

## **WELFARE REFORM BILL**

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### **EXPLANATORY NOTES ON LORDS AMENDMENTS**

#### **INTRODUCTION**

1. These explanatory notes relate to the Lords Amendments to the Welfare Reform Bill, as brought from the House of Lords on 3 November 2009. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 32, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Amendment 2, which was opposed by the Government.

#### **COMMENTARY ON LORDS AMENDMENTS**

##### ***Lords Amendments 1, 24, 60, 92 and 95 to 102***

5. Lords Amendment 24 would repeal sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000. This would have the effect of bringing to an end a pilot scheme which has been in operation in Derbyshire, Hertfordshire, Teesside and West Midlands since October 2001. In these areas benefit sanctions have been applied to offenders found to be in breach of specified community orders. The pilot scheme applies to offenders in the pilot areas who are aged between 18 and 59 and receiving jobseeker's allowance, income support or certain training allowances. Lords Amendments 1, 60, 92 and 95 to 102 make consequential amendments to clause 1 of, and Schedules 2 and 7 to, the Bill.

***Lords Amendment 2***

6. Lords Amendment 2 would amend clause 2 to provide that financial sanctions could not be imposed upon a single parent in receipt of income support with a child under five if they failed to undertake work-related activity. The amendment does not define what is meant by single parent or financial sanction, terms which are not defined elsewhere in legislation.

***Lords Amendments 3 to 7, 11, 12, 53, 55 to 57, 59, 90, 91 and 94***

7. Lords Amendments 3 and 4 would amend clause 2 of the Bill, which inserts into the Social Security Administration Act 1992 a new section making provision for income support claimants to undertake work-related activity. The amendments would ensure that lone parents on income support with a child under three cannot be required to undertake work-related activity. Lords Amendments 55 and 56 would make similar amendments to Schedule 1 to the Bill, which inserts into the Jobseekers Act 1995 a new section that makes provision for income support claimants to move onto modified jobseeker's allowance, following the abolition of income support.
8. Lords Amendment 5 would introduce into the new section 2D of the Social Security Administration Act 1992 (inserted by subsection (2) of clause 2) a right for lone parents who are entitled to income support to restrict the hours for which they will be required to undertake work-related activity. This power could be used to enable them to restrict such activities to their child's hours of schooling or formal childcare. Lords Amendment 57 would make similar provision in relation to modified jobseeker's allowance. Lords Amendments 6 and 59 would provide definitions of "lone parent".
9. Lords Amendment 11 would insert a new clause amending section 124 of the Social Security Contributions and Benefits Act 1992 to ensure that lone parents with a child under seven are a prescribed category of person entitled to income support. It would also amend section 2A of the Social Security Administration Act 1992 to ensure that lone parents on income support with a child under one would not be required to take part in a work-focused interview and that lone parents on employment and support allowance with a child under three would not be required to undertake work-related activity. Further, the new clause would amend sections 12, 13 and 24 of the Welfare Reform Act 2007, to ensure that lone parents on employment and support allowance with a child under one would not be required to take part in a work-focused interview and that lone parents on employment and support allowance with a child under three will not be required to undertake work-related activity. Lords Amendment 11 also contains provision that would allow lone parents receiving employment and support allowance to restrict the hours they are required to undertake work-related activity. As with Lords Amendment 5, these powers would be used to enable them to restrict the activities they will

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undertake to their child's hours of schooling or formal childcare.

10. Lords Amendment 12 would amend clause 3 of the Bill to ensure that lone parents with a child under seven are a prescribed category of person entitled to modified jobseeker's allowance, once income support is abolished.
11. Lords Amendment 53 would amend Schedule 1 of the Bill to replicate the position in income support for those lone parents on modified jobseeker's allowance, namely ensuring that those with a child under one will not be required to take part in a work-focused interview.
12. Lords Amendments 90, 91 and 94 make consequential changes to the repeals in Schedule 7 to the Bill.

***Lords Amendments 8, 27 and 54***

13. Lords Amendments 8, 27 and 54 would introduce into section 2E of the Social Security Administration Act (inserted by subsection (2) of clause 2) and Schedule 1 to the Welfare Reform Bill, section 9 of the Jobseeker's Act 1995 and section 14 of the Welfare Reform Act 2007 a requirement that the well-being of the child should be taken into account when agreeing the activities that a parent will undertake as part of an action plan or jobseeker's agreement in order to help the parent move closer to or into work.

***Lords Amendments 9, 15 and 58***

14. Lords Amendments 9, 15 and 58 would ensure that claimants of employment and support allowance, income support and modified jobseeker's allowance cannot be required to undertake medical or surgical treatment to meet their work-related activity requirement. These amendments are driven by the need to make this position clear in relation to employment and support allowance, where customers will have a health condition or disability. To ensure a consistent approach across income support and modified jobseeker's allowance recipients, the amendments would ensure that the position is the same for each of these groups.

***Lords Amendments 10, 26 and 78***

15. Lords Amendments 10, 26 and 78 would provide that where regulation-making powers in the Social Security Administration Act 1992, the Jobseekers Act 1995 and the Welfare Reform Act 2007 enable circumstances to be prescribed that constitute good cause for failing to undertake mandatory activities (and just cause for leaving employment) the regulations must expressly state that availability of childcare and the claimant's physical or mental health or condition will always be considered.

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***Lords Amendments 13 and 14***

16. Lords Amendment 13 would ensure that an order made under clause 7(2) providing for section 124 of the Social Security Contributions and Benefits Act 1992 (entitlement to income support) to cease to have effect is subject to the affirmative resolution procedure. This gives effect to a recommendation of the House of Lords Delegated Powers and Regulatory Reform Committee. Amendment 14 would provide that any orders making consequential or transitional provisions or savings under clause 7(4) associated with the abolition of income support remain subject to the negative resolution procedure, except where such provision is contained within the same order as provision made under clause 7(2). In the latter case, the order would be subject to the affirmative resolution procedure.

***Lords Amendment 16***

17. Lords Amendment 16 would remove clause 13, which was added to the Bill at Commons Report stage, and which duplicates clause 12 which was also added at Commons Report Stage. Clauses 12 and 13 would both extend entitlement to the higher rate mobility component of disability living allowance – in clause 12 to persons who are severely visually impaired and in clause 13 to persons who are blind. Clause 12 reflects the Government's intention that this entitlement should apply to those with a severe visual impairment. What would qualify as a severe visual impairment for this purpose would be prescribed in regulations.

***Lords Amendments 17 and 18***

18. Lords Amendment 17 would provide that the Secretary of State's power under new section 138(2A) of the Social Security Contributions and Benefits Act 1992, inserted by clause 16 of this Bill, to restrict the making of social fund loans in areas where external provider social loans are in place is to be exercisable by regulations rather than by social fund directions. Lords Amendment 18 would make regulations about the unauthorised disclosure of information in relation to external provider social loans or community care grants subject to the affirmative procedure, rather than negative resolution procedure, if the regulations create new offences or increase penalties. These amendments give effect to recommendations of the House of Lords Delegated Powers and Regulatory Reform Committee.

***Lords Amendments 19 to 22***

19. Lords Amendments 19 and 20 would exclude housing benefit from the new provisions about payments on account of a benefit in new subsections (1A) and (1B) of section 5 of the Social Security and Administration Act 1992. A separate power similar to that under which payments on account are currently

made would be preserved for housing benefit alone. Lords Amendment 21 would remove the power of the Secretary of State to prescribe circumstances in which a payment on account would not be set against subsequent payments of benefit. The Secretary of State would be unable to prescribe that such payments would be irrecoverable. Lords Amendment 22 makes a consequential change by inserting a reference to new subsection (1ZA) of section 5 of the Social Security Administration Act 1992 (which would be inserted by Lords Amendment 19 into section 7 of that Act).

***Lords Amendments 23 and 52***

20. Lords Amendment 23 would insert a new clause which would enable the Secretary of State by order to up-rate social security benefits in the absence of a positive rate of inflation. The power would apply for a single year only. Amendment 52 would insert a reference to the new clause into clause 51(1) of the Bill, allowing it to come into force on the day the Act is passed.

***Lords Amendment 25***

21. Lords Amendment 25 would insert a new clause into the Bill. This would insert into Schedule 1 to the Jobseekers Act 1995 a new provision relating to those who have been victims of, or threatened with, domestic violence. The Secretary of State would be required to exercise existing regulation-making powers to provide that victims of domestic violence will, for a period of 13 weeks, be able to start or continue a claim to jobseeker's allowance without: being available for employment; having entered into a jobseeker's agreement; or actively seeking employment. Regulations made by virtue of the new provision will be subject to the affirmative procedure, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.

***Lords Amendments 28, 61 to 64, 66, 69 to 73, 75, 77 and 80***

22. Lords Amendments 61 to 64, 66, 69 to 73, 75, 77 and 80 would amend Schedule 3 to the Bill, which confers powers on the Secretary of State to make regulations imposing requirements on persons claiming jobseeker's allowance or employment and support allowance who are dependent on or have a propensity to misuse drugs.
23. The set of amendments relating to each benefit would (i) divide the substance-related assessments into two stages - an initial assessment followed by an interview a few days later to discuss matters arising; (ii) disapply a requirement for persons to attend an assessment or interview where they agree to submit to a drugs test which then produces a negative result; and (iii) require all individuals to sign up to a rehabilitation plan if they do not do so voluntarily. The amendments concerning rehabilitation plans would ensure that all identified problem drug users who do not voluntarily sign up to a

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rehabilitation plan and treatment would be required to attend the above two stage assessment and then sign up to a rehabilitation plan that would include a mandatory education programme.

24. Lords Amendment 28 would make a consequential change to clause 25 of the Bill.

***Lords Amendments 29 and 51***

25. Lords Amendment 29 would insert into the Bill a new clause requiring the Secretary of State, by order, to rename council tax benefit as council tax rebate, either generally or in particular cases. Such an order could make consequential amendments to references to council tax benefit in other legislation and documents, and could make different provisions in different areas. The first order made under this new clause would be subject to the affirmative procedure. Lords Amendment 51 makes a consequential change to the extent provisions in clause 50.

***Lords Amendments 30 to 33, 38 and 44 to 49***

26. Lords Amendment 30 would add the provision of residential accommodation to disabled people to the list of matters (contained in clause 31(2)) to which a service must relate in order to be a relevant service for the purposes of the right to control. This amendment ensures that the relevant matters include all elements of adult community care services.
27. Lords Amendment 31 would provide that the exclusion of community care services from the definition of relevant services is to be subject to the disapplication of that exclusion for the purpose of pilot schemes (which would be inserted by Lords Amendment 38 and to the order-making power to enable the permanent removal of the exclusion of community care services following the evaluation of the pilots or the issuing of directions (which would be inserted by Lords Amendment 44).
28. Lords Amendments 32, 33, 48 and 49 would make related amendments of the interpretative provisions in Part 2 of the Bill.
29. Lords Amendment 38 would insert in clause 36 a new subsection (3A), which would enable pilot schemes to apply to adult community care services.
30. Lords Amendment 44 would confer an order-making power that would enable the exclusion of community care services to be fully removed. In relation to England, this power would be exercisable only if either of two conditions were met. One condition is that the Secretary of State has previously made a pilot scheme and has published an evaluation of that scheme. The alternative condition is that the Secretary of State has previously given directions under

community care legislation that were intended to give disabled people greater choice and control.

***Lords Amendments 34 to 37***

31. Lords Amendment 34 would change the wording of clause 33(2). The amended clause would enable regulations to require an authority to inform a disabled person about the right to control and what it means to them and would enable regulations to require an authority to tell a disabled person how much money is available for their support under the relevant funding streams.
32. This Lords Amendment would also enable regulations to require an authority to work with the disabled person to agree outcomes, develop a support plan and review and revise that support plan. It would also enable regulations to require an authority to ensure that services provided or commissioned by them for the disabled person are provided in a way that is consistent with the person's support plan, where this is reasonably practicable.
33. Lords Amendments 35 to 37 would make necessary consequential changes by removing clause 33(3)(c) which would be superseded by the new subsection (2)(a) for clause 33, and by adjusting references in clause 34(1) and 35(1) to match the new structure of clause 33(2).

***Lords Amendments 39 to 43***

34. Lords Amendments 39 to 43 would amend the subsections of clause 37 that specify the cases in which the Welsh Ministers have power to make regulations under clause 33 in relation to relevant services in Wales. They extend those cases to take account of the fact that the Welsh Ministers exercise functions in relation to subject areas where the National Assembly has no legislative competence. New paragraph (c) of clause 37(2) (which would be inserted by Lords Amendment 40) would enable the regulation-making power in clause 33 to be exercised by the Secretary of State or the Welsh Ministers where both have functions in relation to a relevant service in Wales. New paragraph (d) (also inserted by that Lords Amendment) would enable that power to be exercised by the Welsh Ministers in relation to other relevant services with respect to which functions are exercisable by the Welsh Minister, the First Minister for Wales or the Counsel General to the Welsh Assembly Government. Lords Amendment 42 would insert provision preventing the Secretary of State or the Welsh Ministers from modifying each other's functions when making regulations under clause 33.

***Lords Amendment 50***

35. Lords Amendment 50 would insert a new clause making the power to remove a travel authorisation subject to the same piloting regime as the power to order

disqualification from driving in clause 43. Under the new clause the Secretary of State would be required to prepare a report on the operation of the power to remove a travel authorisation (for example a passport) and lay it before Parliament within 6 months from the end of the 2 year review period. The Secretary of State would then be required either to make an order (under the affirmative resolution procedure) providing for the provisions to continue to have effect or to make an order (under the negative resolution procedure) reversing the effect of the amendments made by the Bill.

***Lords Amendments 65, 67, 68, 74, 76 and 79***

36. Lords Amendments 65, 67, 68, 74, 76 and 79 would amend Schedule 3 to the Bill, by inserting new provisions about the provision of information. The new paragraphs set out in Lords Amendments 67 and 76 would enable the Secretary of State to make regulations authorising information to be obtained from the police, the probation service or other prescribed body, to check the accuracy of the information provided by claimants under paragraphs 1 to 3 of Schedule A1 to the Jobseekers Act 1995 or Schedule 1A to the Welfare Reform Act 2007. Regulations may also make provision allowing the Secretary of State to share this information with other relevant persons. The amendments would restrict the information that could be disclosed to the Department for Work and Pensions, and expressly prevent information about a person's medical or social work history being disclosed by either the prison service or the probation service. The amendments would also restrict the persons to whom the Department may pass on the information and restrict subsequent use of the information to use only for the purposes of the administration of the employment and support programme for problem drug users. The only exceptions to this are where disclosure is ordered by a court or is required under other legislation.
37. Lords Amendments 68 and 79 would ensure that information supplied by virtue of these regulation-making powers is not treated as information relating to social security and therefore cannot be passed on to other authorities under provisions that relate to social security information.

***Lords Amendments 81 and 87 to 89***

38. Lords Amendments 81 and 87 to 89 would provide that the regulation-making power in new section 2B of the Births and Deaths Registration Act 1953, inserted by paragraph 4 of Schedule 6 to the Bill, to prescribe the information which a mother gives about the father, is exercisable by the Secretary of State rather than by the Registrar General and is subject to the negative resolution procedure. These amendments give effect to a recommendation of the House of Lords Delegated Powers and Regulatory Reform Committee.

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***Lords Amendments 82 to 86***

39. Lords Amendments 82 to 86 would ensure that regulations made under new section 2B of the Births and Deaths Registration Act 1953 (inserted by paragraph 4 of Schedule 6 to the Bill) may enable an unmarried mother acting alone to attend the register office only once in order to discharge her duty to provide information relating to the father, to provide information concerning the birth and to sign the register. The amendments would enable the 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 would be 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.
40. These amendments would also provide that 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.

***Lords Amendment 93***

41. Lords Amendment 93 would add a consequential repeal of a reference to income support in the Saving Gateway Accounts Act 2009, which has been enacted since this Bill was introduced.

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*Ordered, by The House of Commons,  
to be Printed, 3 November 2009.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON - THE STATIONERY OFFICE  
Printed in the United Kingdom by  
The Stationery Office Limited

£x.00