake will be reasonable in view of their circumstances. A claimant can only be required to take part in any scheme under new *section 17A* if he or she is required to comply with the job-seeking conditions. The Government's view is that the provisions of *clause 1* and new *section 17A* are not unjust or oppressive, within the meaning of Article 4(2) ECHR. *Clause 1* forms part of a long-established policy whereby claimants who are required to be available for and actively seeking work must take reasonable steps to improve their chances of obtaining and remaining in work. By laying down a rule that claimants must look for paid employment, and accept reasonable job offers, as a condition of receiving a jobseeker's allowance, the Government is not forcing them to perform any kind of labour in breach of Article 4(2) ECHR. It could be argued that this reasoning applies equally to a requirement to undertake work (and work-related activity) as part of an employment scheme, the purpose of which is to improve their employment prospects.

403. There is concern that such work or work-related activity is inhuman or degrading treatment and thus in breach of Article 3 ECHR. New *section 17A(5)(d)* contains an important safeguard in this respect. It is strongly arguable that a claimant would have good cause for refusing to comply with a requirement to undertake work that was unreasonable in public law terms or that was otherwise unlawful (for example, if it was required for an improper purpose or the work itself was in breach of Article 3).

404. Human rights issues could be raised by not paying a jobseeker's allowance to claimants who, without good reason, have failed to comply with regulations made under new *section 17A*, as this could be in breach of Article 3, if it amounted to

degrading treatment, or Article 8, which is the right to family life. New *section 17A(5)(d)* contains an important safeguard in this respect. It is strongly arguable that a claimant would have good cause for refusing to comply with a requirement to undertake work that was unreasonable in public law terms or that was otherwise unlawful. In relation to both Article 3 and Article 8 ECHR, new *section 17(8)* enables hardship payments to be made. These powers may be exercised so that claimants and their dependants are not placed in situations of extreme privation in breach of those Articles.

405. Both contributory benefits and non-contributory benefits may, in certain circumstances, be classified as possessions for the purposes of Article 1, Protocol 1 ECHR. The Government takes the view that the powers in new *section 17A(5)(d)* and (6) and (7) do not amount to an unlawful interference under Article 1 of Protocol 1 and that they are capable of being exercised in a way which complies with the Convention rights. The Government considers that those provisions are in the public interest and that they strike a fair balance between the interests of individuals and the community. In addition, non-payment or reduction of benefit may only occur where a claimant is judged not to have good cause for failing to comply with requirements imposed by regulations. Provision may be made in regulations in relation to hardship payments.

406. A decision that a jobseeker's allowance is not payable satisfies the requirement for an independent hearing imposed by Article 6(1) ECHR, which could be a potential human rights concern. This is met through the statutory appeal route.

Revised system of working age benefits

Clause 2: Work-related activity: income support claimants and partners of claimants

407. Article 8 ECHR could be engaged if the sanctions to be imposed were to create hardship such that there was an impact upon private or family life. The Government considers that any interference that is established is justified in the economic interests of the country and the need to make the best use of public funds. In relation to Article 8 ECHR, subsection (7) of new *section 2D* of the Social Security Administration Act 1992 enables hardship payments to be made. These powers may be exercised so that claimants and their dependants are not placed in situations of extreme privation in breach of that Article. The Government is of the view that imposing a reduction in the amount of income support, jobseeker's allowance (JSA) or employment and support allowance (ESA) payable for failure to comply with a relevant work-related requirement does not amount to an unlawful interference under Article 1 of Protocol 1. The measures are aimed at increasing the future employment prospects of individuals and are clearly in the public interest. As such if there was interference with property rights, the Government is of the view that it would be proportionate and justifiable.

Clause 4: Couples where at least one member capable of work

408. Entitlements to social security benefits, including non-contributory benefits, are recognised as “civil rights” for the purposes of Article 6(1) ECHR and disputes about decisions about entitlement to benefit therefore need to be determined by an independent tribunal at a fair and impartial hearing. The appeal system has been set up under the Social Security Act 1998 (c. 14) to establish a fair, ECHR-compliant process.

409. Article 8 ECHR could be engaged if the sanctions to be imposed under regulations by virtue of these amendments were to create hardship such that there was an impact upon private or family life.

410. The Government believes that sanctions encourage participation and help to foster personal responsibility and these aims are clearly in the public interest.

411. The Government is of the view that imposing a reduction in the amount of JSA payable for failure to comply with a relevant requirement does not amount to an unlawful interference under Article 1 of Protocol 1. The measures are aimed at increasing the employment prospects of non-working partners and this is clearly in the public interest. If there was interference with property rights, the Government is of the view that it would be proportionate and justifiable.

412. The Government is of the view that imposing a reduction in the amount of JSA payable for failure to comply with a relevant requirement does not amount to an unlawful interference under Article 1 of Protocol 1. The measures are aimed at increasing the employment prospects of non-working partners and this is clearly in the public interest. If there was interference with property rights, the Government is of the view that it would be proportionate and justifiable.

Work-related activity for claimants of employment and support allowance

Clause 8: Power to direct claimant to undertake specific work-related activity

413. Entitlement to social security benefits including non-contributory benefits are recognised as “civil rights” for the purposes of Article 6(1) ECHR. Accordingly, disputes about decisions which determine entitlement to benefit will need to be determined by an independent tribunal at a fair and impartial hearing. It is intended that similar provision will be made for a reduction in the amount of benefit for a failure to comply with a requirement to undertake a specific work-related activity. The Government considers that this power will be exercised in a way compatible with the Convention. There is an appeal right against a decision to reduce the amount of ESA payable and the Government considers that this is sufficient to safeguard Article 6 rights.

414. Article 8 ECHR could potentially be engaged in one of two ways. Firstly, the imposition of the requirement to undertake specified activity could infringe upon a person’s private and family life. Secondly, Article 8 ECHR could be engaged if the

sanctions imposed were to impact upon private and family life. The Government is confident that the safeguards are such that there will be no interference in a claimant's private life because the provision safeguards a claimant's rights, by virtue of the inclusion of the words, 'reasonable, having regard to the person's circumstances'. Regulations will provide that specific work-related activity will not extend to medical treatment and a claimant's medical circumstances will always be considered when making a specific work-related activity mandatory.

415. Article 8 ECHR does not impose a positive obligation upon the Government to provide financial assistance at any given level. Article 8 might be engaged if withholding a benefit could be seen to have an impact on family life, but the total amount of sanction imposed in relation to any claimant for failure to comply with the conditionality requirements will be proportionate and where necessary a hardship regime can be put into place.

416. It is an established principle that both contributory and non-contributory benefits are possessions for the purpose of this Article. It is more than likely that a reduction in the amount of benefit paid to an individual will be regarded as a 'deprivation' for the purpose of Article 1 of Protocol 1. The Government is of the view that imposing a reduction in the amount of ESA payable for failure to comply with a conditionality requirement does not amount to an unlawful interference under Article 1 of Protocol 1. The ESA reforms, which aim to increase employment opportunities for sick and disabled people, are in the public interest. As such if there was interference with property rights, the Government is of the view that it would be proportionate and justifiable. The Government also considers that including the right to reconsideration will act as a safeguard on the use of this power, giving the claimant of the benefit an opportunity to object to its use without having to wait for a sanction to be applied for non compliance.

Jobseeker's allowance and employment and support allowance: drugs

417. Entitlement to social security benefits is considered a 'civil right'. Sanctioning benefits is not considered an infringement of that right because there is an independent appeals process. As answering questions on drug use could be incriminating, safeguards have been put in place to ensure that this does not contravene Article 7.

418. The Government will put safeguards in place so that it will not affect a person's private life and therefore does not contravene Article 8. The Government is satisfied that Article 8 rights are safeguarded, though takes the view that if it were found that there was an interference it could be justified on the grounds that it was done in accordance with the law and necessary in a democratic society in pursuance of the legitimate aim of safe-guarding the economic well being of the country. Information provisions are deemed to be compatible for similar reasons.

419. A benefit sanction would normally continue to apply pending the outcome of

any appeal (although arrears would be paid in the event the appeal was successful). However, the Government would intend to exercise existing powers to provide in regulations for the imposition of a sanction to be suspended in appropriate cases where an appeal had been brought against a decision that a person had failed without cause to submit to a drugs test.

420. It is arguable that Article 14 could be engaged, because it could be claimed that it treats drug users on a differential basis because of their status. In accordance with this definition, being a drug user is something that someone is doing, it is not what they are. It is the Government's view that the policy can be justified as proportionate, because it only sanctions problem drug users to the extent that they are not complying with a treatment programme that is designed to help them overcome their addiction. Under regulations to be made under the provisions of this Bill, problem drug users seeking treatment will receive favourable labour market conditionality so that they may focus on overcoming their addiction rather than having to search for work.

421. It is an established principle that both contributory and non-contributory benefits are possessions for the purpose of this Article. It is more than likely that a reduction in the amount of benefit paid to an individual will be regarded as a 'deprivation' for the purpose of Article 1 of the First Protocol. The Government is of the view that imposing a reduction in the amount of JSA/ESA payable for failure to comply with a conditionality requirement does not amount to an unlawful interference under Article 1 of Protocol 1. The drugs strategy reforms, which aim to increase employment opportunities for problem drug users, are clearly in the public interest. As such if there was interference with property rights, the Government is of the view that it would be proportionate and justifiable. It is intended that the way in which a sanction for failure to undertake a drug assessment or comply with a rehabilitation plan will mirror the existing sanctions regime under each Act. As the sanctions for the new measures do not go beyond those which are currently in place for existing measures the potential interference in property is the same as that which is already permitted by primary legislation. A claimant will have a right of appeal against a benefit sanction which follows a failure to comply with a rehabilitation plan, in the same way as the claimant can currently appeal a sanction for failure to fulfil labour market conditionality or failure to take part in a work-focused interview.

422. A drugs test will only be imposed in specified circumstances, if a person has failed to undertake a drugs assessment to which he or she has been referred. If a person fails to undertake a drugs test or a drugs assessment, the person will be given an opportunity to show good cause for his or her failure.

423. If the Courts held that using a particular drug as opposed to another constituted a status protected by Article 14, the Government could successfully argue that any discrimination was justified on the basis that it was a legitimate policy choice to adopt measures only in relation to users of particular drugs which it considered caused the most social problems, and also having regard to the significant cost implications of

extending the measures to all types of proscribed drugs.

Abolition of adult dependency increases

Clause 12: Maternity allowance and carer's allowance etc.

424. The abolition of adult dependency increases could raise issues in respect of Article 1 Protocol 1, which provides that every person is entitled to the peaceful enjoyment of their possessions. The Government considers that the withdrawal in respect of carers' allowance and maternity allowance is a justified and proportionate response to the need to simplify benefits and remove provisions which are based on an outdated concept of dependency.

External provider social loans

Clauses 13 to 15: External provider social loans

425. The most likely Articles to be relevant are Articles 8 and Article 1 Protocol 1 with Article 14. Article 6 might be considered if external lenders were found to be exercising public functions. It is unlikely that human rights issues would arise though there have been complaints in the context of the social fund that it is unfair or discriminatory to confine eligibility to those on certain means-tested benefits. It has not been accepted in the few cases which have arisen that the person concerned has had a status within Article 14 of the ECHR or, even if he has, that there is unjustified discrimination. It has also been the Secretary of State's position that the payments are non-contributory and discretionary – they are not available as of right – and the payments are loans not benefits. The same would be argued in respect of the external provider social loans.

426. The same approach would be taken in respect of Article 6. The statutory provisions on review of decisions whether to award a social fund loan and the amount would not apply to decisions by lenders under the new loan scheme. They would have a complaints procedure and it is likely that borrowers could complain to the Financial Ombudsman Service. If someone were identified as having been disadvantaged by the substitution of the new loans scheme for social fund loans the Government would say that there are good reasons for making this change; that the social fund still covers certain people under the loans or community care grant scheme; and that the Government would take action to avoid a breach of Article 3 of the ECHR.

Benefit sanctions for offenders

Clause 19: Loss of benefit provisions

427. The article of most concern is Article 6 (right to a fair trial). The Government's view is that it is very unlikely that this policy will violate Article 6.

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as introduced in the House of Commons on 14 January 2009 [Bill 8]*

The Government only offers people a penalty or a formal caution where there is sufficient evidence to prosecute for a benefit offence. Offenders are invited to an interview before they choose to accept the caution or penalty. Persons who accept a penalty may change their minds within 28 days. Anyone who disputes the reasons why they are being offered a penalty or caution may choose to face prosecution instead. They in effect have the same rights as those being prosecuted for a more serious benefit offence.

428. Article 3 (degrading treatment) and Article 8 (right to respect for family and private life) should not be engaged with this policy. The Government intends that the provisions set out in secondary legislation (S.I. 2001/4022) for income-based jobseeker's allowance to be payable to vulnerable persons in hardship will apply to those who accept a penalty or formal caution or are convicted of a first benefit offence as they currently apply to those convicted for a second benefit offence under the two strikes policy.

Clause 20: Jobseeker's allowance: sanctions for violent conduct in connection with claim

429. Article 3 (inhuman or degrading treatment) and Article 8 (right to respect for family and private life) will not be engaged as hardship payments can be made where appropriate to vulnerable claimants whose benefit is sanctioned as a result of a conviction for or acceptance of a caution for an offence involving violence. Article 6 (right to a fair trial) will be engaged because the claimant has a civil right to the payment of the benefit which may be sanctioned under the policy, but the requirements of this Article are satisfied because the claimant will have a right of appeal.

430. Article 1 Protocol 1 (protection of property) will be engaged, as both contributory and non-contributory benefits are possessions for the purposes of Article 1 Protocol 1. As a result of this clause, the claimant would be deprived of some of his or her property. However member states are granted a wide margin of appreciation with regards to measures of economic or social strategy. The imposition of sanctions of a relatively brief period is a measure within a state's margin of appreciation and can be justified. It has a legitimate aim which is in the public interest, and is a proportionate measure.

431. Article 14 (prohibition of discrimination) may be engaged taken in conjunction with Article 1 Protocol 1. It may be possible to argue that this sanction will be applied in a discriminatory manner as it will only apply to jobseeker's allowance claimants, and not to other benefit claimants. There are a number of differences between JSA and the other benefits, such as the conditionality attached to JSA, which help explain why the benefit sanction is being applied only to JSA claimants. JSA claimants will typically come into contact with Jobcentre Plus staff at least once a fortnight, and more often at certain points of their claim. As such they are usually more frequently in face to face contact with staff than other benefit claimants.

The sanction for violent behaviour is designed to be a deterrent against such behaviour that will also encourage the JSA claimant to engage with the JSA labour market conditionality regime to receive the support they need to move into a job. The sanction is designed specifically to work in tandem with the existing conditionality regime to which JSA claimants are subject, this is not the case for other benefits.

Pilot schemes

Clause 21: State pension credit: pilot schemes

432. The provisions of the ECHR which may be engaged are Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property), and Article 14 (prohibition of discrimination).

433. Dealing with a person's personal financial data in this manner will fall within the exception to the general principle in Article 8 in that it is necessary in the interests of "the economic well-being of the country" in decreasing pensioner poverty. As such, it is a proportionate measure taken to achieve a legitimate aim.

434. Article 1 of the First Protocol is engaged because state pension credit, as a social security benefit, is a possession for the purposes of that article. However, no interference with this possession will occur because only persons who are currently eligible to claim benefit, but who are not in receipt of benefit, will be the subject of the pilot scheme. No-one will be disentitled to benefit by virtue of any pilot scheme, and such a safeguard is established by the boundaries of *subsection (2)* of the clause.

435. As persons already eligible to claim state pension credit will make up the subject group of the pilot scheme, those who fall outside the pilot in a comparable situation must also be those who would be eligible to claim state pension credit. Such a person may therefore make a claim in the ordinary way and no discrimination will have occurred. It is unlikely that in such circumstances Article 1 of the First Protocol would be engaged in respect of the non-recipient, because the claim would not have been made by that person. Even if that is not the case, it is unlikely that any automatic payment under the pilot which had given a person benefit for a period prior to that which a person outside the scheme had actually claimed would be sufficient to give rise to discrimination, especially in view of the numerous other methods currently in place by which people are encouraged to claim. Should the pilot scheme provide for payments to be made without prejudice to any claim for tax credit, social security benefit or liability to tax (as is provided by *subsection (7)*) it may be that a person within the pilot scheme is in a better position than one without, even when the latter is in receipt of state pension credit. In such circumstances, no breach of the Convention will have occurred because the pilot scheme would again be seeking to achieve a legitimate aim of decreasing pensioner poverty and doing so in a proportionate manner.

Clause 22: Period for which pilot schemes have effect etc.

436. The use of piloting powers in general could raise Article 14 (taken with Article 1, Protocol 1) issues on the basis that persons in a specified area or locality to whom a pilot scheme applies are being treated differently (whether better or worse) than those who live elsewhere and do not fall within the scheme. It may be questioned whether the extension of the time limits to 36 months and the minor amendment to *section 29(8)* relating to the purpose of the pilot scheme is proportionate and necessary. The Government considers that the time extension is justified in order to allow for effective evaluation and contracting of pilot schemes and that the amendment to *section 29(8)* is necessary to ensure that new regulations inserted into the Jobseeker's Act 1995 and the Social Security Administration Act 1992 can be piloted.

Miscellaneous

Clause 24: Attendance in Connection with jobseeker's allowance: sanctions

437. Article 6 will be engaged but will not be contravened as there will be appeal rights.

438. Articles 3 and 8 will not be engaged as the existing hardship rules for certain vulnerable people will apply to the benefit sanctions.

439. Article 1 Protocol 1 will be engaged as both contributory benefits and non-contributory benefits may, in certain circumstances, be classified as possessions for the purposes of Article 1 Protocol 1. The interference has a legitimate aim to encourage compliance with the JSA conditionality regime.

Clause 25: Social security information and employment and training information

440. Article 8 is engaged because this policy involves the sharing of personal information about benefit claimants. There is no bulk element to the sharing, it will be shared on an individual basis with skills assessment providers and training providers only in relation to a specific claimant mandated to assessment or training at that provider. So there is no question of unmatched data being provided. Only the least information necessary will be shared in order to achieve the aim of the policy. In addition, a further safeguard in section 72 of the Welfare Reform and Pensions Act 1999 requires that a Minister designate any private sector providers by Order. This will ensure that information will be shared with approved providers who the Government is satisfied have appropriate policies for storing the information the Government shares with them.

Part 2 Disabled people: Right to control provision of services

441. Any right to a direct payment created in regulations made under *clause 29(1)* could potentially be considered a possession under Article 1 of Protocol 1. Rights and

claims to something else can be considered to be property under Article 1 of Protocol 1 if they are sufficiently certain and relate to a substantive interest protected by the Article. Legitimate expectation is also protected under Article 1 of Protocol 1 if it relates to the substantive enjoyment of a property right. It may therefore be that the right to receive payments under regulations provided for under this legislation could constitute a possession for the purposes of Article 1 of Protocol 1, if the payments themselves constitute a property right or possession. However, even if it is the case that Article 1 of Protocol 1 is engaged, it is unlikely that there will be any interference with this property. In terms of the direct payments themselves, any right to a direct payment will only arise where certain conditions arise. If those conditions do not arise, there will be no right and therefore no possession. Someone who has ceased to meet the conditions of entitlement, or never met them, cannot claim any interference with possessions.

442. There may be issues in relation to Article 14 in conjunction with Article 1 of Protocol 1 once the regulations are made using the powers in *clause 29*. It could be argued that there is an analogy with the social security system and that, although there is no obligation to provide a direct payment, if the State chooses to create something which falls within a substantive Article of the Convention, it should do so in a non-discriminatory manner.

443. Even if the right to a direct payment does fall within Article 1 or Protocol 1, the Government takes the view that there is no discrimination in having a payment designed only for disabled people, because they are in a relevantly different position from non-disabled people. They are much more reliant on public services and are disproportionately disadvantaged as a result of having limited control over the delivery of those services.

444. It may be argued that the “right to control” is a civil right for the purposes of Article 6. Social security benefits, to which there is an entitlement in legislation, do give rise to an Article 6 civil right. However, the right to control differs from social security rights. The Government takes the view that the right to control is of a public law nature, as it relates to the provision of public services. It would not interfere with a person’s means of subsistence. It is therefore not a right to which Article 6 applies.

Part 3 Child maintenance

Clause 40: Disqualification for holding or obtaining travel authorisation or driving licence

445. *Clause 40* gives the Child Maintenance and Enforcement Commission the power to make an administrative decision to disqualify a non-resident parent from holding a travel authorisation or driving licence if he fails to pay child maintenance due under the Child Support Act 1991. The Government has considered whether this power breaches Article 6, Article 8 or Article 1 of the First Protocol (protection of property). Insofar as Article 6 is engaged, the Government is satisfied that there is no breach. There will be a full right of appeal to a magistrates, court or sheriff, and the

order will be suspended until the outcome of the appeal is known. Insofar as Article 8 and Article 1 of Protocol 1 are concerned, the Government considers any interference to be justified and proportionate. The measure will only be implemented where the non-resident parent has shown wilful refusal or culpable neglect regarding the payment of child maintenance, and it is intended that other, lesser, measures to ensure compliance will be used first. In addition, the Commission must give consideration to whether exercising the power in a case will impede the ability of the non-resident parent to pay by affecting his means of making a living.

Clause 43: Child support maintenance: offences relating to information

446. *Clause 43(2)* provides that s.14A(3A) of the Child Support Act 1991, which creates the offence of failing to notify the Commission of a change of address, is amended so that it includes a failure to notify the Commission of ‘any other change of circumstances’. The changes of circumstances will be prescribed by regulations. This provision may give rise to issues relating to Article 6, Article 8 and Article 1 of Protocol 1. The creation of this offence complies with Article 6 because the hearing will be before an independent and impartial tribunal (the magistrates’ court) and will be carried out in accordance with the specific requirements of Article 6. The imposition of a charge will be fair, because the regulations will make clear what information is to be provided by the non-resident parent and when. This will be communicated to the liable person in correspondence from the Commission before any charge is laid. The regulations will also only require persons to provide information that they have access to. Therefore there will be no unfairness in the procedure relating to the criminal offence, and the requirements of Article 6 will be met.

447. Article 8 may be engaged because the Commission will require liable persons to notify them of personal details, for example regarding their income or employment status. However this is justified and proportionate because the provision of personal information is essential to ensure that the child maintenance scheme is effectively delivered and that the correct amount of maintenance is passed to children.

448. Article 1 of Protocol 1 may be engaged because the liable person’s child maintenance liability may increase as a result of his change of circumstances. However the liable person is not being unjustly deprived of his property: he will simply be required to pay the correct amount of maintenance, calculated under the statutory scheme. Any interference with Article 1 Protocol 1 is, therefore, justified. This proposal strikes a fair balance between the interests of the community and the requirement to protect individuals’ rights. It is reasonable and proportionate to require liable persons to notify changes in circumstances and to impose penalties when they fail to do so.

449. This provision may give rise to issues relating to Article 6, Article 8 and Article 1 of Protocol 1.

450. Article 6 confers the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The creation of this offence complies with Article 6 because the hearing will be before an independent and impartial tribunal and will be carried out in accordance with the specific requirements of Article 6.

Part 4 Birth registration

451. It could be said that such a duty to provide information about the father engages the mother's rights both to a private life and family life under Article 8 ECHR. By imposing such a duty on the mother, the legislation is requiring her, in effect, to disclose that she had sexual relations with the man in question. The Government accepts that Article 8 is engaged in such circumstances. Furthermore, in naming the father, there is the intended consequence that the father will become involved in the family and therefore it could be argued that this is an interference with the right to respect for the family life that the mother has with her child.

452. Whilst the Government acknowledges that these rights of the mother under Article 8 may be engaged, such interference is justified in accordance with Article 8(2). Firstly, the overarching objective of the joint birth registration proposals is to improve child welfare by encouraging both parents to have a role in their child's upbringing. Joint registration of the unmarried father on the birth register will give that father parental responsibility for the child, allowing him to exercise certain rights in respect of his child and encouraging him to take responsibility for his child. Secondly, the joint birth registration proposals are also intended to promote the right of the child to know his parent.

453. Therefore, the Government is of the view that interference with the mother's Article 8 rights in requiring her to provide information about the father is appropriately balanced against the child's Article 8 right to know about his parentage and the father's right to respect for his family life under Article 8. In addition, the Government is of the view that there are adequate safeguards in place that will allow mothers who are vulnerable not to have to provide information about the father. It could also be argued that in requiring the mother to provide information about the father, the father's Article 8 rights to a private life and a family life are engaged. The disclosure of information about the father to the registrar may violate the father's right to privacy. Furthermore, it could be argued that there is an interference with the father's right to respect for a family life (for example, if he has an existing separate family). The Government considers that if Article 8 is engaged its interference is justified.

454. Respect for private life requires that everyone should be able to establish details of their identity, including the identity of their parents. Furthermore, as mentioned above, the Government is of the view that the rationale for the joint birth registration proposals is such that if Article 8 is engaged such interference is justified. The European Court of Human Rights has recognised that legislation that discriminates between unmarried fathers and married fathers can be legitimate,

*These notes refer to the Welfare Reform Bill
as introduced in the House of Commons on 14 January 2009 [Bill 8]*

proportionate and justified and therefore not contrary to Article 14. The Government is of the view that the difference in treatment between married and unmarried fathers and unmarried fathers and mothers that is proposed is objectively justified.

Paragraph 20 of Schedule 6

455. The Government acknowledges that Article 8 is engaged. However, the information will only be used for statistical purposes and there are appropriate safeguards in place to ensure that individuals cannot be identified.

COMMENCEMENT DATES

456. Details of the commencement dates are provided in paragraphs 253 to 256 of these Notes.

WELFARE REFORM BILL

EXPLANATORY NOTES

These notes refer to the Welfare Reform Bill as introduced in the House of Commons on 14 January 2009 [Bill 8]

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