

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

3. This section sets out the present situation and how the Act will change it.

Employment and Support Allowance

4. **Part 1** of the Act makes provision for the employment and support allowance which will replace incapacity benefit and income support on grounds of incapacity for work or disability. The replacement benefit will have a new benefit structure, incorporating both a contributory allowance and an income-related allowance. The Act provides for the introduction of conditionality to some claimants receiving the benefit. It brings forward the proposals discussed in the Welfare Reform Green Paper published in January 2006 called '*A new deal for welfare – Empowering people to work*'¹ and the Consultation Report published in June 2006².
5. A person may be entitled to an employment and support allowance by satisfying either a National Insurance contribution test (similar to incapacity benefit) or an income-related test (similar to income support) and being assessed to be limited in their capability for work because of their physical or mental condition and satisfying certain other conditions.
6. The impact of any physical or mental condition will be determined on the basis of medical evidence from the claimant and their general practitioner or other health care provider, and advice to the decision-maker from a doctor or other healthcare professional approved by the Secretary of State. Advice to the decision-maker may be given on the basis of documentary evidence, or following a face to face medical examination. The matters to be determined are:
- whether the claimant's capability for work is limited by his physical or mental condition to the extent that it is not reasonable to require him to work; and
 - whether the claimant's capability for work is limited to the extent that it is not reasonable to require him to engage in work-related activity. The Act provides for regulations to define the test as to whether a claimant has limited capability for work-related activity.
7. The above tests will be conducted during an 'assessment phase', which will generally last from the first day of entitlement until a day specified in regulations. It is intended that regulations would provide that this phase would last 13 weeks in most circumstances. It is also intended that regulations would provide for this phase to be extended in certain circumstances, for example should the medical test not take place in the first 13 weeks.

1 Cm 6730 (http://www.dwp.gov.uk/welfarereform/docs/A_new_deal_for_welfare-Empowering_people_to_work-Full_Document.pdf).

2 Cm 6859 (http://www.dwp.gov.uk/welfarereform/docs/welfare_reform_response.pdf).

*These notes refer to the Welfare Reform Act 2007
(c.5) which received Royal Assent on 3rd May 2007*

8. Following the assessment phase, claimants will become entitled to either a ‘work-related activity component’ or a ‘support component’, as determined by the second medical assessment referred to above. If, on the basis of that test, it is determined that the claimant has limited capability for work-related activity, he will be placed in the support group and not have any work-related conditionality attached. If it is determined that the claimant does not have limited capability for work-related activity, he may have work-related conditionality attached. If the assessment phase is extended (as explained above) and a claimant subsequently satisfies the medical test, it is intended that the additional component that they would have received will be backdated as if the extension had never occurred.
9. The amount of allowance claimants receive will be determined by whether they are entitled to a contributory or income-related allowance or both, and whether they are entitled to the work-related activity or support component.
10. There are three things that employment and support allowance claimants who are not placed in the support group may be required to do in order that their entitlement is paid in full (known as “work-related conditionality”). These are:
 - work-focused health-related assessments – these assessments will provide additional information about the claimant’s residual functional capability;
 - work-focused interviews – claimants can be required to discuss what steps they can take to move towards work. As part of these interviews claimants may be asked to assist in drawing up an action plan of work related activity they intend to undertake – but they will not be obliged to do what the action plan says; and
 - work-related activity – undertaking activity that increases the likelihood of getting a job. This may include activities such as work trials or training, which may be identified in an action plan. Claimants could also be offered programmes designed to help them manage their condition.
11. The Act enables the benefit to be reduced (“sanctioned”) if a claimant fails to undertake such assessments, interviews or activity as required without good cause. The factors that could be taken into account in determining “good cause” will be set out in regulations, and will be similar to the factors in the [Social Security \(Incapacity Benefit Work-focused Interviews\) Regulations 2003 \(S.I. 2003/2439\)](#), which are used now in Pathways to Work (described in the Welfare Reform Green Paper). Pathways to Work is a programme in which participants are provided with access to a range of support relating to health-related, personal and external barriers to work. Participants are also required to attend and participate in work-focused interviews.
12. Those entitled to the support component are specifically excluded from the requirement to undertake work-focused health-related assessments, work-focused interviews and work-related activity. However the Government’s intention is that where appropriate, those receiving the support component should be able to volunteer to take part in these if they wish to do so.
13. The Welfare Reform Green Paper envisaged that initially conditionality would only extend to participation in work-focused health-related assessments and work-focused interviews. The Act maintains this flexibility so that, as resources allow, conditionality relating to participation in work related activity can be introduced. The number and frequency of work-focused interviews may also be varied in the future.
14. The Act enables regulations to provide for details concerning work-focused health-related assessments, work-focused interviews and work-related activities. Regulations would also set out the circumstances under which a claimant is required to attend and participate, as well as the circumstances under which a person is deemed to have failed to do what was required without good reason, and the benefit reduction applied in those circumstances.

Housing benefit and council tax benefit

15. Housing benefit is a non-contributory benefit payable where a person has a rent liability³ and meets certain income and capital requirements. Housing benefit can be paid to pensioners and to people of working age. The majority of recipients are in receipt of other income related benefits such as income support or pension credit, but housing benefit is also payable to people in employment or who otherwise meet the income and capital requirements. Currently four million people in Great Britain are in receipt of housing benefit - of whom around 0.86 million live in privately rented properties and 3.16 million in properties rented from social landlords (broadly housing association and council properties). Council tax benefit provides assistance to people on low incomes, who also meet the capital requirements, to pay their council tax.
16. Housing benefit and council tax benefit schemes are administered by 408 local authorities. The Department for Work and Pensions is responsible for the policy and legislation, and for paying appropriate subsidy to local authorities towards the costs of both the administration and benefit costs. The Department for Work and Pensions also: sets performance standards and monitors performance by local authorities against them; collects and publishes performance information; runs a programme of inspection and consultancy through the Benefit Fraud Inspectorate; and issues guidance for local authorities.
17. In 2002 the Government set out proposals for reform of housing benefit in the prospectus '*Building Choice and Responsibility: A Radical Agenda for Housing Benefit*⁴'. The prospectus proposed introducing a simpler way of calculating the housing costs that housing benefit would meet, called the local housing allowance, to be tested in a small number of areas for tenants in private rented housing.
18. Between November 2003 and February 2004 nine pathfinder areas, covering a range of different housing markets, started administering local housing allowance, for tenants in the deregulated private rental market. Further regulations were made to allow for nine additional local authorities to implement the local housing allowance⁵, which started administering the scheme between April and July 2005.
19. The housing benefit measures in the Welfare Reform Act facilitate the extension of local housing allowance across the deregulated private rented sector. In addition, housing benefit measures in the Act make changes to the design and administration of the benefit.
20. The Act provides for a reduction in housing benefit in circumstances where a person has been evicted from his home on grounds of anti-social behaviour and then refuses to co-operate with support that is offered to him with a view to improving his behaviour.
21. The intention is that when a person has been evicted for anti-social behaviour the local authority would approach the person to offer rehabilitation and support services to help address his problem behaviour. No powers in this respect are provided as local authorities already have the appropriate powers.
22. If a person refuses help the local authority will have to decide on the appropriate course of action for the particular case. This will include consideration of a housing benefit sanction. The authority will have to assess the risk of imposing a sanction and take account of vulnerability.
23. If a benefit sanction is considered appropriate the local authority will require that the claimant take specified action, with the aim of ending or preventing repetition of the

3 The term rent is used here to cover the various types of payment in respect of the tenant's home which are eligible for Housing Benefit, as set out in Regulation 12 of the [Housing Benefit Regulations 2006 \(S.I. 2006/213\)](#).

4 The Prospectus is available at http://www.dwp.gov.uk/housingbenefit/publications/2002/building_choice/prospectus.pdf

5 The additional authorities were added by the [Housing Benefit \(General\) \(Local Housing Allowance\) Amendment Regulations 2005, \(S.I. 2006/238\)](#) and the [Rent Officers \(Housing Benefit Functions\) \(Local Housing Allowance\) Amendment Order 2005, \(S.I. 2006/236\)](#).

behaviour that led to his eviction. The authority will warn him that failure to comply, without good cause, will affect the amount of housing benefit payable.

24. If at any time during the period of restriction the local authority considers that a reduction in housing benefit is no longer appropriate housing benefit will be reinstated at the full rate of entitlement. Those people who are sanctioned will have the right of appeal to The Tribunal Service.
25. The intention is that the measure will be piloted in about 10 local authorities in England for a period of two years starting as soon as is practicable. The enabling powers for the scheme will end at 31 December 2010. For a scheme to be in place after this date further primary legislation will be necessary

Sharing and use of social security information

26. The Act also concerns the sharing and use of social security information. Section 41 enables an increase in the sharing of administrative functions between the Department for Work and Pensions and local authorities, including English county councils and will widen the use of social security information held by these authorities. These measures are aimed at supporting joint working arrangements and improving the take-up and delivery of benefits and other services administered by the Department for Work and Pensions and local authorities. Section 42 enables greater information exchange between the Department for Work and Pensions and certain local authorities and among certain local authorities for benefit purposes and for purposes connected with the provision of welfare services. Section 43 is consequential on section 42 and creates a criminal offence for unauthorised onward disclosure of information to complement section 123 of the Social Security Administration Act 1992.

Overpayment recovery

27. [Sections 44](#) and [45](#) amend the provisions covering the administration of benefit overpayments where the payment had been made by a direct credit transfer, known as Direct Payment. This change is intended to remove the ambiguity about the ability to recover overpayments where the decision on benefit entitlement and the decision on overpayment recoverability are made separately.
28. These changes apply to social security benefits paid by the Department for Work and Pensions and to child benefit and guardian's allowance, which are the responsibility of Her Majesty's Commissioners for Revenue and Customs. They do not apply to housing benefit, which is administered by local authorities, nor do they apply to war pensions, which are administered by the Ministry of Defence.

Benefit fraud: local authority prosecution and investigation powers

29. [Sections 46 to 48](#) provide local authorities with clear powers to investigate and prosecute offences relating to national benefits where there is also fraud against local benefits. They also allow for the sharing of information between the Secretary of State for Work and Pensions and local authorities concerning national benefit offences.

Benefit fraud: the "two strikes" rule

30. The report by Lord Grabiner QC entitled "The Informal Economy" (2000)⁶ concluded that the Government should consider introducing new ways to tackle those who are involved in the hidden economy, including a "two strikes and you're out" approach for those convicted more than once of social security benefit fraud.
31. Following this report, the loss of benefit provisions, better known as "two strikes", were put in place by the Social Security Fraud Act 2001. They provide that certain specified

⁶ The report is available from HM Treasury Public Enquiry Unit and on www.hm-treasury.gov.uk

benefits can be reduced or withdrawn where a person commits a benefit offence, of which he is later convicted, within three years of a conviction for a previous benefit offence.

32. Following a review by the Department for Work and Pensions of the benefit fraud sanctions regime it was concluded that the provisions should be extended.
33. [Section 49](#) extends the period between the date of conviction in the earlier proceedings and the date of commission of the offences in the later proceedings from three to five years. This will have the effect that a person's benefit may be withdrawn or reduced if they commit a benefit offence, of which they are later convicted, within five years of a conviction for a previous benefit offence. No changes are being made either to the sanction or to the ability to request or make hardship payments.

Benefits for bereaved persons

34. [Sections 50](#) and [51](#) change the entitlement conditions for widowed mother's and widowed parent's allowance respectively. Where a child is not living with the claimant, the entitlement conditions for widowed mother's and widowed parent's allowance included a requirement to make contributions to the cost of providing for the child of an amount which is not less than the rate of child benefit payable in respect of the child together with an amount which is not less than the rate of guardian's allowance. The latter requirement is removed.

Disability living allowance: age conditions

35. [Sections 52](#) and [53](#) amend the legislation which governs the application of the conditions of entitlement to the care component and the mobility component of disability living allowance to people on or around the age of 16 years.

Social Fund

36. [Section 54](#) makes minor amendments to existing legislation so that it reflects the simplified approach now being used in the making of loans from the social fund. [Section 55](#) will ensure that there is potential to make allocations from the social fund in different ways, for example a single allocation for loans or an allocation directed at a particular social fund payment or group of beneficiaries.

Vaccine Damage Payments: overseas vaccinations

37. [Section 56](#) provides a power by order to enable claims to be made under the Vaccine Damage Payments Act 1979 where disablement results from vaccinations given outside the UK and the Isle of Man by, or on behalf of, Her Majesty's Forces, a specified government department or any other specified body.

Vaccine Damage Payments: appeals to appeal tribunals in Northern Ireland

38. [Section 57](#) enables appeal tribunals in Northern Ireland to hear vaccine damage payment cases in Northern Ireland.

Compensation for Pneumoconiosis

39. The purpose of the Pneumoconiosis etc. (Workers' Compensation) Act 1979 is to provide compensation to sufferers of certain dust-related diseases, or their dependants, where the disease developed as a result of exposure to dust in the course of their employment, but they were unable to claim damages from their employers because those employers had ceased to carry on business. The diseases to which the Act applies are pneumoconiosis, byssinosis, diffuse mesothelioma, primary carcinoma of the lung (where there is accompanying evidence of asbestosis and/or bilateral diffuse pleural thickening) and bilateral diffuse pleural thickening.

40. Sections 58 and 59 amend the Pneumoconiosis etc. (Workers' Compensation) Act 1979 in order to clarify when a person suffering from such a disease may make a claim under the Act and to widen the group of dependants who may make a claim to include, in particular, civil partners.

Attendance allowance/disability living allowance and care home residents

41. Attendance allowance and disability living allowance are paid as a contribution towards the extra living costs of severely disabled people. People in care homes will normally have their disability-related needs (except mobility needs) met by the services provided by the home. To pay attendance allowance or the care component of disability living allowance when the costs of a person's care home accommodation (including board and personal care) are being met, in full or part, out of public funds – usually by a local authority – would amount to duplicate provision from public funds. Hence, in these circumstances, payment of attendance allowance and the care component of disability living allowance may be withdrawn once a person has been resident in a care home for more than four weeks. Section 60 amends the scope of this power.

Independent Living Funds

42. The current Independent Living Funds - the Independent Living (Extension) Fund and the Independent Living (1993) Fund - are being replaced by a new Trust called the Independent Living Fund (2006). The Act amends the Disability (Grants) Act 1993 to enable the Secretary of State for Work and Pensions and the Department for Social Development in Northern Ireland to make grants to the new Independent Living Fund (2006).

Medical Examinations

43. A person can currently be referred for a medical examination and report by the Secretary of State and the eligible member of an Appeal Tribunal to a medical practitioner. The Act amends these powers to enable a person to be referred to a health care professional.