

**House of Lords Select Committee on Delegated Powers and Regulatory Reform**

**WELFARE REFORM AND WORK BILL**

**Memorandum from the Department for Work and Pensions**

**Introduction**

1. The Welfare Reform and Work Bill was introduced in the House of Commons on 9 July 2015.
2. This Memorandum identifies the provisions for delegated legislation in the Welfare Reform and Work Bill. It explains the purpose of the powers, the reason why they are left to delegated legislation and, where applicable, why they are not subject to any Parliamentary procedure.

**Background and summary**

**General**

3. The main provisions of the Welfare Reform and Work Bill are as follows:
  - Introducing a duty to report annually on progress made towards full employment;
  - Introducing a duty to report annually on progress made against meeting target of creating 3 million apprenticeships;
  - Introducing a duty on the Secretary of State for Communities and Local Government to report annually to Parliament on the progress of the Troubled Families Programme;
  - Amending the Child Poverty Act 2010 by removing the duty on the Secretary of State to meet UK wide targets and creating a new statutory duty to publish an annual report on children in workless households in England and on the educational attainment of children in England at the end of Key Stage 4;
  - Removing other duties and provisions relating to the Secretary of State whilst retaining certain provisions relating to Northern Ireland

but with some amendments in consequence of the changes set out in vii above;

- Reforming and renaming the Social Mobility and Child Poverty Commission, as the Social Mobility Commission (the Commission) whose functions will include promoting social mobility in England and advising Ministers, if requested, on how to improve social mobility in England. It is proposed that certain of the Commission's functions with regard to the devolved administrations will continue as before but with some amendments, including amendments in consequence of the changes set out in vii above;
- Reducing the level of the Benefit Cap to £20,000 for couples and lone parents and £13,400 for single claimants apart from in Greater London where it will be set at £23,000/£15,410 respectively. Amending the review mechanism in section 97 of the Welfare Reform Act 2012 in respect of the benefit cap and removing the definition of "welfare benefits", to which the cap applies, from regulations and including them on the face of the Bill;
- Freezing the main rates of the majority of Working Age Benefits, certain elements of Tax Credits and Child Benefit for four years from April 2016;
- Amending the manner for calculating the amount of child tax credit payable to a claimant by limiting the number of children or qualifying young persons in respect of whom the individual element of child tax credit is payable to two (with exceptions), removing entitlement to the family element of child tax credit unless a child or qualifying person is born on or before 6 April 2017 and creating a new disability element payable to claimants who are responsible for a disabled or severely disabled child or qualifying young person;
- Restricting the number of children or qualifying young persons in respect of whom the child element of universal credit is payable to two (with exceptions) and removing the higher rate of child element payable in respect of the first child or qualifying young persons to creating a single flat rate;

- Removing the work-related activity component in employment and support allowance (ESA) and the limited capability for work element in universal credit (UC);
- Increasing the work-related requirements imposed on universal credit claimants who are responsible carers of a child aged 2 to 4;
- Reforming the payment of Support for Mortgage Interest from a benefit to a loan secured over the property of the claimant;
- Enabling the Secretary of State to recover the expenses incurred by the Department for Work and Pensions as a result of transferring a relevant disability benefit, on behalf of a claimant, to an organisation that leases or sells motor vehicles to disabled persons; and
- Placing a requirement on local authorities and private registered providers to reduce social housing rents by 1% a year for 4 years from a frozen 15/16 base line.

This memorandum addresses only those provisions which make delegated provision.

### **Clauses 7 and 8 – reducing the benefit cap**

4. In 2013 the Government introduced a cap on the amount working-age people could be entitled to in benefits. The rationale was that a person should not be entitled to more in benefits than average household earnings and so the cap would act as an incentive to encourage people into work and promote fairness between those in and out of work.
5. The cap is subject to exceptions. It does not apply to those entitled to working tax credit, those on Universal Credit earning above a prescribed threshold, those in receipt of certain benefits (largely associated with the extra costs associated with disability and illness) or war widows and widowers. In addition there is a 39 week grace period for those who were recently employed.

6. The cap was introduced by sections 96 and 97 of the Welfare Reform Act 2012. Provision was then made, pursuant to these powers, in the Housing Benefit Regulations 2006 (regulations 75A – 75H) and the Universal Credit Regulations 2013 (regulations 78 – 83).
7. If a person’s entitlement to welfare benefits (as defined) exceeds the level of the cap, their housing benefit or Universal Credit (depending on which they are entitled to) is reduced by the amount of the excess.
8. The Government has decided that the level of the benefit cap should be reduced. The proposal is intended to encourage more claimants to move into work, promote further fairness with working households and ensure that there is an adequate level of protection for vulnerable claimants. Legislation is needed to implement this as currently the cap must be set by reference to average earnings and the new levels of the cap will be lower than average earnings. Further, currently an annual review of the cap is required to assess whether its relationship with average earnings has changed. Following this review, if the SSWP considers it appropriate, he may increase or decrease the level of the cap. A new review mechanism is required as the cap will no longer be set in reference to average earnings. Legislation is also needed to put the definition of the “welfare benefits” to which the cap applies (currently in secondary legislation) into the primary legislation.

#### **Clause 11 – Changes to child tax credit**

9. This clause makes changes to the manner for determining the maximum rate of child tax credit (CTC) payable to a person entitled to it. Currently it must include a family element payable to all claimants and an individual element payable for each child or qualifying young person (QYP) for whom the claimant is responsible (with a higher amount having to be paid for disabled or severely disabled children or QYPs). Details of these elements as well as the amounts are prescribed by regulations made under section 9 of the Tax Credits Act 2002 read with

section 67 thereof and these regulations are set out in the Child Tax Credit Regulations 2002 (SI 2002/2007).

10. This clause:

- Abolishes the payment of the family element of CTC where the claimant is not responsible for a child or QYP born before 6 April 2017;
- Restricts the payment of the individual element to two children (with exceptions) where the claimant is or becomes responsible for a child or QYP born on or after 6 April 2017; and
- Creates a new disability element payable in respect of all disabled or severely disabled children or QYPs.

11. The manner for determining the maximum of rate of CTC for the tax year 2017/18 incorporating these changes will be made using the existing power in section 9(1) of the Tax Credits Act 2002 (when read with section 67 thereof).

12. However, the clause does create a new regulation making power by providing for exceptions to be made to the restriction on the payment of the individual element of CTC to two children or QYPs, where such a restriction applies. This new power will be used to provide exceptions to the restriction e.g. where that number would be exceeded by reason of a multiple birth.

13. In relation to the new disability element, this clause provides a new regulation making power permitting regulations to be made specifying that this element can be varied according to whether the child is disabled or severely disabled.

## **Clause 12 - Changes to the child element of universal credit**

14. This clause make changes to the child element of universal credit by restricting the number of children or qualifying young persons for whom it may be paid to two and by removing the higher rate for the first child in the household to create a single, flat rate. The additional amount paid for each disabled child or qualifying young person remains unchanged.
15. The only new power created by this clause is the power to make transitional and savings provisions. This will be used to set out the transitional protection for existing claimants who are already responsible for more than two children or qualifying young persons at the time these changes come into effect.

## **Clauses 13 and 14– removing the work-related activity component in ESA and the limited capability for work element in UC**

16. These clauses remove provision for an additional payment to be made to ESA and UC claimants with limited capability for work.
17. Clause 13 removes provision for the payment of the work-related activity component in ESA.
18. Clause 14 removes the fact that a claimant has limited capability for work from the list of needs or circumstances which may be prescribed, in respect of which an additional amount is included as part of an award of universal credit.
19. Claimants with limited capability for work and work-related activity will continue to receive an additional amount of benefit as part of UC.
20. The intention is that the removal will be subject to exceptions. In particular, it is intended that the removal will not apply to:

- those already in receipt of the work-related activity component or limited capability for work element at the point of commencement;
  - UC claimants who have made their claim before the date of commencement (or are treated as having made their claim before that date) and who have provided medical evidence in support of their claim on the grounds of sickness/disability who are determined to have limited capability for work following their assessment; and
  - existing incapacity benefit, severe disablement allowance, and income support claimants who have not yet had their awards converted to ESA who following conversion are placed in the limited capability for work group.
21. New powers have therefore been created in clause 13 (subsection (4)) to allow the Secretary of State to make regulations to make the savings and transitional protection required for ESA.
22. No new regulation powers are needed in clause 14 for UC as there is already power in the Welfare Reform Act 2012 to make provision in regulations under that Act for the exceptions.

### **Clauses 16 to 19 – Payment of Support for Mortgage Interest as a loan**

23. Clauses 16 to 18 create regulation-making powers to provide for loans to be made to eligible owner-occupiers in respect of their liability to pay mortgage interest in respect of the property they occupy as their home. The Secretary of State will be able to prescribe that those entitled to receive Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, State Pension Credit or Universal Credit are eligible to receive a loan to help pay their mortgage interest, which will be secured by a charge over the claimant's property. The payment of loans will replace the existing legislative provision for help with mortgage interest payments in Jobseeker's Allowance, Income

Support, Employment and Support Allowance, State Pension Credit or Universal Credit which has become unsustainable.

24. Clause 19 enables a framework to be put in place to support the transition from the current provision of support for mortgage interest to the new support for mortgage loans scheme. This clause will allow the Government to manage the introduction of support for mortgage interest loans as it sees fit, in particular the migration of those who currently get support for mortgage interest as a benefit to the new loan system.

#### **Clause 20 – Expenses of paying sums in respect of vehicle hire etc**

25. Clause 20 will create a regulation-making power to enable the Secretary of State to recover the expenses incurred by the Department for Work and Pensions as a result of transferring a relevant benefit component, as requested by the claimant, to an organisation that leases or sells motor vehicles to disabled persons in England, Wales and Scotland. A “relevant benefit component” means the mobility component of disability living allowance, if it is payable at the higher rate (see section 73(11)(a) of the Social Security Contributions and Benefits Act 1992), or the mobility component of personal independence payment, if it is payable at the enhanced rate (see section 79(2) of the Welfare Reform Act 2012).

#### **Clauses 21 to 28 and Schedule 2- Reduction in social housing rents by 1% a year for 4 years from a frozen 15/16 base line and associated provisions**

26. Clause 21 requires ‘registered providers’ of social housing – which includes private registered providers (PRPs) and local authorities -- to reduce rents for social housing by 1% per annum over 4 years commencing in the financial year 2016-17 from a frozen 2015-16 base line.

27. Schedule 2 makes further provision about social housing rents, applicable to tenancies which do not fall within clause 21(1) i.e. those which begin after the beginning of 8 July 2015. This Schedule requires a registered provider to secure that the maximum amount of rent payable to it by a new tenant initially, and, if appropriate, in the following relevant year, is no more than an amount calculated in accordance with the provisions of the schedule. Schedule 2 ensures that rents for tenancies beginning after the beginning of 8 July 2015 will track down in parallel with those of established tenancies.
24. Clause 22 creates regulation making powers to disapply in certain circumstances the requirements of clause 21. Clause 23 creates regulation making powers in connection with the granting of exemptions from clause 21 to private registered providers by the Regulator and to local authorities by the Secretary of State.
25. Clause 26 creates powers to make provision about the maximum amount of rent to be paid by tenants excepted from Clause 21 by regulations under Clause 22 or from the provisions of Schedule 2 by paragraph 5 of that Schedule, while an exception is current, in the part of the relevant year after such an exception ceases to apply -- and in the following relevant year, where necessary. Clause 26 also creates associated powers to make provision for enforcement of the requirements of the regulations and for disapplying or modifying a requirement in the regulations as it relates to a registered provider.
26. Schedule 2 paragraph 1(7) creates regulation making powers to define 'formula rate', which is the basis for the calculation of the social rent rate.
27. Schedule 2 paragraph 4 creates powers to identify accommodation that may be let at social housing at an affordable rent and to define affordable rent.

28. Schedule 2 paragraph 5 creates regulation making powers to disapply the requirements of Schedule 2.
29. Schedule 2 paragraph 6 creates regulation making powers in connection with the granting of exemptions from the requirements of Schedule 2 to private registered providers by the Regulator and to local authorities by the Secretary of State.
30. Schedule 2 paragraph 7 creates a regulation making power to make provision about the enforcement of requirements imposed by or under Schedule 2, including provision applying Part 2 of the Housing and Regeneration Act 2008 with modifications.
31. Clause 21(3)(b) and paragraph 10 of Schedule 2 give the Secretary of State power to grant a consent to the use of an alternative permitted review day.
32. Clause 23 and Paragraph 6 of Schedule 2 creates direction making powers which the Department does not consider to be legislative in character.

### **Territorial coverage – Clause 30**

33. Clauses 2 and 3, extend to England and Wales. Clauses 21 to 28 and Schedule 2 extend to England and Wales but apply only to England. Clauses 7, 8, 9(1), (3), (4) and (5), and 12 to 20 and paragraph 1 of Schedule 1 extend to England and Wales and Scotland. The other provisions of the Bill extend to England and Wales, Scotland and Northern Ireland.

## **Parliamentary Scrutiny**

34. The responsible department<sup>1</sup> in each case has considered the appropriate parliamentary procedure to follow in exercising the delegated powers under the Bill. The commentary below on each power sets out which parliamentary procedure has been proposed and why that procedure is considered appropriate.

## **General**

35. All the delegated powers in the Bill are exercisable by statutory instrument.

## **Analysis of delegated powers by clause**

### **Clauses 7 and 8 – reducing the benefit cap**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Both negative and affirmative (see below)*

36. Clause 7 sets an annual limit on the amount a working age person could be entitled to receive in welfare benefits by amending section 96 of the Welfare Reform Act 2012. The new limit is £20,000 per annum for couples and lone parents, and £13,400, for single people save for in Greater London where it is £23,000 per annum for couples and lone parents and £15,410 for single people. Regulations under the clause may specify which limit applies to which descriptions of couple or single person.

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<sup>1</sup> For clauses 7 and 8 (benefit cap), 12 (changes to child element in UC), 13 and 14 (removal of WRAG in ESA and UC), 16 to 18 (loans for mortgage interest) and 20 (expenses of paying sums in respect of vehicle hire etc) the Department of Work and Pensions; for clause 12 (changes to child tax credit) HM Treasury; and for clauses 21 to 28 and Schedule 2 (social housing rents) the Department for Communities and Local Government.

37. The “relevant amount” will be a weekly amount in the case of housing benefit and a monthly amount in the case of Universal Credit, in respect of each of a couple or single person in Greater London and a couple or single person everywhere else. These are to be calculated by reference to the annual limits in the clause. The Secretary of State will use the new powers in section 96 of the Welfare Reform Act 2012, inserted by subsection (2) of clause 7, to set out how the “relevant amounts” are to be calculated by reference to the annual limits in the Bill. Regulations may also provide for identifying when a person is or is not resident in Greater London and that the monthly or weekly figures can be rounded where appropriate (subsection (5B) Welfare Reform Act 2012 as inserted by clause 7).
38. Given that the provisions regarding the calculation are likely to be detailed and that there will be different calculations in housing benefit and Universal Credit, the Department considers it appropriate that this be dealt with in secondary rather than primary legislation.
39. Like the other provisions of section 96 of the Welfare Reform Act 2012 the powers are subject to the negative resolution procedure save for the first regulations, which have already been made. Given that the annual limits will be scrutinised by Parliament as part of the Bill and the relevant amount as set out in regulations is calculated by reference to those amounts, it is considered that the negative resolution procedure is the most proportionate level of scrutiny. Further, currently, section 97(4) of the Welfare Reform Act 2012 already provides that regulations made under section 96 of the Welfare Reform Act 2012 should be made using the negative resolution procedure, and the Department does not see any reason to depart from this approach.

40. Subsections (6) and (7) of clause 7 deal with the commencement of the clause. The powers state that regulations in relation to the commencement of the provisions may make such transitional provision or savings as the Secretary of State considers necessary or expedient and may provide that the amendments made by subsections (2) and (3) do not have effect until a time specified in a notice issued by the Secretary of State in relation to a particular description of person and may set out the form such a notice should take.
41. These provisions are necessary so that the Secretary of State may roll out the new cap level at different times for different areas or cases. This will allow the Department to roll out the level of the cap in a managed fashion that can be delivered more effectively. These provisions are likely to be detailed and technical and the Department does not, therefore, consider it appropriate to include them within the primary legislation.
42. Linked to this is clause 25 which provides that regulations made under subsection (6) to clause 8 may appoint different days for different areas, cases and purposes.
43. The regulations that provide for how the new cap will be commenced will be subject to the negative Parliamentary procedure. The Department considers that this is appropriate to follow the same procedure as the other regulations made pursuant to this clause because the reduction of the cap will have been fully debated as part of the Bill.

44. Clause 8 requires the Secretary of State to review the levels of the cap at least once within a Parliament to determine whether it is appropriate to change it. In carrying out this review he must have regard to the national economic situation and any other factor he considers relevant. Following this review, if he deems it appropriate, all or any one of the annual limits set out in clause 7 can be amended by the Secretary of State. A new section 96A is inserted into the Welfare Reform Act 2012 to achieve this.
45. Although the “annual limit” will be contained in primary legislation, the Department considers it necessary that any change to the limit is made by secondary legislation. This is because any change will need to be implemented fairly quickly and there may be a number of changes, not just one, in a Parliament depending on the national economic situation. Given this, the Department considers it appropriate to amend the limit using secondary legislation.
46. As such, clause 8 contains a power that if, following a review the “annual limit” set out in primary legislation is to be changed, this will be done by regulations made by the Secretary of State. It also provides that any change as a result of a review can be introduced in a phased approach so regulations may make different provision for different areas, cases or purposes, may make such transitional provision or savings as the Secretary of State considers necessary, and may provide that the change to the limit does not have effect in a particular case unless a notice has been issued by the Secretary of State, and may set out the form any such notice should take.
47. If the level is to increase then this can be done using the negative resolution procedure. This is considered an appropriate level of Parliamentary scrutiny because the level of the cap will be fully debated by Parliament as part of the Bill and any increase to the level will be beneficial and, as such, it is considered that it is proportionate for any beneficial change to be done using the negative resolution procedure.

48. Any decrease to the level of the cap will reduce the amount of benefits claimants receive. As such, the Department considers that it is appropriate that any reduction is subject to a greater degree of Parliamentary scrutiny. So any decrease to the annual limit will be subject to the affirmative procedure in order that Parliament can fully consider the change.
49. Linked to this is subsection (7) of clause 25 which provides a power to appoint different days for different areas, cases or purposes for the purpose of commencing clause 8(1)-(6).

### **Clause 11 – Changes to child tax credit**

*Power conferred on: HM Treasury*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative and affirmative on first use only*

50. Clause 11 makes changes to the manner for determining the maximum rate of child tax credit (CTC) payable to a person entitled to it. The manner for determining the maximum rate is to be set out in regulations: sections 9(1) and 67 Tax Credits Act 2002. CTC is made up of a number of elements. Currently, there are two elements: a family element payable to every person (if it is a single claim) or persons (if it is a joint claim) who is entitled to CTC and an individual element. The individual element is currently payable for each and every child or qualifying young person (QYP) for whom a person or persons are responsible but it is paid at a higher rate where the child or QYP is disabled or severely disabled. The changes made by clause 11 are to come into effect for the tax year 2017/18 and subsequent tax years.

51. Clause 11 inserts a new section 9(3A) and (3B) into the Tax Credits Act 2002 so as to restrict the number of children or QYPs for whom the individual element may be payable to two but only where the person or persons claiming CTC is or are responsible for a child or QYP born on or after 6 April 2017. New section 9(3B)(b) provides for exceptions to the restriction of the individual element to two children to be prescribed by regulations. This is a new regulation making power. This new power will be used to provide exceptions to the restriction e.g. where that number would be exceeded by reason of a multiple birth.
  
52. Clause 11 also provides for a new disability element of CTC which is payable for all disabled or severely disabled children regardless of their date of birth. The purpose of the creation of the new element is to allow for continued support to be provided through CTC for disabled or severely disabled children despite the restriction of the payment of the individual element of CTC for only two children. Currently, the individual element is payable at three different rates: a rate payable for all able bodied children./ QYPs, a higher rate for disabled children or QYPs and an even higher rate for severely disabled children or QYPs. The creation of the new disability element will enable the current individual element to be split into two – a flat rate amount payable for all qualifying children or QYPs (which will be reflected as the individual element) and a separate disability element payable where the child or QYP is disabled or severely disabled where the latter is intended to reflect what is currently the additional individual element payable for such children. The disability element will then be payable for all disabled children at the appropriate rate regardless of whether or not the child or QYP falls within the two children restriction which will be applicable in relation to the individual element from 2017/18 onwards. The clause includes a power for the disability element to be paid at different rates depending on whether the child or QYP is disabled or severely disabled. These changes will be made under the existing power to prescribe the manner for determining the maximum amount of CTC payable as provided for by section 9(1) Tax Credits Act 2002 when read with section 67 thereof.

It is intended that the power in new section 9(5)(c) Tax Credits Act 2002 will be used to provide for the amount of the disability element to vary according to whether the child or QYP is disabled or severely disabled and this will allow for the current position of paying an amount in respect of a child or QYP's disability at different rates according to the severity of the disability to be maintained despite the introduction of a single new disability element.

53. The new power under section 9(3B)(b) Tax Credits Act 2002 will be subject to the draft affirmative resolution procedure on first use. The Department considers it appropriate that the regulations are subject to the draft affirmative resolution procedure because section 66(2)(c) TCA 2002 already provides that the first regulations made under section 9 TCA 2002 should be subject to such procedure. As any regulations made under section 9 will have an impact on the amount of a CTC award payable to a person or persons claiming CTC, and so the Department considers that it is appropriate to use the draft affirmative procedure on first use of that power. As stated above, it is currently intended that the new power will be used to set out in secondary legislation technical details of how multiple births arising from the same pregnancy are to be treated. The Department also considers that it is appropriate to adopt the negative resolution procedure on all subsequent uses of this power as this is consistent with the approach adopted for all regulations made under s9.
54. The power under section 9(5)(c) Tax Credits Act 2002 to vary the amount of the disability element according to whether the child is disabled or severely disabled will, in accordance with existing provision in section 66(2)(a) Tax Credits Act 2002, be subject to the affirmative resolution procedure where the exercise of this power will prescribe the monetary amount of the disability element (being an amount that will be required to be reviewed annually by HM Treasury in accordance with section 41(2)(c) Tax Credits Act 2002). The Department considers that

it is appropriate to adopt this procedure when setting the monetary amount of the disability element.

**Clause 12 – Changes to the child element of universal credit**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative*

55. This clause make changes to the child element of universal credit by restricting the number of children or qualifying young persons for whom it may be paid to two and by removing the higher rate for the first child in the household to create a single, flat rate. The restriction of the child element is intended to be subject to exceptions, to mitigate harsh impacts that the policy might have and to allow for a more effective and controlled implementation. Among these exceptions will be existing claimants who are already responsible for more than two children or qualifying young persons at the point the clause comes into force – therefore, such claimants will not see a reduction in the child element of their award and will continue to receive a higher rate of child element for their first child or qualifying young person. However, such claimants will not be entitled to any further amounts for new children or qualifying young persons who enter the household after the implementation date where this would cause the limit of two to be exceeded, and the higher rate will cease to be payable once the first child or qualifying young person leaves the household. It is proposed that this exception be made by way of transitional and savings provisions in regulations.
56. As such, subsection (6) of Clause 12 provides that regulations may make such transitional or transitory provision or savings as the Secretary of State considers necessary or expedient in connection with the coming into force of the clause. Provisions made under this power are likely to be detailed and technical and the Department does not, therefore, consider it appropriate to include them in primary legislation.

57. Regulations made under subsection (6) will be subject to the negative Parliamentary procedure. The Department considers this to be a proportionate level of scrutiny because any transitional or savings provisions will be favourable to affected claimants and, in any event, because the changes to the child element of universal credit will have been fully debated as part of the Bill.

**Clauses 13 and 14 – removing the work-related activity component in ESA and limited capability for work component in UC**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: negative*

58. Clause 13 removes provision for an additional payment to be made to ESA claimants with limited capability for work.
59. The removal is intended to be subject to exceptions. In particular, the intention is that it will not apply to those already in receipt of the work-related activity component at the point of commencement or to existing incapacity benefit, severe disablement, and income support claimants who have not yet had their awards converted to ESA who following conversion are placed in the limited capability for work group. It is intended that the rules in relation to linking periods will also be retained.
60. Because of the detailed and transitional nature of these exceptions, it is appropriate for details of the exception to be set out in regulations by the Secretary of State rather than in the primary legislation. It is therefore considered necessary to have a regulation making power to allow the Secretary of State to make savings and transitional provision.

61. These powers will be subject to the negative resolution procedure. The Department considers it appropriate and proportionate that the regulations are subject to the negative resolution procedure because
- (1) the removal of the work-related activity component and limited capability for work element will have been fully debated as part of the Welfare Reform and Work Bill,
  - (2) the regulations will relate to savings and transitional provisions, and
  - (3) it is not uncommon for changes to welfare benefits to be introduced with certain exceptions of this nature.
62. Clause 14 amends section 12(2) of the Welfare Reform Act 2012 which provides for an award of universal credit to include an amount in respect of such particular needs or circumstances as may, under section 12(1), be prescribed in regulations
63. Clause 14 removes the fact that a claimant has limited capability for work as a need or circumstance that may be prescribed under section 12(1).
64. The intention is that regulations under existing provisions of the Welfare Reform Act 2012 will remove provision for the limited capability for work element but that this will not apply to certain claimants, in particular those who are already in receipt of that element; and UC claimants who have made their claim before the date of commencement (or are treated as having made their claim before that date), have provided medical evidence in support of their claim on the grounds of sickness/disability and who are subsequently determined to have limited capability for work following their assessment.
65. As there is already power in the Welfare Reform Act 2012 to make this provision by regulations, no further powers are needed in clause 14.

## **Clauses 16 to 19 – Payment of Support for Mortgage Interest as a loan**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative*

66. Clause 16 creates a new regulation-making power which will enable the Secretary of State to provide for loans to be made to eligible persons who are liable to pay mortgage interest in respect of the property they occupy as their home. The purpose of this clause is to reform the current scheme, whereby help for mortgage interest payments is paid to owner-occupiers as a benefit, so that help is instead offered in the form of a loan.
67. The power in subsection (2) will enable the Secretary of State to prescribe in regulations criteria that an individual must meet to be eligible for a loan. Under subsection (3) and (4) such regulations may, in particular, require that an individual is entitled to income support, income-based jobseeker's allowance, income-related employment and support allowance, state pension credit or universal credit, and that they have received such a benefit for a prescribed period. It is the Department's intention that the eligibility criteria under the current scheme remains the same. The regulations may also make provision about the amounts secured by a mortgage in respect of which a loan may be made and may, in particular, provide that the loan can only be made if the mortgage it is taken out for particular purposes (subsections (4) and (5)). The regulations may also prescribe a maximum amount secured by a mortgage in respect of which a loan may be made (subsection (6)). Under subsection (7) the Secretary of State may prescribe a method for determining or calculating the amount that may be paid by way of loan and require that the loan be secured by a charge over land. The Secretary of State may make different provisions in the regulations for different purposes under subsection (9).

68. Given that the provisions setting out, for example, the calculation of the loan amount and the application of a charge will be detailed and technical in nature the Department considers it appropriate that this be dealt with in secondary, rather than primary, legislation. Further, the detail of the current SMI scheme is contained in secondary legislation and it is the Department's intention to mirror much of that detail (for example, by having the same eligibility criteria for a loan and the formula for calculating the amount of loan that can be received). It is therefore considered appropriate to provide this in secondary legislation.
69. This power is subject to the negative resolution procedure. This is considered the most appropriate form of Parliamentary scrutiny as the primary clause will have been fully debated as part of the Welfare Reform and Work Bill, including debate on the contents of the regulations which will be made under this power. Further, the regulations setting out the current scheme in respect of income support, jobseeker's allowance, employment and support allowance and state pension credit were subject to the negative procedure. As such, the Department considers that it is appropriate and proportionate to use the negative resolution procedure.
70. Clause 17 sets out further detail about the regulation-making power in clause 16. The regulations may make provision about the circumstances in which a person is, or is to be regarded as, liable to pay mortgage interest and is to be regarded as occupying, or as not occupying, property as a home (subsection (2)) and may include provision about: (a) applying for a loan, (b) conditions which must be satisfied before a loan can be made (such as receiving financial advice), (c) when, and the manner in which, a loan must be repaid, (d) other terms upon which a loan is made, (e) the payment of interest and how that rate of interest will be determined, (f) charging administration costs, (g) adding such costs to the amount of loan, and (h) accepting substituted security (subsection (3)(a) to (h)).

71. The regulations may make provision requiring that, in certain circumstances, the money lent is paid directly to a qualifying lender who will apply such amount towards discharging a person's mortgage interest liability (subsection (4)(a)). The definitions relevant to "qualifying lender" are set out in subsection (8), (9) and (10). The regulations may also make provision: (a) about the costs of administering the making of loan payments to qualifying lenders, (b) requiring a qualifying lender (where the amount paid to them is less than it would be because they have met administration costs) to credit the amount of difference against the mortgage interest liability, (c) enabling a body to elect not to be regarded as a qualifying lender, (d) to recover from any body or person payments made in error or fees due from them, and (e) for cases where the same person is the borrower in relation to mortgage interest payable in respect of two or more different loans (subsection (4)(b) to (f)). The regulations may also include provision requiring information and documents to be provided and to authorise the disclosure of information (subsection (6)).
72. As with clause 16, the provisions setting out the detail of the loans scheme, for example applying for a loan and the terms upon which a loan is made, will be detailed and technical in nature. The detail of the current SMI scheme is contained in secondary legislation, and it is the Department's intention to mirror much of that detail, save that help will be provided in the form of a loan. For these reasons, the Department considers it appropriate that this be dealt with in secondary, rather than primary, legislation.
73. The power in subsection (5) will enable the Secretary of State to make arrangements with a third party so that they can exercise functions under the regulations (such as providing financial advice and arranging the registration of a charge on the claimant's property). Finally, the regulations may also make provision with similar effect in respect of individuals who have entered into alternative finance arrangements (subsection (7)).

74. The Department considers it appropriate to set out in secondary legislation the arrangements for the exercise of functions by a third party. This will allow the opportunity to monitor and amend, if necessary, the way in which the administration of the scheme takes place. Further, the specific detail relating to the delegated functions will be largely operational. The detail regarding the alternative finance arrangements is also more appropriate for secondary legislation as the provisions will largely mirror the provisions for mortgage interest, with specific technical detail dealing with alternative finance arrangements.
75. This power is subject to the negative resolution procedure. This is considered the most appropriate form of Parliamentary scrutiny for the reasons described in relation to clause 16 above. As such, the Department considers that it is appropriate and proportionate to use the negative resolution procedure.
76. Clause 19 deals with the transition from the payment of SMI to new and existing claimants in the form of a benefit, to the provision of SMI in the form of a loan. Subsection (1) of clause 19 states that regulations may make such transitional provision or savings as the Secretary of State considers necessary or expedient in connection with the coming into force of sections 16 to 18. Subsections (2) to (7) set out further detail about what the regulations may include in regards to the transition to the new loans scheme. Subsections (2) and (3) enable the regulations to make provision to temporarily exclude the making of a loan under regulations under section 16 certain areas or cases after the coming into force of sections 16 to 18, and provide that such exclusions may continue until a time specified in a notice issued by the Secretary of State. Subsections (4) and (5) enable the regulations to make provision for enabling the payment of SMI to continue for certain areas or cases after sections 16 to 18 have come into force, and provide that such payments may continue until a time specified in a notice issued by the

Secretary of State. Any regulations made under section 19 may make different provision for different areas, cases or purposes.

77. The provisions in section 19 are necessary so that the Secretary of State may roll out the new loans scheme at different times for different areas or cases if necessary. This will allow the Department to transition to SMI loans in a managed fashion that can be delivered effectively. These provisions are likely to be detailed and technical and the Department does not, therefore, consider it appropriate to include them within the primary legislation.
78. The regulations that provide for how the scheme will be rolled out will be subject to the negative Parliamentary procedure. The Department considers that it is appropriate to follow the same procedure as the other regulations made pursuant to clauses 16 and 17 because the SMI loan reforms will have been fully debated as part of the Bill.

## **Clause 20 – Expenses of paying sums in respect of vehicle hire etc**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative*

79. The power in clause 20 is narrowly defined and can only be exercised in a limited and therefore clearly understood way. The Secretary of State can only recover the expenses incurred by the Department for Work and Pensions as a result of transferring the mobility component of disability living allowance, if it is payable at the higher rate or the mobility component of personal independence payment, if it is payable at the enhanced rate. It does not apply to any other benefit. Equally it only relates to the transfer to a provider whose business consists of or includes the supply by way of lease or hire purchase of motor vehicles to persons in receipt of the benefits referred to. It is also confined to expenses incurred.

The regulations made under that power will be subject to the negative Parliamentary procedure. The regulations can prescribe the fee or method of calculation for recovery and how that recovery will be made, which is considered more appropriately prescribed in regulations.

## **Clauses 21 to 28 – Reduction in social housing rents**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative*

Provision relating to exceptions

80. Clause 21 requires ‘registered providers’ of social housing – which includes private registered providers (PRPs) and local authorities -- to reduce rents for social housing by 1% per annum over 4 years commencing in the financial year 2016-17 from a frozen 2015-16 base line.
81. Schedule 2 makes further provision about social housing rents, applicable to tenancies which do not fall within clause 21(1) i.e. those which begin after the beginning of 8 July 2015. This provision will ensure that rents for new tenancies will track down in parallel with rents of established tenancies. It requires registered providers to secure that the maximum amount of rent payable to it by a new tenant initially, and, if appropriate, in the following relevant year, is no more than an amount calculated in accordance with the provisions of the schedule.
82. The Secretary of State will use the power in clause 22 (4), to disapply in certain circumstances the requirements of clause 21.

83. The regulations made under clause 22 (4) will allow for disapplication in certain cases. Subsection (5) clarifies the types of cases and circumstances which regulations under subsection (4) may include. The provision in subsection (6) clarifies that regulations which make provision about tenants of certain descriptions under subsection (5)(a) may include provision for tenants whose income exceeds certain prescribed thresholds, and the provision in subsection (7) clarifies that regulations which make provision about events of certain descriptions under subsection (5)(e) may include provision about periods during a tenancy when the rent payable is temporarily reduced or waived. The power to disapply clause 21 will be used to reflect a proportionate operation of the policy, in particular to align the tenancies caught by the rent reduction provisions with those caught by the previous rent standard and policy, and to modify the application of the primary provisions, where this is appropriate, for example if a tenant's rent is subject to a temporary reduction.
84. Schedule 2 paragraph 5 gives regulation making powers which allow for the disapplication of the rent requirements of Schedule 2, Part 1 in certain cases. The provisions mirror those of clause 22 and, similarly, the power to disapply the schedule will be used to reflect a proportionate operation of the policy.
85. Clause 26 creates powers to make provision about the maximum amount of rent to be paid by tenants excepted from Clause 21 by regulations under Clause 22 or from the provisions of Schedule 2 by regulations under paragraph 5 of Schedule 2, while an exception is current, in the part of the relevant year after such an exception ceases to apply and in the following relevant year. Clause 26 also creates associated powers to make provision for enforcement of the requirements of the regulations and for disapplying or modifying a requirement in the regulations as it relates to a registered provider. These provisions will enable the Secretary of State to make special

provision for excepted cases, and will enable provisions to control rents to be modified in appropriate cases, as well as disapplied entirely.

#### Provision relating to exemptions

86. Clause 23 allows for the regulator to issue a direction in respect of a PRP exempting it from the requirements of clause 21 if one of the conditions set out in subsections (4) or (5) are satisfied. The conditions are:

- the Regulator considers that complying with clause 21 would jeopardise the financial viability of the provider, or
- the circumstances of the private registered provider satisfy requirements prescribed in regulations.

87. Clause 23 allows for the Secretary of State to issue a direction in respect of a local authority exempting it from the requirements of clause 21 if one of the conditions set out in subsections (10) and (11) are satisfied. The conditions are:

(10) the Secretary of State considers that the local authority would be unable to avoid serious financial difficulties if it were to comply with section 21, or

(11) the circumstances of the private registered provider satisfy requirements prescribed in regulations made by the Secretary of State).

88. Paragraph 6 of Schedule 2 mirrors clause 23 and provides for the Regulator or the Secretary of State to issue directions in respect of a PRP or a local authority respectively if conditions are satisfied including circumstances prescribed in regulations made by the Secretary of State under paragraph 6(5) and paragraph 6(10) of Schedule 2.

89. Taken together the regulation-making powers in clause 23 and Schedule 2 paragraph 6 provide flexibility to adjust the operation of the intended policy to mitigate the impact of the rent reduction provisions where this is necessary to maintain the financial stability of social housing providers.
90. The Department does not consider the direction making powers in subclauses 23(1) and (7) and sub-paragraphs 6(1) and (7) to be legislative in character. Rather such a direction embodies an executive decision because it will relate to a named registered provider – and may, in addition, be given in relation to some of the social housing of that registered provider not all of it. It is a power to give a direction on a particular case if conditions in relation to a particular provider’s financial circumstances (or another condition as to the circumstances of the provider to be set out in regulations) are met.

#### Provisions relating to rent setting cases covered by Schedule 2

91. Schedule 2 paragraph 1(7) creates a power to define ‘formula rate’, which is the basis for the calculation of the social rent rate.
92. Schedule 2 paragraph 4 creates powers to identify accommodation that may be let at social housing at an affordable rent and to define affordable rent.

#### Provision relating to enforcement of the Schedule

93. Schedule 2 paragraph 7 creates regulation making power to make provision about the enforcement of requirements imposed by or under Schedule 2, including provision applying Part 2 of the Housing and Regeneration Act 2008 with modifications.

Justification for delegation / procedure.

94. Taken together, the power to make regulations under the social housing rents provisions is intended to confer on the Secretary of State the ability to adjust the operation of the intended policy by modifying the effects of the provision in clause 21 and Schedule 2, and to make detailed provision for aspects of the rent setting regime applicable to new tenancies.
95. Given that the provisions regarding the cases and circumstances in which exceptions and exemptions may be granted are likely to be detailed, and are of a nature that means they may have to be adjusted over time to reflect any external changes, the Department considers it appropriate that this be dealt with in secondary rather than primary legislation.
96. The Department's intention in relation to the powers contained in Schedule 2 to define formula rate, identify accommodation that may be let at social housing at an affordable rent and to define affordable rent is to specify in the regulations the formula set out in the previous rent standard and policy, and to enable accommodation which met the criteria set out in previous rent standard and policy regarding accommodation which it was appropriate to let at affordable rent to continue to be so let. These provisions are likely to be detailed. Accordingly, the Department considers it appropriate that this be dealt with in secondary rather than primary legislation. The powers must be exercised according to general public law principles and will be subject to challenge by way of judicial review.
97. In light of the above, and given that the primary provisions have only temporary effect, the Department considers that choice of negative procedure is both appropriate and proportionate.

Power conferred on: Secretary of State

Powers exercised by: Consent

Parliamentary Procedure: None

98. Clause 21(3)(a) provides that for the purposes of rent reductions a tenant's rent in the 12 months prior to the first relevant year is to be taken to be the rent on 8 July 2015 – the date on which the intention to legislate regarding rent reductions was announced. The link to rent on 8 July 2015 is an anti-avoidance provision.
99. Clause 21(3)(b) grants to the Secretary of State a power to consent to the use of an alternative 'permitted review day' for the purpose of calculating the amount of rent payable to the registered provider by the tenant in respect of the 12 months preceding the first relevant year. In considering whether to grant such a consent the Secretary of State is likely to take into account the circumstances and conduct of individual registered providers, and, in particular, whether any rent increases implemented after 8 July 2015 were in accordance with a provider's normal practice and consistent with the then applicable rent standard and policy. Pursuant to subsection (4) such consents may be given for a particular case or a description of cases.
100. Paragraph 10 of Schedule 2 makes equivalent provision in relation to consents to a use of a different permitted review day applicable to the determination of an 'assumed rent' under paragraph 1(5) of that Schedule.
101. In relation to both provisions, the Department intends to issue a general consent to cover typical cases, which will be publicised through the Regulator of Social Housing and other governmental channels. Other consents may necessarily be tenancy or provider specific.

102. There is no Parliamentary scrutiny of consents given under section 21(3)(b) or Paragraph 10 of Schedule 2 but the power must be exercised according to general public law principles and is subject to challenge by way of judicial review. As exercise of these powers will be fact specific, enabling the Secretary of State to moderate the impact of the anti-avoidance measures if the circumstances and conduct of a provider warrant it, the Department considers that it is appropriate that directions under the amended powers may be made without Parliamentary scrutiny.

### **Clause 29 – Power to make consequential provision**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: Negative*

103. Subsection (1) of clause 29 will enable the Secretary of State to make consequential amendments and revocations of subordinate legislation (whenever made) where necessary or expedient as a result of any provision in the Bill. Because of the detailed and technical nature of these amendments, and the fact that the power is limited to amendments of secondary legislation, it is considered appropriate for them to be set out in regulations by the Secretary of State rather than in the primary legislation.

104. This power is subject to the negative resolution procedure. This is considered the most appropriate form of Parliamentary scrutiny as the clause will have been fully debated as part of the Welfare Reform and Work Bill and relates to consequential amendments of subordinate legislation only.

## **Clause 31 - Commencement**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: None*

105. Clause 31(3) makes provision for the coming into force of the benefit cap reduction and review and clause 31(5) makes provision for the coming into force of the reduction in social housing rents (so far as not already brought into force by clause 31(1)). Each contains regulation making powers (see above). Clause 31(6) provides that commencement of provisions not otherwise mentioned in clause 31, will be on such day(s) as appointed in regulations.
106. Clause 31(7) provides the power for regulations relating to subsection (3), (5) or (6), to appoint different days for different areas; and appoint different days for different cases or purposes.
107. Clause 31(8) provides that regulations under subsection (3), (5) or (6) may make transitional or transitory provision or savings which the Secretary of State considers necessary or expedient.
108. These powers will be subject to no parliamentary procedure. The Department considers this appropriate because the provisions to which they relate will have been fully debated as part of the Welfare Reform and Work Bill; and because these regulations will relate to the implementation of their commencement, and are therefore largely operational.