

Welfare Reform Bill 2007, Delegated Powers Memorandum.

House of Lords Select Committee on Delegated Powers and Regulatory Reform

Welfare Reform Bill

Memorandum from the Department for Work and Pensions

Introduction

1. The Welfare Reform Bill was introduced in the House of Commons on 4 July 2006 and was amended in Standing Committee [and during Report]. It was introduced to the House of Lords on 11th January 2007
2. This memorandum identifies the provisions for delegated legislation in the Welfare Reform Bill. It explains the purpose of the powers, the reason why they are left to delegated legislation and the procedure selected for the powers and why it has been chosen.
3. The Bill seeks to implement many of the proposals set out in the Green Paper '*A new deal for welfare: Empowering people to work*' (CMD 6730) which was published in January 2006 and which sought views on the proposals. Consultation ended on 21 April 2006. Over 600 responses were received. The results of the consultation, and the Government's response, were published in June 2006 in '*A new deal for welfare: Empowering people to work – Consultation report*' (CMD 6859).
4. The Bill is organised into the following parts;
 - Part 1 (Clauses 1-28) – Employment and Support Allowance;
 - Part 2 (Clauses 29-39) – Housing Benefit and Council Tax Benefit;
 - Part 3 (Clauses 40-48) – Social Security Administration: General;
 - Part 4 – (Clauses 49-61) – Miscellaneous;
 - Part 5 – (Clauses 62-69) – General; and
 - Schedules 1-8.
5. The main provisions of the Bill provide for the introduction of the proposed Employment and Support Allowance (ESA) and for changes relating to entitlement to and administration of Housing Benefit and Council Tax Benefit including the loss of Housing Benefit following eviction for anti-social behaviour. Other areas where there are delegated powers in the Bill deal with:
 - the use of benefits information and information sharing between relevant authorities;
 - local authority investigation and prosecution of benefit fraud;
 - the care and mobility components of Disability Living Allowance;
 - amendments to the Vaccine Damage Payments Act 1979;

Welfare Reform Bill 2007, Delegated Powers Memorandum.

- payments of allowances to care home residents;
- the Independent Living Funds; and
- consequential amendments to existing primary legislation.

Bill measures relating to benefits for bereaved persons, loss of benefit for commission of benefit offences and overpayment recovery contain no regulations so are not covered by this memorandum.

6. The Department has followed the precedent in current social security legislation by setting out the overall legislative framework on the face of the Bill and providing for regulations and orders to set out the matters of detail. Previous examples include the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992 (which together provide the underpinning legislative framework for entitlement to and administration of social security benefits) and the Jobseekers Act 1995, the Welfare Reform and Pensions Act 1999, the Child Support, Pensions and Social Security Act 2000 and the State Pension Credit Act 2002.
7. This approach is particularly important as the rules governing Housing Benefit (HB) and Council Tax Benefit (CTB) are, and are intended to be for the new Employment and Support Allowance, closely linked to those governing other social security benefits such as Income Support, Incapacity Benefit, Jobseeker's Allowance and Pension Credit. This approach provides the Secretary of State with the necessary flexibility to make changes in the light of operational experience and changing circumstances. This is particularly important with the introduction of a new benefit where there may need to be 'settling-in' changes. For example, regulations which set out how to calculate and administer benefits are subject to regular amendment and updating to make changes to mirror and take account of new developments across other social security benefits.

Employment and Support Allowance

8. Part 1 of the Bill contains the framework of measures for the proposed Employment and Support Allowance (ESA) that will be available for people aged between 16 and State Pension age (currently 65 for men and 60 for women). The main elements of Part 1 and its associated Schedules are:
 - the framework of the two elements of ESA – contributory allowance and income-related allowance;
 - the conditionality framework for ESA;
 - the arrangements for the administration of ESA;
 - consequential amendments, following the introduction of ESA; and
 - transitional arrangements to provide for existing Incapacity Benefit and Income Support cases at the point of change to have their benefit levels protected.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

9. ESA will replace Incapacity Benefit and Income Support paid on grounds of incapacity. It will modernise the support provided to people of working age with a health condition or disability and introduce a new conditionality and support regime designed to help claimants to return to work where they have the capability to do so.
10. The Bill sets out the conditions of entitlement and the basic structure of ESA. In common with other income-related benefits such as Income Support, a claimant's income (to be determined in accordance with regulations made under clause 16) will be deducted from his "applicable amount". This is an amount which will be set out in regulations and will include the new ESA Support Component or Work-Related Activity Component.
11. Similarly, the contributory element follows many of the principles which apply to Incapacity Benefit. For example, entitlement is based on National Insurance contribution conditions, as set out in clause 1 and Part 1 of Schedule 1, and there are to be deductions for certain pension and other payments and allowances, as provided for in clauses 2 and 3.
12. The proposed delegated powers will enable regulations to provide for the detailed rules of the benefit and the way it is administered. As already stated, this will provide the Secretary of State with the flexibility to amend the detailed rules more easily, and within appropriate timescales, in the light of operational experience and other developments. This will ensure Parliamentary scrutiny is maintained. It also allows for the timely introduction of adjustments that necessarily occur from time to time, for example, for changes to the amount of benefit or the level of the support and work-related activity components. Regulations will also provide for appropriate transitional arrangements.

Housing Benefit

13. Part 2 of the Bill includes measures to reform and improve the design and administration of Housing Benefit (HB) and Council Tax Benefit (CTB). The main elements of Part 2 would provide for secondary legislation to:
 - facilitate national roll out of the Local Housing Allowance (LHA) for tenants living in the private rented sector (clause 29);
 - allow a reduction, or non-payment, of Housing Benefit following eviction for anti-social behaviour and a refusal to take up rehabilitation (clause 30);
 - support improvements to the extended payment scheme (clauses 31-33) and a clearer information sharing gateway between local authorities and rent officers (clause 34);
 - allow changes to who Housing Benefit is normally paid (clause 36); and
 - update the legislation to avoid potential discrimination regarding the treatment of income for certain war pensions (paragraphs 3 and 4 of Schedule 5).

Welfare Reform Bill 2007, Delegated Powers Memorandum.

14. Given the statutory role of local authorities in administering Housing Benefit (HB) and Council Tax Benefit (CTB), the Secretary of State has a duty (under section 176 of the Social Security Administration Act 1992) to consult with organisations that he considers to be representative of local authorities on new regulations and certain orders relating to HB and CTB. Hence, HB and CTB regulations are formally referred by the Department, in draft, to the four representative local authority associations covering England, Wales, Scotland and London for consultation. This requirement to consult will apply in the usual way to relevant orders and regulations made under the delegated powers in this Bill.

Other Bill elements

15. The clauses in Part 3 of the Bill containing delegated powers are those dealing with the sharing of social security information and benefit fraud.

Sharing of social security information

These provisions widen and clarify the extent to which information relating to social security can be shared between relevant authorities in relation to the administration of Housing Benefit. These authorities include, amongst others, local authorities that administer Housing Benefit and Council Tax Benefit, county councils in England and the Department for Work and Pensions. The provisions also deal with exchange of information relating to Housing Benefit and welfare services between the Secretary of State, local authority Housing Benefit teams and local authority teams working on the delivery of the "Supporting People" programme (which helps vulnerable people to live independently). These powers are designed to help increase take-up of benefits and simplify the administration of Housing Benefits.

Benefit Fraud

The two clauses dealing with benefit fraud would widen the current powers of local authority investigators so that they can investigate fraud committed in respect of social security benefits administered nationally by the Department for Work and Pensions and also to allow the local authorities to bring prosecutions in respect of those benefits.

16. The clauses in Part 4 of the Bill containing delegated powers deal with a variety of topics. These provisions would;
 - modify the existing delegated powers in sections 72(7) and 73(5) of the Social Security Contributions and Benefits Act, which allow the Secretary of State to prescribe circumstances in which a person is or is not taken to satisfy the conditions of entitlement to the care and mobility components of Disability Living Allowance, so that the additional entitlement conditions for children under the age of 16 years are subject to such regulations;

Welfare Reform Bill 2007, Delegated Powers Memorandum.

- in respect of Vaccine Damage Payments:
 - provide that, in such circumstances as may be specified, people of a specified description need not show that their vaccination was carried out in the United Kingdom or Isle of Man, where the vaccination was given under arrangements made by or on behalf of Her Majesty's forces, a Government Department or other specified body;
 - allow appeal tribunals constituted in Northern Ireland to hear Vaccine Damage Payment appeal cases;
- recast the existing rules which allow Attendance Allowance or the care component of Disability Living Allowance to be withdrawn from care home residents and others in similar situations where the costs of a disabled person's accommodation, board and personal care are borne out of local or public funds;
- allow the Secretary of State and the Department for Social Development in Northern Ireland to make consequential amendments to subordinate legislation as a consequence of the new power to make payments to the Independent Living Fund (2006); and
- Clauses 57 and 58 amend the Pneumoconiosis etc. (Workers Compensation) 1979 Act by substituting a new definition of 'relevant employer' and by updating the definition of dependant. The new definition of relevant employer is set out in schedule 6.

17. Part 5 of the Bill sets out the general provisions applying to the whole of the Bill, for example the general definitions of terms used in the Bill, the proposed territorial extent of the provisions and when provisions in the Bill could come into effect. There are delegated powers under clauses 62 'Northern Ireland', 66 'Transition' and 68 'Commencement'.

Territorial coverage

18. The Bill, with certain exceptions, extends to England, Wales and Scotland only. Clauses 41(1)-(10) 42 and 46 extend to England and Wales only. Paragraphs 1, 2, 4, 11(3), 13 and 21 of Schedule 3 extend to Scotland only. A number of provisions, set out in clause 67(4) and (5) also extend, or apply only, to Northern Ireland. Certain provisions, set out in clause 67(6) also extend to the Isle of Man.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Parliamentary Scrutiny

19. The Department has considered in each case the appropriate procedure to follow in making regulations and orders. Most of the provisions deal with technical or procedural detail. On this basis and for the reasons set out in paragraphs 6 and 7 above, it is proposed that the delegated powers to make regulations or orders should be subject to negative resolution procedure, other than:

- the first regulations under clause 12;
- those regulations which by virtue of clause 18(1) are to have effect for a limited period;
- regulations under the new sections 130B(4) and 130D(2) of the Contributions and Benefits Act 1992 inserted by clause 30 of the Bill; and
- any regulations made under paragraph 9 of Schedule 6 to be inserted in the Pneumoconiosis etc. (Workers' Compensation) Act 1979.

20. The Committee may also wish to note that, other than regulations made within six months of the primary provisions coming into force, the Department is required to submit social security regulations to the Social Security Advisory Committee for scrutiny and comment. Any benefit regulations made more than six months after the Bill provisions have been brought into force would fall within this scrutiny requirement.

General

21. All of the delegated powers, other than the powers of direction (see paragraph below), are exercisable by statutory instrument. The annex to this memorandum lists and provides references for all of the clauses containing powers to make delegated legislation. The Annex lists the provisions by which the powers are created. Provisions which illustrate how a delegated power must or may be used have not been listed, but have of course been explained where appropriate in this memorandum.

22. The commentary on clauses also includes an explanation of the proposed powers of direction in relation to the supply of information by rent officers in clause 35. It also includes an explanation of the proposed changes to the Secretary of State's current powers of direction in section 139D of the Social Security Administration Act 1992. These changes are set out in clause 38 of the Bill. There are also direction powers at clause 14 and 46 which are explained in relation to the delegated powers in that clause.

23. All powers are exercisable by the Secretary of State, other than those inserted at sections 4(3A) and section 7A(1A) of the Vaccine Damage Payments Act 1979 by clause 56 and those inserted by clause 60(5) of the Bill which are exercisable by the Department for Social Development in Northern Ireland.

Analysis of delegated powers by clause

Clause 1 – Employment and Support Allowance

24. Clause 1 of the Bill provides for an Employment and Support Allowance (ESA) to be payable. The allowance will be payable as a “contributory allowance”, or as an “income-related allowance” (which can be paid on its own, or with the contributory allowance). The clause sets out the main conditions (“the basic conditions”) that must be met before a person can be entitled to ESA. It also provides that additional conditions need to be met in accordance with Schedule 1.
25. Although Clause 1 does not of itself contain delegated powers, the associated Schedule 1, discussed later in the commentary, does contain a number of powers.

Clause 2 – Amount of contributory allowance

26. Clause 2 provides for how the contributory allowance of ESA will be calculated. It provides that it will consist of a prescribed amount, plus, where certain conditions are fulfilled, either a support component or a work-related activity component, less certain prescribed deductions. The decision as to which component will be payable will be determined following an assessment of whether the claimant has limited capability for work-related activity under clause 9. Given that benefit rates are reconsidered on an annual basis, it is appropriate that the amount of benefit and the components are set out in regulations rather than in primary legislation. It is also appropriate that these regulations follow the negative procedure given the need to be able to align with amounts and conditions with those in other negative provisions, for example in Income Support and Jobseeker’s Allowance.
27. Subsection (1)(a) provides the Secretary of State with the power to prescribe in regulations the benefit rate for claimants. During the assessment phase the prescribed amount will equate to the single person’s age-related amounts payable in Jobseeker’s Allowance. In the main phase, there is one basic rate of the allowance, regardless of age.
28. Subsection (1)(c) provides that the amount of the contributory allowance is subject to prescribed deductions under clause 3 (see below).
29. Subsections (2) and (3) provide for the conditions of entitlement to the support component and the work-related activity component. It is not intended to impose additional conditions of entitlement at present. However, this will provide the Secretary of State with the flexibility to impose additional conditions of entitlement in the light of changing circumstances, societal change or operational experience without need for recourse to primary legislation. There are no plans to use this power in the immediate future.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

30. Subsection (4)(a) provides the power to prescribe the circumstances in which the requirement for the assessment phase to have ended before a component can be paid need not apply. This would allow prescribed cases to receive the relevant component immediately should we wish to do so for certain groups in the future.
31. Subsection (4)(b) provides the power for the support component or work-related activity component to be backdated in prescribed circumstances, for example, where the assessment phase has been extended because the assessments of limited capability for work & limited capability for work-related activity have not been completed by the end of the first 13 weeks of entitlement.
32. Subsection (4)(c) enables the Secretary of State to prescribe the amount of the work-related activity and support components. Given that benefit rates are reconsidered on an annual basis, it is appropriate that the amount of benefit and the components are set out in regulations rather than in primary legislation. It is also appropriate that these regulations follow the negative procedure given the need to be able to align the amounts and conditions with those in other negative provisions, for example in Income Support and Jobseeker's Allowance.

Clause 3 – Deductions from contributory allowance: supplementary

33. Clause 3 provides for ESA to be reduced where a claimant has income from an occupational or personal pension payment or Pension Protection Fund periodic payment above an amount to be specified in regulations. Fifty per cent of the excess income over £85 a week is deducted from Incapacity Benefit claims and it is the intention that the same deductions are to be made from ESA. The £85 limit is currently set out in primary legislation for Incapacity Benefit. It is intended that this limit will be set out in regulations for ESA, under clause 2(1)(c), to allow for flexibility to make any future change to the limit without recourse to a change in primary legislation should it be appropriate to do so; for example, due to changes in the level of pension payments generally. This provision is an established part of the current benefits system and the negative procedure provides Parliament with the appropriate level of oversight were the Government to propose any change to this amount.
34. Subsection (1)(c) of the clause provides for deductions to be made in respect of payments made to a person who is appointed to or is a member of a prescribed body carrying out public or local functions. This is intended to enable benefit to be reduced where a claimant is a local authority councillor. Incapacity Benefit is currently reduced where a councillor's income exceeds £86.00 per week, as per section 30E of the Social Security Contributions and Benefits Act 1992 and regulations 8 and 9 of the Social Security (Incapacity Benefit) Regulations (SI1994/2946). The intention is to replicate this position; however, the power is designed to provide the flexibility to apply similar rules to other people in similar remunerated

Welfare Reform Bill 2007, Delegated Powers Memorandum.

positions if it were appropriate to do so in the future. The power would also allow us to make deductions for people employed with NHS bodies. However, there is no policy intention to do so at this time.

35. Subsection (2) provides for regulations to allow for income from occupational pensions, personal pensions, public service pensions and Pension Protection Fund payments, in excess of a specified amount, to be deducted when assessing ESA and will be used to bring forward rules currently operating in Incapacity Benefit and also to extend deductions to people receiving DLA care at the highest rate.
36. Subsections (2)(a)-(d) set out further powers in relation to pension payments or Pension Protection Fund periodic payments to be deducted from future ESA claims.
37. Subsections (2)(a) and (2)(b) provide details of how regulations may set out the circumstances in which exemptions can be made. The intention is to use the power in subsection 2(b) to disregard payments where the pension payments are in connection with the death of a member of a scheme (and therefore not a personal benefit paid in connection with the claimant's employment). Subsection (2)(a) would allow the requirement to make pension payment or Pension Protection Fund deductions in relation to certain groups to no longer be applied in the future; for example, if new financial products become available that need to be differentiated from pension payments or Pension Protection Fund payments.
38. Subsection (2)(b) provides the powers to treat a pension payment or Pension Protection Fund payment as not a pension payment for the purposes of ESA. An example of this would be where the income is not available because the occupational pension scheme is in deficit or has insufficient resources to pay the full pension. The intended provision will be similar to regulation 21(b) of the Social Security (Incapacity Benefit) Regulations 1994.
39. Subsection (2)(c) provides a power to treat prescribed sums as pension payments or Pension Protection Fund payments for the purposes of making deductions from ESA. This power would only be used if there was evidence that persons were deliberately not exercising an option to draw their pension with the intention of increasing their benefit entitlement. No such evidence has so far emerged, but this power is required in case a problem develops in the future. It is the same power as current exists in the Incapacity Benefit regime in section 30DD(4)(b) of the Social Security Contributions and Benefits Act 1992.
40. Subsection (2)(d) provides for the apportionment of pension payments into weekly payments. For example, this will enable monthly pension payments to be converted into weekly amounts so that they can be deducted from ESA on a weekly basis. This mirrors the approach currently taken in Incapacity Benefit in regulation 24 of the Social Security (Incapacity Benefit) Regulations 1994.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

41. Subsection (3) defines what a “pension payment” is for the purposes of ESA. Paragraph (b) of the definition provides the power to prescribe certain payments made under an insurance policy providing benefits in connection with physical or mental illness or disability as a pension payment. Paragraph (c) of the definition provides the power to prescribe other payments as pension payments. This power would enable income to be taken into account if paid as regular payments after employment has ended under an insurance policy which provides a similar income to an occupational or personal pension. It would also allow the flexibility to ensure new insurance products are treated appropriately following developments in the insurance market. This power would only be used to make a significant change or to extend the current provisions after consultation with those with an interest in either providing or purchasing such products and as such, the negative resolution procedure gives Parliament the appropriate level of oversight.
42. These regulation-making powers are similar in extent to those which apply to Incapacity Benefit. The Department believes that negative regulations provide the necessary flexibility to deal with the level of detail needed to accommodate future policy changes and to keep the provision up to date.

Clause 4 – Amount of income-related allowance

43. Clause 4, together with Clause 16 and Part 2 of Schedule 1, provides the fundamental basis for the calculation of the income-related element of ESA. Entitlement is based on rules similar to those in Income Support which the income-related allowance replaces for people with a health condition or a disability. Subsection (1) provides that the amount of a claimant’s income-related allowance is the applicable amount where he has no income, or where he has an income the amount by which the applicable amount exceeds the amount of his income.
44. The negative procedure is appropriate given the need to regularly update and maintain alignment with other negative powers relating to the corresponding provisions in other benefits, such as Income Support.
45. Subsection (2)(a) of the clause provides the power to prescribe the amounts to be included in the applicable amount. This will include a personal allowance (the same as the basic rate of the contributory element where the claimant is single but higher where the claimant is a member of a couple) and additional amounts where appropriate. This includes, for example, certain housing costs where the claimant is an owner-occupier. It is intended that additional amounts will be prescribed in respect of those costs, such as mortgage interest, ground rent or service charges. These are similar to the arrangements which currently apply to Income Support.
46. The power will also be used to include certain premiums in the income-related allowance assessment. These would be a severe disability premium, an enhanced disability premium, a carer premium and a pensioner premium.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

It is intended that the qualification criteria for these premiums will be the same as for Income Support.

47. It is intended to use regulations in this instance to allow for changes to the personal allowance and other amounts and, if necessary, for other additions to be made in future without the need for primary legislation. This approach mirrors that followed in the other income-related benefits.
48. Subsection (3) provides the power to prescribe nil as an applicable amount. This will be used to reduce to nil the standard applicable amount for people such as those in prison or members of religious orders who are fully maintained and therefore do not require income-related support. This is similar to paragraphs 7 and 8 of Schedule 7 to the Income Support (General) Regulations 1987 (S.I. 1987/1967). Regulations are necessary to allow the Secretary of State to act promptly if other circumstances arise where it would be inappropriate to pay benefit to a person who is fully maintained by other means. It is necessary to ensure that regulations provide for an applicable amount of nil as it would otherwise be arguable that "nil" is not "an amount".
49. Subsections (4) and (5) describe the qualifying conditions for payment of the support component and the work-related activity component. These are the same as for contributory allowance claimants in relation to clause 2. Subsections (4)(c) and (5)(c) give power to prescribe additional conditions which will provide the Secretary of State with the flexibility to impose additional conditions of entitlement in the light of changing circumstances, societal change or operational experience without need for recourse to primary legislation. There are no plans to use this power in the immediate future.
50. Subsection (6)(a) provides the power to no longer apply the requirement that the assessment phase must have ended before a component can be payable. For example, this would allow prescribed cases to receive the relevant component immediately should we wish to do so for certain groups in the future.
51. Subsection (6)(b) provides the power for the support component or work-related activity component to be backdated in prescribed circumstances. As in respect of clause 2(4)(b), an example would be where the assessment phase has been extended because the assessments of limited capability for work and limited capability for work-related activity have not been completed by the end of the first 13 weeks of entitlement.
52. Subsection (6)(c) enables the Secretary of State to prescribe the amount of the work-related activity and support components. These will be reconsidered on an annual basis so it is appropriate that the amount of benefit and the components are set out in regulations, rather than in primary legislation. It is also appropriate that these regulations follow the negative procedure given the need to be able to align the amounts and conditions

Welfare Reform Bill 2007, Delegated Powers Memorandum.

with those in other negative provisions, for example in Income Support and Jobseeker's Allowance.

Clause 5 – Advance award of income-related allowance

53. Clause 5 applies to claimants who:

- are not entitled to a contributory allowance; and
- are not entitled to income-related allowance as their applicable amount, without the addition of a component amount, is less than their income; and
- would have been entitled to an income-related allowance if a component amount had been payable.

54. Where these circumstances apply, regulations under subsections (2) and (3) would enable a claim for income-related allowance to be made on one date and for benefit to be payable from a later date, provided the claimant met all the other conditions of entitlement.

55. The effect of the regulations would be that the claimant's applicable amount would include a component amount from the later date. This would mean that an award could be made at the beginning of the claim (unlike the current system where an award can only be made where a further claim is made) for a claimant who will only be entitled to the income-related ESA once the assessment phase has ended and the claimant is entitled to the work-related activity or support component. Such a claimant will not be paid any ESA any earlier than any other ESA claimant – the regulations would simply ensure the process works appropriately for such a claimant.

56. The provisions in subsection (2) cross-refer to general powers relating to benefit claims and payments in the Social Security Administration Act 1992. As a result of subsection (2), where there is to be an advance award, those provisions take effect with modifications so that appropriate arrangements for such claims can be made.

57. The regulations under this clause are intended to ensure that claimants do not find themselves in a situation where they cannot become entitled to the higher amounts in the main phase of the benefit because their income is too great to qualify for ESA during the assessment phase. The regulations are therefore purely beneficial to the claimant and the negative procedure is appropriate.

Clause 7 – Exclusion of payments below prescribed minimum

58. Clause 7 duplicates the power in section 134(4) of the Social Security Contributions and Benefits Act 1992. It allows the Secretary of State to prescribe that ESA would not be paid for very small amounts of benefit. The intention is that ESA will not be paid if entitlement is below 10 pence per week unless it is combined with another benefit. Entitlement to benefit remains and claimants receive any 'passported' benefits in the same way as

Welfare Reform Bill 2007, Delegated Powers Memorandum.

if payment is actually made. Ministers have made it plain in Committee that the amount will remain at 10p, which is in alignment with other benefits such as Jobseeker's Allowance and means that the negative procedure is appropriate.

Clause 8 – Limited capability for work

59. This clause refers to determination of eligibility for the ESA on the basis that the claimant, by reason of a physical or mental disease or disabling condition, is limited in his ability to work, as demonstrated by his inability to carry out specified activities, and it would not be reasonable to require him to work. The specific activities, and the extent to which a person's capacity to perform them is limited, will be specified in regulations under subsection (1).
60. Regulations under this section would be subject to the negative resolution procedure. We consider this to be an appropriate level of scrutiny as they will be dealing with the technical detail of the assessment for limited capability for work within the framework of the clause.
61. Subsection (2) requires regulations to set out the criteria against which claimants will be assessed when determining whether they have limited capability for work and how the test will be conducted. These powers are very similar to the powers in section 171C (2) (a) and (b) of the Social Security Contributions and Benefits Act 1992, and make provision for specifying the precise nature of the test to be applied to determine whether a person has limited capability for work. The report of the review of the current test, *'The Transformation of the Personal Capability Assessment'*, has recommended changes to ensure the test remains a robust and fair assessment of entitlement to benefit. The current test is referred to in regulation 25(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 and the detail of the test is set out in the Schedule to those regulations.
62. Current legislation specifies that the Personal Capability Assessment must be carried out by a doctor approved by the Secretary of State. It is intended that regulations made under clause 8 will also provide for appropriately trained healthcare professionals other than doctors who have been approved by the Secretary of State to carry out the assessment. The role of other healthcare professionals has changed and it is now recognised that they have the skill and expertise to carry out more complex tasks and could, with appropriate training, be equally adept in carrying out these assessments.
63. Subsections (3) and (4) closely resemble the powers in Section 171A of the Social Security Contributions and Benefits Act 1992, and allow for regulations to make provision about gathering evidence required to determine whether a person has limited capability for work; and about the sanctions that might be applied to a person who fails without good cause to provide the required information or to attend, or submit himself to, an

Welfare Reform Bill 2007, Delegated Powers Memorandum.

arranged medical examination. Where a person does not demonstrate good cause for such a failure, he will be treated as not having limited capability for work and will therefore not be entitled to ESA. Some examples of good cause will be set out in the regulations, and they will include the nature of a claimant's disability and the state of his health at the time.

64. The medical assessment to determine benefit entitlement will normally be carried out during the first 13 weeks of a claim. There will, however, be a period of time after the date of claim before we are able to carry out this medical assessment. Subsections (5) and (6) allow the making of regulations to treat claimants who meet prescribed conditions as having limited capability for work until such time as the medical assessment is carried out. This power would be used, for example, to pay ESA to claimants who have supplied medical certificates from their treating medical practitioners advising them to refrain from work and who are waiting for the medical assessment to be carried out. The power is similar to that contained in section 171C(3) of the Social Security Contributions and Benefits Act 1992 and is necessary to ensure that claimants may be treated as having limited capability for work pending their medical assessment being carried out.
65. The detail of the medical assessment of limited capability for work will be provided in regulations to allow the flexibility to amend and further refine the assessment if necessary to take account of changes in medical treatments, the prevalence of disabling conditions or changes to the workplace environment.

Clause 9 – Limited capability for work-related activity

66. Clause 9 provides for determining in regulations whether a person's capability for work-related activity is limited by his physical or mental condition and, if it is, whether his physical or mental condition is such that it is unreasonable to require him to undertake work-related activity. Where this is found to be the case, once claimants have completed the assessment phase, they will receive the support component in addition to the basic allowance of ESA and they will be placed into the 'Support' group. Where claimants do not satisfy the test of limited capability for work-related activity contained in the regulations made under clause 9, they will not be treated as having limited capability for work-related activity. Once they have completed the assessment phase, they will receive the work-related activity component in addition to the basic allowance, but not the support component. It is intended that the criteria for membership of the Support group will be based on the functional effects of a person's condition.
67. Regulations under this section would be subject to the negative resolution procedure. This is considered to be an appropriate level of scrutiny as the regulations will be dealing with the technical detail of the assessment of limited capability for work-related activity within the framework set out by the clause.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

68. Subsection (2) of Clause 9 requires the regulations made under subsection (1) to determine whether a person has limited capability for work-related activity by using an assessment and for the content and manner of carrying out the assessment to be set out in those regulations. The intention is that the assessment will be carried out by a healthcare professional approved by the Secretary of State.
69. Subsections (3) and (4) provide similar regulation making powers to those found in Clause 8 in relation to gathering evidence required to determine whether a person has limited capability for work-related activity.
70. Sanctions may be applied to a person for failure without good cause to provide the required information or attend for an arranged medical assessment. If a person fails, without good cause, to provide the evidence required from him, or fails to attend or to participate in an arranged medical assessment, he will be treated as not having limited capability for work-related activity.

Clause 10 – Work-focused health-related assessments

71. Clause 10 allows the Secretary of State to make regulations requiring claimants eligible for ESA, but not so functionally restricted as to be unable to engage in work-related activity, to have an additional, work-focused health-related assessment.
72. Regulations made under this clause would be subject to negative resolution. This is considered to be an appropriate level of scrutiny as the regulations will be dealing with the technical details of the assessment within the framework set out by the clause.
73. The purpose of the work-focused health-related assessment is to assess what the claimant is capable of doing and to help the claimant to articulate their hopes and expectations for the future and to explore their attitudes and beliefs about their health and its impact on their ability to work.
74. The advice from the work-focused health-related assessment will be made available to Personal Advisers, who provide Jobcentre Plus claimants with a range of skilled advice and help them engage with the labour market. The report will support actions to be taken during the claimant's conditionality regime.
75. Regulations under subsection (1) will set out a requirement to take part in one or more work-focused health-related assessments. All claimants eligible for ESA but not in the Support group will be required to take part in a work-focused health-related assessment as part of the initial assessment process. A requirement to take part in further work-focused health-related assessments could apply when a review of benefit entitlement is carried out, if the person's condition has changed.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

76. Subsection (2) sets out some of the matters which the regulations may include. These include paragraphs (a), (b) and (d) specifying the circumstances in which someone would be subject to this requirement, provision for notifying an individual of the requirement to undertake a work-focused health-related assessment and for determining and notifying an individual of the time and place of the assessment. The intention is that, where possible, the work-focused health-related assessment will be carried out at the same appointment as the assessment of entitlement
77. Subsection (2)(c) provides for regulations to prescribe the nature and content of the work-focused health-related assessment. It is intended that the work-focused health-related assessment will include examination of the claimant's residual functional capacity – what the claimant can still do despite their health condition – and information about their concerns and consideration of health interventions that would improve their functional capacity.
78. Under subsection (2)(e), the regulations may set out when a individual is regarded as having, or not having, taken part in a work-focused health-related assessment. Regulations under subsection (2)(f) will set out powers for sanctions when an individual fails to take part in a work-focused assessment without good cause. Further provisions under paragraphs (g) and (h), will be made to set out matters and circumstances to be considered when determining good cause. These lists will not be exhaustive but will include matters such as the nature of a claimant's disability and the state of his health at the time.
79. The work-focused health-related assessment will be an integral part of ESA conditionality. The sanction for failure to take part without good cause will be that the amount of ESA payable to a claimant is reduced in accordance with the regulations under subsections (3) and (4). These powers allow us the flexibility to ensure that any reduction made is appropriate and can reflect particular circumstances. If, after a reduction is made, a claimant agrees to attend and participate in the assessment, his future weekly benefit rate will be restored to the full amount ordinarily payable to him.
80. In accordance with subsection (5), the regulations are required to include a provision whereby a person who, initially, is not a member of the Support group, and is therefore subject to the requirement to have a work-focused health-related assessment, and who subsequently becomes a member of the Support group will no longer be required to have the assessment. This will ensure that claimants in such circumstances are treated in exactly the same way as those who were members of the Support group from the outset of their claim.
81. In accordance with subsection (6) the regulations may make provision for allowing waivers and deferrals of work-focused health related assessments. The intention is to use this power to specify that a waiver or deferral will be granted where there are circumstances related to a claimant's health condition and/or other circumstances outside the claimant's control which

Welfare Reform Bill 2007, Delegated Powers Memorandum.

make it difficult or impractical for them to attend at the usual time. A waiver granted under subsection (6)(a) will allow a requirement on a claimant to attend a work-focused interview to be considered as not having applied and therefore a sanction would not be imposed. Subsection 6(b) will allow a requirement on a claimant to attend a work-focused health related assessment to not apply until a specified time and no sanction would be imposed until that time. Subsection 6(c) will allow a work-focused health related assessment to be rescheduled if a claimant is unable to attend an assessment due to circumstances outside of his control. These powers are necessary to allow for sufficient flexibility in the system to take account of claimants' differing circumstances.

82. Subsection (7) provides for the definition of "work-focused health-related assessment" and at paragraph (c) provides for assessing other prescribed matters (other than those in paragraphs (a) and (b)) relating to a person's physical or mental condition and the likelihood of his remaining in work. It is intended that these matters will include an individual's attitudes and beliefs about their ability to work; their hopes and expectations about the future; and, in general rather than specific terms, what workplace adjustments might be appropriate to support a move into work.

Clause 11 – Work-focused interviews

83. "Work-focused interview" is defined in clause 11(7) as an interview by the Secretary of State conducted for purposes prescribed in regulations connected with getting the person interviewed into work or keeping them in work. Regulations under this power will set out that the purposes of a work-focused interview are assessing the person's prospects for work, giving assistance and encouragement regarding work, identifying activities that the person might undertake regarding work, identifying training, education or rehabilitation opportunities and employment opportunities.
84. Regulations made under this clause would be subject to negative resolution. It is intended that the regulations giving effect to these requirements will be similar in a number of respects to the existing Pathways to Work programme (The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003 (S.I. 2003/2439) ("the Pathways to Work Regulations")). Evaluation of the Pathways to Work programme continues to provide evidence of what works best with the incapacity benefits claimant group. Delegated powers will assist in the effective application of the ESA conditionality regime in the future by affording the Secretary of State sufficient flexibility to change the detailed requirements in the light of experience and developments. Providing a framework of powers in primary legislation and detailed requirements in regulations will allow that flexibility.
85. Subsection (1) of this clause makes provision for regulations to impose a requirement on claimants entitled to ESA, apart from those in the Support group, to take part in a work-focused interview or interviews. Clause 11(2) and (6) set out what regulations made under clause 11 may, but are not required to, provide for.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

86. Regulations under Clause 11 will provide for a conditionality regime that is similar to the conditionality regime in the Pathways to Work programme, which has widespread support in principle. The regime may need to be changed in light of operational experience or to adapt to wider changes, it is therefore intended that the negative resolution procedure will apply to regulations under Clause 11.
87. Regulations will allow the Secretary of State to require relevant persons to take part in work-focused interviews at a time of his choosing. A relevant person will be defined in regulations as someone who is entitled to ESA, is not a member of the Support group, is at least 18 years old and has not reached the age at which a woman attains State Pension age.
88. It is intended that in accordance with subsection (2)(d) regulations will allow the Secretary of State to notify the claimant of where the interview is to be held and to set out the test for when the interview may take place in a claimant's home.
89. Regulations will set out what a claimant has to do to satisfy the requirement to take part in a work-focused interview. This will include requiring the claimant to provide certain relevant information, such as existing skills and qualifications and work history, and participate in discussions about their employability and the steps they could take to help them move into work or closer to the labour market. In this respect the regulations will be similar to the Pathways to Work Regulations. Additionally it is envisaged that when claimants are also required to undertake work-related activity then regulations would require a claimant to discuss the relevant work-related activity they had undertaken in order to participate in a work-focused interview.
90. As in the existing Pathways to Work Regulations, it is intended that the regulations will allow five days for anyone failing to take part in a work-focused interview to show they had good cause to do so. The regulations under this section will provide a non-exhaustive list of matters that can be taken into account in determining good cause, for example, difficulties with normal means of transport, caring responsibilities, accident or illness.
91. Regulations under subsection (3) will provide that if it is determined that the claimant has failed to participate in a work-focused interview and not shown good cause within the allowed time then the amount of ESA payable to that claimant will be reduced. Regulations under subsection (3) will set out how the reduction is to be determined. Subsection (4) sets out matters that these regulations may include. It is intended that regulations will provide for benefit to be reduced in two steps; by 50 per cent of the amount of the work-related activity component in each of the first four benefit weeks beginning with the week the reduction is first made; and by 100 per cent of the amount of the work-related activity component in each subsequent benefit week until certain circumstances occur. It is not intended that any claimant should face a sanction of more than the amount of the work-related activity component

Welfare Reform Bill 2007, Delegated Powers Memorandum.

for failure to take part in interviews. Therefore sanctions will not take effect until the end of the assessment phase when the work-related activity component has been awarded, even for a failure to attend an interview during the assessment phase (the sanction may in some cases be imposed but it will be suspended until the end of the assessment phase). Otherwise, a sanction will start from the first day of the benefit week following a decision that the claimant had failed to take part in an interview without good cause and will stop in the week that the claimant complies with the requirement to take part in a work-focused interview. A sanction will also stop if the claimant ceases to be a relevant person for work-focused interview purposes.

92. Regulations under this section will include provisions allowing waivers and deferrals of work-focused interviews. It is intended that regulations will provide for deferral in circumstances where an interview would be of no assistance to the claimant or would be inappropriate at the time. For example, a claimant undertaking a training course might have the requirement to attend a further interview deferred until the course was completed. Regulations will provide that an interview could be waived if the interview would not be of assistance to a claimant because they were about to start or return to work.
93. Clause 11(5) provides that regulations under section 11 must provide for the requirement to take part in work-focused interviews to cease when a claimant becomes a member of the support group. This is in keeping with the policy that it would be unreasonable to expect members of the support group to participate in work-focused interviews as a condition of receipt of their full allowance, although they can volunteer to participate in appropriate support.

Clause 12 – Work-related activity

94. Work-related activity, as defined by subsection (7) of the clause, is activity that will make it more likely the person will obtain work or be able to obtain work. Clause 12(1) provides for regulations which could require claimants who were required to take part in work-focused interviews to also undertake work-related activity. It is intended that this requirement would be imposed once the assessment phase has been completed and then apply for a fixed period. As the Secretary of State set out during Second Reading of the Bill in the House of Commons, this requirement will not apply to Incapacity Benefit claimants if they migrate to ESA. There is no intention of using this power immediately as the work-related activity requirement will be introduced over time in the light of evidence and availability of resources.
95. The introduction of a requirement to engage in work-related activity will build on the base of work-focused interviews originally piloted in the Pathways to Work programme. Having these requirements set out in regulations rather than in primary legislation would allow the Secretary of State the flexibility to apply these requirements as and when appropriate and for requirements to be changed as appropriate in the light of emerging evidence. As these regulations will impose a new requirement on ESA claimants, the affirmative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

resolution procedure will apply for the first set of regulations made under the clause 12 powers. Subsequent uses of the clause 12 powers will be subject to the negative resolution procedure.

96. Clause 12(1) contains a power for regulations to be made requiring ESA claimants, who are required to take part in work-focused interviews, to undertake work-related activity. Clause 12(2) and (6) sets out what regulations made under clause 12 may provide for.
97. Regulations will set out how a claimant will be notified of the requirement to undertake work-related activity.
98. Subsection (2)(c) refers to regulations setting out a minimum requirement that a claimant will have to undertake within a given period of time to satisfy the requirement to undertake work-related activity. This is envisaged being used to require that a claimant should undertake a minimum set number of 'steps' of work related activity within a fixed number of weeks. The intention is that the minimum requirement will apply to all claimants required to participate in work-related activity. However, the intention is also that the requirement will be waived or deferred where necessary to ensure claimants are dealt with fairly, for instance where a claimant has a fluctuating condition.
99. The definition of work-related activity in subsection (7) envisages a wide array of activities will potentially be work-related activity for an individual. However in order that a claimant could reasonably fulfil a requirement to undertake work-related activity we intend to ensure provision of support options. It is envisaged that the types of work-related activity we will provide for claimants will include such activities as:
 - work tasters;
 - programmes to manage health in work; and
 - job search assistance.
100. Subsection (2)(d) refers to setting out circumstances where a claimant is, or is not, to be regarded as undertaking work-related activity. It is envisaged using regulations to prescribe that a person undertaking a work-focused interview in itself is not to be regarded as undertaking work-related activity.
101. Subsections (f), (g), (h), and (i) refer to regulations setting out how it should be decided whether a claimant has met the requirement to participate in work-related activity and has provided sufficient evidence to show they have met the requirement, and if not whether they had good reason to not have done so. The intention is that a claimant should be able to provide evidence to show they have completed the required number of steps of work-related activity within a given time period. For example, this could be attendance at a condition management programme. This will allow consistent monitoring of claimants' compliance with a requirement.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

102. It is envisaged that regulations will provide that the claimant will have an opportunity to demonstrate they had good cause for failing to comply with a requirement to participate in work-related activity as required under regulations. Claimants will have a set time limit in which to show good cause. This will ensure that claimants who had good cause for failing to meet their work-related activity component will not be sanctioned. This is very important to ensure confidence in the sanctioning system.
103. Regulations setting out the matters to be taken into account in determining if a person has good cause for failing to undertake work-related activity in accordance with clause 12 will need to reflect that the requirement to participate in work-related activity will be over a given period of time (intended to be a number of weeks). This will be different to good cause for missing an interview on a given day as envisaged under Clause 11. However it is envisaged that certain matters to be taken into account in determining whether a claimant has good cause including:
- that the relevant person misunderstood the requirement to take part in work-related activity due to any learning, language or literacy difficulties of the relevant person or any misleading information given to the relevant person by the officer; and
 - that a fluctuating condition or disability from which the relevant person suffers made it impossible for him to participate in work-related activity.
104. Regulations under subsection (3) will provide that when a claimant has not undertaken work-related activity and not shown good cause for this, then the amount of ESA payable to him will be reduced. Subsection (4) sets out matters that regulations made under subsection (3) may provide for. It is considered that a reduction in benefit is appropriate because DWP research has found that the prospect of being sanctioned is an incentive to comply with conditionality requirements such as the work-related activity requirement. Complying with the requirement to undertake work-related activity will make it more likely that a claimant obtains or retains work.
105. Under subsection (3) it is envisaged that regulations will provide that where a reduction in ESA occurs, on its own or in combination with a reduction related to failure to meet a requirement to participate in work-focused interviews, the maximum reduction imposed will not be more than the amount of the work-related activity component.
106. Subsection (5) provides that regulations under clause 12 will provide that a requirement to undertake work-related activity shall cease when a claimant enters the Support Group. It is not thought that it would be reasonable to require claimants in the support group to undertake work-related activity. This confirms the intention not to require claimants to undertake work-related activity if it is not reasonable to do so.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

107. Waivers for work-related activity will be provided for by regulations under subsection (6). That is, a requirement on a claimant to participate in work-related activity is to be considered as not having applied and therefore a sanction could not be imposed for a failure to undertake work-related activity. Waivers are not envisaged being applied where a claimant will be returning to a job shortly or is on the verge of returning to work.
108. Having the combined powers to make regulations in clause 12 will provide the Secretary of State with the necessary flexibility to accommodate future policy changes and to update these provisions. As is Departmental practice, the intention is to commission research on the effects of a requirement to undertake work-related activity when it is introduced to inform evolution of the policy. As these regulations will impose a new requirement on ESA claimants, the affirmative resolution procedure will apply for the first set of regulations made under the clause 12 powers.

Clause 13 – Action plans in connection with work-focused interviews

109. An action plan will be provided to claimants who attend a work-focused interview, as a record of their discussions.
110. Regulations under Clause 12 and 13 will provide for a conditionality regime that is similar to the conditionality regime in the Pathways to Work programme, which has widespread support in principle. It is therefore intended that the negative resolution procedure will apply to regulations under Clause 13.
111. Subsection (1) of this clause contains a regulation making power to prescribe the circumstances in which the Secretary of State must provide a person with an action plan. Regulations will set out that these circumstances are where a person who was required to participate in a work-focused interview has attended this interview. Regulations are appropriate in this circumstance to allow for other circumstances in which the Secretary of State must provide an action plan, in the light of experience.
112. Regulations under subsection (1) will also prescribe the purposes of the action plan. It is envisaged that initially, when claimants are only required to take part in work-focused interviews, the purpose of the action plan will simply be a record of what was discussed during the interview. It would be expected to include any activity that the claimant might take voluntarily to assist a return to work. In these respects its purpose will be the same as in the existing Pathways to Work programme, in providing a reference document for the claimant.
113. Subsections (2)(a), (b) and (c) provide for regulations to specify the form and content of action plans; and the means of reviewing and updating them. It is intended that regulations will specify that the action plan will be a written document that will contain a record of the work-focused interview. It will also contain a record of any activity that the claimant has agreed that he is willing to take that may make it more likely that he will obtain or remain in work or

Welfare Reform Bill 2007, Delegated Powers Memorandum.

be able to do so and other information that the Secretary of State considers appropriate.

114. However, when regulations under clause 12 require participation in work-related activity it is intended that the action plan would include activities, such as attending a training programme that, if undertaken by the claimant would satisfy the work-related activity requirement. Clause 13(3) refers to regulations under clause 13 being able to provide for this.
115. The claimant would not be required to undertake the specific activities in the action plan, even when participation in work-related activity is required by regulations. However, if the claimant did not undertake the activities in the action plan then they would have to undertake other activity in order to satisfy the work-related activity requirement.
116. Subsections (4)(a) to (e) provide for prescribing the circumstances when a claimant can ask for their action plan to be reconsidered and setting out how this would work. It is intended to introduce this provision in regulations when it is required for claimants to undertake work-related activity. This would be in order to resolve situations where a claimant believed the steps included were inappropriate or no longer appropriate and that other steps, not agreed at the work-focused interview, should be included.
117. Having these provisions set out in regulations rather than in primary legislation would allow the Secretary of State the flexibility to apply relevant requirements as and when appropriate and for requirements to be changed in the light of evidence about the usefulness of the action plan.

Clause 14 – Directions about work-related activity

118. Clause 14 enables the Secretary of State to direct that a specific activity undertaken by an individual is not to count as meeting the requirement for work-related activity.
119. The clause provides for regulations to prescribe circumstances in which the Secretary of State can issue a direction. The aim in taking this power is to ensure that circumstances where claimants are undertaking inappropriate work-related activity can be dealt with; in particular, where this is at cost to the public purse.
120. A particular circumstance envisaged where such a direction could be applied to is for a claimant who clearly stated they are not interested in pursuing a particular type of job doing activity specifically related to preparation for that type of job. It is envisaged that a direction could be issued to stop that activity counting towards the work-related activity requirement. The claimant could meet the requirement by undertaking other types of work-related activity.
121. It is believed there may be other circumstances pertaining to a requirement to undertake work-related activity and therefore flexibility in secondary

Welfare Reform Bill 2007, Delegated Powers Memorandum.

regulations to enable protection of the public purse is appropriate. Given the very wide range of activities counting as work-related activity, under the definition in Clause 12 subsection (7), it is possible that regulations will have to be revised to ensure that directions operate effectively. It is believed it is appropriate that these regulations are subject to negative resolution as they are setting out the detail of when directions will be imposed.

Clause 15 – Contracting out

122. The purpose of clause 15 is to allow the Secretary of State to authorise public, private and voluntary sector contractors to undertake various functions relating to the ESA conditionality regime as set out in clauses 10 to 14.
123. Regulations made under this clause will be subject to the negative resolution procedure as they will simply be allowing for the contracting out of functions the detail and policy for which will be contained in regulations made under other clauses of the Bill. In addition, regulations allowing for authorisations may need to take account of changes in other conditionality regulations made under the negative resolution procedure.
124. Subsection (2) enables regulations to be made that allow persons other than the Secretary of State to be authorised to exercise functions imposed on the Secretary of State under regulations made under clauses 10 to 14 and decision making functions linked to these. In common with the approach taken to previous social security legislation, the majority of detail is contained within regulations rather than on the face of the Bill. This allows operational changes to be made in light of changing policy and as other regulations made in clauses 10 to 14 are made.
125. The intention is to use these powers to make regulations allowing the Secretary of State to authorise public, private and voluntary sector contractors to undertake functions related to work-focused interviews (clause 11) and action plans (clause 13), including requiring a claimant to take part in a work-focused interview, notifying claimants of the time and place of an interview and undertaking the interview itself. This will not, at this time, include an authorisation to undertake the decision-making process that could lead to sanctions. This will be based on the functions to be contracted out in the Pathways to Work programme currently being rolled out nationally.
126. When clauses 12 and 14 are commenced and the regulations made under them come into force it is intended to make regulations under subsection (2) allowing the Secretary of State to authorise public, private and voluntary sector providers to undertake functions of the Secretary of State in relation to work-related activity (clause 12) and directions (clause 14). At this stage regulations under clause 15(2)(b)-(e) may also provide for authorisations to include functions relating to revision, supersession and appeals decisions in accordance with the Social Security Act 1998.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

127. Subsection 15(2) also allows for regulations to be made to allow contractors to be authorised to undertake various functions imposed under regulations made under Clause 10. It is envisaged that regulations may be made that will allow the Secretary of State to authorise contractors to require claimants to take part in work-focused health-related assessments in certain circumstances. In common with the approach to decision-making under clauses 11 to 14, it is not at this time envisaged that decision making relating to sanctions for failure to participate in work-focused health-related assessments will be contracted out. However, as work related activity is expanded, decision making may be extended.
128. Subsection (3) allows for regulations made under subsection (2) to define the scope of authorisations that can be issued to contractors. For example the regulations may provide that the Secretary of State could only authorise PVS contractors to exercise WFI functions or to undertake functions related to additional work-related activity only in certain areas.

Clause 16 Income and capital: general

129. Clause 16 sets out that the Secretary of State may prescribe how the income and capital of a claimant (and their partner) may be calculated in determining how much income-related allowance is payable. It is intended to model the regulations on the existing income-related benefit (Income Support) provisions in the Income Support (General) Regulations 1987. There is a significant amount of technical detail associated with these rules which are subject to regular amendment due to changing circumstances, and the need for the rules of the income-related benefits to remain aligned. For this reason it is appropriate that the Secretary of State should have the flexibility provided by regulation-making powers to make changes as and when necessary. The need to be able to respond quickly to changes, both in the types of income available, and to reflect case-law developments, means that the negative resolution procedure applies to these powers.
130. Subsection (1) confers the power to make regulations prescribing how income and capital (including savings and money in banks and building societies) will be calculated or estimated in certain situations. It is intended that ESA will have the same income and capital rules that currently apply in Income Support. All income of the claimant or partner will be taken into account (and reduce the amount of benefit paid) unless otherwise disregarded. Claimants are not entitled to Income Support if they have capital assets in excess of an upper limit of £16,000. In addition where claimants have capital assets between £6,000 and £16,000 a tariff income of £1 for every £250 (or part of £250) is assumed and deducted from benefit. This will be mirrored in the rules relating to the income-related allowance.
131. Income will be disregarded where it would not be reasonable to reduce a claimant's income related benefit due to that income. One example is where the income is specifically for something that is intended to be additional to the benefit income such as a payment in relation to the welfare foods scheme (now Healthy Start) or where taking the income into account to

Welfare Reform Bill 2007, Delegated Powers Memorandum.

reduce the income-related benefit would defeat the purpose of the payment, for example, a gratuity paid to the recipient of the Victoria Cross or George Cross.

132. Capital is disregarded in similar circumstances to income and, in addition, the reasonable costs of realising the value of an asset, such as a dwelling or shares is disregarded. However, capital does not include the value of a person's home or the value of their personal possessions.
133. Subsection (2) provides regulation-making powers to prescribe how weekly income will be assessed. It is intended that the rules will provide that income may be averaged. In averaging income for fluctuating earnings, for example, the Secretary of State may take an average for a past and current period and apply it to a future period. Or where income is received at monthly or longer intervals, the regulations will provide for how they should be calculated in relation to a week.
134. Subsection (3)(a) provides for circumstances where a person is treated as having capital or income he no longer possesses. It is intended that existing provisions in the Income Support (General) Regulations 1987 concerning deprivation of income or capital will be applied to ESA. This provision allows a claimant to be treated as having a notional income from capital no longer in their possession if they have disposed of the capital solely or mainly to secure or increase entitlement to ESA. In this way the benefit system is protected from abuse.
135. Subsection (3)(b) provides for disregards of both capital and income. For example the capital value of a claimant's own home is disregarded. This subsection also allows the value of a second home to be disregarded too where there is good reason to do so, for example because an elderly close relative lives there. This power would also be used to fully disregard income like Disability Living Allowance when calculating income-related benefit. Certain other income (for example, war pensions) will be disregarded in part.
136. Subsections (3) (a) and (b) provide the Secretary of State with the power to treat income as capital and capital as income. For example, an advance of earnings from an employer will be treated as capital.
137. Subsection (4) provides a power to make regulations prescribing how income from capital holdings will be taken into account in calculating ESA. Normally, capital will be deemed to have an assumed tariff income for purposes of assessing entitlement. The intention is that a tariff income of £1 a week for every £250 or part thereof will be applied to capital between £6,000 (£10,000 in cases of people in residential care and nursing homes) and the upper capital limit of £16,000. This is the same way that income from capital assets is determined in other income-related benefits such as Income Support and income-based Jobseeker's Allowance.

Clause 17 – Disqualification

Welfare Reform Bill 2007, Delegated Powers Memorandum.

138. Subsection (1) of this clause provides for regulations to set out the circumstances in which a person may be disqualified from receiving ESA or be treated as not having limited capability for work (which would extinguish entitlement to ESA). The circumstances include situations where a claimant has limited capability for work as a result of his own misconduct, fails to comply with medical advice without good cause or fails to follow specified rules of behaviour. The intention is that the claimant may be disqualified from receiving benefit in a similar way to that set out in the Social Security (Incapacity for Work) (General) Regulations 1995. The regulations to be made under this clause would be subject to the negative resolution procedure in the same way as for the existing provision.
139. In accordance with subsection (2), the regulations are required to provide that any disqualification under this clause should not exceed a period of six weeks.
140. Subsection (3) provides that regulations will provide what matters are, or are not, to be regarded as good cause. An example of what would be considered good cause would be if taking medication recommended by the doctor or other healthcare professional had unpleasant side effects, or for another genuine reason such as fear of surgery. Refusing to undertake a course of physiotherapy to improve mobility would not be considered good cause. Claimants will have the right of appeal to an independent appeal tribunal against any decision to disqualify payment of benefit.
141. Subsection (4) provides that unless regulations provide otherwise a claimant shall be disqualified for receiving the contributory allowance for any period in which they are absent from Great Britain or undergoing imprisonment or detention in legal custody. It is intended that the Regulation-making power will be used, for example, to provide that a prisoner on remand who is subsequently released without a sentence of imprisonment or detention in legal custody being imposed would not have their benefit disqualified under this provision.

Clause 19 – Relationship with statutory payments

142. This clause makes provision for ESA's relationship with statutory payments paid by employers, which will be the same as for Incapacity Benefit. It is appropriate that the Secretary of State should have the flexibility provided by regulation-making powers to make changes as and when necessary in view of likely changes in this area and that they should be subject to negative resolution procedure in line with standard practice in social security legislation.
143. Subsection (1) provides that ESA is not payable at the same time as Statutory Sick Pay. This is the same as for Incapacity Benefit currently.
144. Subsection (2) provides that where a claimant is entitled to Statutory Maternity Pay she is not entitled to contributory ESA, except in prescribed circumstances, which are that she continues to be in a period of limited

Welfare Reform Bill 2007, Delegated Powers Memorandum.

capability for work and ESA is payable after deduction of Statutory Maternity Pay.

145. Subsection (3) allows regulations to provide that where a woman is entitled to Statutory Maternity Pay and is also entitled to a contributory ESA, the amount payable will be after the Statutory Maternity Pay has been deducted. This is similar to arrangements for Incapacity Benefit (see Regulation 7A of the Social Security (Incapacity Benefit) Regulations 1994).
146. Subsections (4), (5), (6) and (7) make similar provision to subsections (2) and (3) for Statutory Adoption Pay and Additional Statutory Paternity Pay to be deducted from ESA where a person has limited capability for work. As respects Statutory Adoption Pay, this is similar to the existing Incapacity Benefit arrangements as provided by Regulation 7B of the Social Security (Incapacity Benefit) Regulations 1994. Additional Statutory Paternity Pay is a new statutory payment introduced by the Work and Families Act 2006 and sub-sections (6) and (7) simply allow for it to be treated in the same way as the other statutory payments.

Clause 20 – Deemed entitlement for other purposes

147. Regulations may be made under this clause to enable a person who loses entitlement to ESA by the operation of any provision of, or made under, Part 1 of the Bill, the Social Security Administration Act 1992 or Chapter 2 of Part 1 of the Social Security Act 1998 to be treated as if they were still entitled to ESA. This would be for the purpose of enabling them to retain any rights and obligations which depend on that entitlement, such as the right of appeal. This is similar to provisions which currently exist for Incapacity Benefit under section 113(3) of the Social Security Contributions and Benefits Act 1992. Any regulations made under this provision would be subject to the negative resolution procedure in line with the procedure applied to the existing provision.

Clause 21 – Supplementary provisions

148. Clause 21 does not provide for secondary powers in itself but it does specify that Schedule 2 has effect. The Secondary Powers in this schedule are discussed later.

Clause 22 – Recovery of sums in respect of maintenance

149. Clause 22 is a regulation making power for making provision to enable the Secretary of State to apply for a court order to recover sums from persons who have liability to maintain an adult dependant who is claiming income-related ESA, and for those regulations to include provision on related matters, such as the enforcement of orders and the transfer of the right to receive payments. The powers mirror those in section 23 of the Jobseeker's Act and would be used to make the same provisions as in regulation 169 of the Jobseeker's Allowance Regulations 1996 (SI 1996/207) to enable the Secretary of State to apply to a court, for an order requiring payment, and

Welfare Reform Bill 2007, Delegated Powers Memorandum.

for the Secretary of State to transfer the right to receive payment to the claimant. As the powers are to be used in the same way as the existing power in the Jobseeker's Act which is subject to the negative resolution procedure, it is believed the same procedure is appropriate for income-related ESA.

Clause 23 – Interpretation of Part 1

150. Clause 23 provides for the interpretation of Part 1 of the Bill. The Department believes that regulations made under this clause setting out how certain words and phrases are to be interpreted or defined should be subject to negative resolution procedure as this provides the necessary flexibility to accommodate future policy changes and changes of interpretation which may occur as a result.
151. Subsection (2) of this clause provides for the assessment phase of the claim to end on such a day as may be prescribed. This enables the assessment phase to be set for a particular period (which is intended in most cases to be 13 weeks). It also enables the assessment phase to be changed; for example, to extend it beyond this period. It is intended that this will include where a claimant appeals against a decision that they are not entitled to an ESA because they do not satisfy the Personal Capability Assessment.
152. This clause also provides that the definition of a "week" may be prescribed as any seven day period for benefit purposes. This allows benefit entitlement to commence for any seven day period following a claim and ensures that entitlement can be assessed over appropriate seven day periods with reference to the day of the week the person will be paid.

Clause 24 – Regulations

153. This clause does not contain regulation-making powers but is drawn to the Committee's attention as it sets out how the ESA regulation-making powers are to be exercised.

Clause 25 – Parliamentary Control

This clause does not contain regulation-making powers but is drawn to the Committee's attention as it sets out the Parliamentary control of the ESA regulations.

Clause 27 – Consequential amendments relating to Part 1

154. Clause 27 provides for regulations to make provisions which are consequential on Part 1 of the Bill amending, repealing or revoking any provision of an Act, including an Act of the Scottish Parliament, where that legislation was passed on or before the last day of the Session in which the Bill is passed. Although every effort was made to identify all consequential amendments for inclusion in the Bill this Henry VIII power has been taken in order to deal with any amendments which may be needed subsequently for

Welfare Reform Bill 2007, Delegated Powers Memorandum.

the proper operation of ESA and its interaction with other social security benefits. The regulations will be subject to the negative resolution procedure which gives the appropriate level of Parliamentary oversight given that any amendments must be of a consequential nature. They are intended to be made for the purposes of ensuring that other legislation takes proper account of the replacement of incapacity benefit by ESA, and the change to income-related ESA in some circumstances where income support would currently be payable.

155. Clause 27 also gives effect to the amendments to other Acts in Schedule 3. Powers created or extended by those amendments are discussed in the section on Schedule 3 below.

Clause 28 – Transition relating to Part 1

156. Although Clause 28 does not of itself contain delegated powers, the associated Schedule 4, discussed later in the commentary, does contain a number of powers.

Schedule 1 – Employment and Support Allowance: additional conditions

157. Both parts of Schedule 1 provide for a substantial number of the detailed rules relating to conditions of entitlement to ESA and, as will be seen, are very closely linked to the current rules in Incapacity Benefit and Income Support. The Secretary of State will therefore need flexibility to reflect changes that may be made in other benefits – for example keeping rules in Income Support and income related ESA consistent where it is appropriate to do so.
158. Part 1 of Schedule 1 sets out the National Insurance contribution conditions which must be satisfied in order to be entitled to the contributory allowance. In effect, these are the same conditions as those that exist in Incapacity Benefit now. Part 2 of the Schedule describes the conditions which must be satisfied for a claimant to receive income-related allowance. These largely reflect the powers currently used in Income Support.
159. As the powers in the Schedule resemble existing powers relating to existing benefits, and would be applied in broadly the same way, the negative procedure is appropriate. Some drafting changes have been made to make the text easier to read, for example the first contribution condition used to be drafted with two sub-paragraphs (paragraph 2 of Schedule 3 to the 1992 Act), but has been redrafted with 3 sub-paragraphs (paragraph 1 of Schedule 1 to the Bill). The effect is exactly the same.

Conditions relating to National insurance

Welfare Reform Bill 2007, Delegated Powers Memorandum.

160. Paragraphs 1(4) (a) and (b) provide that the first contribution condition, the requirement to have paid a minimum number of contributions in one of the three tax years prior to the ESA claim, may be modified in respect of a person who has been in receipt of any prescribed description of benefit during any prescribed time or period.
161. The power at paragraph 1(4)(a) provides for the first contributory condition to be satisfied by claimants entitled to certain benefits at certain times. These groups will be set out in regulations. The intention is to use the power to replicate the provisions set out at regulation 2B(2) of the Social Security (Incapacity Benefit) Regulations 1994. These are:
- carers who were entitled to Carer's Allowance in the relevant year, or who would have been but for the overlapping benefit rules;
 - people who have been in work for more than 2 years before their claim and who were entitled to disability working allowance or the disability element of the Working Tax Credit;
 - certain convicted prisoners whose conviction has been overturned and whose contribution record has been credited in relation to when they were in prison; and
 - claimants who were previously entitled to ESA in the relevant year.
162. As a result of regulations to be made using the power in paragraph 1(4)(b), a modified contribution condition will apply to those groups. This will be based on the relaxation provision in regulation 2B(1) of the Social Security (Incapacity Benefit) Regulations 1994 in that the first contribution condition will be satisfied if appropriate contributions have been paid in any one tax/contribution year.
163. It is appropriate that this type of detail is in secondary legislation, with the framework of the contribution conditions set out in Schedule 1 to the Bill itself. The groups to which the relaxed form of contribution conditions will apply may need to be adapted to take into account wider changes in social security and other legislation in the future. It is therefore intended that the negative resolution procedure will apply.
164. Paragraph 3(1)(a) provides that the benefit year, which begins on the first Sunday in January, in which a benefit is claimed may be modified in prescribed circumstances. It may be necessary to do this to enable an award to be made, for example where a claimant would qualify in a subsequent benefit year to that in which the initial claim is made.
165. Paragraph 3(2) provides that the relevant benefit year for the purposes of determining whether the contribution conditions are satisfied may be modified in respect of a person who was previously entitled to, or made a claim for, ESA. It is important to ensure that previous successful or unsuccessful claims do not have unintended effects on a claimant's entitlement to ESA. For example, this allows someone who left benefit and is covered by the linking rules to be treated as meeting the contribution

Welfare Reform Bill 2007, Delegated Powers Memorandum.

conditions despite them now being in a different benefit year. These powers are necessary to make suitable provision for such claimants.

166. Paragraph 4(1)(a) provides that the normal age limit (20) for claiming ESA under the youth provisions may be extended in prescribed circumstances to age 25. It is intended to use this power to extend the age cut-off from 20 to 25 for people in education, or vocational or occupational training. This is the same as provided for Incapacity Benefit by Regulation 15 of the Social Security (Incapacity Benefit) Regulations 1994.
167. Paragraph 4(1)(c) provides that claimants claiming under the youth provisions must satisfy certain prescribed conditions relating to being resident and present in Great Britain. It is intended to use this power to require claimants to be ordinarily resident in Great Britain, without being subject to immigration control, and to have been present in Great Britain for a total of at least 26 weeks in the year up to the date of entitlement. This is the same as for Incapacity Benefit, as per Regulation 16 of the Social Security (Incapacity Benefit) Regulations 1994.
168. Paragraph 4(3) provides the power to modify the age limit which applies to a young person reclaiming ESA under the youth provisions. It is intended that this power will be used to ensure that a person who leaves benefit can in some cases re-qualify for ESA as if they had not left. This is a linking rules provision, without which a young person, who could not otherwise meet the first and second conditions at paragraphs 1 and 2, could leave the benefit and not be able to re-qualify because he was over the age limit.
169. Paragraph 4(4) provides a power to prescribe the circumstances in which a person is or is not to be treated as receiving full-time education. This power will be used to define "full-time education" so that, for example, time spent on a course that would not be suitable for a student without a disability is excluded from being counted in the amount of education that a claimant using the youth contribution condition is undertaking. This flexible power to define the circumstances in which people are treated as receiving full-time education is important in the current climate of substantial structural changes that are being proposed to the education system.

Conditions relating to Income-related allowance

170. Part 2 of the Schedule provides certain additional conditions where the income-related allowance of ESA will not be paid. These are based on the arrangements which currently apply to Income Support.
171. Paragraph 6(1)(b) provides that a claimant is not entitled to income-related ESA if he has capital which exceeds the prescribed capital limit. This limit does not apply to the contributory-related element of the benefit. This limit is intended to be the same as that which applies to Income Support currently – £16,000.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

172. Paragraph 6(2) provides that where a claimant is a member of a couple, the capital and income of the partner shall be treated as belonging to the claimant unless regulations prescribe otherwise. This is because the calculation of entitlement is on a household basis. An example of where this power might be used is where the claimant's partner ceases to live permanently in the same household and therefore it becomes inappropriate to aggregate the income and capital. This provision is the same as in Income Support.
173. A claimant of the income-related ESA cannot be engaged in remunerative work as a result of the condition of entitlement set out in paragraph 6(1)(e). The definition of "remunerative work" is to be defined in regulations under paragraph 6(5) and will be defined as 16 hours or more within a week done in expectation of payment. However, it will sometimes be appropriate for some claimants who are undertaking certain types of remunerative work still to be entitled to the benefit. For example a person who is working as a child minder in their own home, or undertaking voluntary work where the only payment is to cover reasonable expenses, is not regarded as being in remunerative work. Equally, it will sometimes be appropriate for people to be treated as undertaking remunerative work even though their work may not fit within the definition. For example a person who is absent from employment without good cause is treated as still being in remunerative work. As a result, paragraph 6(3) provides that regulations may prescribe the circumstances in which a person is or is not to be treated as engaged in remunerative work.
174. Claimants in full-time advanced education (above Scottish Certificate of Education (higher level) or A-levels or equivalent) are regarded as students and are normally excluded from benefit. However, Income Support has rules which allow "disabled students" to claim and the Government has committed to enabling disabled students to participate in full-time education while receiving income-related ESA.
175. Paragraph 6(4) provides the power to disapply the requirement in paragraph 6(1)(g) that the income-related element is not payable where a claimant is receiving education ("education" is to be defined in regulations under paragraph 6(5)). There is also a power in paragraph 6(4) to provide for when a claimant is to be treated, or not to be treated as receiving education within the meaning to be defined in paragraph 6(5). This will be set out in regulations. It is intended to use this power to prescribe the circumstances which will enable disabled students to qualify. The Secretary of State requires the flexibility provided by the regulation-making powers in the Bill to ensure that disabled students are able to qualify where appropriate and also respond to changes in education provision which could affect eligibility to benefit entitlement. It is appropriate, that in line with provision in other social security legislation the powers be subject to negative resolution procedure.
176. Paragraph 6(5) includes the definition of "couple". There are two delegated powers in this definition – one in paragraph (b) and the other in paragraph (d). In paragraph (b), the definition of "couple" includes a man and woman

Welfare Reform Bill 2007, Delegated Powers Memorandum.

who are not married but are living together as if they were, unless regulations prescribe otherwise. This is the same as Income Support currently. In paragraph (d), the definition of “couple” includes two people of the same sex who are not civil partners but are living together as if they were, unless regulations provide otherwise. This is the same as Income Support.

177. Paragraph 6(5) – the definition of “couple”, in paragraph (d), provides that two people of the same sex who are not civil partners but are living together as if they were are a couple unless regulations provide otherwise. This is the same as Income Support. The intention is to use this power in the same way as Income Support. For example, where the members of the couple were temporarily separated they would normally be a couple. However, regulations under paragraph 6(5)(d) would be used to specify, as in Income Support, that where one member is detained in legal custody pending trial or sentence or whilst serving a sentence on conviction they are not a couple.
178. Paragraph 6(7) provides that regulations may modify the provisions of paragraph 6 of this Schedule for members of polygamous marriages. This includes how benefit, income and capital in respect of the second and any subsequent spouse will be aggregated for the purposes of determining entitlement to ESA. Once again it is intended to align the rules of ESA with those in Income Support.
179. Paragraph 6(8) provides the Secretary of State with the power to prescribe in regulations the circumstances in which persons are to be treated, or not to be treated, as members of the same household. The intention is that regulations under this subsection will be modelled on the existing provisions that apply in Income Support (Regulation 16 of the Income Support (General) Regulations 1987). Here, generally, a person who is living away from the other members of the family cannot be treated as a member of the claimant's household if that person does not intend to return to live with the rest of the family or is likely to be away for over 52 weeks. However the absent member may be treated as a member of the household if that person intends to return to live with the family and has no control over the period of absence, which is unlikely to last substantially more than 52 weeks.
180. Paragraph 6(8) will also provide that members of a couple should not be treated as members of the same household when one of them is held in a special hospital or in custody, on temporary release from custody or is permanently in residential accommodation (including residential care and nursing homes). The couple provisions need to stay aligned with those in the other income –related benefits such as Income Support, and as with those benefits, the regulations under those provisions are made under the negative procedure.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Schedule 2 – Employment and Support Allowance: supplementary provisions

181. Schedule 2 contains a number of provisions, set out in the following paragraphs, which contain powers for supplementary matters relating to ESA. For example, it deals with links between periods of claiming, and circumstances when the normal rules are modified such as when a person can be treated as having limited capability for work without having satisfied the usual test. The provisions would, in many cases, be used to replicate parts of the current incapacity benefit or income support systems, or to align ESA with other benefits, such as Jobseeker's Allowance. Due to the need for flexibility to ensure the provisions in regulations are aligned and integrated properly with other benefits, delegated powers are appropriate. In the main, the provisions need to be aligned with provisions relating to other parts of the benefit system which use the negative procedure which makes that procedure appropriate here.

Limited capability for work

182. Claimants will be entitled to ESA where the claimant, by reason of a physical or mental health condition, is limited in their ability to carry out specified activities and meets the threshold of limited capability for work, which will be set in regulations under clause 8. Paragraph 1 of Schedule 2 contains additional powers in relation to limited capability for work.

183. Paragraph 1(a) provides that a claimant may in prescribed circumstances be treated as either having or not having limited capability for work. An example of how it is intended to use this power would be in dealing with people who are terminally ill, to treat them as having limited capability for work so that they can qualify for ESA, even though they might not meet the threshold for limited capability for work if the usual functional test were applied to them. A specific example might be cancer of the pancreas where a person might not demonstrate the debilitating symptoms necessary to score the 15 points required to be eligible for ESA, until about 6 weeks before death was expected. Equally, this power might be used to provide for claimants undergoing certain invasive types of chemotherapy to be treated as having limited capability for work. Alternatively, this power might be used to treat pregnant women as having limited capability for work if work would put them or their unborn child at serious risk of damage, even though the woman might not actually have limited capability for work itself.

184. Paragraph 1(b) provides a regulation-making power for the question of whether a person has limited capability for work to be determined notwithstanding that he is for the time being treated as having limited capability for work under paragraph 1(a). This power, when used in combination with paragraph 1(c) of Schedule 2, enables the question of a person's limited capability for work to be looked at again and for a determination to be made about whether the person has limited capability for work. It might be used, for example, where someone has been treated as having limited capability for work under paragraph 1(a), but after a period of

Welfare Reform Bill 2007, Delegated Powers Memorandum.

time medical evidence or advice is received that the person's condition has significantly improved and it would be appropriate to test whether or not that person has limited capability for work.

185. Paragraph 1(c) provides a regulation-making power to determine afresh, in prescribed circumstances, the question of whether a person has limited capability for work. For example, it might be used to re-determine whether someone has limited capability for work, on the basis of medical advice that their condition can be expected to improve within a given period of time or that it has improved.

Waiting days

186. It is intended that people will normally be excluded from receiving ESA for the first three days of a period of sickness or disability ("waiting days"). This is in order to prevent large numbers of claims for very short spells of illness.
187. Paragraph 2 enables regulations to prescribe the circumstances in which waiting days need not be served, for example:
- where a claimant makes a new claim for benefit within the period covered by the linking rules; or
 - waiting days have been served already in respect of another benefit and it would cause a break in entitlement in the income-related benefit payment.

Periods of less than a week

188. Although ESA is a weekly benefit, there will be circumstances where it is necessary to calculate a claimant's entitlement for only part of a week. For example, at the beginning of a claim there may be less than a week payable up to the first designated payment date, depending on the day of the week the claimant becomes entitled. Similarly part week payments may be made at the end of a claim where a claimant has limited capability for work for part of a benefit week because they have returned to work.
189. Paragraphs 3(a) and (b) therefore enable regulations to be made which will make provision for these periods of less than a week. The intention is to use these powers to provide for the calculation of benefit for part weeks and to make appropriate modifications to the way in which income is to be calculated.

Linking periods

190. It is intended that where two periods of limited capability for work are separated by no more than a prescribed period of time (the "linking period"), the two periods should be treated as continuous, with the intervening period being ignored for benefit payment purposes. For example, if a person claims benefit for four weeks ("the first claim"), has a break of four weeks, and then claims again ("the second claim"), this second claim is treated as a

Welfare Reform Bill 2007, Delegated Powers Memorandum.

continuation of the first claim. This means that if the contribution conditions were satisfied for the first claim, they will continue to be satisfied for the second claim, and the person will now be treated as if they had already completed four weeks of the assessment phase.

191. Powers under paragraph 4(1) enable the Secretary of State to prescribe the length of the linking period. The intention is to make different provision for different circumstances which will broadly follow the linking periods which current apply to Incapacity Benefit. For example, the intention is that people will be able to leave benefit for work or training for up to 104 weeks, as now, with the reassurance that their benefit position will be protected. The intention also is that the current 8-week linking rule that bridges gaps in entitlement to Incapacity Benefit will be extended to 12 weeks in ESA to align with rules elsewhere in the benefit system, for example, in Jobseeker's Allowance.
192. Powers under paragraph 4(2) provide that regulations can prescribe that a condition met in an earlier period of limited capability for work does not need to be met again if periods link. An example would be where in the earlier period of limited capability for work the person's assessment phase has ended; they would not need to satisfy the assessment phase again to qualify for the work related activity or support component.

Presence in and absence from Great Britain

193. Clause 1(3)(d) provides that to be entitled to ESA a person must be in Great Britain. Paragraph 5 of Schedule 2 allows the Secretary of State to provide in regulations the circumstances in which a person is to be treated as being in Great Britain. The intention is that in order to receive the income-related element of ESA a greater degree of affiliation to Great Britain is required beyond physical presence in the country. Accordingly it is proposed that, as a condition of receiving the income-related element, a person will be required to be habitually resident in Great Britain. This will reflect the existing requirements for Income Support, income-based Jobseeker's Allowance and Pension Credit. This does not apply to the contributory element in the same way that it does not apply to Incapacity Benefit except for those who qualify under the youth provisions.
194. Paragraph 6 allows the Secretary of State to prescribe the circumstances in which a person's entitlement to the contributory allowance can be paid where they are absent from Great Britain. As with Incapacity Benefit, this could be a permanent absence to a European Union country, or a country which has a bi-lateral agreement with the United Kingdom. It can also be for a temporary absence.
195. Paragraph 7 allows the Secretary of State to modify any provisions in ESA for contributory allowance in respect of someone who has been employed on a ship, vessel, hovercraft or aircraft. For example, people who have been employed on board a ship or aircraft could have any entitlement to contributory ESA protected despite not having been present in Great Britain,

Welfare Reform Bill 2007, Delegated Powers Memorandum.

or we could make modifications to, for example, the administration of the PCA in cases where, because claimants are outside of Great Britain, there are particular operational and practical considerations to take into account.

196. Paragraphs 8(1) and (2) enables the Secretary of State to prescribe the circumstances in which a person's entitlement to income-related ESA may continue when temporarily absent from Great Britain. As with Incapacity Benefit, Income Support and income-based Jobseeker's Allowance, it is intended to allow ESA to continue in payment for periods of temporary absence from Great Britain, for example, on a short holiday, or when a person is abroad receiving medical treatment.

Limited capability for work-related activity

197. The main provisions relating to limited capability for work-related activity are set out in clause 9. Regulations under paragraph 9(a) of this Schedule may provide that a person in specified circumstances can be treated as having or not having limited capability for work-related activity. For example, the intention is to treat terminally-ill claimants as having limited capability for work-related activity to give them access to the support component, even though they might not meet the threshold in the test for limited capability for work-related activity if it were applied to them.
198. Paragraph 9(b) provides a regulation-making power allowing the question of whether a person has limited capability for work-related activity to be determined notwithstanding that he is for the time being treated as having limited capability for work-related activity under paragraph 9(a). This power, when used in combination with paragraph 9(c) of Schedule 2, enables the question of a person's limited capability for work-related activity to be looked at again and for a determination to be made about whether the person has limited capability for work-related activity. It might be used, for example, where someone has been treated as having limited capability for work-related activity under paragraph 9(a) and has been placed into the support group, but after a period of time medical evidence or advice is received that the person's condition has significantly improved and it would be appropriate to test whether or not that person has limited capability for work-related activity and whether or not that person should remain a member of the support group.
199. Paragraph 9(c) provides a regulation-making power to determine afresh, in prescribed circumstances, the question of whether a person has limited capability for work-related activity. For example, it might be used to re-determine whether someone has limited capability for work-related activity on the basis that there is medical advice that their condition has worsened or it has improved or that it can be expected to worsen or improve within a given period of time.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Effect of work

200. By the very nature of the allowance, people claiming ESA are usually limited in their capability to undertake work. It is recognised however, that most people have some capability to work, and that work can be beneficial to many claimants – for example using part time work to build up confidence, increase social inclusion, or as a ‘stepping stone’ into sustained employment, and so some work is permitted. Incapacity Benefit has a range of Permitted Work rules. It is intended that ESA will have similar rules. In order to build upon the evidence of what works and gain the maximum benefit from such rules in encouraging people to move into work, there needs to be sufficient flexibility to allow for the development of a variety of options and activities. That flexibility requires that the provisions are set out in regulations using the negative procedure.

Treatment of allowances as “benefit”

201. Paragraph 11 makes provision for regulations to be made as a result of which the allowance, or the contributory element, or the income-related element would be treated as benefits for the purposes of the Contributions and Benefits Act, which is the main Act governing social security benefits generally. This power will be used to ensure that ESA and its two elements can be treated in the same way as other similar provisions within the social security system.

Attribution of reductions in cases where allowances taken to consist of two elements

202. Paragraph 12 creates a power to prescribe how reductions to a claimant’s benefit payment will take effect in cases where the claimant is entitled to both the contributory strand and the income-related strand of the allowance. Clauses 10, 11 and 12 of the Bill, along with section 2AA of the Administration Act, enable regulations to reduce benefit where there is non-compliance with the conditionality for ESA. The intention is to use those regulations to apply appropriate sanctions to the claimant’s benefit, and in the case where a claimant is entitled to both a contributory allowance and an income-related allowance, additionally to determine what element of the allowance the sanction will effect. For example, this power would be used to ensure that a sanction applied against the contributory allowance was not made good by a corresponding increase in the income-related allowance, thereby negating the effect of the sanction.

Advance claims

203. Section 5(1)(c) of the Social Security Administration Act 1992 and the regulations made under that provision enable people to claim benefits in advance of their being entitled to them. Under those regulations, such a claim is either made in relation to a period after the date on which the claim is made, or it is treated as being so made. As is the case for other benefits we intend to provide for people to be able to claim ESA up to three months

Welfare Reform Bill 2007, Delegated Powers Memorandum.

in advance. The power at paragraph 14 will enable the making of appropriate modifications to Part 1 of the Welfare Reform Act, by regulations, in relation to advance claims to ensure the process is appropriate.

Members of the forces

204. This allows any of the normal conditions of entitlement to be modified in respect of members of Her Majesty's forces and provides for Her Majesty's forces to consist of prescribed establishments and organisations in which people serve under the control of the Defence Council. This provision is required to ensure that members of the forces who are unfit for duty prior to discharge are treated similarly to people in employment who exhaust their Statutory Sick Pay entitlement. For example, currently, where service personnel have been absent from duty due to illness or disability and are discharged from the service, like people who have received Statutory Sick Pay, they do not need to serve waiting days at the beginning of their claim for Incapacity Benefit. Provisions under this power would follow those in regulation 2 of the Social Security Contributions and Benefits Act 1992 (Modifications for Her Majesty's Forces and Incapacity Benefit) Regulations 2003 (203/737). The power would be used only to ensure that the different status of members of the Her Majesty's forces is taken into account in the rules of the benefit, and the negative procedure is appropriate.
205. In summary, the Schedule 2 powers are subject to negative resolution because in many cases they will be used to replicate parts of the current Incapacity Benefit or income support systems, or to align ESA with other benefits, such as Jobseeker's Allowance. In the main, the alignment will be with provisions relating to other parts of the benefit system which use the negative procedure, making that procedure appropriate here.

Schedule 3 – Consequential amendments relating to Part 1

206. Schedule 3 sets out amendments to other Acts which are consequential upon Part 1 of the Welfare Reform Bill creating ESA. The schedule contains the following powers which amend or extend existing powers. The schedule, in most cases, makes no changes to the existing procedure which applies in each case, so the Government does not believe the creation of ESA justifies any changes to the level of Parliamentary oversight. This is because these consequential amendments are in the main minor, and will be used to apply existing provisions to the new benefit in the same or similar ways to existing benefits.
207. Where there are changes in the procedure relating to a power this is noted below and is because the power mirrors an existing affirmative power relating to Jobseeker's Allowance. As the use of that power has already been approved by Parliament, the negative procedure is appropriate to the extension of those provisions in the same way to income –related ESA.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

208. The first category of consequential amendments are those which have the effect of including income-related ESA within the scope of a pre-existing power which currently applies to income support and/or income-based Jobseeker's Allowance. This has the effect of extending a pre-existing power to include income-related ESA rather than creating a new power which would not have already been considered by the Committee. The amendments included in this category are to:

- section 17A of the Children Act 1989 – paragraph 6(3);
- sections 6, 46(5) and 47(3)(b) of the Child Support Act 1991 as amended by the Child Support, Pensions and Social Security Act 2000 and as it has effect apart from that Act – paragraph 7(2) to (6);
- section 24(1) and (2)(d) of the Criminal Justice Act 1991 – paragraph 8;
- section 15A of the Social Security Administration Act 1992 – paragraph 10(5);
- section 74A of the Social Security Administration Act 1992 – paragraph 10(9);
- paragraph 6 of Sch. 5 and paragraph 6 of Sch. 8 Local Government Finance Act 1992 – paragraph 11;
- section 115 of the Immigration and Asylum Act 1999 – paragraph 18; and
- section 94 of the Local Government Act 2000 – paragraph 20.

209. The second category of consequential amendments are those which amend legislation so as to include income-related and contributory ESA. The amendments which achieve this in relation to provisions containing delegated powers simply extend those pre-existing powers so as to apply them as they currently apply to both Incapacity Benefit and Income Support and/or to income-based and contributory jobseeker's allowance and in some cases to a range of other social security benefits. These amendments deal particularly with the administration and adjudication of an ESA. The amendments included in this category are:

- section 6A(2) of the Social Security Contributions and Benefits Act 1992 – paragraph 9(2);
- section 148 of the Social Security Contributions and Benefits Act 1992 in relation to the amendment at section 150 of the Social Security Contributions and Benefits Act 1992 – paragraph 9(11);
- sections 1, 2AA, 5, 71, 73, 122B, 124, 125, 130, 132, 150(7) and 179 of the Social Security Administration Act 1992 – paragraphs (2), (3), (4), (6), (7), (14), (16), (17), (19), (20), (21), (23) and (29);
- sections 11, 27 and 28 of the Social Security Act 1998 – paragraphs 16(4), (5) and (6); and
- section 72 of the Welfare Reform Act 1999 – paragraph 17.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

210. A third category of amendments is those which insert provisions relating only to contributory ESA which currently apply to Incapacity Benefit and/or contributory Jobseeker's Allowance. Again these amendments simply extend existing powers to ESA:
- section 22(5) of the Social Security Contributions and Benefits Act 1992 – paragraph 9(4); and
 - sections 71 & 159B of the Social Security Administration Act 1992 – paragraphs 10(6) and 10(22).
211. The fourth category of amendments are those which create new delegated powers and a full explanation of those provisions is set out below.
212. Paragraph 10(23) of Schedule 3 inserts section 159C into the Social Security Administration Act 1992. This provision specifies that in certain circumstances, for example where certain other benefit income changes, the amount of a person's income-related ESA is recalculated without a further decision being made by the Secretary of State. The new section includes a power to prescribe exceptions to this rule. For example, in income support (which has a similar power), the power has been used to specify an exception where the claimant is receiving the transitional addition to income support. In such a case section 159 of the Social Security Administration Act 1992 does not apply so a decision has to be made where there is any change to that addition.
213. The remaining new delegated powers in Schedule 3 mirror existing affirmative powers relating to Jobseeker's Allowance. As the current use of the affirmative power in Jobseeker's Allowance has already been approved by Parliament, and the new power relating to ESA will be used to mirror those provisions and apply them in the same way to ESA as they currently apply to Jobseeker's Allowance, the negative resolution procedure is appropriate.
214. The two provisions concerned are the amendments made by paragraph 19 which inserts subsection 62(4A) into the Child Support, Pensions and Social Security Act 2000, and that made by paragraph 22 of Schedule 3 which inserts section 9(4B) into the Social Security Fraud Act 2001. These create powers allowing regulations to prescribe reductions in payments of income-related ESA where a person has been found to be in breach of a community order, or where a member of their family is an offender subject to a benefit reduction under the provisions of the Social Security Fraud Act. These powers mirror those in the same sections which relate to Jobseekers Allowance and may be used to provide the same rules for ESA to reductions in benefit of up to 40 per cent of the personal allowance, and to provide for lower rates of deductions in certain circumstance, such as the pregnancy of a family member.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Schedule 4 – Transition relating to Part 1

215. The use of negative powers within this Schedule is required to ensure the ability to act quickly and flexibly regarding the transitional arrangements for existing cases and respond promptly should the need arise.
216. This Schedule provides for transitional arrangements in relation to the introduction of ESA. Paragraph 1 provides a general power for regulations to make such provision as the Secretary of State considers necessary or expedient in connection with the coming into force of any provision of, or repeal, relating to Part 1 or otherwise for the purposes of, or in connection with, the transition to ESA. In addition to this general power the schedule provides specific powers in relation to those people who are on existing benefits. Existing benefits, for these purposes, means incapacity benefit (including transitional awards of incapacity benefit (paid to people previously on sickness or invalidity benefit), severe disablement allowance, and income support on grounds of incapacity for work or disability).
217. Paragraphs 2-4 provide for regulations to specify when a claim can be treated as a claim for an existing benefit and when a claim can be treated as a claim for ESA. Regulations may provide that a claim for an existing benefit made before the day that ESA comes into effect, but for a period beginning after ESA is introduced, (i.e. people making advance claims), can be treated as a claim for ESA.
218. Regulations may provide that after the appointed day (the day ESA is introduced), existing benefits cannot be claimed. Paragraph 3(c) provides that regulations may make provision for a claim to ESA to be treated as a claim for existing benefit. This may be used, for example, when someone's benefit is backdated to a period before ESA was introduced
219. Paragraphs 5 and 6 relate to claims that are made by those who had previously been entitled to an existing benefit, subsequently left benefit, but who can return to benefit because they are covered by linking rules. It covers those cases where the claimant's original claim was for an existing benefit, but their subsequent claim covered by linking rules is after ESA has been introduced. Regulations may provide that these cases may be awarded ESA on terms, which match wholly or partly, the existing benefit.
220. Paragraph 7 provides for regulations to make provision for the migration of existing claimants onto ESA. These could provide for voluntary migration in prescribed circumstances, or mandatory migration. Regulations can prescribe the timing, conditions, kind and amount of any such entitlement to ESA which was previously an award for an existing benefit. It also can make provision for the termination of existing awards and for determining whether a claimant has limited capability for work-related activity (that is, that they would be in the Support group). Paragraph 7 provides for regulations to make provisions for the conditions of continuing entitlement, or reviewing or terminating such awards.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

221. Paragraphs 8 and 9 provide for regulations to make provisions for the conditions of continuing entitlement, or reviewing or terminating such awards. These paragraphs will allow regulations to be made for the protection of existing awards as they are moved on to ESA.
222. Paragraph 10 allows for regulations to modify the rules for the annual uprating of incapacity benefit and severe disablement allowance on or after the commencement of ESA.

Clause 29 – Local Housing Allowance

223. Clause 29(2) contains regulation-making powers in relation to how the Appropriate Maximum Housing Benefit (“AMHB”) is to be determined. (The AMHB is the maximum level of Housing Benefit to which an individual can be eligible, before deductions are made as a result of their income). It provides that regulations must prescribe the manner in which the AMHB is to be determined and sets out a number of regulation making powers. The existing relevant regulation making powers have been brought together in the new section 130A with some recasting, together with new powers specifically focussed on the Local Housing Allowance (LHA) approach.
224. The powers provide that, as now, the detailed rules will be contained in regulations. This includes rules setting out when case specific referrals should be made to rent officers, when case specific or generic rent officer determinations should be used to determine AMHB and when AMHB should be calculated without reference to rent officer determinations. (Generic determinations, relating to certain size properties in specific areas are required for the LHA). As is currently the case, the regulation making powers in relation to the determination of AMHB are subject to the negative procedure.
225. It is necessary to use regulation making powers to provide the Secretary of State with the flexibility to amend the detailed rules in relation to determination of AMHB without the need to amend primary legislation. The calculation of AMHB needs to take account of the wide range of tenancy types and claimant’s circumstances which change over time. It would be impracticable to put this level of detail in primary legislation. Use of the negative procedure reflects the current position and maintains the appropriate level of Parliamentary scrutiny of detailed provision of this nature.
226. Clause 29(3) relates to decision making in relation to Housing Benefit and enables regulations to prescribe the cases and circumstances in which, and the procedure by which, a superseding decision relating to Housing Benefit must be made by the appropriate relevant authority. Under the LHA this allows for the local authority to apply a new LHA rate each year to ensure that a claimant's award is updated.
227. There is an existing regulation making power which enables the Secretary of State to prescribe the cases and circumstances in which, and the procedure

Welfare Reform Bill 2007, Delegated Powers Memorandum.

by which, a superseding decision may be made by the appropriate relevant authority. That power is subject to the negative procedure as is the new power. Making such provision in secondary legislation ensures that the Secretary of State has the necessary flexibility to amend the detailed rules so that he can respond quickly to the wide range of circumstances which can arise in relation to decision making and Housing Benefit. The use of the negative procedure reflects the existing level of Parliamentary scrutiny for detailed provision in relation to decision making of this type.

228. Proposed new section 130A(2) provides that regulations must prescribe the manner in which the AMHB is to be determined. This replaces the similar power currently contained in section 130(4).
229. Proposed new section 130A(3) provides that the regulations may provide for the AMHB to be ascertained in the prescribed manner by reference to rent officer determinations. This power replaces the power contained in section 122(3) of the Housing Act 1996 which provided that regulations under section 130(4) of The Social Security Contributions and Benefits Act 1992 (Housing Benefit: manner of determining appropriate maximum benefit) may provide for benefit to be limited by reference to determinations made by rent officers in exercise of functions conferred under section 122. We intend that this power should be used, as now, to provide for case specific rent officer determinations to be used in determining AMHB in some cases and for generic rent officer determinations (i.e. LHA determinations) to be used in other cases. As now, there will be some cases where rent officer determinations are not used to determine AMHB. The new power is particularly appropriate for LHA cases because it makes it clear that AMHB make reference to rent officer determinations but does not need to be limited by such determinations.
230. Proposed new section 130A(4) provides that regulations may require an authority administering Housing Benefit in any prescribed case to apply for a rent officer determination and to do so within such time as may be specified in the regulations. This replaces the existing regulation making power in relation to applications to rent officers for determinations in section 122(5)(a) and (b) of the Housing Act 1996. This power will be necessary for cases that are exempt from the LHA. It is considered desirable that the powers relating to this matter should be in the same piece of legislation.
231. Proposed new section 130A(5) provides the power to make provision as to the circumstances in which, for the purpose of determining the AMHB, the amount of the liability a person has to make payments in respect of a dwelling in Great Britain which he occupies as his home must be taken to be the amount of a rent officer determination instead of the actual amount of that liability. This is an additional "treat as liable" power created solely for the purpose of calculating the AMHB. The existing power to make regulations to treat people as liable is contained in section 137 (2) (j). It provides a power specifically focussed on the LHA approach, which it is intended to use to enable a claimant's AMHB to exceed their rent liability if the appropriate LHA is higher than their actual rent liability. It is intended to do this by providing

Welfare Reform Bill 2007, Delegated Powers Memorandum.

for a claimant's rent liability to be treated as the amount of the appropriate LHA where that allowance is higher than the claimant's actual rent liability.

232. Proposed new section 130A(6) provides an equivalent power to that in subsection (5) for claimants who are "treated" as having a rent liability under regulations made under the existing "treat as liable" regulation making power in section 137(2)(j) Social Security Contributions and Benefits Act. (They may be treated as having a rent liability under regulations made under section 137(2)(j) for example because it is their partner who has the actual liability. This enables either member of the couple to make the Housing Benefit claim).
233. Clause 29(3) provides for regulations to set out the cases and circumstances in which, and procedure by which a decision relating to Housing Benefit must be made by the appropriate relevant authority. It is intended to use this power to prescribe when a local authority must make a decision whether to supersede a Housing Benefit decision where for example, it should use an updated LHA determination to calculate AMHB. This is wider than the current power in Schedule 7, paragraph 4 of the Child Support, Pensions and Social Security Act 1992 which permits regulations to be made to prescribe the cases and circumstances in which a decision to supersede an earlier decision may be made rather than must be made. The wider power is considered to be necessary in order to ensure the proper implementation of the Government's policy intentions in this area.

Clause 30 – Loss of Housing Benefit following eviction for anti-social behaviour etc.

234. Clause 30 provides for a sanction of Housing Benefit when a household has been evicted for anti-social behaviour, has subsequently refused an offer of rehabilitation services and thereafter failed to comply with a warning notice. Rehabilitation services are those that have the intention of ending, or preventing repetition of, conduct which may or has led to eviction. The new delegated powers are found in 4 sections to be inserted in the Social Security Contributions and Benefits Act 1992 by subsection 1 of the clause – subsections 130B, 130D, 130F, and 130G.

Section 130B – Loss of Housing Benefit following eviction on certain grounds

235. Subsection (4) of the proposed section 130B provides for the Secretary of State to prescribe the rate at which benefit is reduced and the circumstances in which benefit is to be payable.
236. These powers will be used to set out the level of the reduction in benefit if the conditions for the sanction have been met; when a hardship rate will be payable and the level of that hardship rate; and what should happen in circumstances where two sanctions are active on a Housing Benefit claim at the same time.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

237. The Department has previously used delegated legislation to set out the detail of sanction levels and hardship. For example, the severity of a sanction made because of “two strikes” legislation is set out in the Social Security (Loss of Benefit) Regulations (SI 2001 No. 4022). This approach provides flexibility for the Department to amend the detailed rules without the need for amending primary legislation.
238. The Department recognises that the severity of the sanction and issues relating to hardship are something that Parliament will want to have the opportunity to consider in more detail. Regulations made under subsection (4) will therefore be subject to affirmative Parliamentary procedures.
239. Subsection (11) of 130B enables the Secretary of State to prescribe the form of the warning notice, which in England and Wales would have to be issued prior to a sanction being imposed. The warning notice will set out for the claimant what action he must take, and the time limit for such action, and will advise him that the amount of Housing Benefit payable could be affected if they did not comply. Any such regulations will be subject to the negative procedure.

Section 130D – Loss of Housing Benefit: supplementary

240. Subsection (1) of the proposed section 130D provides powers to the Secretary of State to prescribe circumstances in which some or the entire amount of Housing Benefit sanctioned should be paid to the claimant, with such other adjustments as may be prescribed.
241. This power will be used to set out circumstances where benefit that has been sanctioned should be repaid to the claimant. Examples of when this could happen are if the claimant successfully applies to have the relevant possession order set aside or if the claimant has made a successful appeal.
242. Subsection (2) of the proposed section 130D would provide powers to the Secretary of State to vary the definition of relevant possession orders, the making of which satisfies the first condition for application of the sanction.
243. It is not envisaged that this power will be used in the immediate future. It could be used to extend the proposal to other orders for possession, not specifically related to anti-social behaviour. For this reason the Department considers that any Order made by virtue of this section should be subject to affirmative procedure, so that Parliament can be given the opportunity to consider any change in detail.
244. Subsection (3) of the proposed new section 130D provides powers to the Secretary of State to prescribe circumstances which may or may not constitute good cause, and those matters which should and should not be taken into account in deciding whether someone has good cause for not taking an action specified in a sanction warning notice or Scottish equivalent.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

245. The Department has previously set out the detail of good cause in regulations. For example, legislation and regulations relating to circumstances in which Jobseekers Allowance is not payable are set out in primary legislation (Jobseekers Act 1995) and the good cause provisions are detailed in the Jobseekers Allowance regulations (SI 1996 No. 207).
246. The regulations will provide details of circumstances that must be taken into consideration when determining good cause. These would include duties and emergencies, such as attending funerals for close family and friends, attending court/jury service or being in an accident (travel, domestic, natural disaster). The regulations would also enable an authority to consider all the circumstances of a case; and circumstances that would give good cause automatically, such as the time to take action specified in a warning notice is less than one week after the notice was issued.

Section 130F – Information provision

247. For the provision to work effectively it will be necessary for information to be exchanged. The necessary information sharing provisions are provided in the proposed section 130F. Those who may share information and the purposes for which information may be used are generally set out in the primary legislation. The regulations will set out the operational detail of how the information sharing should take place and so it is intended that they will be made using the negative procedure. The use of delegated powers will give the Secretary of State the necessary flexibility to change the provisions in the light of changing circumstances.
248. Regulations made under subsection (1) of the proposed section 130F will require a court which makes a relevant possession order to notify the Secretary of State of it. They would also set out which other details relating to the order the court must provide. Regulations would also enable the Secretary of State to require similar information from others who may be aware of the making of a relevant order for possession, such as a landlord or local authority.
249. Regulations made under subsection (3) of the proposed section 130F will require relevant local authorities to supply relevant information held by it to the Secretary of State, or to a person providing services to him, for any purpose relating to the administration of Housing Benefit. For example, this could include information relating to whether a claimant has met any of the conditions within section 130B(1).
250. Regulations under subsection (4) of the proposed section 130F will require relevant information to be shared within and between authorities administering Housing Benefit and those providing rehabilitation services for purposes relating to the administration of Housing Benefit, for example information relating to the failure to comply with a sanction warning notice.
251. Regulations made under subsection (5) of the proposed section 130F will require relevant information to be shared within and between authorities

Welfare Reform Bill 2007, Delegated Powers Memorandum.

administering Housing Benefit and those providing rehabilitation services for purposes relating to the provision of rehabilitation services. This would ensure that authorities could share relevant information should a household move from one authority area to another.

252. Subsection (7) of the proposed new section 130F will enable the Secretary of State to prescribe that information should be provided in a certain manner, for example in writing, and that information should be supplied within a certain time.

130G – Pilot schemes relating to loss of Housing Benefit

253. Section 130G will provide the Secretary of State with powers to set up a pilot scheme for this proposal for a prescribed period. This power will be used to prescribe who the pilot scheme will apply to and the period for which it will run. The intention is to pilot in 10 authorities for a period of 2 years. The regulations will specify and end date for all regulations made under sections 130B to 130G. Subsection (6) would enable the Secretary of State to amend or revoke the pilot scheme through regulations.

Clauses 31 and 32 – Housing Benefit and Council Tax Benefit for persons taking up employment

254. Together these clauses remodel the existing provisions for payment of an Extended Payment (or benefit run-on) to claimants in prescribed circumstances who take up or increase their hours of employment. The main intent behind these clauses is to provide for an easier method of making extended payments and remove the requirement for those who receive extended payments to submit a fresh claim for any in-work Housing Benefit or Council Tax Benefit unless that person has moved to another authority. This will avoid the current situation where qualification for the Extended Payment ends an existing award of Housing Benefit and/or Council Tax Benefit which means the tenant must submit a new claim in order to receive Housing Benefit or Council Tax Benefits once they are in employment. The detailed rules are expected to remain the same or similar to the current scheme, and will remain in secondary legislation to provide the flexibility to keep these under review.
255. Clause 31, subsections (1) and (2) provide the Secretary of State with the power to prescribe the basic underpinning entitlement conditions for Extended Payments of Housing Benefit/Council Tax Benefit, namely that a person entitled to Housing Benefit or Council Tax Benefit would be entitled to such a payment for a prescribed length of time when his own or his partner's entitlement to one of a number of prescribed benefits ends, in prescribed circumstances (e.g. when he has commenced employment or increased hours or earnings), and certain prescribed conditions are satisfied (e.g. he must have been entitled to the prescribed benefit for a continuous period of 26 weeks). In particular, clause 30, subsection (2) allows for the period for which a person is entitled to an Extended Payment to be

Welfare Reform Bill 2007, Delegated Powers Memorandum.

prescribed. It is intended that it will be payable for a 4 week period, as it is now.

256. The negative resolution procedure has been chosen for regulations made under these two clauses, as their purpose is to improve the operation of the current Extended Payments schemes, which are themselves subject to negative resolution.
257. The underlying objective of Extended Payments is that they act as a work incentive. The flexibility to amend the detailed provisions for entitlement has been used on a number of occasions, for example to add receipt of certain disability benefits to the list of qualifying benefits. It is considered appropriate to maintain the same degree of flexibility to respond to changing circumstances.
258. Clause 31, subsection (7) provides that calculation of an Extended Payment should be determined by regulations, as is the case under the current legislation.
259. Clause 31, subsection (9) allows the Secretary of State to prescribe in regulations how entitlement to an Extended Payment under subsection (1) interacts with an existing entitlement, whether existing Housing Benefit or Council Tax Benefit entitlement is claimed by the Extended Payment claimant or their partner.
260. Clause 31, subsection (10) allows the Secretary of State to prescribe in regulations that where a person moves to another local authority area within the 4 week period after they take up work, any amount of Extended Payment payable by the original local authority is the sole amount of their entitlement. On the rare occasion that a claimant considers that they may be entitled to in-work Housing Benefit and Council Tax Benefit in addition to the Extended Payment entitlement, this will be payable by the new local authority and the claimant will need to claim this additional amount. However, the amount payable by the new authority will be reduced by the amount of an Extended Payment. The purpose is to avoid double-provision, and the same offsetting rules will apply where a tenant moves within the local authority.
261. Clause 31, subsection (12) allows the Secretary of State to make provision in the regulations for exceptions to the offsetting rules (described above) in prescribed circumstances; or to avoid the other partner in a couple from "double claiming" during the period of an Extended Payment. An example of the sort of exceptional circumstances envisaged under subsection (12)(a) or (c) is where somebody has an unavoidable rental liability at the same time on two properties, for example after fleeing from domestic violence.
262. The Government inserted clause 31(13) during Commons Committee stage to maintain a feature of the current schemes which allows a period of grace if a person moved home (and as a result ceased to be entitled to Housing Benefit and/or Council Tax Benefit) in the week they took up employment, or

Welfare Reform Bill 2007, Delegated Powers Memorandum.

in the preceding week. This amendment was necessary, because such people would otherwise not get an Extended Payment as their entitlement to Housing Benefit would have ended before they ceased to be entitled to one of the qualifying benefits for the Extended Payment

263. Clause 32 makes clear that the normal Housing Benefit and Council Tax Benefit rules apply in relation to benefit paid under the Extended Payment provisions. However, subsection (1)(b) permits the Secretary of State to make any modifications to the general rules which he considers are required in relation to Extended Payments. The administration provisions are defined in subsection (3) as the Administration Act and subordinate legislation made in pursuance of that Act.
264. The power to modify the Administration Act in subsection (1)(b) is a Henry VIII power. However, its effect is limited to modifications that are necessary in connection with extended payments. Moreover, the primary powers in the Administration Act relate to administration of benefits rather than entitlement and any modifications are likely to be of a relatively minor procedural nature.
265. Subsection (2) illustrates, in particular, the type of modification that could be made under the Henry VIII power in subsection 1(b). It specifically allows for such a modification to include that the payment of an Extended Payment must be made from one local authority to another, in prescribed circumstances. This would allow (for cases where a council tenant has moved between local authorities) the former authority to discharge responsibility for paying the Extended Payment by transferring the money directly to the new local authority. The new authority would then rebate the tenant's rent/council tax account accordingly. The basic intent here is that the usual method of paying the tenant should not be disrupted in the rare cases when an Extended Payment is due and the tenant has moved to a different area. As the effect of clause 32 subsections (1)(b) and (2) is limited, negative resolution will still provide Parliament with sufficient opportunity to scrutinise any proposed modifications.
266. Clause 32, subsections (4) and (5) provide for all the regulation making powers described above in relation to Extended Payments to be exercisable by the Secretary of State, and to be subject to the negative procedure. Subsection (6) makes clear that the usual scope for regulations under the Social Security and Contributions Act 1992 to make, for example, different provisions for different classes, or exemptions for particular classes of case, or to make whatever consequential or transitional arrangements as necessary and so on, applies in relation to Extended Payments.
267. As discussed above, the provisions in clauses 31 and 32 are essentially remodelling the existing regulation-making powers, and it is considered appropriate to maintain the same scope and procedure for the delegated powers.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Clause 34 – information relating to housing benefit

268. Clause 34 amends the existing regulation making power relating to the provision of information and evidence to rent officers contained in section 5(1)(h) and (3) of the Social Security Administration Act 1992. The existing delegated power enables the Secretary of State to make regulations requiring local authorities to provide information or evidence to rent officers for the determination of a Housing Benefit claim or in connection with any question arising in connection with a claim. The amendments contained in clause 34 enable the Secretary of State to make regulations that require local authorities to provide rent officers with evidence of a prescribed description relating to an individual claim or award or to any description of claim or awards.
269. It is considered important to maintain the existing flexibility provided by a delegated power as the Secretary of State from time to time needs to change the type of information or evidence that should be provided in the light of changes to the housing market and the exact nature of the functions which rent officers are required to undertake in connection with Housing Benefit. The new delegated power, like the existing delegated power is subject to the negative procedure and it is considered that this level of Parliamentary scrutiny continues to be appropriate for regulations which make detailed provision in this area.
270. Subsection (2A) contained in subsection (2) of clause 34 would enable the Secretary of State to require prescribed persons to provide a rent officer with information or evidence of such description as is prescribed. Subsection (2B) provides that the Secretary of State may prescribe any description of information or evidence which he thinks is necessary or expedient to enable rent officers to carry out their functions under section 122 of The Housing Act 1996.
271. Subsection (2C) provides that information or evidence required to be provided by virtue of subsection (2A) may relate to an individual claim or award or to any description of claims or awards.
272. It is intended that the prescribed persons will be local authorities and that they will be required to provide basic information about Housing Benefit claims and awards each month in order that the rent officer can exclude Housing Benefit properties from the database he uses to make determinations in accordance with his functions under section 122 of the Housing Act 1996. It is also intended that regulations will require local authorities to provide certain information where the local authority is required to ask the rent officer to make a case specific determination as part of his functions under section 122 of The Housing Act 1996. It is intended that this will be information about the claimant and other occupiers, the dwelling and the tenancy which the Secretary of State considers is necessary or expedient for the rent officer to have in order to carry out the relevant case specific determination including possible visits. This would include information warning rent officers of potentially violent claimants.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

273. Should local authorities fail to warn rent officers where appropriate, this power could be used to impose specific requirements in relation to warning rent officers of potential violence, although it is not necessary in the short-term because we will aim to resolve the issue by producing guidance to accompany the draft regulations.

Clause 35 – Supply of information by rent officers

274. Clause 35 does not include a delegated power but includes a direction giving power and reference to this clause is included for the sake of completeness. It provides an information sharing gateway from rent officers to the Secretary of State. This clause is similar to the information sharing gateway between local authorities and the Secretary of State contained in section 122D of the Social Security Administration Act 1992.

275. Clause 35 inserts a new section 122F into the Social Security Administration Act 1992. Subsection (1) enables the Secretary of State to require a rent officer to supply Housing Benefit information held by the rent officer to, or to a person providing services to, the Secretary of State. It provides that the information may be used for specific purposes, including social security purposes.

276. Subsection (2) of the new section 122F provides that information must be supplied under subsection (1) in such manner and form, and in accordance with such requirements, as may be specified in directions given by the Secretary of State. This is equivalent to the direction giving power contained in section 122D. It enables the Secretary of State to change his requirements relating to the provision of the information and the form and manner in which it is to be provided without the need to legislate. This provides flexibility so that, where he considers it necessary, he could seek more detailed information where for example it appeared that Housing Benefit expenditure was rising unusually quickly in a particular area. Or he could ask for information to be provided in a different format where that would assist in considering a policy option.

277. *Subsection (3)* limits the onward disclosure of the information provided in accordance with directions. It also ensures that the information sharing provision meets the information sharing principles of the Commissioners for Her Majesty's Revenue and Customs. (The Secretary of State's responsibilities for the appointment, remuneration and administration of rent officers will transfer to the Commissioners for Her Majesty's Revenue and Customs on the 1st of April 2009 and the work of the Rent Service will be integrated into the Valuation Office Agency an agency of her Majesty's Revenue and Customs).

278. Dealing with such detail in legislation would be cumbersome and it would be difficult to respond quickly to changing information requirements.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

279. As this power would not be exercisable by statutory instrument, it is not included in the Annex of delegated powers.

Clause 36 – Payment of Housing Benefit

280. Clause 36 substitutes new sub-paragraphs (2), (2A) and (2B) for subsection (2) of section 134 of The Social Security Administration Act 1992, which does not contain any delegated power. The new subsection (2) provides that Housing Benefit is to be paid in such manner as is prescribed and that regulations may, in particular, provide for Housing Benefit to be paid in one or other or a combination of the methods of payment set out in the new subsection (2). Subsection (2B) provides that the new subsection (2) does not affect the existing power in section 5 to make provision in relation to the payment of benefit.

281. The existing provisions in relation to payment of benefit in section 5(1)(i)(p) and (6) are delegated powers subject to the negative procedure. It is necessary to use delegated powers subject to the negative procedure in relation to the new powers in subsection (2A) as this is an area where regulations need to be amended in the light of developments in housing and landlord and tenant law and developments relating to the financing of various types of social housing. It is therefore appropriate that the method of payment is dealt with in secondary legislation which is subject to the negative procedure.

282. The regulation making power contained in the new subsection (2) will enable the Secretary of State to make regulations which require local authorities to pay Housing Benefit to their tenants, rather than rebating their tenants. It is intended to use the power in the new subsection (2) to extend the principle of payment to tenants to those renting from the local authority in appropriate cases, subject to safeguards. The existing powers in section 5 do not provide for this.

283. The power contained in new subsection (2), together with the existing powers in section 5, can be used to make regulations which require local authorities to pay Housing Benefit for other types of claimant either to the claimant, to someone else on his behalf or to his landlord.

Clause 38 – Directions by Secretary of State

284. Clause 38 makes changes to the Secretary of State's powers of direction available to him, by virtue of section 139D of the Social Security Administration Act 1992, they are included here for completeness. In particular it widens the Secretary of State's direction making powers.

285. Currently, following his consideration of a report and any local authority response to it the Secretary of State can give directions to a local authority as to the standards it must attain in respect of its administration of benefit (i.e. Housing Benefit and/or Council Tax Benefit) and the time within which it

Welfare Reform Bill 2007, Delegated Powers Memorandum.

must do so. Directions can also include recommendations on the action the authority might take to attain the required standards.

286. Clause 38 would extend the Secretary of State's power so that he could direct an authority to take such actions necessary for the purpose of improving its administration of benefits. It is necessary to take this power because not all problems in respect of a local authority's benefit service can be covered by specifying standards to be attained. For example, it might be considered necessary that an authority should ring-fence and clear a backlog of work, develop and implement a suitable strategy for combating benefit fraud or review a part of the service that is not functioning properly.
287. The power to direct on actions would be used as a last resort when an authority is unwilling or unable to take the action necessary to address problems identified in a report.
288. Wider direction making powers are already available to the Secretary of State, by virtue of the powers in section 15 of the Local Government Act 1999. These powers can be used when an authority is failing to comply with its duties under Best Value. Amongst other things, these powers provide for the Secretary of State to direct an authority to take any action he considers necessary or expedient to comply with Best Value requirements. However, these powers are only available to the Secretary of State in respect of English authorities, as similar powers in Scotland and Wales rest with the devolved administrations.
289. In widening the Social Security Administration Act direction powers the Secretary of State would be able to take appropriate action in respect of a local authority's benefits service in Scotland and Wales, as well as in England. This reflects the fact that benefits is a reserved matter and the Secretary of State needs to be able to act when poor performance in respect of benefits administration is reported, whether the local authority that is failing is in England, Scotland or Wales.
290. Unlike the Best Value powers that cover all local authority functions the powers in the Social Security Administration Act are limited so that the Secretary of State can only:
 - use the power if he has received a copy of a report that is concerned with Housing Benefit and/or Council Tax Benefit administration;
 - use the power in relation to the local authority that was the subject of the report stating that there is a need for the authority to improve its performance and remedy failings; and
 - direct on action he thinks necessary or expedient for improving the authorities functions in relation to benefits administration (including the prevention and detection of fraud).
291. Other safeguards are as follows:

Welfare Reform Bill 2007, Delegated Powers Memorandum.

- when considering a report the Secretary of State would also be able to take account of any information provided by the authority in question on its proposals for reporting failings and any other information he thinks relevant - so a balanced decision can be made on whether or not directions are appropriate;
- except in cases of emergency, the Secretary of State would be required to give the authority in question an opportunity to make representation about any proposed direction; and
- the Secretary of State would be able to vary or revoke a direction in consequence of representations made by a local authority, to rectify an error or omission or in consequence of a material change in circumstances.

292. As now, directions would only be used as a last resort. DWP's preference is to work with authorities that need to deliver improvements. Since 1997 the Secretary of State has only used his Social Security Administration Act direction powers on three occasions, and the Local Government Act powers once in respect of benefits.

293. In the case of the direction under Local Government Act 1999, the Secretary of State directed an authority to clear a backlog of work by the end of December 2001 without compromising the speed and accuracy of non-backlog work. This direction focused on resolving a key problem, but it could not have been made under the Social Security Administration Act powers because no standard was specified in the direction. The provisions proposed rectify this situation.

294. In England when deciding on the action that should be taken in respect of an authority that is reported to be delivering an unsatisfactory benefits service, DWP would continue to take account of any protocol on intervention agreed between the Government and Local Government Association. In Scotland and Wales DWP would, as now, consult with the devolved administrations to ensure that any action taken was appropriate.

Clause 39 – Minor and consequential amendments relating to Part 2

295. Clause 39 contains no delegated powers in itself but it does give effect to Schedule 5 which does contain such powers.

Schedule 5

296. The purpose of this part is to update, clarify and ensure the avoidance of discrimination in the types of war service pension that are eligible for discretionary disregard schemes operated by local authorities. In broad terms, there is a mandatory £10 disregard that is applied to war disablement and war widow/widowers pensions when calculating entitlement to an income-related benefit. In addition, local authorities may decide, under sections 134(8) and 138(6) of the Social Security Administration Act 1992, to

Welfare Reform Bill 2007, Delegated Powers Memorandum.

disregard in whole or in part the income (remaining after the mandatory disregard has been applied) from certain types of war disablement or war widow's pension when calculating Housing and Council Tax Benefit entitlement. In effect this means that benefit claimants who are in receipt of the relevant war service pensions can benefit from a higher income before their entitlement to Housing and Council Tax Benefits is withdrawn.

297. The majority of war service pensions are included in local schemes by virtue of sections 134(8)(a) and 138(6)(a) and are not subject to spending limits. However sections 134(8)(b) and 138(6)(b) enable the Secretary of State to prescribe discretionary modifications to the scheme by way of regulation. Such modifications are subject to a spending limit on the part of the authority. Over time, and in the absence of a suitable primary legislative vehicle at the relevant time, certain pensions have been included in the discretionary schemes by this route; for example, pensions for a group of war widows, pensions for war widowers etc.
298. Recent changes to war service pensions, including the introduction of the Armed Forces (Pensions and Compensation) Act 2004, have highlighted the need to ensure that the Housing Benefit and Council Tax Benefit arrangements can be updated promptly to take account of any future changes in the relevant service provisions, otherwise war service pensions recipients could lose out on valuable financial assistance.
299. Therefore the Bill provides for a new delegated power at paragraphs 3 and 4 of Schedule 5. This would enable local authorities to introduce discretionary local schemes that enable them to disregard the whole or part of any war service pension paid to a person when deciding a claim for Housing Benefit or Council Tax Benefit but would enable the Secretary of State to set out the qualifying benefits in regulations, subject to the negative procedure. The intention is to use this power to replicate the current list of eligible war service pensions, which may be included in the discretionary schemes, and to add to this list those already prescribed in regulations, thereby ensuring they are not subject to a spending limit.
300. The Department considers that the appropriate level of scrutiny is to subject the definition of qualifying service pensions to the negative procedure. This is consistent with the usual arrangements in social security legislation, particularly for a provision that is beneficial to the recipients. And is the same level of scrutiny to which a pension may be added to the list of service pensions that qualify for the mandatory £10 disregard across all the income-related benefits.

Clause 40 – Social Security information

301. Clause 40 would amend the Social Security Administration Act by (a) inserting a new section 7B to provide for the use by "relevant authorities" of social security information in connection with the administration and promotion of claims for benefit, and (b) amending section 7A of that Act which deals with the receipt by relevant authorities of claims for benefit and

Welfare Reform Bill 2007, Delegated Powers Memorandum.

the collection and verification of evidence relating to claims. Also the definition of "relevant authority" is extended to include county councils in England.

302. The clause provides for a number of new regulation-making powers (described below). They will enable the Department to respond to changing circumstances as regards to administration of social security benefits without the need for new primary legislation. The proposed new powers would all be subject to the negative procedure - which the Department considers would afford the appropriate level of scrutiny.
303. Subsection (2) of the proposed new section 7B would enable the Secretary of State to make regulations governing the procedures to be followed by a relevant authority when it receives and uses social security information that has been used or verified by another relevant authority. The intention is to ensure that information already verified should normally be accepted and used by the importing authority within certain safeguards, to avoid asking the claimant to provide the same information again. Without this, one of the objectives of the clause, to streamline administrative procedures, would be harder to achieve.
304. Subsection (3) provides for the Secretary of State to prescribe in regulations what counts as a "relevant purpose", which must be related to either a claim or potential claim for a "specified benefit". A purpose is relevant in this context if it increases the take-up of social security benefits to which claimants may be entitled. It is intended that regulations would allow, for example, a local authority that receives a claim for Housing Benefit from a pensioner, to use that information in encouraging the pensioner to take up any unclaimed entitlement to Pension Credit or other DWP-administered benefits.
305. Subsection (5) enables the Secretary of State to prescribe through regulations the "specified" benefits for the purposes of new section 7B – these are expected to be most social security benefits. In practice this would mean that the Secretary of State could permit the use of information in relation to a range of benefits and respond in a timely way to future changes in the nature or the names of particular benefits, without recourse to primary legislation. A similar approach was taken in section 7A (6)(d) of the Social Security Administration Act which allows the Secretary of State to prescribe relevant benefits for the purposes of facilitating claims to be taken by the Department or local authorities on behalf of one other.
306. Clause 40 (2)(b), inserts paragraph (e) into section 7A (2) of the Social Security Administration Act. The new paragraph provides for regulations to enable one relevant authority to verify claims information and evidence on behalf of another. For example, where the Department receives a claim for Housing Benefit and supporting information and evidence only relevant to the Housing Benefit claim, regulations could prescribe that the Department may verify this material on behalf of the local authority to which the claim would be forwarded. The local authority could then be required, through

Welfare Reform Bill 2007, Delegated Powers Memorandum.

regulations made under subsection (2) of the proposed section 7B (described above) to use such information.

307. Subsection 2(e) adds a county council in England as a category of relevant authority for the purposes of sections 7A and the proposed 7B of the Administration Act. Section 7A (6) (c) provides for regulations enabling county councils in England to accept claims and information for specified social security benefits and to forward them to whoever administers the benefit. By virtue of regulations made under section 7A 2(e) above, English county councils will also be able to verify claims information on behalf of whoever administers the benefit.

Clause 41 - Information relation to certain benefits

308. Clause 41 deals with the exchange of information between the Secretary of State and local authority Housing Benefit teams and local authority teams working on the delivery of welfare services (the "Supporting People" programme funded by the Department for Communities and Local Government and the Devolved Administrations to help vulnerable people to live independently).
309. It is proposed that regulations are used as the reasons for information sharing will change over time with ongoing developments in the way that Supporting People is financed and administered, and as relevant policy changes in the general Housing Benefit regulations occur (for example concerning the rules prescribing the circumstances in which payment should be made to the tenant, the landlord or another third party). Specifying these matters in secondary legislation provides a necessary degree of flexibility to continue this information sharing as relevant policy developments are made. Given the nature of these changes we believe that the negative procedure provides the appropriate level of scrutiny.
310. It provides two information sharing gateways. The first under subsection (1) provides that the Secretary of State and Housing Benefit teams can supply information to Supporting People teams (and vice versa) for the purpose of applying welfare services grants. This replaces the current provision in section 94 of the Local Government Act 2000.
311. The second gateway under subsection (2) allows Housing Benefit teams and Supporting People teams to share certain information for prescribed Housing Benefit and welfare services purposes. These purposes are prescribed under subsection (8) of this clause.
312. Regulations under subsection (8) would specify the purposes for which certain information can be used, providing the necessary level of flexibility needed to allow for future changes, while still limiting its use to purposes concerning Housing Benefit or welfare services.
313. This would allow regulations to be made enabling welfare services information, such as that concerning the vulnerability of the tenant or the

Welfare Reform Bill 2007, Delegated Powers Memorandum.

probity of the landlord, to be used to inform local authority decisions on whether Housing Benefit should be paid direct to the claimant or to the landlord.

314. We considered it appropriate to use regulations to restrict powers for the information gateway in subsection (2). Information to be shared would be of a personal nature, including matters relating to a person's medical condition and mental health. Creating a gateway for any information relating to any housing benefit or welfare service matter would be excessive.
315. The Secretary of State may make an order under subsection (7) of this clause to specify the enactments under which grants are paid and in respect of which information sharing can take place. It is considered appropriate to use regulations to specify which grants the sharing in subsection (1) can take place not only to provide for the current funding stream in place, but also to allow for policy work being considered by the Department for Communities and Local Government (DCLG) and the Welsh Assembly (WA) which is looking at using alternative grant making powers to fund welfare services.
316. Initially we intend that this power under subsection (7) is used to specify those grants made under section 93 of the Local Government Act 2000 so that the sharing currently under section 94 of that act (which this provision repeals) may continue, while allowing the Secretary of State, in the future, to specify other grants to allow for any changes in funding policy developed by DCLG or WA.
317. Information to be shared under subsection (2) will be of a personal nature. However, the Department considers that the protection provided under section 123 of the Social Security Administration Act 1992 in respect of Housing Benefit Teams and clause 42 of this Bill in respect of Supporting People teams would provide the necessary protection against any unauthorised sharing, consistent with that throughout the Social security system and in the current sharing under the Local Government Act 2000. Regulations made and the information sharing itself would have to be compatible with the European Convention on Human Rights and Data Protection law.

Clause 45 – Local authority powers to investigate benefit fraud

318. The purpose of this clause is to widen the existing powers of local authority fraud investigators to allow them to investigate fraud against national DWP administered benefits.
319. The clause amends section 110A of the Social Security Administration Act 1992. The provisions would allow a local authority to authorise investigators to use powers contained in section 109B and 109C for "relevant purposes" that relate to: the entitlement to social security benefits; whether benefit legislation has been contravened; and the prevention or detection of benefit

Welfare Reform Bill 2007, Delegated Powers Memorandum.

offences. Regulations are appropriate for setting limits on the powers to prevent misuse.

320. Proposed new subsection (1B) of this section would enable the Secretary of State to prescribe the conditions under which the new powers can be used whilst new subsection (2B) would allow restrictions to be placed on the use of those powers. The intention is to put limits and safeguards in place to restrict the range of benefits that a local authority could investigate and to ensure that the powers are not misused.
321. Regulations would set out the national benefits that local authorities will be able to investigate. The Secretary of State would be able to withdraw the new powers where an authority has misused them, or is likely to misuse them. The threat from fraudsters is not static. Therefore, setting out these conditions in secondary legislation will ensure flexibility and allow the limits and safeguards to keep pace with the evolving threat from fraudsters.

Clause 46 – Local authority powers to prosecute benefit fraud

322. The purpose of this clause is to provide a power for local authorities to prosecute fraud against national benefits. The clause inserts a new section 116A into the Social Security Administration Act 1992. The provisions would allow a local authority to bring proceedings for a national benefit offence where they already have a power to prosecute offences against Housing Benefit or Council Tax Benefit. Delegated powers are needed to provide safeguards against misuse.
323. Using secondary legislation to set out these conditions and when they are satisfied allows the limits and safeguards sufficient flexibility so that they can keep pace with the evolving threat to the benefit system from fraudsters.
324. Subsection (2) of the proposed new section 116A would allow the Secretary of State to list the benefits that a local authority cannot bring proceedings against and set out the circumstances in which they cannot prosecute. It also allows him to direct that an authority not bring proceedings in particular cases. This will allow the Secretary of State to set limits to the powers and stop local authorities from bringing proceedings in certain cases, or certain types of case, such as where they are particularly difficult or sensitive.
325. Subsection (3) would allow the Secretary of State to prescribe conditions so that a local authority must not bring proceedings under it unless those conditions are satisfied. The Secretary of State would be able to withdraw the new prosecution powers from a local authority where they have misused them or are likely to misuse them.

Clause 51 – Care Component of disability living allowance: persons under the age of 16

326. Clause 51 amends section 72 of the Social Security Contributions and Benefits Act 1992. Section 72(1) contains the entitlement conditions for the

Welfare Reform Bill 2007, Delegated Powers Memorandum.

care component of Disability Living Allowance. Clause 51(2) inserts a new subsection (1A) which modifies those conditions of entitlement for children on or around the age of 16.

327. Regulations made under section 72(7) of the Social Security Contributions and Benefits Act 1992 are made subject to the negative resolution procedure. This delivers a flexible system that can then respond effectively to changes in the future. Primary legislation would not provide the degree of flexibility to adapt the entitlement conditions or the application of the age conditions promptly in the future if necessary.
328. Currently section 72(7) provides the Secretary of State with regulation-making powers to prescribe (subject to section 72 subsections (5) (terminal illness) and (6) (age conditions)) the circumstances in which a person is to be taken to satisfy, or not satisfy, such of the conditions of entitlement mentioned in subsection (1) paragraphs (a) to (c) as may be prescribed. For example, regulations currently provide (and will continue to do so under the new power) that a person who suffers from renal failure and undergoes renal dialysis in specified circumstances shall be taken to satisfy either section 72(1)(b) or (c) of the Social Security Contributions and Benefits Act.
329. The power in section 72(7) is amended by clause 51(6) and (7) which removes the current reference to section 72(6) (which will cease to have effect provided by clause 51(5)) and replace it with a new section 72(7A). The new section provides for subsection (1A) which relates to the modified entitlement conditions for persons under the age of 16 to have effect subject to regulations made under section 72(7) (except as otherwise prescribed). Therefore, where regulations are made, the modified entitlement conditions will not apply unless expressly provided for.
330. It is considered appropriate to continue to use regulations to prescribe the circumstances in which the conditions of entitlement are to be taken to be satisfied or not satisfied and to be able to prescribe whether the modifications in the new subsection (1A) apply to such circumstances. This provides a necessary degree of flexibility in their application to difficult circumstances and allows for future changes, if necessary.

Clause 52 – Mobility Component of disability living allowance: persons under the age of 16

331. Clause 52 amends section 73 of the Social Security Contributions and Benefits Act 1992. Currently section 73(1) contains the entitlement conditions for the mobility component of Disability Living Allowance. New subsection (4A) replaces current subsection (4) and modifies those conditions of entitlement for children on or around the age of 16.
332. Regulations made under section 73(5) of the Social Security Contributions and Benefits Act 1992 are made subject to the negative resolution procedure. This delivers a flexible system that can then respond effectively to changes in the future. Primary legislation would not provide the degree of

Welfare Reform Bill 2007, Delegated Powers Memorandum.

flexibility needed to adapt the entitlement conditions or the application of the age conditions in the future if necessary.

333. Currently section 73(5) provides the Secretary of State with regulation-making powers to prescribe (subject to section 73 subsection (4) the circumstances in which a person is to be taken to satisfy, or not to satisfy, a condition of entitlement mentioned in either subsection (1)(a) or (d) or subsection (2)(a) as may be prescribed. For example, regulations currently provide (and will continue to do so under the new power) that a person is to be taken to satisfy the conditions in section 73(1)(a) of the Social Security Contributions and Benefits Act 1992 if he has both legs amputated at levels which are either through or above the ankle.
334. Clause 52(4) provides for new subsection (4A) to have effect subject to regulations made under subsection (5) (except as otherwise prescribed).
335. It is considered appropriate to continue to use regulations to prescribe the circumstances as described above as this provides a necessary degree of flexibility in their application to difficult circumstances and allows for future changes, if it proves necessary.

Clause 55 – Overseas vaccinations

336. Clause 55 amends section 2 of the Vaccine Damage Payments Act 1979 (conditions of entitlement). It replaces the existing regulation-making power in subsection (5) with new subsections (5A) and (5B).
337. Regulations¹ made under the existing power provides that vaccinations given outside of the UK or Isle of Man to serving members of Her Majesty's forces or members of their families shall be treated as carried out in England where the vaccination in question has been given as part of medical facilities provided under arrangements made by or on behalf of the service authorities. This clause seeks to extend that existing power to cover a wider category of people under certain circumstances.
338. The order-making powers are subject to negative resolution. We feel it appropriate and necessary to make provision for the extension on the vaccine damage payments scheme within secondary legislation rather than making provision in primary legislation. The order-making power provides us with the degree of flexibility needed to make provision for differing circumstances and to make changes where the need arises.
339. Accordingly, new subsection (5A) provides the Secretary of State with an order-making power to set out the circumstances in which the condition of entitlement in section 2(1)(a)(i) of the Vaccine Damage Payments Act 1979, which requires that the vaccination was carried out in the UK or the Isle of Man, need not be fulfilled in order to make a claim for vaccine damage payment in certain circumstances. The order-making power applies in the

¹ Regulation 5 of the Vaccine Damage Payments Regulations 1979 (SI 1979/432).

Welfare Reform Bill 2007, Delegated Powers Memorandum.

case of vaccinations of persons of a description so specified in the order, which are given under arrangements made by or on behalf of Her Majesty's forces; a government department specified in the order; or any other body specified in the order.

340. For example, if a civil servant is given a vaccination outside of the UK and Isle of Man under arrangements made by the Foreign and Commonwealth Office, for the purposes of the Act, the order may provide that the civil servant would not have to show that the vaccination was carried out in the UK or Isle of Man. However, the civil servant would still have to satisfy the other conditions of entitlement within section 2.
341. The power contained within new subsection (5A) gives the Secretary of State the power to provide that the condition contained within section 2(1)(a)(i) need not be fulfilled "in such circumstances as may be specified in the order". One intended use of this power is to specify that the vaccination in question must have been given in line with the Department of Health's schedule of recommended vaccinations and/or where the vaccinations given are the same products licensed for use in the UK or the Isle of Man for the disease against which the vaccination was given (or an identical equivalent).

Clause 56 – Appeals to appeal tribunal in Northern Ireland

342. If a claim for a Vaccine Damage Payment is turned down by the Secretary of State the claimant has the right to appeal the decision to an appeal tribunal. The current definition of an appeal tribunal in the 1979 Act provides that Vaccine Damage Payment appeal cases can only be heard by a Great Britain constituted appeal tribunal. Therefore, if a claimant living in Northern Ireland appeals a Vaccine Damage Payment decision, their case could only be heard by a Great Britain constituted Appeal Tribunal, and not by a Northern Ireland constituted Appeal Tribunal.
343. Clause 56 provides for section 4 (appeals to appeal tribunals) of the Vaccine Damage Payments Act 1979 to be amended in order to enable appeal tribunals constituted in Northern Ireland to hear Vaccine Damage Payments appeal cases, where the appellant lives in Northern Ireland. The clause also provides power for the Department for Social Development in Northern Ireland (DSDNI) to make regulations in relation to appeals and appeal tribunals in Northern Ireland. It is necessary to use regulations, using the negative resolution procedure, in respect of this clause to provide DSDNI the same powers as Great Britain to make detailed procedural rules for tribunals in Northern Ireland.
344. Subsection (1) provides for the Vaccine Damage Payments Act 1979 to be amended.
345. Subsection (2) provides that (a) if the Vaccine Damage Payment claimant's address is in Northern Ireland, appeals can be heard by an appropriate appeal tribunal constituted in Northern Ireland, and (b) if the Vaccine Damage Payment claimant's address is anywhere other than Northern

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Ireland, appeals can be heard by an appropriate appeal tribunal constituted in Great Britain.

346. Subsection (3) provides power for DSDNI to make regulations under section (4)(1) of the 1979 Act, to make provision in relation to the manner and timing of appeals in Northern Ireland, and to make provision in relation to proceedings before appeal tribunals constituted in Northern Ireland.
347. Subsection (4) provides DSDNI power to make provisions by regulations with respect to (a) the correction of accidental errors of an appeal tribunal in relation to a Vaccine Damage Payment appeal in Northern Ireland, and (b) the setting aside of such appeal decisions where appropriate on grounds relating to when a document relating to the appeal in which the decision was given was not sent to, or was not received by the appellant or their representative or was not received at an appropriate time by the appeal tribunal which gave the decision; or (ii) an appellant or their representative was not present at a tribunal hearing.

Clause 57 – “Relevant employer”

348. This clause has no delegated powers in itself but it does insert a Schedule into The Pneumoconiosis etc. (Workers Compensation) Act 1979, set out in Schedule 6 of the Bill, which does have delegated powers.

Schedule 6 – Definition of “relevant employer”

349. Schedule 6 is a new Schedule to be inserted into the Pneumoconiosis etc. (Workers’ Compensation) Act 1979 (“the 1979 Act”) which sets out the definition of “relevant employer” for the purposes of that Act. Paragraph 8 provides a power to prescribe relevant occupations for the purpose of the definition of “relevant employer”.
350. Regulations made under Schedule 6 will provide the flexibility to adapt quickly to any changes to related legislation or wider developments. As these powers deal with the definition of a prescribed occupation for the purposes of the relevant employer definition we consider that the negative procedure provides the appropriate level of scrutiny.
351. One aspect of the new definition of a relevant employer is that he must have employed the disabled person in a prescribed occupation. Paragraph 8(1) of the Schedule provides that a prescribed occupation in relation to a person disabled by a disease to which the 1979 Act applies means an occupation prescribed in relation to the disease by the Secretary of State by order made by statutory instrument.
352. The order is required for the purposes of the new definition of a “relevant employer” to prescribe the occupations which are relevant for each disease covered by the 1979 Act and the Pneumoconiosis etc.(Workers’ Compensation) (Specified Diseases) Order 1985 S.I 1985/2034.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

353. The relevant diseases are pneumoconiosis, byssinosis, diffuse mesothelioma and primary carcinoma of the lung where there is evidence of one or both of the following – asbestosis, bilateral diffuse pleural thickening.
354. The occupations used to define a relevant employer for these diseases will mirror the occupations prescribed in relation to the equivalent disease under the Industrial Injuries Disablement Benefit Scheme. This is because the original intention of the Act was to make payments to those people entitled to Industrial Injuries Disablement Benefit Scheme for certain diseases who could not obtain compensation at common law. Delegated legislation is needed to mirror these occupations as they change so that we keep the legislation in line with the original and current policy.
355. Paragraph 9 provides a more general power that will be used to include or exclude people from the definition of “relevant employer” as new knowledge about the cause and development of these diseases arises. As this power provides for modification of the Schedule, any regulations made under it will be subject to affirmative resolution.

Clause 59 - Power to stop payment of allowances to care home residents

356. Clause 59 provides regulation-making powers for the Secretary of State to prescribe the circumstances in which payment of Attendance Allowance or the care component of Disability Living Allowance are withdrawn from care home residents.
357. It is intended that regulations under clause 59 would be made subject to the negative resolution procedure. The new powers in sections 67 and 72 are not open ended but are limited in scope and therefore it is considered that the negative resolution procedure is the appropriate level of parliamentary scrutiny in these circumstances.
358. Subsection (1) relates to Attendance Allowance and substitutes subsection (2) of section 67 of the Social Security Contributions and Benefits Act 1992 with new subsections (2) to (7). The new sub-section (2) provides the Secretary of State with regulation-making powers under which payment of Attendance Allowance may be withdrawn from a care home resident. Regulations will prescribe that Attendance Allowance will be withdrawn where any of the costs of any qualifying services (i.e. accommodation, board and personal care) provided in the care home are borne out of public or local funds under a specific enactment. New subsection (5) provides the Secretary of State with a regulation-making power to specify (within secondary legislation) the specified enactment for these purposes.
359. Subsection (2) substitutes subsection (8) of section 72 of the Social Security Contributions and Benefits Act 1992 with new subsections (8)-(13). The new subsections (8) and (11) provide similar regulation-making powers as for Attendance Allowance but with regard to the withdrawal of payment of the care component of Disability Living Allowance from care home residents.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

360. The proposed powers would be exercisable by Order and regulations made by statutory instrument. We feel it more appropriate to specify in regulations the enactments under which any of the costs of the qualifying services provided for a care home resident must be met (out of public or local funds) to lead to a withdrawal of the payment of these benefits. Specifying the enactments in regulations, rather than in primary legislation, provides the degree of flexibility necessary to easily update the list of enactments in the event of change.

Clause 60 – Independent Living Funds

361. Clause 60 amends the Disability (Grants) Act 1993 to allow the Secretary of State and the Department for Social Development in Northern Ireland to make grants to the new Independent Living (2006) Fund. This clause provides powers to the Secretary of State, or in relation to Northern Ireland, the Department for Social Development, to make consequential amendments to subordinate legislation. The powers are exercisable by order made by statutory instrument in the case of the Secretary of State and by order made by statutory rule in the case of the Department for Social Development.
362. It is intended that both powers should be subject to the negative resolution procedure as they are powers to make consequential amendments updating references within secondary legislation to reflect the establishment of the Independent Living Funds (2006).

Clause 62 – Northern Ireland

363. This clause applies to an Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (legislation for Northern Ireland during suspension of devolved government). The clause provides for such an Order, provided that it contains a statement that it is made only for purposes corresponding to those of this Bill, to be subject to the negative resolution procedure.
364. Such a procedure is appropriate such an Order will only contain provisions corresponding to those of this Bill and as such Parliament will have subjected them to an appropriate degree of scrutiny.

Clause 66 – Transition

365. This clause provides a power for the Secretary of State by order made by statutory instrument to make such transitional provision or savings as he considers necessary or expedient in connection with the coming into force of the Bill except for Part 1 (dealt with in Schedule 4). By virtue of subsection (2), the power includes the power to make “incidental, supplementary and consequential provision”. This power is not subject to any Parliamentary procedure and we consider that this is appropriate given the limited scope of the power, including the fact that it may only be exercised in connection with the coming into force of provisions of the Bill.

Welfare Reform Bill 2007, Delegated Powers Memorandum.

Clause 68 – Commencement

366. Subsection (2) provides, with certain exceptions, for the provisions of the Bill to come into force on such day as the Secretary of State may by order made by statutory instrument appoint. As is usual with powers to make commencement orders it is not subject to any Parliamentary procedure.

Annex 1, Table identifying powers to make delegated legislation, in the Welfare Reform Bill 2006

Clause	Subject	Procedure
Part 1		
2(1)(a)	Prescription of the personal rate of contributory allowance	Negative
2(1)(c)	Prescribing deductions to be made from contributory allowance	Negative
2(2)(c)	Support component in contributory allowance - other conditions	Negative
2(3)(c)	Work-related activity component in contributory allowance - other conditions	Negative
2(4)(a)	Prescribing the circumstances when the condition requiring an assessment phase to have ended does not apply	Negative
2(4)(b)	Backdating of either component	Negative
2(4)(c)	Amount of the work-related activity and support components in the contributory allowance	Negative
3(1)(c)	Deductions from contributory allowance - prescribed payments made in relation to membership of or appointment to prescribed bodies	Negative
3(2)(a)	Disapply deductions in respect of prescribed persons	Negative
3(2)(b)	Treat prescribed pension/ Pension Protection Fund (PPF) payments as not deductible	Negative
3(2)(c)	Treat prescribed sums as pension or PPF payments	Negative
3(2)(d)	Determine how payments are related to periods of entitlement to the contributory allowance	Negative
3(3)	Definition of "pension payment"	Negative
4(2)(a)	Amount of income-related allowance which together with the relevant component makes up the applicable amount for the income-related allowance.	Negative
4(3)	Cases where the applicable amount will be 'nil'	Negative
4(4)(c)	Other conditions for receipt of support component	Negative
4(5)(c)	Other conditions for receipt of work-related activity component	Negative
4(6)(a)	When the condition requiring an assessment phase to have ended does not apply	Negative
4(6)(b)	Backdating of either component	Negative
4(6)(c)	Amount of the work-related activity and support components in income-related allowance	Negative
5(2)(a)	Modifies claims and payments powers in the s.5(1)(d), Admin Act for the purposes of advance awards	Negative
5(2)(b)	Modifies claims and payments powers in the s.5(1)(e), Admin	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

	Act for the purposes of advance awards	
5(3)	Advance awards - time at which payment relating to an advance award becomes payable	Negative
7	Prescribing the minimum benefit payment unless prescribed circumstances apply	Negative
8(1)	Determination of whether a claimant has limited capability for work	Negative
8(5)	Prescribing the circumstances in which a person may be treated as having limited capability for work and the conditions which apply.	Negative
9(1)	Determination as to whether a claimant has limited capability for work-related activity	Negative
10(1)	Requirement to take part in a work-focused health-related assessment	Negative
10(3)	Power to prescribe amount by which benefit to be reduced in case of failure to attend work-focused health-related assessments	Negative
11(1)	Requirement to take part in work-focused interviews	Negative
11(3)	Reduce amount payable where there is failure to attend a work-focused interview and there is no good cause	Negative
11(7)	Purposes of a 'work-focused interview'	Negative
12(1)	Requirement to undertake work-related activity	Affirmative (first regulations only)
12(3)	Reduce amount payable where there is failure to undertake work-related activity without good cause	Affirmative (first regulations)
13(1)	Secretary of State to provide an action plan in prescribed circumstances; prescribe purposes of the action plan	Negative
13(2)	The form, content and review and update of action plans	Negative
13(4)	Reconsider action plan at person's request	Negative
14(1)	Prescribe circumstances in which a direction providing that an action if taken is to be treated as not undertaking work-related activity	Negative
15(2)	Specifying functions of the Secretary of State that can be authorised to be carried out by other persons	Negative
16(1)	Calculation or estimation of income and capital in relation to an ESA claim	Negative
16(2)	Prescription of rules for the calculation of income in respect of a week	Negative
16(3)	Prescribe the circumstances where we will treat a person as possessing capital; disregard capital or income; treat income as capital; treat capital as income	Negative
16(4)	Deem capital as yielding an income at a prescribed rate	Negative
17(1)	Disqualification from benefit	Negative
17(3)	Matters to be taken into account in determining 'good cause'; circumstances in which a person is, or is not, regarded as having good cause	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

17(4)	Disqualification from contributory allowance	Negative
18(1)	Provision for piloting regulations	Affirmative
19(2)	Statutory Maternity Pay (SMP) - exceptions to no entitlement to contributory allowance	Negative
19(3)	Deduction of SMP from contributory allowance	Negative
19(4)	Statutory Adoption Pay (SAP) – exceptions to no entitlement to contributory allowance	Negative
19(5)	Deduction of SAP from contributory allowance	Negative
19(6)	Additional Statutory Paternity Pay – exceptions to no entitlement to contributory allowance	Negative
19(7)	Deduction of Additional Statutory Paternity Pay from contributory allowance	Negative
20	Deemed entitlement for other purposes	Negative
22(1)	Court to have power to make a recovery order in respect of maintenance	Negative
23(1)	Definition of “employment” and “employed”	Negative
23(1)	Definition of “period of limited capability for work”	Negative
23(1)	Definition of “week”	Negative
23(2)	The end of the assessment phase	Negative
23(3)	Prescribe different start date for the assessment phase and circumstances in which this applies	Negative
27(2)	Regulations may make provision consequential to Part 1	Negative
Part 2		
29(2)	New s.130A(2) of the SSCBA - determine appropriate maximum Housing Benefit, including use of and application for rent officer determinations and treating a person as liable for the purpose of determining AMHB.	Negative
29(3)	New sub-paragraph (4A) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 – the cases and circumstances in which, and the procedure by which, the appropriate relevant authority must make a Housing Benefit decision.	Negative
30(1)	s.130B(4) of the SSCBA – prescribe: part of restriction period; reduction of benefit; benefit only payable in prescribed circumstances	Affirmative
30(1)	s.130B(11) of the SSCBA – form of the warning notice	Negative
30(1)	s.130D(1) of the SSCBA - where restricted Housing Benefit has been paid: circumstances where person to be paid some or all of the amount not paid; other prescribed adjustments	Negative
30(1)	s.130D(2) of the SSCBA – Secretary of State may vary the definition of relevant order for possession	Affirmative
30(1)	s.130D(3) of the SSCBA – matters to be taken into account in considering good cause and circumstances in which person is or is not to be regarded as having or not having good cause	Negative
30(1)	s.130F(1) of the SSCBA – notification by a court or other described person to the Secretary of State of the making of an order and provision of prescribed information	Negative
30(1)	s.130F(3) of the SSCBA – supply of relevant information concerning the administration of Housing Benefit by a local	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

	authority or a person authorised to carry out its functions	
30(1)	s.130F(4) of the SSCBA – provision of information to authorities administering Housing Benefit and persons authorised to carry out the functions of such authorities	Negative
30(1)	s.130F(5) of the SSCBA - specified authorities and persons to provide information to a relevant local authority or a person authorised to carry out its functions	Negative
30(1)	s.130F(7) of the SSCBA - the manner and form of information	Negative
30(1)	s.130G of the SSCBA – pilot schemes relating to loss of Housing Benefit to have effect for a prescribed period	Negative
31(1)(a)	Benefits (in addition to Housing Benefit and Council Tax Benefit) that a claimant, or his partner, must be entitled to for subsection (2) to apply	Negative
31(1)(b)	Circumstances in which a claimant or his partner ceases to be entitled to the prescribed benefit for subsection (2) to apply	Negative
31(1)(c)	Conditions to be satisfied if subsection (2) is to apply	Negative
31(2)	Period of entitlement to extended payment of Housing Benefit or Council Tax Benefit	Negative
31(7)	Amount of Extended Payment payable	Negative
31(9)	Effect of entitlement to an extended payment on the claimant's, or his partner's, award of Housing Benefit or Council Tax Benefit	Negative
31(10)	Manner in which the amount payable by a local authority is to be reduced by an amount payable by the “appropriate authority” where a claimant shifts between authorities.	Negative
31(12)(a)	Circumstances in which a payment of Housing Benefit or Council Tax Benefit, as well as an extended payment, may be made by the same local authority	Negative
31(12)(b)	Circumstances in which a partner's entitlement is to be regarded as the claimant's when the claimants shifts between authorities	Negative
31(12)(c)	Circumstances in which the amount payable is not to be reduced by subsection (10)	Negative
31(13)	The period which a claimant may have ceased to have been entitled to Housing Benefit or Council Tax Benefit to still be deemed to be entitled for the purpose of subsection (1)	Negative
32(1)(b)	Necessary modifications can be made to the Social Security Administration Act and subordinate legislation in relation to extended payments	Negative
34	New subparagraphs (2A), (2B) and (2C), section 5 of the Social Security Administration Act 1992: persons required to provide rent of the SIR with information or evidence; information or evidence to be provided.	Negative
36	The new s.134(2) of the Social Security Administration Act 1992 to provide for payment of Housing Benefit – arrangements for paying Housing Benefit	Negative
38	Directions to local authorities by the Secretary of State	None
Part 3		
40(1)	s.7B(2) of the Social Security Administration Act 1992 (“the	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

	Administration Act”) – use of social security information, procedure to be followed in connection with previously used or verified information	
40(1)	s.7B(3) of the Administration Act – relevant purpose relating to a claim or potential claim for a specified benefit	Negative
40(1)	s.7B(5) of the Administration Act - specified benefits for the purposes of clause 40.	Negative
40(2)(a)	Inserts new sub-paragraph (c) into s7A(1) of the Administration Act providing for regulations enabling claims for certain benefits to be made to English county councils or persons providing services to or authorised to exercise any function of English county councils under s7A.	
40(2)(b)	Inserts paragraph (e) into section 7A of the Administration Act providing for regulations to enable a relevant authority to verify claims information and evidence on behalf of another.	
40(2)(e)	Substitutes sub-paragraph (c) of section 7A(6) of the Administration Act- adding English county councils as a category of “relevant authority” for the purposes of sections 7A and 7B of that Act.	
41(7)	Define the relevant grant-making enactment mentioned in subsection (1).	Negative
41(8)	Define prescribed purpose for which information can be held or used in subsection (2).	Negative
41(8)	Define prescribed purpose	Negative
45(3)	In paragraph (1B) - conditions under which a local authority can authorise investigators to use powers contained in sections 109B and 109C of the Administration Act for “relevant purposes”	Negative
45(3)	In (1C) – restrict or invalidate an authorisation under 109A(2)(a), (c) or (d) of the Administration Act	Negative
46(2)	Authorities may bring proceedings except in relation to benefits or circumstances prescribed or where the Secretary of State directs they must not be brought	Negative
46(3)	Conditions that Authorities must satisfy to bring proceedings.	Negative
Part 4		
51(7)	s. 72(7) taken together with new s. 72(7A) of the SSCBA – power to prescribe circumstances in which a person is to be taken to satisfy or not to satisfy the conditions of entitlement to the care component of Disability Living Allowance	Negative
52(4)	s. 73(5) taken together with new s. 73(5A) of the SSCBA – power to prescribe circumstances in which a person is to be taken to satisfy or not to satisfy the certain conditions of entitlement to the mobility component of Disability Living Allowance	Negative
55(2)	Requirement that vaccination be carried out in the UK or the Isle of Man need not be fulfilled in certain circumstances	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

56(3)	Department for Social Development in Northern Ireland (DSDNI) may make provisions relating to manner and timing of appeals and proceedings of appeal tribunals in relation to vaccine damage payments	Negative
56(4)	DSDNI may provide for correction of accidental errors in, and setting aside of, tribunal decisions.	Negative
59(1)	new s.67(2) of the SSCBA – power to withdraw payment of Attendance Allowance to care home residents	Negative
59(2)	new s.72(8) of the SSCBA - power to withdraw payment of care component of Disability Living Allowance to care home residents	Negative
60(3)	Independent living funds – power to make consequential amendments or revocations to secondary legislation	Negative
60(5)	Independent living funds - DSDNI to make consequential amendments or revoke enactments within a specified meaning	Negative
Part 5		
66(1)	Secretary of State may make transitional provision or savings	Negative
68(2)	Secretary of State, by Order, may bring into force specified provisions of the Act	Negative
In Schedule 1:		
p. 1(4)(a)	First condition satisfied where previously entitled to prescribed benefit during prescribed period	Negative
p. 1(4)(b)	Modifications where people previously entitled to prescribed benefit	Negative
p. 3(1)(a)	Definition of “benefit year”	Negative
p. 3(2)	Modifications to “relevant benefit year” in prescribed circumstances	Negative
p. 4(1)(a)	Circumstances when third national insurance contribution condition can apply to people aged 20-24.	Negative
p. 4(1)(c)	Third condition – prescribe conditions with respect to residence or presence in Great Britain	Negative
p. 4(3)	Disapply the age condition where claimant previously received ESA by satisfying the third condition.	Negative
p. 4(4)	Prescribe when a person is or is not receiving full-time education	Negative
p. 6(1)(b)	Prescribe the amount of capital which, if exceeded, will mean that the claimant is not entitled to the income-related allowance	Negative
p. 6(2)	Circumstances in which income and capital of other member of a couple not to be regarded as income and capital of claimant	Negative
p. 6(3)	Treating a person as engaged in, or not engaged in, remunerative work	Negative
p. 6(4)(a)	Treating a person as, or as not, receiving education	Negative
p. 6(4)(b)	Circumstances when requirement to not be receiving education need not apply.	Negative
p. 6(5) – in (b), “couple”	Circumstances in which a man and woman living together as husband and wife not to be treated as a couple	Negative
p. 6(5) – in (d),	Circumstances in which two people of the same sex living together as if they were civil partners not to be treated as a	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

“couple”	couple	
p. 6(5) – “education”	Definition of “education”	Negative
p. 6(5) - “remunerative work”	Definition of “remunerative work”	Negative
p. 6(7)	Modifications to income-related conditions in respect of polygamous marriages	Negative
p. 6(8)	Treating people as, or as not, members of the same household	Negative
In Schedule 2:		
p. 1(a)	Treating a person as having, or not having, limited capability for work	Negative
p. 1(b)	Determining limited capability for work even though already being treated as having limited capability for work	Negative
p. 1(c)	Circumstances in which a fresh determination of limited capability for work to be undertaken	Negative
p. 2	Prescribing number of ‘waiting days’ at beginning of period of limited capability for work before a claimant is entitled to an employment and support allowance.	Negative
p. 3	Making provision for entitlement and amount payable for periods of less than a week	Negative
p. 4(1)	Circumstances in which two periods of limited capability for work, separated by no more than a prescribed length of time, are treated as one continuous period	Negative
p. 4(2)	Where two periods link, conditions satisfied in the first period to be treated as satisfied in the later period.	Negative
p. 5	Circumstances in which a person to be treated as being, or not being in Great Britain	Negative
p. 6	Circumstances in which a claimant not in Great Britain may still be entitled to contributory allowance	Negative
p. 7(1)(a)	Modifications to contributory allowance provisions in respect of employment on board a ship, vessel, hovercraft or aircraft.	Negative
p. 7(1)(b)	Modifications to contributory allowance provisions where a claimant is outside Great Britain	Negative
p. 7(1)(c)	Modifications to contributory allowance provisions in respect of prescribed employment in connection with continental shelf operations	Negative
p. 8(1)	Circumstances where entitlement to income-related allowance continues on leaving Great Britain	Negative
p. 8(2)	Modifications to income-related allowance provisions where entitlement to income-related allowance continues on leaving Great Britain	Negative
p. 9	Treating as having, or not having, limited capability for work-related activity and determining afresh the question of limited capability for work-related activity.	Negative
p. 10	Prescribing the circumstances for treating as not entitled to ESA because of doing work	Negative

Welfare Reform Bill 2007, Delegated Powers Memorandum.

p. 11	Provide for ESA, contributory allowance or income-related allowance to be treated as a benefit, or a benefit of a prescribed description for prescribed purposes of the Social Security Contributions and Benefits Act 1992.	Negative
p. 12	Amount of reduction of the two elements of ESA (the contributory element and the income-related element)	Negative
p. 14	Modifications to Part 1 in respect of advance claims	Negative
p. 15(1)	Modifications to Part 1 or corresponding provisions in Northern Ireland in respect of current or former members of Her Majesty's forces	Negative
p. 15(2)	Defining "Her Majesty's forces" - to consist of prescribed establishments and organisations	Negative
In Schedule 3: this schedule of consequential amendments extends or creates new powers into the following legislation:		
p.6	s.17A Children Act 1989	Negative
p.7	s.6(9), (10) and (13) Child Support Act 1991 prior to its amendment by the Child Support, Pensions and Social Security Act 2000 (the 2000 Act).	Affirmative for (9) and (10) Negative for (13)
	s.6(7), (8) and (11) Child Support Act 1991 as amended by the 2000 Act	Negative
	s.46(5) Child Support Act 1991 prior to its amendment by the 2000 Act and as amended by that Act	Affirmative for both versions of this section
	s. 47(3)(b) Child Support Act 1991 prior to its amendment by the 2000 Act and as amended by that Act	Affirmative for both versions of this section
p.8	s.24(1) and (2)(d) Criminal Justice Act 1991	Negative
p.9	s.6A(2) Social Security Contributions and Benefits Act 1992	Negative
	s.22(5) Social Security Contributions and Benefits Act 1992	Negative
p.10	s.1 Social Security Administration Act 1992	Negative
	s.2AA Social Security Administration Act 1992	Negative
	s.5 Social Security Administration Act 1992	Negative
	s.15A Social Security Administration Act 1992	Negative
	s.71 Social Security Administration Act 1992	Negative
	s.73 Social Security Administration Act 1992	Negative
	s.74A Social Security Administration Act 1992	Negative
	s.122B Social Security Administration Act 1992	Negative
	s.124 Social Security Administration Act 1992	Negative
	s.125 Social Security Administration Act 1992	Negative
	s. 130 Social Security Administration Act 1992	Negative
	s.132 Social Security Administration Act 1992	Negative
	s.150(7) Social Security Administration Act 1992	Affirmative
s.159B Social Security Administration Act 1992	Negative	
s.159C Social Security Administration Act 1992	Negative	

Welfare Reform Bill 2007, Delegated Powers Memorandum.

	s.179 Social Security Administration Act 1992	Negative
p.11	Paragraph 6 of Schedule 4 Local Government Finance Act 1992	Negative
	Paragraph 6 of Schedule 8 Local Government Finance Act 1992	Negative
	s.11 Social Security Act 1998	Negative
	s.27 Social Security Act 1998	Negative
	s.28 Social Security Act 1998	Negative
	s.72 Welfare Reform and Pensions Act 1999	Negative
p.18	s.115 Immigration and Asylum Act 1999	Negative
p.19	s.62A(4A) Child Support, Pensions and Social Security Act 2000	Negative
p.20	s.94 Local Government Act 2000	Negative
p.22	s.9(4B) Social Security Fraud Act 2001	Negative

In Schedule 4:

p. 1(a)	When a claim for existing benefit before appointed day is to be treated as ESA	Negative
p. 1(b)	When a claim for ESA can be made before appointed day	Negative
p. 2(a)	Exclude making a claim for an existing benefit on or after appointed day	Negative
p. 2(b)	When a claim for an existing benefit on or after appointed day is to be treated as a claim for ESA	Negative
p. 2(c)	When a claim for ESA is to be treated wholly or partly as a claim for an existing benefit	Negative
p. 2(d)	Exclude making of a claim for ESA by a person entitled to an existing benefit	Negative
p. 3	When ESA is to be awarded for periods before appointed day and prescription of conditions of entitlement and amount payable in such cases	Negative
p. 4(2)	Securing that an award of ESA is made on terms matching wholly or partly the award that would have been made if a further claim to existing benefit had been made	Negative
p. 5(2)	Securing that an award of ESA is made on terms matching wholly or partly the award that would have resulted from conversion had entitlement to existing benefit continued	Negative
p.6(1)(a)	Convert existing awards into awards of ESA and provide for terms of conversion	Negative
p.6(1)(b)	Terminate existing awards in prescribed circumstances	Negative
p. 7(a)	Determine continuing entitlement to ESA transitional allowance	Negative
p. 7(b)	Review of award of transitional allowance	Negative
p. 7(c)	Termination of award of transitional allowance	Negative
p. 7(d)	Part 1 to have effect with prescribed modifications in relation to a person with a transitional allowance	Negative
p. 7(e)	Revision of transitional allowance	Negative
p. 8(1)	Circumstances when person entitled to transitional allowance immediately before retirement is to be treated as satisfying condition in p.5(2) of Schedule 3 to the SSCBA	Negative
p. 9	Modification of uprating of Incapacity Benefit and Severe Disablement Allowance in relation to tax years on or after the appointed day	Negative

In Schedule 5:

Welfare Reform Bill 2007, Delegated Powers Memorandum.

p. 3(a)	Discretionary disregards - qualifying benefits in respect of Housing Benefit	Negative
p. 4(a)	Discretionary disregards - qualifying benefits in respect of Council Tax Benefit	Negative
In Schedule 6 (to be inserted as the Sch to the 1979 Act):		
p. 7(1)	Prescribed occupation in relation to a person disabled by a disease to which the 1979 Act applies means an occupation prescribed by the Secretary of State by Order	Negative
p. 8	Include or exclude people from the definition of "relevant employer"	Affirmative