

WELFARE REFORM ACT 2009

EXPLANATORY NOTES

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 Act gives effect to those proposals that do.
5. This Act 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 Act 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 – General
7. The following paragraphs summarise those Parts, and are followed by detailed explanations of the individual sections and Schedules.

Part 1 – Social security

8. The aim of much of this Part of the Act 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 Act 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

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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 Act 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, for whom an immediate return to work is not appropriate, but is a genuine possibility with time, encouragement and support. 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. Lone parents will be required to

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undertake differing levels of activity, depending on the age of their youngest child. Where the child is aged;

- under one, no activity will be required;
 - over one but under three, the parent will be required to attend a WFI at regular intervals;
 - three to under seven, the parent will be required to undertake work-related activity.
17. The Act includes provision that will ensure lone parents and partners of benefit recipients in this “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.
 18. 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.
 19. The White Paper set out the Government’s view that for a number of people the biggest barrier to work was their drug use. *Section 11 and Schedule 3* provide for problem drug users to be directed to make, and comply with, a rehabilitation plan. In some circumstances they could also be required to undergo drug testing.
 20. 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. A further provision extends the mobility component of disability living allowance to certain people with severe visual impairments.
 21. This Part of the Act 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 is without the resources to meet their immediate, urgent needs.
 22. 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 external providers, including credit unions or 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 legislate for this proposal, and provisions are therefore included in the Act allowing for the making of ‘external provider social loans’.
 23. 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 in many cases remove the need for people to apply for social fund crisis loans.

24. **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. **Section 25** 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

25. 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.
26. **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 **section 39**) are provided by relevant authorities (defined in **section 40**). 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

27. 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 impose a 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. These provisions will be piloted for a two year period.
28. This Part also includes amendments to the current statutory provisions relating to information offences.

Part 4 – Birth registration

29. 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 Act 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.
30. 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.

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31. 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.
32. 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.
33. 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.
34. 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.
35. The amendments contain provisions which 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 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 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.
36. The new provisions 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.
37. 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

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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 in fact no longer married at the time of the child's 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.

38. 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.
39. 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.
40. 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 – General

41. This Part contains sections dealing with consequential amendments, repeals and revocations of other legislation, financial provisions, the extent of the Act, commencement of provisions of the Act, and the short title.