

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 2: Housing benefit and council tax benefit

Section 38: Duty to send inspection reports to the Secretary of State and; Section 39: Directions by Secretary of State

202. Under the arrangements set out in the Social Security Administration Act 1992, the Secretary of State may authorise persons to report to him on local authorities' administration of housing benefit and council tax benefit, and, in particular, their performance in the prevention and detection of fraud. The Benefit Fraud Inspectorate is the only 'person' so authorised. On receipt of a report from the Benefit Fraud Inspectorate, the Secretary of State must send a copy of the report to the local authority and may invite it to consider the report and submit its proposals for improving performance and remedying identified failings. After considering the report and any response from the local authority, the Secretary of State may give directions to the authority. Directions may also be given on the basis of certain other reports commissioned, or received, by the Secretary of State - for example in England and Wales, public interest reports sent to him by the relevant audit body.
203. **Sections 38 & 39** provide for greater flexibility for the Secretary of State in respect of the range of reports that can be used to trigger a direction, to include public interest reports and Best Value audit reports from the Controller of Audit in Scotland and Best Value reports from the Auditor General for Wales.
204. **Section 39** also allows directions to be given on a wider range of matters. An example of this might be to require the local authority to draw up benefits-related policy documents or to review existing benefits administration procedures. Additionally, they allow the Secretary of State, when reaching a decision to give directions, to take into account information in addition to that contained in the report he has received and the authority's response - for example trends in performance.
205. In addition, section 39 enables the Secretary of State to require a local authority to consider a report and submit to him its proposals for improving performance and remedying identified failings. It also provides for him to vary or revoke any direction made, for example he would be able to vary a direction where a material change of circumstances had affected the local authority's ability to meet it.
206. **Subsections (1) and (2)** of section 38 amend the Local Government Act 1999, to enable the Auditor General for Wales to send copies of Best Value reports that relate to any extent to the administration of housing benefit or council tax benefit to the Secretary of State.
207. **Section 39** amends section 139D of the Social Security Administration Act 1992, which provides for the Secretary of State to act on certain reports he receives on housing benefit and council tax benefit administration. Following consideration of a report and any response from the local authority, the Secretary of State may direct the authority

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

to attain specified standards in its administration of housing benefits, within specified timescales.

208. *Subsection (2)* provides for the Secretary of State to use his powers of direction in respect of (i) public interest reports and (ii) Best Value reports referred to him by the Controller of Audit in Scotland. This restores the legislative position in relation to public interest reports that was inadvertently broken with the introduction of the Local Government in Scotland Act 2003.
209. Similarly *subsection (3)* adds Best Value reports, referred by the Auditor General for Wales, to the list of reports on which the Secretary of State can issue directions.
210. Following the Secretary of State's receipt of a relevant report *Subsection (4)* allows the Secretary of State to require the authority to submit its proposals for improvement. *Subsection (5)* further enables the Secretary of State to specify the information (and the format and timescales for the information) he requires from the local authority, to fully inform a decision on possible directions. This does not prevent the authority submitting other information it thinks relevant to the Secretary of State's considerations. To ensure that sufficient time is given to the authority to consider its response, the Secretary of State is required to give the authority not less than one month to respond and can extend this, for example where there were reasonable grounds for doing so following a request from the local authority.
211. *Subsection (6)* allows the Secretary of State to also take into account any other relevant information he thinks appropriate. This might include, for example, past statistical trends, or evidence of the authority's commitment to, and success in, the delivery of improvement.
212. The section also provides the Secretary of State with the power to direct a local authority to take any action he thinks necessary or expedient to improve its performance and the timescales within which it must do so. The powers, which allow the Secretary of State to specify the standards he expects an authority to attain and the timescales within which he expects them to attain them, remain by virtue of *subsection (3A)*. Where there are serious concerns in respect of a benefits administration matter, but a standard cannot be specified, the provision in *subsection (3B)* enables the Secretary of State to give a direction on that matter. The power allows him, for example, to require the authority to draw up a counter fraud strategy policy for benefits where none existed, or to review and make detailed proposals for improving a particular operational process about which there were serious concerns.
213. *Subsection (7)* takes into account the change in subsection (6) and provides for the Secretary of State to continue to make recommendations to an authority about the actions it might take to attain the standards set out in a direction.
214. *Subsection (8)* places a requirement on the Secretary of State, before giving a direction, to give the local authority an opportunity to make representations about the directions to him. However, *subsection (8)* permits the Secretary of State to issue directions *without* consulting the authority about their content if he considered it a matter of urgency. In such an urgent case, the Secretary of State must inform the authority in writing of his reasons for not inviting representations from it before giving the directions.
215. *Subsection (9)* inserts a new section, 139DA, into the Social Security Administration Act 1992, enabling the Secretary of State to vary or revoke a direction when he thinks it necessary to do so. He can do so where he had received representations from the relevant local authority; to rectify an omission or error; or where there had been a material change of circumstances. For example, he might vary or end a direction where a change in legislation means that the direction was no longer relevant or needed to be changed in a material aspect. This subsection also requires the Secretary of State to write to the authority giving his reasons for making the variation and offer it the opportunity to make representations about the proposed variation.