

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 4: Miscellaneous

Benefits for bereaved persons

Section 50: Widowed mother's allowance

256. Broadly, in order to be entitled to widowed mother's allowance, a widow must be entitled to child benefit in respect of a child.¹ A widow is entitled to child benefit in respect of a child if:

- the child is living with her, or
- the child is not living with her but she makes contributions to the cost of providing for the child at a rate which is not less than the rate of child benefit payable in respect of the child.²

257. At present, section 37 of the Social Security Contributions and Benefits Act 1992 provides that, where a widow is entitled to child benefit in respect of a child who is not living with her, she is not entitled to widowed mother's allowance unless she also makes additional contributions to the cost of providing for the child at a rate which is not less than the rate of guardian's allowance.³ Section 50 removes this requirement.

Section 51: Widowed parent's allowance

258. This section amends the provisions of section 39A of the Social Security Contributions and Benefits Act 1992 in respect of widowed parent's allowance in the same way that section 50 amends the provisions about widowed mother's allowance.

Disability living allowance: age conditions

Section 52: Care component of disability living allowance: persons under the age of 16

259. This section amends section 72 of the Social Security Contributions and Benefits Act 1992, which sets out the entitlement conditions to the care component of disability living allowance (section 72(1)). The entitlement conditions are modified in the case of claims for a period in which the claimant is under the age of 16 (section 72(6)). This section removes subsection (6) and replaces it with new subsections (1A) and (2A). The new subsections apply the same modifications to the standard entitlement conditions

¹ Section 37(1)(a) of the Social Security Contributions and Benefits Act 1992. A widow may also be entitled to widowed mother's allowance where she is pregnant.

² Sections 141 and 143(1) of the Social Security Contributions and Benefits Act 1992.

³ Sections 37(2) and 77(5) of the Social Security Contributions and Benefits Act 1992. This requirement was added by the Tax Credits Act 2002. It replaced a requirement to make contributions at not less than the amount of child dependency increases payable in respect of a child under section 81 of the Social Security Contributions and Benefits Act 1992. Child dependency increases were abolished by the Tax Credits Act 2002 (except for cases in respect of which transitional provision was made).

for the care component (in section 72(1)) but only if a person is under the age of 16 on the date on which the award would begin and only in relation to any period up to and including the day before a person reaches the age of 16. Consequential amendments are also made.

Section 53: Mobility component of disability living allowance: persons under the age of 16

260. This section amends section 73 of the Social Security Contributions and Benefits Act 1992, which sets out the entitlement conditions to the mobility component of disability living allowance (section 73(1)). The entitlement conditions are modified in the case of claims for a period in which the claimant is under the age of 16 (section 73(4)). This section removes subsection (4) and replaces it with new subsections (4A) and (9A). The new subsections apply the same modifications to the standard entitlement conditions for the mobility component (in section 73(1)) but only if a person is under the age of 16 on the date on which the award would begin and only in relation to any period up to and including the day before a person reaches the age of 16. Consequential amendments are also made.

Social Fund

Section 54: Matters to which regard must be had in awarding budgeting loans

261. Section 138 of the Social Security Contributions and Benefits Act 1992 provides for payments to be made out of the social fund in the form of budgeting loans, crisis loans and community care grants to give help to people on low incomes.
262. Certain officials at Jobcentre Plus (“appropriate officers”) determine applications for social fund payments in accordance with the provisions in primary legislation, principally section 140 of the Social Security Contributions and Benefits Act 1992, and directions and guidance issued by the Secretary of State (and guidance issued by the nominated appropriate officer for the area). Section 140(1) sets out factors relevant to decisions on crisis loans and community care grants and section 140(1A) does the same for budgeting loans. The system of decision-making in respect of budgeting loans has been simplified with the consequence that some of the provisions in section 140(1A) are unnecessary. Section 54 removes them. The possibility that a third party may meet the need under consideration will no longer be one of the factors relevant to decisions on budgeting loans (see section 140(1)(c) and (1A)(b)). The reference in section 140(1A) to budgeting loan criteria other than the applicant’s personal circumstances which may be specified by the Secretary of State in directions has been removed, as the directions no longer contain such criteria.

Section 55: Allocations from the Social Fund

263. Under section 168 of the Social Security Administration Act 1992 the Secretary of State allocates money out of which Social Fund payments may be made under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992.
264. The money available is limited. There is one budget for loans and one for grants. The budgets are currently allocated to Jobcentre Plus offices for the purpose of making payments of loans and grants to the customers in their geographical area. The intention is that there should be flexibility as to how allocations are made and, in particular, it should be clear that it is open to the Secretary of State to make a single allocation from which loans may be made nationwide, or to make an allocation for loans to be paid from a regional centre or in respect of a particular type of loan or grant. The amendments to section 168 in section 55 give that clarity and flexibility. There are other minor amendments to section 168, and an associated amendment to section 140 of the Social Security Contributions and Benefits Act, in paragraphs 2 and 3 of Schedule 7 to the Act (minor and consequential amendments).

Vaccine Damage Payments Act 1979

Section 56: Overseas vaccinations

265. Section 2(1)(a)(i) of the Vaccine Damage Payments Act 1979 provides that payments are normally only to be made under that Act in respect of vaccinations carried out in the United Kingdom or the Isle of Man. Section 2(5) of that Act currently provides that regulations shall specify cases where certain vaccinations given to members of Her Majesty's Forces and their families abroad are treated as though they are given in England for the purpose of entitlement to a vaccine damage payment.
266. *Subsection (2)* of section 56 substitutes the regulation-making power currently in section 2(5) of the Vaccine Damage Payments Act 1979 with an order-making power in new subsections (5A) and (5B) of that section. The order-making power in new subsection (5A) specifies that the Secretary of State may provide that, in such circumstances as may be specified in an order, the condition of entitlement in section 2(1)(a)(i) of the Vaccine Damage Payments Act 1979 does not need to be met in the case of vaccinations given under arrangements made by or on behalf of Her Majesty's forces, a specified government department, or any other body listed within the order. This means that the Secretary of State can provide that serving members of Her Majesty's forces, specified Crown servants and other people posted abroad and members of their families will be entitled to claim a vaccine damage payment through the Vaccine Damage Payments Act 1979 for disablement resulting from vaccinations given under specified arrangements.

Section 57: Appeals to appeal tribunal in Northern Ireland

267. This section provides for appeals tribunals in Northern Ireland to hear vaccine damage payments cases in Northern Ireland.
268. Section 3A(6) of the Vaccine Damage Payments Act 1979 defines an appeal tribunal for the purposes of an appeal under that Act to mean appeal tribunals constituted under Chapter 1 of Part 1 of the Social Security Act 1998. Sections 4 to 7 of the Social Security Act 1998 establish and provide the constitution for appeal tribunals. These provisions do not extend to Northern Ireland, in relation to which parallel provisions were made by the [Social Security \(Northern Ireland\) Order 1998 \(SI. 1998/1506 \(N.I. 10\)\)](#).
269. Tribunals established under the Northern Ireland Order were not brought within the scope of the definition in section 3A(6) of the Vaccine Damage Payments Act 1979. The consequence of this omission is that appeal tribunals constituted under the Northern Ireland legislation cannot hear appeals under the Vaccine Damage Payments Act 1979, although the legislation does permit the hearing of Northern Ireland cases by a Great Britain tribunal.
270. *Subsection (2)* of section 57 provides that appeals under the Vaccine Damage Payments Act 1979 are to be made to "an appropriate tribunal". It defines an appropriate tribunal as one constituted under the Social Security (Northern Ireland) Order 1998, where the claimant's address is in Northern Ireland. In all other cases the appropriate tribunal will be continue to be an appeal tribunal constituted under the Social Security Act 1998.
271. *Subsection (3)* provides for making procedural rules for Northern Ireland tribunals in relation to such appeals.
272. *Subsection (4)* enables the Department for Social Development in Northern Ireland to make provision by regulations in relation to the correction of a Northern Ireland appeal tribunal's errors and, where it appears reasonable, the setting aside of the tribunal decisions.
273. *Subsection (5)* provides that the Department for Social Development in Northern Ireland is to pay travel and related costs to those required to attend before a Northern

Ireland appeal tribunal and, where appropriate, to those who accompany the disabled person to such an appeal tribunal.

Compensation for pneumoconiosis etc.

Section 58: “Relevant employer”

274. The conditions of entitlement to a payment in the case of a person suffering from a disease to which the Pneumoconiosis etc. (Workers’ Compensation) Act 1979 applies are set out in section 2(1) of the Act. One of the conditions of entitlement is that all relevant employers have ceased to carry on business. “Relevant employer” is defined in section 2(3) as meaning any person by whom the person suffering from the disease was employed at any time during the period which he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement. If there are no relevant employers, a payment is made.
275. **Section 58** substitutes a new definition of “relevant employer” which is set out in Schedule 6. A relevant employer is any person by whom the person was employed in a prescribed occupation at any time during the period he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement.
276. The following periods of employment would be disregarded for the purposes of determining whether there is a relevant employer:
- those that ended more than 20 years before the date on which the employee’s claim for industrial injuries disablement benefit was determined (or, in the case of a claim from a dependant, where such a date does not exist, from the date of the death of the sufferer), and
 - in cases of diffuse mesothelioma only, any employment which began not more than 15 years before that date.
277. A person is not a relevant employer if, disregarding the periods of employment mentioned in the previous paragraph, the period during which he employed the person suffering from the disease:
- did not exceed 12 months, and
 - did not exceed 5 years in total and does not represent more than 25% of the total period during which the person was employed in a prescribed occupation (or 7 years and not more than 20% of the total period employed in a prescribed occupation).

Section 59: “Dependant”

278. A “dependant” of a person who, immediately before his death, suffered from a relevant disease can bring a claim under the Pneumoconiosis etc. (Workers Compensation) Act 1979. Section 3 of that Act sets out the meaning of a “dependant”. Section 3(1) of that Act sets out an order of priority for determining which “dependant” may bring a claim in each case.
279. **Section 59** amends the 1979 Act so that civil partners, children of civil partners, a person who was living with a sufferer as if husband and wife and a person who was living with a sufferer as if they were civil partners are included within the meaning of “dependant”.
280. **Section 59(3)** removes a provision which, in certain circumstances, prevents a person from bringing a claim as a “dependant” where he or she and a person suffering from a relevant disease were living together as husband or wife in Scotland.

Other

Section 60: Power to stop payment of allowances to care home residents

281. *Subsection (1)* of this section replaces section 67(2) of the Social Security Contributions and Benefits Act 1992, to provide for payment of attendance allowance to be stopped, with new subsections (2) to (7).
282. New subsection (2) confers a power to make regulations providing for circumstances in which payment of attendance allowance may be withdrawn from those resident in a care home, namely where any of the costs of any qualifying services provided in a care home are borne out of public or local funds under a specified enactment.
283. New subsections (3) to (7) define what is meant by a “care home”, “qualifying services” and an “enactment” for these purposes.
284. *Subsection (2)* of this section replaces section 72(8) of the Social Security Contributions and Benefits Act 1992, to provide for the care component of disability living allowance to be stopped, with new subsections (8) to (13).
285. New subsections (8) to (13) confer a power to provide by regulations for circumstances in which payment of the care component of disability living allowance may be withdrawn from those resident in a care home.

Section 61: Independent Living Funds

286. This section amends the Disability (Grants) Act 1993 which provides for the making of grants by the Secretary of State for Work and Pensions and the Department for Social Development in Northern Ireland to the Independent Living (Extension) Fund, the Independent Living (1993) Fund and Motability. The current Independent Living Funds are being replaced by a new Trust called The Independent Living Fund (2006) and this section will update the names of the funds to allow the Secretary of State and the Department for Social Development in Northern Ireland to make grants to the new fund.
287. This section provides a power to make consequential amendments to subordinate legislation.

Section 62: Medical Examinations

288. This section allows the Secretary of State and the eligible member of an appeal tribunal to refer a person to a health care professional for medical examination and report, rather than only allowing a referral to a medical practitioner. Such a reference can be made where considered necessary for the purpose of providing the Secretary of State with information for use in making a decision on entitlement to benefit or to aid the appeal tribunal’s determination of an appeal.
289. *Section 62(4)* also allows the eligible member of an appeal tribunal to specify the description of health care professional to whom a person is to be referred.
290. *Section 62(5)* inserts a definition of health care professional into section 39 of the Social Security Act 1998. It lists different types of regulated health care professions, together with a regulation-making power to add other regulated professions. Members of these professions, will, if they are approved by the Secretary of State, be health care professionals for the purposes of carrying out medical examinations.

General

Section 64: Northern Ireland

291. The Northern Ireland Act 2000 enables legislation for Northern Ireland to be made by Order in Council while devolved government is suspended. This section enables such Orders in Council to be made by negative resolution procedure if they are made only for purposes corresponding to the purposes of the Act.
292. Such Orders in Council are normally made at the Privy Council following Royal Assent to a Bill, usually later the same month or the following month. This practice has been adopted in order to enable parity of content and also, as far as possible, parity of timing, between legislation for Great Britain and for Northern Ireland. On restoration of the Northern Ireland Assembly, this section will cease to have practical effect, and corresponding legislation for Northern Ireland would be by Bill of the Assembly.

Section 67: Repeals

293. This section gives effect to Schedule 8, which repeals certain existing legislation as a consequence of the measures in the Act.

Schedules

Schedule 1 – Employment and support allowance: additional conditions

294. **Part 1** of this Schedule describes the conditions of entitlement to a contributory employment and support allowance relating to national insurance contributions. These are, in substance, the same as those that exist in relation to incapacity benefit now.
295. **Part 2** of this Schedule provides for certain additional conditions for entitlement to an income-related employment and support allowance. These are similar, though not identical, to the conditions of entitlement that currently apply to income support. For example, as well as there being no entitlement if income exceeds the applicable amount, **paragraph 6(1)(b) and (2)** of the Schedule provide that there is no entitlement to an income-related allowance if the claimant and their partner together have capital assets in excess of a limit set out in regulations, which is expected to be £16,000, i.e. the same as that which applies for the purposes of income support.
296. **Section 1(3)** provides that there is no entitlement to either a contributory allowance or an income-related allowance if the claimant is entitled to income support or any type of jobseeker's allowance. **Paragraphs 6(1)(c) and (d)** of this Schedule provide that there is no entitlement to an income-related employment and support allowance where the claimant is entitled to state pension credit or the claimant's partner is entitled to income support, state pension credit or an income-based jobseeker's allowance. This is to ensure that only one income-related benefit is paid to a household at any one time in order to prevent duplicate provision from public funds.
297. The Schedule further provides that there is no entitlement to an income-related employment and support allowance where a claimant or their partner is in paid (remunerative) work, as is the case with income support. Regulations will determine what amounts to remunerative work.
298. The Schedule also provides that there is no entitlement to an income-related allowance where a claimant is receiving education (**paragraph 6(1)(g)**). The Secretary of State may set out in regulations when a person is or is not to be treated as receiving education. The Secretary of State may also disapply this condition, so that, for example, certain disabled young people or disabled students may be entitled to an employment and support allowance (**paragraph 6(4)**).
299. **Paragraph 6(7)** provides a power for paragraph 6 of Schedule 1 to be modified where the claimant is a member of a polygamous marriage. This includes modifications in

respect of how benefit, income and capital in respect of the second and any subsequent spouse will be aggregated for the purposes of determining entitlement to an employment and support allowance. It is intended that the modifications made in respect of an employment and support allowance would be based on the income support rules relating to polygamous marriages.

Schedule 2 – Employment and support allowance: supplementary provision

300. This Schedule contains additional provisions in respect of the employment and support allowance. *Paragraph 1* confers powers to provide by regulations for claimants to be treated as having (or not having) limited capability for work, as well as to require capability for work to be determined afresh (or for the first time in the case of a person being treated as having limited capability for work, but who has never actually undergone an determination of capability for work). *Paragraph 9* makes equivalent provision for treating claimants as having (or not having) limited capability for work-related activity, as well as making equivalent provision for determining capability for work-related activity afresh (or for the first time for claimants being treated as having limited capability for work-related activity, but who have never actually undergone such a determination).
301. *Paragraph 2* provides that a person is not entitled to an employment and support allowance for a certain number of days at the beginning of a period of limited capability for work. It is intended that claimants will be required to wait for three days at the beginning of a period of limited capability for work, before becoming entitled to an employment and support allowance (as now under incapacity benefit). Paragraph 2 allows for exceptions whereby the waiting days do not need to be served, for example, where someone was previously entitled to another benefit, such as jobseeker's allowance, regulations may disapply the waiting days requirement to ensure that the claimant would not have a break in benefit entitlement.
302. *Paragraph 4* of this Schedule provides for periods of limited capability for work to be linked together and treated as one period of limited capability for work. Where periods are linked in this way then regulations can provide that a condition relating to an employment and support allowance that was satisfied in the earlier period of limited capability for work can be treated as satisfied in the later period of limited capability for work.
303. The Schedule also provides for regulations to prescribe circumstances where people are entitled to an employment and support allowance where they are not in Great Britain (for example, where they live abroad or are employed on a ship or oil rig) (*paragraphs 5 to 8*) and other additional matters.

Schedule 3 – Consequential amendments relating to Part 1

304. *Paragraph 1* amends the Social Work (Scotland) Act 1968 so that people in Scotland receiving income-related employment and support allowance will be exempted from liability to contribute towards the cost of their children being in care.
305. *Paragraph 2* amends the Education (Scotland) Act 1980 so that for the purposes of qualifying for free school meals families receiving income-related employment and support allowance in Scotland are treated the same as those receiving income support or income-based jobseeker's allowance.
306. *Paragraph 3* amends the Transport Act 1982 so that people receiving income-related employment and support allowance will be reimbursed the costs of obtaining a medical certificate for the exemption from having to wear a seat belt on medical grounds.
307. *Paragraph 4* amends the Legal Aid (Scotland) Act 1986 so that recipients of income-related employment and support allowance in Scotland will have the same entitlements

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

to free legal advice and assistance as people receiving income support and income-based jobseeker's allowance.

308. *Paragraph 5* amends the Income and Corporation Taxes Act 1988 so that payments of sums in respect of maintenance made under section 23 will be treated the same way for tax liability purposes as other payments made under corresponding provisions for income support and jobseeker's allowance.
309. *Paragraph 6* amends the Children Act 1989 so that in England and Wales people receiving income-related employment and support allowance will be exempted from liability to contribute towards the costs of maintaining their children in care, services and assistance provided to children in need and their families and other provision and support.
310. *Paragraph 7* amends the Child Support Act 1991 so that an income-related employment and support allowance will be treated the same way as income-based jobseeker's allowance and income support for the purposes of applications, reduced benefit decisions and fees under both the old child support scheme and the modified scheme introduced by the Child Support, Pensions and Social Security Act 2000 and calculation of child support maintenance in the old scheme.
311. *Paragraph 8* amends the Criminal Justice Act 1991 so that the Secretary of State will be able to make regulations enabling fines or compensation orders imposed on an offender entitled to an income-related employment and support allowance to be deducted from that benefit.
312. *Paragraph 9* amends the Social Security Contributions and Benefits Act 1992 so that earnings factors will be calculated the same way for an employment and support allowance as jobseeker's allowance for the purpose of satisfying the contributions conditions, and also so that an employment and support allowance recipient of either the support component or the work-related activity component will be entitled to a Christmas Bonus. The paragraph also makes a number of other consequential amendments to the Act.
313. *Paragraph 10* amends the Social Security Administration Act 1992 so that an employment and support allowance will be subject to the usual provisions that relate to other benefits in respect of claims and overpayments and makes other consequential changes. It also makes provision about the annual up-rating of the rates of an employment and support allowance.
314. *Paragraph 10(10)* inserts a reference to income-related employment and support allowance into section 105 of the Social Security Administration Act 1992 thus ensuring that the offence provided for in that section applies to those in receipt of income-related employment and support allowance. The offence provided for in section 105 currently applies to those in receipt of income support on the grounds of incapacity.
315. *Paragraph 10(23)* inserts a new section 159C into the Social Security Administration Act 1992 which makes provision, like that in relation to other benefits set out in sections 159, 159A and 159B of that Act, which sets out the circumstances, such as the annual up-rating of benefits, where the level of a person's employment and support allowance changes without a decision being made by the Secretary of State to supersede the decision on their award.
316. *Paragraph 10(24)* inserts a new section, section 160B, into the Social Security Administration Act 1992 to provide for implementation of increases in employment and support allowance due to attainment of particular ages, without a decision being made by the Secretary of State to supersede the decision on their award.
317. *Paragraph 11* amends the Local Government Finance Act 1992 so that in England and Wales and in Scotland arrears of unpaid council tax can be recovered by deductions from employment and support allowance.

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318. *Paragraph 12* makes consequential amendments to the Jobseekers Act 1995. In particular it amends section 1 of the Act to provide that one of the conditions of entitlement to a jobseeker's allowance is that the claimant does not have limited capability for work instead of the current condition that the claimant "is capable of work". Further amendments make it clear that the question of whether a person has or does not have limited capability for work is to be determined in accordance with the provisions of Part 1 of this Act.
319. *Paragraph 13* amends the Pensions Act 1995 to include the Welfare Reform Act 2007 in the list of enactments to which the rules for determining pensionable age apply for the purposes of the definition in section 1(6).
320. *Paragraph 14* amends the Children (Scotland) Act 1995 so that in Scotland people receiving income-related employment and support allowance will be exempted from liability to repay financial assistance provided to children or their families.
321. *Paragraph 15* amends the Employment Tribunals Act 1996 so that income-related employment and support allowance can be recouped from certain awards made by employment tribunals.
322. *Paragraph 16* amends the Education Act 1996 so that in England and Wales people receiving income-related employment and support allowance will be entitled to free school meals, milk and the remission of other charges.
323. *Paragraph 17* makes consequential amendments to the Social Security Act 1998. In particular, the amendments apply the provisions relating to the making of benefit decisions by the Secretary of State, the supersession and revision of decisions, and the rights to independent appeal to an employment and support allowance.
324. *Paragraph 18* amends the Welfare Reform and Pensions Act 1999 so that the powers enabling the Secretary of State to share certain information with local authorities and others in connection with the administration of benefits will apply to information relating to an employment and support allowance.
325. *Paragraph 19* amends the Immigration and Asylum Act 1999 so that people could not receive income-related employment and support allowance whilst subject to immigration control.
326. *Paragraph 20* amends the Child Support, Pensions and Social Security Act 2000 so that the provisions relating to penalties for breaching a community order will apply to income-related employment and support allowance.
327. *Paragraph 21* amends the Local Government Act 2000 so that the provisions on data sharing where a grant for welfare services is or will be paid to the benefit recipient would apply to income-related employment and support allowance.
328. *Paragraph 22* amends the Adults with Incapacity (Scotland) Act 2000 so that in Scotland employment and support allowance will be exempted from the matters to be managed on behalf of a person incapable of managing their own affairs.
329. *Paragraph 23* amends the Social Security Fraud Act 2001. In particular, the amendments apply the provisions relating to the loss of benefit for the commission of offences and the provision of benefit for the families of those who have lost entitlement due to benefit offences to employment and support allowance.
330. *Paragraph 24* amends the Income Tax (Earnings and Pensions) Act 2003 so that a contributory employment and support allowance is treated the same way for tax purposes as incapacity benefit.

Schedule 4 - Transition relating to Part 1

331. This Schedule provides for transitional arrangements for those people who are on existing benefits. Existing benefits are incapacity benefit (which includes transitional awards of incapacity benefit), severe disablement allowance and income support (where appropriate).
332. *Paragraph 1* provides a general transitional power, allowing the Secretary of State to make such provision, by regulations, as he considers necessary or expedient in connection with the coming into force of Part 1 or the transition to employment and support allowance. The remaining paragraphs of this Schedule provide specific powers relating to the transition to the new allowance.
333. *Paragraphs 2 to 4* provide for regulations to specify when a claim can be treated as a claim for an existing benefit and when a claim can be treated as a claim for an employment and support allowance. Regulations may make provisions that a claim for an existing benefit made before the day that the provisions in respect of an employment and support allowance come into effect can be treated as a claim for an employment and support allowance.
334. Regulations may provide that, after the appointed day (i.e. the day on which the provisions about an employment and support allowance take effect), existing benefits cannot be claimed and an employment and support allowance is claimed instead. *Paragraph 3(c)* enables regulations to provide for a claim to an employment and support allowance to be treated as a claim for existing benefit. This power may be used, for example, when someone's benefit is backdated to a period before the appointed day.
335. *Paragraphs 5 and 6* relate to claims that are made by those who had previously been entitled to an existing benefit, who subsequently ceased to be entitled to that benefit, but who could have returned to benefit because they would have been covered by linking rules. It covers those cases where the claimant's original claim was for an existing benefit, but their subsequent claim is made after the provisions in relation to employment and support allowance have come into force. Regulations may provide that these cases may be awarded an employment and support allowance on terms which match wholly or partly the terms of the existing benefit.
336. *Paragraph 7* provides for regulations to make provision for the migration of existing claimants onto an employment and support allowance. Regulations could prescribe the timing, conditions, kind and amount of any such entitlement to an employment and support allowance in such cases. Regulations could also make provision for determining whether a claimant has limited capability for work-related activity (i.e. that they would be entitled to the support component of an employment and support allowance). *Paragraph 8* provides for regulations to make provisions for the conditions of continuing entitlement, or for reviewing or terminating such awards.
337. *Paragraph 9* provides for regulations to make provision for claimants entitled to a transitional allowance immediately before reaching pensionable age to be treated as having satisfied the conditions for entitlement to state pension in the Contributions and Benefits Act.
338. *Paragraph 10* provides for regulations which can modify the effect of section 150 of the Contributions and Benefits Act in relation to up-rating of incapacity benefit or severe disablement allowance in relation to tax years after the appointed day.

Schedule 5 – Minor and consequential amendments relating to Part 2

Billing authorities

339. The measure in *paragraphs 1, 8 and 11* is a minor technical amendment to primary legislation (Social Security Contributions and Benefits Act 1992, Social Security Administration Act 1992 and Local Government etc. (Scotland) Act 1994) in order

to clarify and standardise references in this legislation to certain public authorities concerned with the administration of council tax benefit. It ensures that all references to relevant authorities administering council tax benefit in England and Wales are to "billing authorities" and those to relevant authorities in Scotland are to "local authorities in Scotland". *Paragraph 8* is retrospective and will be taken to have had effect from 1 April 1997, the date of coming into force of section 140A of the Social Security Administration Act 1992.

Administration of housing and council tax benefits

340. *Paragraphs 5 to 7 and 9* amend sections 139E, 139F, 139G and 140B (5A) of the Social Security Administration Act 1992, to take account of the more flexible powers of direction contained in section 39. The amendments enable the Secretary of State to require information he needs from a local authority to decide whether it had taken the action specified in the direction, in the same way as he can decide on whether specified standards have been obtained. The amendments also provide for the Secretary of State to take the same enforcement action when an authority fails to comply with a direction on actions, as he can when an authority fails to deliver on standards set down in a direction.

Services benefits

341. Local authorities who administer housing benefit and council tax benefit have discretionary powers to operate a local scheme to disregard up to the full amount, or any part of a war disablement pension and war widow's pension, which is not already subject to a statutory disregard of £10 a week. This power to disregard war disablement pensions and war widow's pensions will be provided by sections 134(8) (a) and 139(6) (a) of the Social Security Administration Act 1992. It is not subject to any limit on how much local authorities can spend.
342. The current legislation also provides at sections 134(8)(b) and 139(6)(b) of the Social Security Administration Act 1992 that the local authority may choose to disregard other income as part of their local scheme, but only where the source of that income has been prescribed by the Secretary of State. For example, this power is currently used to disregard income of war widowers and certain war widows who are not covered by the definition of war widow's pension in the primary legislation. However, for these types of disregard the legislation provides a spending limit on the amount of prescribed income that local authorities are able to disregard.
343. *Paragraphs 3, 4, 10 and 14 of Schedule 5* relate to services benefits. *Paragraphs 3 and 4* will amend section 134(8)(a) and 139(6)(a) of the Social Security Administration Act 1992 to enable the Secretary of State to prescribe in secondary legislation which pensions are to be included within the definitions of "war disablement pension" and "war widow's pension". A "war widow's pension" is defined to include corresponding pensions payable to a widower or surviving civil partner. This ensures that war widowers and certain war widows whose entitlement for being included within a local authority discretionary scheme is currently provided through prescription by the Secretary of State is covered by the primary legislation and thereby avoids any potential indirect discrimination by these pensions being subject to a spending limit as is currently the case. The amendment also allows the Secretary of State the flexibility to add further pensions to the definitions of qualifying service pensions, without the need for further amendments to primary legislation.

Local housing allowance

344. *Paragraph 12* makes consequential changes to section 122(5) of the Housing Act 1996 as a result of the inclusion of provisions providing for referrals to rent officers and use of their determinations in the calculation of appropriate maximum housing benefit in the proposed new section 130A(3) and (4) in section 30.

Revisions of decisions and appeals

345. *Schedule 5, paragraph 13* amends Schedule 7 of the Child Support, Pensions and Social Security Act 2000.
346. The decision making process in respect of housing benefit and council tax benefit was amended in the Child Support, Pensions and Social Security Act 2000. This is set out in Schedule 7 and section 68 of the 2000 Act. An amendment is made because the relevant provision in Schedule 7 does not achieve the policy intention.
347. An overpayment comes into existence when a decision is either revised or superseded and the revised or superseded decision is less favourable. The benefit paid under the old decision, which is more than the entitlement under the new decision, is the overpayment and is recoverable. Such decisions should be capable of being revised and/or appealed. However, recent case law has precluded the former from being an option. This defeats the policy intention of changing, as quickly as possible, decisions which are wrong particularly if they are adverse to the claimant. As revision is not available, the claimant has no option but to make an appeal. The amendment rationalises the position.

Schedule 6 – Schedule to be inserted in the Pneumoconiosis etc. (Workers’ Compensation) Act 1979

348. Please see the explanation under section 58 above.

Schedule 7 – Minor and consequential amendments relating to Part 4

349. *Schedule 7* makes provision for minor and consequential amendments to the Vaccine Damage Payments Act 1979, the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 and the Social Security Act 1998 which arise from the provisions of Part 4 of the Act.