

Sharing customer data between DWP and local authorities

Call for evidence on new arrangements extending data sharing powers between DWP and local authorities, in relation to the provision of welfare services and housing benefit.

March 2011

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1. Introduction

1.1 The Government is planning to extend current data sharing arrangements between the Department for Work and Pensions (DWP) and local authorities and their service providers. This document sets out details and invites views on the implementation of the new measures.

1.2 Primary legislation is required in order to introduce new regulation-making powers, and this is being sought by the inclusion of four clauses in the Welfare Reform Bill, which has just been introduced in Parliament. A copy of the Bill can be accessed at: <http://services.parliament.uk/bills/2010-11/welfarereform.html>

The specific clauses are reproduced in this document, at Annex A.

1.3 In this call for evidence we want to gather views from both customers and local authorities about the potential impact of the new data sharing arrangements. In particular it would be helpful to hear your views about the following issues:

Local authorities

(a) How do you think you might use this new power? What kind of information would be useful to share and for what purposes?

(b) Do you work with other providers who deliver welfare services on your behalf? Do you think they would need to have access to customer social security information?

(c) Do you think that improved data sharing arrangements will help improve customer service, and support greater efficiencies?

(d) Do you experience any barriers or limitations as a result of rules about handling data, that impact on their ability to deliver high quality and efficient services? Could this new power help to remove or reduce some of those barriers?

(e) Do customers feel this will make it easier for them to apply for different services and benefits?

Customers and their representatives

(f) Are you worried about how well your information will be protected? Are there concerns that personal information may be shared inappropriately?

(g) Would you like to see more use made of the information you have provided, in order to ensure you receive all the benefits and services you may be entitled to?

(h) Are you generally happy when you apply for a benefit or service, you know who is going to have access to your data and for what reason? Would you like to receive more advice about how your personal data is used by government?

1.4 All the views submitted will help in drafting regulations later in the year; formulating guidance for staff; and ensuring appropriate advice and information is given to customers.

About this call for evidence

Who is the call for evidence aimed at?

1.5 This call for evidence is aimed at local authorities who deliver welfare services, DWP and local authority customers, welfare rights organisations and other customer representative groups, and any other interested groups or individuals, in England, Wales and Scotland.

How to respond to this call for evidence

1.6 Please send your written responses to:

Richard Grennan
1st Floor
Caxton House
Tothill Street
London SW1H 9NA

Or by email to: laconsultation.callforevidence@dwp.gsi.gov.uk

1.7 Please ensure your response reaches us by 25 April 2011

1.8 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents. We will acknowledge your response.

1.9 If you have any queries about this call for evidence, please contact Carol Foster-Middleton as above.

1.10 We have notified this consultation to people and organisations who have already been involved in this work or who have expressed an interest in it. Please share this document with, or tell us about, anyone you think will want to be involved in this consultation.

1.11 We publish a summary of the responses to the call for evidence on the consultations section of our [Consultation website](#). The summary will also summarise the next action that we will take.

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received.

All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you

want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

More information about the Freedom of Information Act can be found on the Ministry of Justice website: [Ministry of Justice: Fol Guidance](#)

Feedback on this exercise

1.15 We value your feedback on how well we consult. If you have any comments on the process of this call for evidence, for example, how it could be improved, but not about the issues raised, please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway, Hull HU2 8NF
roger.pugh@dpw.gsi.gov.uk

2. Description of the changes

2.1 These measures will extend current data sharing powers in relation to the use of customer social security data, and also introduce a new power which will allow local authorities to share certain customer data with DWP and local authority Housing Benefit (HB) teams in certain circumstances.

What is the current policy?

2.2 DWP is able to share customer social security data with local authorities for the purpose of administering Housing Benefit and Council Tax Benefit (HB/CTB).

2.3 In addition, DWP and local authority HB teams can supply information to other parts of a local authority to help determine eligibility and liability to pay for a limited category of welfare services. This provision has been used to assist local authorities in England and Wales to decide if a person is eligible for help under the Supporting People scheme. It also allows local authority Supporting People teams to share information with local authority HB teams in order to decide if a person is vulnerable and requires housing costs to be paid direct to the landlord, or lives in supported accommodation and is exempt from Local Housing Allowance rules.

2.4 There is no general legal gateway allowing DWP or local authority HB teams to share social security data with local authorities to help them decide eligibility for or liability to pay for other types of welfare services. Also, local authorities have no general power to share customer information about welfare services with DWP for social security benefit purposes. Without a legal gateway, information can only normally be shared where the customer has given their consent. DWP requires written evidence that consent has been provided. Sharing social security information

unlawfully is a serious disciplinary offence, therefore good record keeping is essential to protect both staff and customers. Practice across local authorities varies, but many do seek written evidence of consent before supplying information to DWP.

What is the change in policy?

2.5 The new power will allow regulations to be made, which in turn could allow:

- (a) DWP and HB teams to share customer social security data with local authorities for the purpose of deciding whether a person is eligible for a wider range of welfare services than is currently covered; or to assess if a person is required to pay towards that service;
- (b) local authorities to share customer information with DWP or HB teams when a person is admitted to or discharged from hospital or a care home, or requires overnight care at home; and for some other purposes in relation to the assessment of a social security benefit.

2.6 Social security data is any data held by DWP for the purpose of its social security functions; for example, to help decide if a person is entitled to a social security benefit. This can include details about a person's income and capital, and other members of the family household.

Reason for change in policy

Sharing customer data for welfare services purposes

2.7 The measure described at paragraph 2.5(a) above relates to the provision of locally delivered welfare services and benefits. Local authorities provide a range of support and assistance to people living in their area, and this may be linked to receipt of a social security benefit, because:

- the service is targeted towards people on low incomes, for example Disability Facilities Grants;
- eligibility is dependent on receiving a specific benefit, for example Blue Badge parking permits, or concessionary travel schemes;
- there is a charge, and a means test is completed to determine how much a person can pay, for example domiciliary care such as home help or day care.

2.8 In addition, there are may be new localised schemes provided by local authorities or other organisations, where eligibility or entitlement is linked in some way to a person's income. An example is a localised scheme to provide financial support to replace elements of the discretionary Social Fund scheme, which is going to be abolished. A separate consultation is taking place in relation to proposals for such local schemes and a copy can be accessed from the DWP website at <http://www.dwp.gov.uk/consultations/2011/local-support-replace-ccg-cl.shtml>

2.9 Where local authorities and others delivering such services require details of a person's financial circumstances they will first of all request this from the customer.

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Very often the customer is unable to provide all their details and DWP or HB teams will be approached for confirmation of any social security benefit in payment. The new powers will allow regulations to be made, prescribing specific welfare services in relation to which DWP agrees to share customer social security information.

2.10 Being able to use data that is already held by government will make it easier for customers to apply for a range of local services and benefits. They will not have to provide detailed financial information repeatedly to different government offices. Local authorities will be able to access customer information that has already been provided to DWP or to the local authority HB department, without needing to seek the customer's consent every time. Removing the need to collect customer consent before data can be shared will make it easier for customers and for staff. It will speed up the decision making process and allow for administrative savings to be made.

2.11 Delays in obtaining details about a person's social security award can mean that where a charge is liable in respect of a service such as domiciliary care, the local authority often has to provide several weeks of free care until an accurate financial assessment can be completed. Customers may be discouraged from accepting the provision of a service until they know how much it might cost them.

Sharing data to assess entitlement to a social security benefit

2.12 The measure described at paragraph 2.5(b) above relates to the need to reassess a person's social security benefit award when key changes take place. Customers are required to report any relevant changes in their circumstances, including when they move into care or are absent from home due to a stay in hospital. Both of these events can be quite traumatic and customers may not realise the need to report them promptly, or they may not always be in a position to report the change themselves. As a result, benefit is often overpaid due to a delay in reassessing entitlement. Local authorities tell us that they often know before DWP, when a person moves into hospital or residential care, particularly when that person is a client of the social services department.

2.13 Moves into hospital or residential care account for a large proportion of benefit overpayments. Customers find the process of being notified about overpayments and being asked to repay them, very stressful. It is far preferable to ensure the right benefit is paid at the right time.

2.14 This measure would provide an additional route for certain changes (moves to hospital or residential care) to be notified to the relevant benefit team, helping to ensure more awards were reassessed promptly and accurately.

2.15 In addition, new rules come into force from April 2011 which will allow people on HB to receive a higher rate of benefit where they need an extra room for an overnight carer.

2.16 Customers who live in the private rented sector receive help with their housing costs calculated under Local Housing Allowance rules. Awards are assessed in part

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by reference to the number of rooms a customer is deemed to require. Prior to April 2011, no allowance was made where a customer lived in a property with an additional bedroom that is used by a non-resident carer (often referred to as a sleepover room). In some cases the additional cost has been met by social services or by the local authority through a Discretionary Housing Payment.

2.17 Customers who want to be considered for the additional room rate after April 2011, need to provide evidence that they have a disability or health condition that requires the provision of an overnight carer. A large number of customers will have sought help through their local social services department, and will have a care plan specifying that overnight care is required.

2.18 This measure will allow social services departments to confirm that overnight care is required. This will help to ensure that the customer's application for help with housing costs is dealt with quickly and that the correct amount is awarded. There will be no exchange of sensitive personal data relating to the health of the customer. All that is required by the benefit team is a simple yes/no confirmation that overnight care is required.

Why sharing data on the basis of consent is not appropriate

2.19 Customers need to understand what they are being asked so that the consent is 'informed'. While consent is not defined in the Data Protection Act, the European Data Protection Directive defines an individual's consent as '*any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.*' Many of the customers who are likely to be affected by the new data sharing arrangements described above are elderly, or disabled. Some will have learning difficulties or mental health conditions. It is difficult to obtain consent unless people fully understand what it is they are consenting to.

2.20 It is possible for customers to consent to their personal social security data being shared by DWP or local authority HB teams with other parts of the local authority. In practice this is usually quite costly unless the volumes are small. Local authorities must agree in advance with the relevant DWP or HB team how consent should be handled and what form the consent should take. This process causes significant administrative problems.

2.21 Consent forms may only allow data to be shared for one specific purpose on one particular date, and unless this is recorded properly staff may not realise the limitations of the consent form. Staff who are unsure whether it is appropriate to share data in a particular circumstance will usually refuse to do so. It is a serious offence to share data where the law does not allow this. While this does ensure customer data is protected, it often means that legitimate activities are delayed or compromised in some way, leading to reduced customer services, potential underpaid or overpaid benefit, and extra work for staff.

2.22 The scale of the data being shared is considerable. Dealing with this work on a case by case basis is inefficient and gives rise to possible inconsistencies in decision making. Having a legal gateway will ensure everyone is clear about the circumstances where personal data can be shared; it will allow a streamlined system to be put in place to ease the administrative problems; and with training and guidance to support the new rules, it will provide extra reassurance that personal data is being handled legally and securely.

3. Implementation issues

3.1 If the proposals are agreed by Parliament, it is intended that regulations will be brought forward in 2012 in respect of specific arrangements. There will be further consultation with local authorities when draft regulations are available, and this will include discussions about implementation of the policy. Having a legal power to share data is only the first step. A lot more needs to be done before any new data sharing arrangements can be put in place. For example:

- **Development of new processes and IT support:** appropriate methods of sharing data will be fully explored. We will ensure that a full assessment of options is undertaken, in consultation with key stakeholders, before any decisions are made.
- **Development of staff training and guidance manuals:** we will ensure that full training is provided and that guidance is updated to reflect new data share arrangements.
- **Revision of leaflets, claim forms and other material:** customers must be told what their data will be used for, by whom and for how long. We will ensure that Privacy Notices are amended to make clear where social security data is being shared with local authorities for use in assessing entitlement to a welfare service.

3.2 It would be useful to have early views from local authorities and others on these and other issues related to implementation.

4. Consultation and involvement

4.1 Local authorities have made extensive representations to this department, seeking an extension to existing data sharing powers. DWP already shares customer social security data with local authorities for the specific purpose of administering HBCTB. Local authorities have put forward a well argued case that being able to reuse this data would allow them to ensure customers received a range of other benefits and services more easily and promptly, without customers having to provide lots of financial information several times to different parts of government.

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4.2 DWP undertook a review of data sharing policy and practice between August and December 2009. Findings from the review supported the argument for wider access to customer social security data.

4.3 Informal advice from local authorities, during stakeholder meetings and other forums, indicated that they would be able to help the Department by passing on details of client admissions to hospital or care. Customers are required to report such changes themselves, but often fail to do so promptly, leading to overpaid social security benefit. It would help to reduce the amount of overpayments if local authorities were able to alert benefit teams to these types of changes earlier than might otherwise have been the case. Consideration was given to extending this to cover NHS staff and those working in residential and nursing homes, but on balance it was decided this would be too complex to introduce. It is acknowledged that local authorities will not know about everyone in their area who moves into residential care or is admitted to hospital. And many people who receive overnight care at home will have made their own private arrangements. The measures described here for sharing information will help ensure a lot of social security awards are reassessed more promptly, but will not remove the requirement for customers to report relevant changes themselves.

4.4 After carefully considering the evidence, the Government has decided that it would be appropriate to seek an extension of data sharing powers for the reasons described here.

4.5 We hope that local authorities and customers will see this as a positive measure. Current safeguards that are in place will continue to be applied to ensure personal information is fully protected, and only used for the purposes for which it has been collected.

4.6 Local authorities, welfare rights organisations, and other stakeholders are now invited to submit their views in respect of these proposals. We welcome any comments in respect of the new data sharing powers that are being introduced, and in particular whether there are any specific issues government needs to consider concerning the implementation of this policy.

Annex A – Welfare Reform Bill

Welfare Reform Bill

Data sharing - 15 February 2011 - (09)

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1 Information-sharing in relation to provision of overnight care etc [j1403]

(1) This section applies where a local authority holds information falling within subsection (2) in relation to a person who is receiving or is likely to receive a relevant service.

(2) The information referred to in subsection (1) is

- (a) information as to the fact of the provision or likely provision of the service;
- (b) information about when the provision of the service begins or ends or is likely to do so;
- (c) other prescribed information relating to the service provided and how it is funded (including the extent to which it is funded by the recipient).

(3) In this section relevant service means.

- (a) service consisting of overnight care in the individual's own home provided by or on behalf of a local authority;
- (b) a residential care service provided by or on behalf of a local authority;
- (c) a service consisting of overnight hospital accommodation.

(4) In subsection (3)(c) .hospital accommodation means

- (a) in relation to England, hospital accommodation within the meaning of the National Health Service Act 2006 which is provided by a Primary Care Trust, an NHS trust or an NHS foundation trust;
- (b) in relation to Wales, hospital accommodation within the meaning of the National Health Service (Wales) Act 2006 which is provided by a Local Health Board or an NHS trust;
- (c) in relation to Scotland, hospital accommodation within the meaning of the National Health Service (Scotland) Act 1978 which is provided by a Health Board or Special Health Board but excluding accommodation in an institution for providing dental treatment maintained in connection with a dental school.

(5) The local authority may.

- (a) itself use the information for purposes relating to the payment of a relevant benefit to the individual, or

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(b) supply the information to a person specified in subsection (6) for those purposes.

(6) The persons referred to in subsection (5) are.

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person authorised to exercise any function of a local authority relating to a relevant benefit;
- (e) a person providing services relating to a relevant benefit to a local authority.

(7) In this section relevant benefit means

- (a) universal credit;
- (b) housing benefit;
- (c) council tax benefit;
- (d) any prescribed benefit.

(8) Regulations under subsection (7) may not prescribe a benefit provision for which is within the legislative competence of the Scottish Parliament.

2 Information-sharing in relation to welfare services etc [\[j1402b\]](#)

(1) The Secretary of State, or a person providing services to the Secretary of State, may supply relevant information to a qualifying person for prescribed purposes relating to welfare services.

(2) A qualifying person who holds relevant information for a prescribed purpose relating to welfare services may supply that information to.

- (a) the Secretary of State, or
- (b) a person providing services to the Secretary of State, for a prescribed purpose relating to a prescribed benefit.

(3) A qualifying person who holds relevant information for a prescribed purpose relating to welfare services or housing benefit may.

- (a) use the information for another prescribed purpose relating to welfare services or housing benefit;
- (b) supply it to another qualifying person for use in relation to the same or another prescribed purpose relating to welfare services or housing benefit.

(4) Relevant information supplied under subsection (1) or (3) to a qualifying person may be supplied by that person to a person who provides qualifying welfare services for purposes connected with the provision of those services.

(5) In subsection (4) services are qualifying welfare services if.

- (a) a local authority, or
- (b) a person who is a qualifying person by virtue of subsection (11)(g), contributes or will contribute to the expenditure incurred in their provision.

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(6) The Secretary of State may not exercise the power under subsection (3) to prescribe purposes for which information may be supplied by a qualifying person so as to prescribe an excepted purpose in relation to excepted information held by a Welsh body.

(7) In subsection (6)

(a) excepted information is information held by the Welsh body that
(i) is not supplied by, or derived from information supplied to another person by, the Secretary of State or a person providing services to the Secretary of State or a person engaged in the administration of housing benefit, and

(ii) is held only for an excepted purpose;

(b) an excepted purpose is a purpose relating to a matter provision for which
(i) is within the legislative competence of the National Assembly for Wales, or

(ii) is made by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

(8) The Secretary of State may not exercise the power in subsection (3) to prescribe purposes for which information may be supplied by a qualifying person so as to prescribe an excepted purpose in relation to excepted information held by a Scottish body.

(9) In subsection (8)

(a) excepted information is information held by the Scottish body that
(i) is not supplied by, or derived from information supplied to another person by, the Secretary of State or a person providing services to the Secretary of State or a person engaged in the administration of housing benefit, and
(ii) is held only for an excepted purpose;

(b) an excepted purpose is a purpose relating to a matter provision for which is within the legislative competence of the Scottish Parliament.

(10) Subsections (1) to (4) do not apply in a case where the supply or use of information is authorised by section 1.

(11) In this section .qualifying person means

- (a) a local authority;
- (b) a person authorised to exercise any function of such an authority relating to welfare services;
- (c) a person providing services to a local authority relating to welfare services;
- (d) an authority which administers housing benefit;
- (e) a person authorised to exercise any function of such an authority relating to housing benefit;
- (f) a person providing to such an local authority services relating to housing benefit;
- (g) a person prescribed or of a description prescribed by the Secretary of State.

(12) In this section relevant information means information relating to.

- (a) universal credit;
- (b) state pension credit;
- (c) income support;

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- (d) income-based jobseeker's allowance;
- (e) income-related employment and support allowance;
- (f) housing benefit;
- (g) any prescribed benefit;
- (h) welfare services.

(13) In this section person engaged in the administration of housing benefit means

- (a) an authority which administers housing benefit,
- (b) a person authorised to exercise any function of such an authority relating to housing benefit, or
- (c) a person providing to such an authority services relating to housing benefit;

Scottish body means

- (a) a local authority in Scotland,
- (b) a person authorised to exercise any function of such an authority relating to welfare services,
- (c) a person providing services to a local authority in Scotland relating to welfare services, or
- (d) a person prescribed or of a description prescribed by the Secretary of State;

Welsh body means

- (a) a local authority in Wales,
- (b) a person authorised to exercise any function of such an authority relating to welfare services,
- (c) a person providing services to a local authority in Wales relating to welfare services, or
- (d) a person prescribed or of a description prescribed by the Secretary of State;

Welfare services includes services which provide accommodation, support, assistance, advice or counselling to individuals with particular needs, and for these purposes assistance includes assistance by means of a grant or loan or the provision of goods or services.

3 Unlawful disclosure of information [\[j1445\]](#)

(1) A person to whom subsection (2) applies is guilty of an offence if the person discloses without lawful authority any information.

- (a) which comes to the person by virtue of section 2(1), (3) or (4), and
- (b) which relates to a particular person.

(2) This subsection applies to.

- (a) a person mentioned in section 2(11)(a) to (c);
- (b) a person who provides qualifying welfare services (within the meaning of section 2);
- (c) a person who is or has been a director, member of the committee of management, manager, secretary or other similar officer of a person mentioned in paragraph (a) or (b);
- (d) a person who is or has been an employee of a person mentioned in paragraph (a) or (b);
- (e) a person who is or has been in relevant employment.

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- (3) A person guilty of an offence under this section is liable
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (4) It is not an offence under this section
- (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
 - (b) to disclose information which has previously been disclosed to the public with lawful authority.
- (5) It is a defence for a person (D) charged with an offence under this section to prove that at the time of the alleged offence
- (a) D believed that D was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise, or
 - (b) D believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- (6) A disclosure is made with lawful authority if it is so made for the purposes of section 123 of the Social Security Administration Act 1992.
- (7) This section does not affect that section.
- (8) For the purposes of this section a person is in relevant employment if the person is
- (a) a civil servant in the Scottish Administration,
 - (b) a civil servant who serves the Welsh Assembly Government,
 - (c) any other person who carries out the administrative work of the Scottish Administration or the Welsh Assembly Government,
 - (d) a person who provides services to the Scottish Administration or the Welsh Assembly Government,
 - (e) a person who is a director, member of the committee of management, manager, secretary or other similar officer of a person mentioned in paragraph (d), or
 - (f) a person who is an employee of a person mentioned in paragraph (d).
- (9) In relation to an offence under this section committed in England and Wales before the commencement of section 154(1) of the Criminal Justice Act 2003 (increase in maximum term that may be imposed on summary conviction of offence triable either way) the reference in subsection (3)(b) to 12 months must be taken to be a reference to 6 months.

4 Sections 1 to 3: supplementary [j1444]

- (1) In sections 1 and 2

benefit includes any allowance, payment, credit or loan;

income-based jobseeker's allowance has the same meaning as in the

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Jobseekers Act 1995;

income-related employment and support allowance means an income-related allowance under Part 1 of the Welfare Reform Act 2007;

local authority means

- (a) a county or district council in England;
- (b) an eligible parish council (within the meaning of Chapter 1 of Part 1 of the Localism Act 2011);
- (c) a London borough council;
- (d) the Common Council of the City of London in its capacity as a local authority;
- (e) the Council of the Isles of Scilly;
- (f) a county or county borough council in Wales;
- (g) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

prescribed means prescribed in regulations made by the Secretary of State.

(2) Any power to make regulations under sections 1 and 2 includes power.

- (a) to make different provision for different purposes, cases and areas;
- (b) to make such incidental, supplemental, consequential, transitional or saving provision as the Secretary of State thinks necessary or expedient.

(3) Regulations under sections 1 and 2 must be made by statutory instrument.

(4) A statutory instrument containing regulations under section 1 or 2 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Until the coming into force of provision for identifying eligible parish councils within the meaning of Chapter 1 of Part 1 of the Localism Act 2011, the reference in subsection (1) to an eligible parish council within the meaning of that Chapter is to be read as a reference to an eligible parish council within the meaning of Part 1 of the Local Government Act 2000.

(6) The following provisions are repealed.

- (a) sections 42 and 43 of the Welfare Reform Act 2007;
- (b) section 69(2)(a) of that Act.