

# WELFARE REFORM ACT 2009

---

## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 1: Amendments connected to section 4*

##### **Part 1**

273. *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.
274. *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**

275. 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. *Subsection (3)* provides that a lone parent with a child aged under one will not be required to undertake work-focused interviews.

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

276. 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.
277. *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.
278. 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 interviews**

279. This provision requires a person, in prescribed circumstances, to be provided with an action plan. In preparing an action plan, the Secretary of State must have regard to the well-being of any child who may be affected by it.
280. *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**

281. This makes provision for jobseeker's directions to require the claimant to take part in any reasonable activity, particularly some form of activity related to finding employment, 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 or a jobseeker's agreement.
282. 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.
283. *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.
284. Claimants who fail to comply with these requirements may incur a sanction.

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

285. 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. This does not apply if the claimant is a lone parent with a child aged under three (*subsection 18B(1)(b) refers*). 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.
286. *Subsection (4)* provides that regulations made under this section must provide that lone parents are entitled to restrict the hours for which they will be required to undertake work-related activity. For example they could restrict such activities to their child's hours of schooling or formal childcare.
287. *Subsection (5)* 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.
288. *Subsection (6)* provides that a person cannot be required to undertake medical or surgical treatment to meet their work-related activity requirement.
289. Claimants who fail to comply may incur a sanction.
290. *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**

291. *Section 18C* to the Jobseekers Act 1995 defines the circumstances in which claimants may be sanctioned for failing to satisfy specified 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.

292. 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**

293. *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.
294. Regulations can prescribe circumstances in which a person can be considered not to have left employment voluntarily.
295. 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.
296. *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.
297. *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**

298. *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.
299. *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.
300. *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 for claimants not required to meet the jobseeking conditions. The sanction period must be at least one week and not more than 26 weeks.
301. *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 for claimants required to meet the jobseeking conditions.

## **20: Exemptions from section 19**

302. *New section 20* provides for regulations to be made to prescribe possible exemptions from *new section 19*. *Paragraph 7 of Schedule 1* replaces sections 20 and 20B of the Jobseekers Act 1995 with new provisions.

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

303. *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.
304. 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**

305. *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*.
306. *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.
307. *Paragraph 15 of Schedule 1* amends section 14 of the Jobseekers Act to provide that persons in prescribed circumstances will not be affected by the current provisions that 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.
308. *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.
309. *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.
310. *Paragraphs 19 to 22 of Schedule 1* make further minor amendments to the Jobseekers Act 1995 to take account of the new provision.
311. *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.

312. 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.
313. 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.
314. 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 jobseeker's allowance. These rules are similar to those that apply in relation to income support.

## **Part 2**

315. *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***

316. *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**

317. 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**

Persons dependent on drugs etc.

318. In *paragraph 1*, *sub-paragraphs (1), (2) (3) and (4)* 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.
319. *Paragraph 2* is a regulation-making power which may require someone to undertake a substance-related assessment. The substance-related assessment is divided into two stages - an initial assessment followed by an interview a few days later to discuss matters arising. 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.
320. 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. The requirement for persons to attend an assessment or interview will disapply where they agree to submit to a drugs test which then produces a negative result. *Sub-paragraphs (7) and (8)* set out the types of test that can be prescribed in regulations.



***Paragraph 1 to 3: supplementary***

321. *Paragraph 4* applies to information provided by claimants under *paragraphs 1 to 3*. It ensures that information or evidence provided by claimants about their drug possession, or drug use cannot be used against them in criminal proceedings unless they choose 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.

**Voluntary and mandatory rehabilitation plans**

322. *Paragraph 5* provides a regulation-making power providing for claimants to have the jobseeking conditions suspended and to receive a treatment allowance when they are prepared to agree to receive treatment in accordance with a voluntary rehabilitation plan. *Paragraph 6* provides regulation-making powers in respect of problem drug users who do not agree to receive treatment in accordance with a voluntary rehabilitation plan. This group will be required to comply with a mandatory rehabilitation plan.
323. The mandatory rehabilitation plans ensure that all identified problem drug users who do not voluntarily sign up to a rehabilitation plan and treatment are required to comply with a mandatory education programme. *Sub-paragraph (6)* provides for the agreement, form, signature, review, variation and revocation of rehabilitation plans. *Sub-paragraph (7)* provides that a person is not required to submit to certain types of treatment without consent. Regulations may also be made which will require claimants to provide information or evidence about their compliance with the plan.

**Sanctions**

324. *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 or a drugs interview, take part in a drug test or comply with a mandatory rehabilitation plan. What 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.
325. *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.

**Information**

326. *Paragraph 8* enables the Secretary of State to make regulations authorising information to be obtained from the police, the probation service or other prescribed body for the purposes of Schedule 3. Regulations may also make provision allowing the Secretary of State to share this information with other relevant persons. The regulation making power expressly prevents information about a person's medical or social work history being disclosed to the Department for Work and Pensions by either the prison service or the probation service. Restrictions apply to limit the persons to whom the Department may pass on the information obtained and to restrict subsequent use of the information by them to use only for the purposes of administering Schedule 3. The only exceptions to this are where disclosure is supplied for the purposes of court proceedings, or is required under other legislation.
327. *Paragraph 9 of new Schedule A1* provides a definition of "drug" and also provides a power to set out in regulations which drugs the provisions described above will apply to.
328. The jobseeking conditions are defined as being actively seeking and available for work and having agreed a Jobseeker's Agreement.

**Power to extend provisions to alcohol**

329. *Paragraph 10* would allow the Secretary of State to make regulations extending these provisions to persons who misuse alcohol.

**Consequential amendments**

330. *Paragraphs 3 and 4 of Schedule 3* make consequential amendments to the Jobseekers Act 1995. *Paragraph 3(2)* would enable the drugs provisions to be introduced gradually across different areas of Great Britain. Under *sub-paragraph (3)* 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 fails to comply with a requirement imposed by regulations under *Schedule A1*, for example by not complying with the terms of a rehabilitation plan.

**Report on initial operation of drugs provisions**

331. *Paragraph 5 of Schedule 3* provides that the Secretary of State must 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.

**Part 2 – Employment and support allowance**

332. *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 Jobseekers 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.
333. 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**

334. *Paragraph 8 of Schedule 3* makes amendments to the Welfare Reform Act 2007 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 provides for the affirmative procedure to apply to all regulations made under the new *Schedule 1A* inserted by *paragraph 7*.
335. *Paragraph 9* provides for the Secretary of State to report on the operation of regulations made under *Schedule 1A* to the Welfare Reform Act 2007 as in *paragraph 334* above.

***Schedule 4: Loss of benefit provisions: further amendments***

336. *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 *section 24*.
337. *Paragraph 9 of Part 2 of Schedule 4* makes consequential amendments to the Social Security Administration Act 1992. *Paragraph 10* 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 51: consequential amendments etc.***

338. *Paragraph 3* amends *section 39C* of the Child Support Act 1991 ('the 1991 Act') to reflect the making of disqualification orders by the Commission.
339. *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.

- 340. *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.
- 341. Subsections (3) to (5) of section 39E are repealed.
- 342. *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.
- 343. *Paragraphs 6 to 8* make other minor amendments.

#### ***Schedule 6: Registration of births***

- 344. References to ‘the 1953 Act’ are references to the Births and Deaths Registration Act 1953.
- 345. *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.
- 346. *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).
- 347. *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 parents.
- 348. 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*.
- 349. *Paragraph 4* inserts new *sections 2A, 2B, 2C, 2D and 2E* into the 1953 Act.
- 350. *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.

351. 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*.
352. 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.
353. 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.
354. 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 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);
  - the child's father has died;
  - the mother does not know the identity of the father;
  - the mother does not know the whereabouts of the father;
  - the father lacks capacity, within the meaning of the Mental Capacity Act 2005);
  - 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.
355. In addition, *subsection (4)(g)* includes a power for further exemptions to be set out in regulations.
356. 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.
357. 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.
358. *Subsection (6)* enables regulations to prescribe that the mother's duty under new *section 2A* of the 1953 Act to sign the register will have effect as a duty to sign a prescribed declaration. The practical effect is that the mother will not have to return

to the register office to discharge her duty to sign the register once the alleged father has been contacted and the prescribed time has been reached when the registrar can register the birth.

- 359. *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.
- 360. The provisions relating to fathers also (where relevant) relate to women who are parents by virtue of section 43 of the HFE Act.
- 361. 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.
- 362. 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. Where the regulations provide for an unmarried father, acting separately from the mother, to sign a prescribed declaration, the regulations may provide that the signing by him of the declaration is to be treated as the signing by him of the register.
- 363. The provisions relating to fathers in this section also apply to women who are parents by virtue of section 43 of the HFE Act.
- 364. *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.
- 365. 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. As in *section 2C* where regulations provide for an unmarried father, acting separately from the mother, to sign a prescribed declaration, the regulations may provide that the signing by him of the declaration is to be treated as the signing by him of the register. If the mother does not acknowledge the man to be the father, then his details will not be entered on the register.
- 366. The provisions relating to fathers in this section also apply to women who are parents by virtue of section 43 of the HFE Act.
- 367. 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.

368. 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 have agreed 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.
369. 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.
370. 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.
371. 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.
372. *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.
373. *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.
374. *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.
375. *Paragraph 10* contains a number of amendments to section 9 of 1953 Act in consequence of new *sections 2B, 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.
376. *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.
377. *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.
378. 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.

379. *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).
380. *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.
381. *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.
382. 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.
383. *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.
384. 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.
385. 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).
386. 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.
387. 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.

388. *Paragraph 14* amends section 34(3) of the 1953 Act to take account of the repeal of section 6 of the 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.
389. *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 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). A person who commits any of the offences under section 36 of the Act, in respect of any requirement for information from the registrar relating to the birth, shall be liable on summary conviction for a fine not exceeding level 1 on the standard scale (currently a maximum of £200).
390. 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(1), (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.
391. *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.
392. *Paragraph 18* makes a consequential amendment arising from the amendments to section 39, which exclude from section 39 regulations made under *sections 2B(1), (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.
393. *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.
394. 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.



395. *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) subsections (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.
396. 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.
397. 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.
398. *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.
399. *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***

400. This Schedule provides for repeals and revocations consequential on the provisions in the Act.