

*These notes refer to the Welfare Reform Act (Northern Ireland)  
2010 (c.13) which received Royal Assent on 13 August 2010*

# Welfare Reform Act (Northern Ireland) 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Social security**

#### ***Section 1: Schemes for assisting persons to obtain employment: ‘Work for your benefit’ schemes etc.***

This section inserts two new Articles, Article 19A (schemes for assisting persons to obtain employment: ‘work for your benefit’ schemes etc.) and Article 19B (Article 19A: supplemental) into the [Jobseekers \(Northern Ireland\) Order 1995 \(S.I. 1995/2705 \(N.I. 15\)\)](#).

Article 19A(1), which is inserted by subsection (2), enables the Department for Social Development to make provision in regulations for, or in connection with, imposing a requirement on jobseeker’s allowance claimants to participate in schemes that are designed to assist them to obtain employment.

In particular, these regulations may impose a requirement on claimants to undertake work or work-related activity as part of a ‘work for your benefit’ scheme.

Implementation in Northern Ireland will be subject to the outcome of the evaluation of pilots in Great Britain and the availability of resources.

If introduced in Northern Ireland, Article 19A(1) will provide for regulations to set out the circumstances in which jobseeker’s allowance claimants are required to participate in schemes under this Article. The intention is to use these powers to require a proportion of long-term unemployed claimants who reach the end of the Department for Employment and Learning’s Steps to Work programme without finding work to take part in a ‘work for your benefit’ scheme. It is envisaged that personal advisers will be able to require other jobseeker’s allowance claimants to take part in the scheme if the adviser considers that participation would benefit the individual concerned.

As well as undertaking full-time work or work-related activity it is also envisaged that participants in ‘work for your benefit’ schemes will be provided with relevant employment support.

Article 19A(2) makes it clear that the regulations may require claimants to undertake work or a work-related activity during a prescribed period with a view to improving their chances of finding employment. It is envisaged that claimants may participate in ‘work for your benefit’ schemes for up to six months.

Article 19A(3) defines ‘work-related activity’ as activity which would make it more likely that the participant will obtain or remain in work or be able to do so.

Article 19A(4) precludes regulations made under paragraph (1) from applying to jobseeker’s allowance claimants who are not required to satisfy the jobseeking conditions. These are the conditions set out in Article 3A(5)(a) to (c) of the Jobseekers (Northern Ireland) Order 1995 (see section 4(3) - namely that a person is available for work, has a current jobseeker’s agreement, and is actively seeking employment). The Department envisages the precluded groups will include lone parents with younger children who are moved to jobseeker’s allowance after the abolition of income support (see section 9).

Article 19A(5) provides examples of provisions that may be included in regulations made under Article 19A(1).

Article 19A(5)(d) enables regulations to provide that benefit payments may be withheld or reduced where a claimant has failed to comply with the regulations and he or she does not show good cause for the failure within the period specified in regulations. If good cause is shown, benefit will continue to be paid. It is intended that good cause for not participating in a ‘work for your benefit’ scheme will be consistent with the good cause provisions currently contained in regulations relating to jobseeker’s allowance. An example of good cause would be dealing with a domestic emergency.

Paragraph (6) provides that a jobseeker’s allowance is not payable for a period specified in regulations where a claimant has failed to comply with regulations made under Article 19A. This paragraph also provides that the period specified in the regulations in respect of which a jobseeker’s allowance is not payable must be at least one week and not more than 26 weeks.

Article 19A(7) provides that the appropriate consequence if a member of a joint-claim couple fails to comply with regulations is that he or she be treated as subject to sanctions for the purpose of Article 22A. The period for which the full allowance is not payable must be at least one week and not more than 26 weeks.

Paragraphs (8) and (9) of Article 19A make provision for claimants to receive an income-based jobseeker’s allowance even though provision made by the regulations may prevent it. This is to enable claimants who are subject to a sanction to receive hardship payments. Regulations may prescribe the rate and period of such payments and the circumstances in which they are payable. Paragraph (8) does not apply in the case of a joint-claim jobseeker’s allowance. Provision for such payments is contained in Article 22B(4) of the Jobseekers (Northern Ireland) Order 1995.

New Article 19B, which is also inserted in the Jobseekers (Northern Ireland) Order 1995 by subsection (2), contains provisions that are supplemental to Article 19A. These provisions relate to the practical operation of schemes prescribed under Article 19A and provide support for any contractual arrangements the Department for Employment and Learning may make regarding their delivery.

Paragraph (1) enables the Department for Employment and Learning to associate itself, financially or otherwise, with any scheme falling within Article 19A(1). For example, ‘work for your benefit’ schemes may involve contracting with non-Government organisations and providing funding for relevant work-related activity and employment support. The Department for Employment and Learning may also wish to make payments to persons participating in the schemes to cover certain expenses, such as the cost of public transport to the host organisation.

Paragraph (3) enables the Department for Employment and Learning, where necessary, to use existing powers in Article 4 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (status of trainees etc.), to make an order dealing with the employment status of claimants participating in schemes under Article 19A and detailing how any income gained while on a scheme should be treated for the purpose of other relevant legislation (for example, legislation relating to tax or National Insurance contributions). This follows the same approach as in Article 57(7) of the [Welfare Reform and Pensions \(Northern Ireland\) Order 1999 \(N.I. 11\)](#).

Subsections (3) to (5) of section 1 make other amendments which are consequential on new Article 19A.

Subsection (3) inserts a new paragraph (4) in Article 36 of the Jobseekers (Northern Ireland) Order 1995 (regulations and orders) to make it clear that regulations made under new Article 19A may make different provision for different areas and that they may make provision only in relation to an area or areas specified in the regulations.

Subsection (4) amends Schedule 3 to the [Social Security \(Northern Ireland\) Order 1998 \(N.I. 10\)](#) to provide that a decision relating to non-payment of benefit under Article 19A may be appealed.

### ***Section 2: Work-related activity: income support claimants and partners of claimants***

This section amends the [Social Security Administration \(Northern Ireland\) Act 1992 \(c.8\)](#) by inserting new sections 2D to 2H.

New section 2D allows the Department for Social Development to make regulations which may require a person in receipt of income support, and who is not the lone parent of a child under the age of 3 (subsection (1)), or the partner of a person receiving income support, income-based jobseeker’s allowance or income-related employment and support allowance (subsections (2) and (3)) to

undertake work-related activity, as part of their progression to work outlined in Professor Gregg's recommendations, as a condition of continuing to receive the full amount of benefit.

The regulations made under this section will make provision for –

- the circumstances in which a person is to be subject to any requirement to undertake such activity;
- notifying a person of such a requirement;
- prescribing the time and amount of work-related activity which a person is required to undertake;
- detailing the circumstances in which a person is, or is not, to be regarded as undertaking such activity;
- determining, in the case of a claimant in a polygamous marriage, which of the partners is required to undertake work-related activity;
- imposing a sanction where a person required to undertake work-related activity has failed, without good cause, to comply with the requirement. The regulations will prescribe which matters are, or are not, to be taken into account when determining good cause for such failure. Where a sanction is imposed, the regulations will make provision for benefit to be reduced, and prescribe the amount and period of the reduction;
- providing that lone parents entitled to income support can restrict the hours for which they will be required to undertake work-related activity;
- definitions for the purposes of this section and for *new sections 2E and 2F*. In particular 'work-related activity' is defined as activity which makes it more likely that the person will obtain or remain in work or be able to do so;
- information supplied under the regulations made under this section to be taken to be information relating to social security. This will enable the exchange of information with, for example, training providers.

New section 2E relates to persons in receipt of certain benefits and to the partners of such people who are required to attend work-focused interviews under the provisions of section 2A or section 2AA of the Social Security Administration (Northern Ireland) Act 1992. The benefits in question are income support, income-based jobseeker's allowance or an income-related employment and support allowance.

The provision requires the Department or the Department for Employment and Learning, in circumstances to be specified in regulations, to provide such people with an action plan. Regulations made under this section will provide for the form, content and review and updating of action plans. Where a person is required under the provisions of section 2D to undertake work-related activity, the action plan will contain details of the activities which will allow that requirement to be met. The regulations will also allow a person provided with

an action plan to ask for it be reconsidered, and set out the circumstances and time in which such a request may be made; the matters to be considered when deciding on reconsideration; notification of the reconsideration decision, and directions giving effect to the decision on reconsideration.

Subsection (6) provides that the well-being of the child should be taken into account when agreeing the activities that a parent will undertake as part of an action plan.

New section 2F allows the Department or the Department for Employment and Learning, in circumstances to be set out in regulations, to issue a direction to a person required to undertake work-related activity under section 2D. The direction will specify either –

- the *only* activity, in that case, which will be regarded as work-related activity, or
- activity which, in that person's case, will *not* be treated as work-related activity.

The direction may not specify medical or surgical treatment as the only activity which is to be regarded as work-related activity.

The regulations will provide that any direction must be reasonable, taking into account an individual's circumstances, must be included in an action plan given under section 2E and may be varied or brought to an end by a subsequent direction made under section 2F(1). Where a direction is varied or ended by a subsequent direction, that change may have retrospective effect.

New section 2G will allow the Department and the Department for Employment and Learning to authorise staff of contracted out suppliers to carry out their functions in issuing action plans under new section 2E and issuing directions under new section 2F. In addition regulations may provide for those persons to carry out the functions of the Department in revising or superseding decisions made under those sections. However, they will not be able to make decisions about whether a person has failed to comply with a requirement to undertake work-related activity, whether that person had good cause for such a failure or whether benefit should be reduced as a result of that failure. Those decisions will remain with the Department.

Regulations made under new section 2G will further specify the extent to which a contractor and its staff may be authorised to carry out functions of the Department or the Department for Employment and Learning and the duration of the authorisation. The Department or the Department for Employment and Learning will be able to revoke the authorisation at any time, and will not be prevented from exercising any function itself. Any action or omission by the authorised person is to be treated as an action or omission of the Department or the Department for Employment and Learning, except where it relates to the exercise of the function, or where criminal proceedings are brought in respect of anything done by the authorised person.

New section 2H applies to any regulations made under sections 2A, 2AA or 2D of the Social Security Administration (Northern Ireland) Act 1992. This

provides that circumstances are to be prescribed in regulations which will constitute good cause for failing to undertake mandatory activities. They must expressly state that availability of childcare and the claimant's physical or mental health or condition will always be considered.

Subsections (3) to (6) of section 2 make minor consequential amendments to the Social Security Administration (Northern Ireland) Act 1992 and the Welfare Reform and Pensions (Northern Ireland) Order 1999.

### ***Section 3: Lone parents***

Subsection 1 amends section 123 of the [Social Security Contributions and Benefits \(Northern Ireland\) Act 1992 \(c.7\)](#) to ensure that lone parents with a child under seven are a prescribed category of person entitled to income support.

Subsection 2 amends section 2A of the Social Security Administration (Northern Ireland) Act 1992 to ensure that lone parents on income support with a child under one will not be required to take part in a work-focused interview.

Subsections 3 to 5 amend sections 12, 13 and 24 of the [Welfare Reform Act \(Northern Ireland\) 2007 \(c.2\)](#), to ensure that lone parents on employment and support allowance with a child under one will not be required to take part in a work-focused interview and with a child under three will not be required to undertake work-related activity. A regulation-making power provides that lone parents on employment and support allowance will be entitled to restrict the times when they are required to undertake work-related activity.

### ***Section 4: Entitlement to jobseeker's allowance without seeking employment etc.***

Subsections (1) to (3) amend the Jobseekers (Northern Ireland) Order 1995 by inserting new Articles 3A and 3B to provide entitlement to jobseeker's allowance for different categories of claimant including groups who would currently claim income support.

New Article 3A makes provision for claimants who are not a member of a joint-claim couple. It re-states the existing basic conditions under which people who are not in remunerative work can qualify for contribution-based or income-based jobseeker's allowance if they satisfy jobseeking conditions (such as to be available for and actively seeking work.). It creates a new entitlement for people of a description provided in regulations, who are not required to meet the jobseeking conditions but meet the other basic conditions of entitlement, such as presence in Northern Ireland and satisfy an income test. It also ensures that lone parents with a child under seven are a prescribed category of person. This will enable income-based jobseeker's allowance to be extended to groups who currently qualify for income support.

New Article 3B ensures that the existing provision in Article 5A of the Jobseekers (Northern Ireland) Order 1995 (the conditions for claims by joint-claim couples) can continue to operate in the light of the amendments made to

the Jobseekers (Northern Ireland) Order by the new Article 3A above. Where a person is a member of more than one couple, regulations will make provision for deciding which couple is included for the purposes of a joint-claim. This would apply, for example, to someone in a polygamous marriage.

Paragraph (4) introduces Schedule 1, which includes amendments to the Jobseekers (Northern Ireland) Order 1995 to support these changes.

### ***Section 5: Couples where at least one member capable of work***

This section amends the law relating to certain claimants who are members of a couple.

Subsection (1) amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by inserting new regulation-making powers into section 123(1) of that Act (conditions for income support) and by inserting new subsections (6A) and (6B) (employment and support allowance).

Subsection (2) amends paragraph 6 of Schedule 1 to the Welfare Reform Act (Northern Ireland) 2007 (conditions for income-related employment and support allowance).

The purpose of these provisions is to remove entitlement to income support and income-related employment and support allowance for couples where one member is capable of work. This will mean that the only route to income-related support for such couples will be through income-based jobseeker's allowance and the member of the couple who is work ready will be required to fulfil the jobseeking requirements in Article 3 of the Jobseekers (Northern Ireland) Order 1995.

Regulations will prescribe the circumstances in which a member of a couple will not be treated as being capable of work, for example, he or she has claimed or is receiving employment and support allowance or he or she is in receipt of carer's allowance.

### ***Section 6: Statutory sick pay and employment and support allowance***

This section amends section 20(1) of the Welfare Reform Act (Northern Ireland) 2007 which prevented eligibility for employment and support allowance by those entitled to statutory sick pay. That section is amended to include a regulation-making power to allow people who are receiving statutory sick pay to claim income-related employment and support allowance, instead of income support. Currently people may receive income support in addition to statutory sick pay. In order to abolish income support, alternative provision needs to be made for this group of people.

### ***Section 7: Transitional provision relating to sections 4 to 6***

This section makes provision for the transition of people who move from income support to employment and support allowance or jobseeker's allowance as a result of the provisions in sections 4 to 6. This includes stopping awards of

income support or employment and support allowance, where it is appropriate. A transitional allowance can be paid for a time and an amount prescribed in regulations.

***Section 8: Assembly procedure: regulations imposing work-related activity requirements on lone parents with children under 7***

Section 8 provides that regulations made within five years of the passing of the Welfare Reform Act and which impose a requirement on a lone parent of a child under 7 to undertake work-related activity will be subject to the confirmatory procedure of the Assembly.

***Section 9: Abolition of income support***

This section provides for the abolition of income support and the repeal of its associated references if, as a result of changes made in this Act or otherwise, there are no longer any groups of people that require income support. There is scope in subsection (4) to provide any transitional protection necessary.

Subsection 7 provides that an order to end entitlement to income support will be subject to the confirmatory resolution procedure of the Assembly.

***Section 10: Power to direct claimant to undertake specific work-related activity***

This section allows the Department or the Department for Employment and Learning to specify a work-related activity which a claimant of employment and support allowance, in the work-related activity group, must undertake to meet the requirements of the claim. Work-related activity is activity aimed at helping the claimant obtain work, remain in work or to be more likely to obtain or remain in work. This will not apply to claimants whose condition limits them to the extent that they could not reasonably be required to undertake work-related activity as a condition of receiving their benefit.

Section 10 amends section 15 of the Welfare Reform Act (Northern Ireland) 2007 which provides a power for the Department or the Department for Employment and Learning to direct that a specific activity in the case of an individual is not to count as work-related activity under the requirements imposed by section 13 of that Act. This is intended to stop claimants seeking to satisfy the requirement to undertake work-related activity by undertaking activity considered inappropriate for their circumstances.

New subsection (1)(a) provides that in addition to the existing power under section 13 of the Welfare Reform Act (Northern Ireland) 2007, the Department or the Department for Employment and Learning can, in prescribed circumstances, direct that a specific activity is the only activity which can, in the person's case, be regarded as work-related activity. This is intended to enable the Department and the Department for Employment and Learning to require claimants to undertake a specific activity in certain circumstances.



New subsection (1A) provides that the direction may not specify medical or surgical treatment as the only activity which is to be regarded as work-related activity.

New subsection (2)(a) requires that any direction given to the claimant must be reasonable, having regard to the person's circumstances. New subsection (2) (b) requires that any direction given to the claimant under subsection (1) must be recorded in the claimant's action plan. Failure to undertake the specified activity without showing good cause for this within the allowed time would be sanctionable.

### ***Section 11: Conditions for contributory jobseeker's allowance***

This section amends the contribution conditions for jobseeker's allowance. It amends the Jobseekers (Northern Ireland) Order 1995 so that the first contribution condition for jobseeker's allowance is met by the claimant having paid, or being treated as having paid, at least 26 weeks of Class 1 contributions on relevant earnings at the base year's lower earnings limit (£90 per week in 2008/09) in one of the two tax years prior to the claim. Class 1 national insurance contributions are those paid on earnings from employment. Relevant earnings are those upon which contributions have been paid and which count towards establishing entitlement.

Subsection (3) introduces a regulation-making power which will be used to set out the detail of the calculation to determine whether a person has paid contributions on enough earnings to be entitled to the contributory benefit. A further regulation-making power is introduced by subsection (5) to allow for prescribed categories of claimants to satisfy the first contribution condition by alternative criteria. This new provision in the Jobseekers (Northern Ireland) Order 1995 for jobseeker's allowance will parallel the provision in the Welfare Reform Act (Northern Ireland) 2007 in respect of employment and support allowance.

### ***Section 12: Conditions for contributory employment and support allowance***

This section amends the contribution conditions for employment and support allowance. The section amends the Welfare Reform Act (Northern Ireland) 2007 so that the number of tax years in which a person can pay national insurance contributions and qualify for employment and support allowance is reduced from three years to two. This aligns the period for employment and support allowance with that for jobseeker's allowance.

The section further amends the Welfare Reform Act (Northern Ireland) 2007 to provide that the first contribution condition for employment and support allowance is met by the claimant having paid, or being treated as having paid at least 26 weeks of Class 1 or Class 2 contributions on relevant earnings at the base year's lower earnings limit (£90 per week in 2008/09) in one of the two tax years prior to the claim. Class 1 national insurance contributions are those paid on earnings from employment. Class 2 national insurance contributions are those

paid on earnings from self-employment. Relevant earnings are those upon which contributions have been paid and which count towards establishing entitlement.

The section provides a regulation-making power which will be used to set out the detail of the calculation to determine whether a person has paid contributions on enough earnings to be entitled to the contributory benefit. The existing regulation-making power in the Welfare Reform Act (Northern Ireland) 2007 is amended to allow for further prescribed categories of claimants, for example partners of overseas service personnel, to satisfy the first contribution condition by alternative criteria.

### ***Section 13: Mobility component***

Section 13 amends the entitlement conditions to the higher rate mobility component of disability living allowance so as to allow entitlement to people with a prescribed severe visual impairment. The section amends section 73 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to set out a new category of entitlement to the higher rate mobility component for people who are severely visually impaired as prescribed in regulations. Section 13 does not alter the existing entitlement to the higher rate mobility component of those who are blind and deaf (to the prescribed degree).

### ***Section 14: Maternity allowance and carer's allowance***

This section repeals sections 82 and 90 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which make provision for Adult Dependency Increases (ADIs) to be paid with maternity allowance and carer's allowance respectively, in circumstances where the claimant has an adult dependant.

The section will abolish the payment of ADIs for all new claims to maternity allowance and carer's allowance at the same time as they cease to be available on new claims to state pensions in 2010.

ADIs in payment with carer's allowance at the time of change will be phased out between 2010 and 2020. This will be in line with the arrangements for phasing out the existing ADIs paid with the state pension. Phasing out will not apply to maternity allowance as this is a short-term benefit paid for 39 weeks. Payment of ADIs for existing maternity allowance claims will therefore cease when the maternity allowance entitlement ends.

### ***Section 15: Community care grants relating to specified goods or services***

Under the existing law, successful applicants for community care grants may be provided with cash to obtain the goods or services that the award covers. At the direction of the appropriate officer, a payment may be made to a third party to provide the goods or services. These amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 enable the Department to require that, where the goods or services are covered by arrangements the Department has made with a supplier, the award made must relate to specified

goods or services and the payment would be made to the supplier. It is expected that these arrangements will involve the supply of white goods and furniture at a discounted rate.

***Section 16: Community care grants: reviews and information***

Section 16(1) and (2) preclude an application for review being made where goods or services have been awarded. Clause 16(3) inserts a new section 116E into the Social Security Administration (Northern Ireland) Act 1992 which allows regulations to provide for the exchange of information between the Department and relevant suppliers and for the use or disclosure of such information, including provision for a criminal offence for unauthorised disclosure. There is power by regulations to make exceptions to this.

***Section 17: Regulations relating to information: Assembly control***

Section 17 provides that regulations about the unauthorised disclosure of information in relation to community care grants will be subject to the confirmatory procedure where the regulations create new offences or increase penalties.

***Section 18: Payments on account***

Section 18(2)(a) repeals section 5(1)(s) of the Social Security Administration (Northern Ireland) Act 1992, which enables regulations to be made providing for the making of a payment on account of benefit where it is impracticable for a claim to be made immediately, where it is impracticable for a claim to be determined immediately or where an award of benefit has been made, but it is impracticable to pay the whole immediately. Subsection (2)(c) of section 18 inserts a new subsection (1A) into section 5 of that Act. It provides a regulation-making power to allow a payment on account of housing benefit to be made where no claim has been made or a claim has been made (including where a claim has been determined and an award made) and, in either case, a person who is or would be covered by such a claim would be in need if no payment on account was made, and an award has been made but it is impracticable to pay the full amount of the benefit immediately.

The new subsection (1B) broadens the range of situations in which a payment on account may be made before an award has been made. It enables these payments to be made on a need basis rather than in situations where it is impracticable to make a claim, determine a claim or pay benefit. It provides the Department with improved flexibility to address short-term hardship.

The new subsection (1C) enables regulations to make provision about the manner in which payments on account of benefit are to be set against subsequent payments of benefit and to prescribe circumstances in which they are not to be set against subsequent payments and are not otherwise recoverable.

Subsections (3) and (4) of section 18 make consequential changes to references to section 5(1)(s) in other sections of the Social Security Administration (Northern Ireland) Act 1992.

### ***Section 19: Loss of benefit provisions***

Section 6 of the [Social Security Fraud Act \(Northern Ireland\) 2001 \(c.17\)](#) enables certain specified benefits to be withdrawn, or reduced payments to be made, for a period of 13 weeks (known as the disqualification period) where a person is convicted of benefit fraud on two occasions, and the second offence was committed within five years of the date of conviction for the first. These loss of benefit provisions are commonly referred to as the ‘two strikes’ rule.

Where such an offence of benefit fraud comes to light, the offender may be prosecuted, agree to an administrative penalty as an alternative to prosecution under section 109A of the Social Security Administration (Northern Ireland) Act 1992, or agree to be given a caution.

Subsection (1) inserts new sections 5A, 5B and 5C into the Social Security Fraud Act (Northern Ireland) 2001. New section 5A defines, for the purposes of section 5B and section 6, ‘disqualifying benefit’ and ‘sanctionable benefit’.

New section 5B introduces the new benefit sanction to apply after the first conviction, or after any administrative penalty or caution known as the “one strike” rule. The combined effect of subsections (1), (4) and (5) is for benefit to be reduced or withdrawn for the disqualification period where the offender has –

- been convicted of one or more benefit offences in any proceedings;
- accepted an administrative penalty as an alternative to prosecution; or
- agreed to be given a caution

The disqualification period is defined in subsection (11) of new section 5B as a period of four weeks beginning at a prescribed time after conviction or the agreement of an administrative penalty or caution.

Subsection (2) of new section 5B sets out definitions of the terms used in new section 5B(1)(b).

Subsection (3) of new section 5B provides that a sanction under the new rules will not apply where a conviction would be the second conviction for the purposes of section 6 (‘two strikes’).

Subsections (6) to (10) of new section 5B provide that the amounts by which income support, jobseeker’s allowance, state pension credit, employment and support allowance or housing benefit are to be reduced will be prescribed in regulations. These amounts will be the same as those currently prescribed for the purposes of section 6.

Subsection (13) of new section 5B sets out definitions of the terms used within new sections 5B and 5C; in particular, ‘benefit offence’ is defined in such a way

that the provisions will only apply to offences committed after new section 5B comes into operation.

Subsection (1) of new section 5C provides that in the event that a conviction is quashed all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Subsection (2)(a) of new section 5C provides that where the person had agreed to pay an administrative penalty but has withdrawn that agreement, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Subsection (2)(b) of new section 5C provides that where, following an appeal or in accordance with regulations, it is decided that there was no overpayment or that it is not recoverable, all payments that would have been made but for the sanction are to be made as if no restriction had been imposed.

Subsection (3) of new section 5C provides for subsection (4) to apply where the person had agreed to pay an administrative penalty, but following an appeal or in accordance with regulations the amount of the overpayment is revised.

Subsection (4) provides that where there is a new penalty or caution relating to the same offence, the new disqualification period is to be reduced by the length of the old disqualification period and that in any other case the necessary adjustments are to be made to reverse the effects of the sanction.

Subsection (4)(b) of new section 5C provides that if a new agreement to pay an administrative penalty is not made then all payments that would have been made but for the sanction are to be made as if no restriction had been imposed and the Department can proceed to prosecute the offence.

Subsection (5)(b) of new section 5C provides for convictions that result in absolute or conditional discharges and to a conviction in Great Britain, including convictions that result in absolute discharges, conditional discharges, or probation orders made by a court in Scotland and absolute discharges made by a court of summary jurisdiction in Scotland, to count as convictions for the purposes of the new sanction.

Subsection (2) of section 19 introduces Schedule 3 which contains further amendments to the Social Security Fraud Act (Northern Ireland) 2001 and related amendments to other legislation.

***Section 20: Jobseeker's allowance: sanctions for violent conduct etc. in connection with claim***

This section inserts two new Articles into the Jobseekers (Northern Ireland) Order 1995, Article 22C (sanctions for violent conduct etc. in connection with claim) and Article 22D (Article 22C supplementary).

Paragraph (1) of new Article 22C makes provision for a benefit sanction of one week to be applied to jobseeker's allowance claimants who are successfully

convicted of or, cautioned for violent or threatening behaviour towards staff of Social Security Offices or Jobs and Benefits Offices or contracted out staff. In addition, for the sanction to apply it is necessary that –

- the violent conduct was towards staff of Social Security Offices or Jobs and Benefits Offices or contracted out staff;
- the offence took place on the Social Security Office or Jobs and Benefits Office premises while the offender was there for the purpose of a jobseeker's allowance claim;
- the offender is a person or a member of a joint-claim couple who satisfies the conditions of receiving jobseeker's allowance.

Paragraph (2) provides for:-

- (a) benefit not to be payable for a period of one week in the case where the jobseeker's allowance claim is not a joint-claim even if the conditions of entitlement are satisfied; and
- (b) the period of any other sanction also to be extended by five weeks on the first occasion that the other sanction applies to the claimant.

The reference to another sanction is to any other sanction arising as a result of the Jobseekers (Northern Ireland) Order 1995 and during which jobseeker's allowance is not to be payable. It explains that the sanctions period which is to be extended by five weeks is the period of that other sanction arising out of the Jobseekers (Northern Ireland) Order 1995.

Under paragraph (4) in the case of a joint-claim jobseeker's allowance, the offender will be treated in the same way as in paragraph (2), namely that a sanction of one week will be applied. If another sanction is imposed the sanction period will be increased by five weeks.

Paragraph (5) explains in relation to a joint-claim jobseeker's allowance that the reference to another sanction is to any other sanction arising as a result of the Jobseekers (Northern Ireland) Order 1995 and during which jobseeker's allowance is not to be payable. It also explains that the sanctions period which is to be extended by five weeks is the period of that other sanction arising out of the Jobseekers (Northern Ireland) Order 1995.

Paragraph (6) provides for regulations to set out that after a certain period the sanctions in paragraphs (2) and (4) will not apply to the claimant of jobseeker's allowance or that in certain circumstances the sanction will not apply to the claimant.

Paragraph (7) makes provision for hardship payments to be made during the sanction period. This does not apply in the case of a sanction of a joint-claim jobseeker's allowance as in paragraph (4). Corresponding provision is made for them by Article 22B(4).

Paragraph (8) provides that regulations may be made for hardship payments in paragraph (7) to be paid as follows:-

- only if the information required from the claimant has been provided;
- payable at a prescribed rate;
- payable only for part of the week.

Paragraph (9) provides that where a conviction is subsequently overturned the amount of sanctioned benefit would be repaid as if the person had never been convicted of the offence in the first place.

New Article 22D sets out in paragraph (1) the offences involving violence or harassment in respect of which the sanction will be applied. These are-

- (a) common assault, battery or affray;
- (b) an offence under section 16, 18, 20, 42 or 47 of the Offences Against the Person Act 1861;
- (c) an offence under Article 9 or 10 of the Public Order (Northern Ireland) Order 1987;
- (d) an offence under Article 4 or 6 of the Protection from Harassment (Northern Ireland) Order 1997;
- (e) an ancillary offence in relation to an offence within any of sub-paragraphs (a) to (d).

In paragraph 1(e) “ancillary offence”, in relation to an offence means any of the following –

- (a) aiding, abetting, counselling or procuring the commission of the offence;
- (b) attempting or conspiring to commit the offence.

Paragraph (4) explains the meaning of ‘cautioned’.

Paragraph (5) provides for regulations to be made for requiring prescribed persons (such as the police or the prosecuting agencies) to notify the Department of any offences set out in new Article 22D in respect of which a sanction may be applied, as in new Article 22C.

Paragraph (6) provides for amendments to be made by regulation to paragraphs (1) or (2) by removing or adding offences.

Subsection (3) of section 20 amends Article 37(1)(c) of the Jobseekers (Northern Ireland) Order 1995 so that the regulation making power found in paragraph (6) of new Article 22D will be subject to the confirmatory resolution procedure.

Subsection (4) makes a consequential amendment to paragraph 3(d) of Schedule 3 to the Social Security (Northern Ireland) Order 1998. This will give



those whose benefit is sanctioned a right of appeal about the payability of their benefit.

***Section 21: Repeal of sections 53 to 57 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000***

***Section 22: Period for which pilot schemes have effect etc.***

This section amends Article 31 of the Jobseekers (Northern Ireland) Order 1995 and section 19(1) of the Welfare Reform Act (Northern Ireland) 2007 which allow for the piloting of regulations made under specified enactments relating to working-age benefits. Piloting regulations can have effect only in specified areas and in relation to specified classes of persons. Persons can be selected for participation in schemes on a sampling basis. At the moment, piloting regulations can only have effect for a maximum of 12 months under Article 31 of the Jobseekers (Northern Ireland) Order 1995 and a maximum of 24 months under section 19(1) of the Welfare Reform Act (Northern Ireland) 2007. Subsections (1)(a) and (2) extend and align both these time limits to 36 months. Subsection (1)(b) amends Article 31 of the Jobseekers (Northern Ireland) Order 1995 to mirror the language used in section 19 of the Welfare Reform Act (Northern Ireland) 2007 so as to create consistency and to ensure that regulations which are aimed at making it more likely that persons will obtain or remain in work or be able to do so, can be piloted.

***Section 23: Exemption from jobseeking conditions for victims of domestic violence***

Section 23 inserts a new provision in Schedule 1 to the Jobseekers (Northern Ireland) Order 1995, which relates to those who have been victims of, or threatened with, domestic violence. The Department will be required to exercise regulation-making powers to provide that victims of domestic violence will, for a period of 13 weeks, be able to start or continue a claim to jobseeker's allowance without: being available for employment; having entered into a jobseeker's agreement; or actively seeking employment. Regulations made by virtue of the new provision will be subject to the confirmatory procedure.

***Section 24: Good cause for failure to comply with regulations etc.***

Section 24 provides that where regulation-making powers in the Jobseekers (Northern Ireland) Order 1995 and the Welfare Reform Act (Northern Ireland) 2007 enables circumstances to be prescribed that constitute good cause for failing to undertake mandatory activities (and just cause for leaving employment in the Jobseekers (Northern Ireland) Order) the regulations must expressly state that availability of childcare and the claimant's physical or mental health or condition will always be considered.



***Section 25: Jobseekers' agreements and action plans: well-being of children***

Section 25 introduces a requirement in Article 11 of the Jobseeker's (Northern Ireland) Order 1995 and section 14 of the Welfare Reform Act (Northern Ireland) 2007, that the well-being of the child should be taken into account when agreeing the activities that a parent will undertake as part of an action plan or jobseeker's agreement in order to help the parent move closer to or into work.

***Section 26: Contracting out functions under Jobseekers (Northern Ireland) Order 1995***

This section provides a general provision to allow the contracting out of certain functions of the Department or the Department for Employment and Learning under the Jobseekers (Northern Ireland) Order 1995.

Subsection (2) of section 26 inserts new Article 22E before Article 23 of the 1995 Order. This provides for particular functions of the Department and the functions of the officers of the Department for Employment and Learning to be carried out by authorised persons.

Paragraph (3) provides for regulations to enable the relevant functions to be contracted out and paragraphs (5) and (6) provide for those regulations to include the extent to which the contracting out arrangements are to apply.

Some types of decisions, for example failure to comply with requirements, good cause for failure, and any reductions in jobseeker's allowance are excluded and cannot be contracted out. Under these provisions any authorisation to a contractor may specify the duration for which the authorisation applies. The section also makes provision for the revocation of an authorisation and deals with the limits of any liabilities arising out of functions carried out by an authorised person.

Subsection (3) substitutes references to 'employment officers' with 'officer of the Department' in other parts of the 1995 Order so that it is aligned with the new terminology. Subsections (4) and (5) include further consequential changes.

***Section 27: Attendance in connection with jobseeker's allowance: sanctions***

This section amends Article 10 of the Jobseekers (Northern Ireland) Order 1995. Article 10 allows regulations to be made providing for entitlement to jobseeker's allowance to cease for between one and five days if the claimant fails to attend a mandatory interview and subsequently makes contact with the Social Security Office or Jobs and Benefits Office within a prescribed period of the date of the mandatory interview without showing good cause for the failure to attend. Regulations set out that the prescribed period is five working days.

This new provision will mean that in the above circumstances, entitlement to jobseeker's allowance will continue but will not be payable for a fixed period of at least one week and not more than two weeks.

In addition, regulations will provide that if a person fails to attend a mandatory interview for the second or subsequent time, a fixed sanction of two weeks will be applied whilst keeping the claim open.

If the person makes contact with the Social Security Office or Jobs and Benefits Office within the prescribed period of five working days and shows good cause in both circumstances, a sanction would not be imposed.

Example: If a person fails to attend a mandatory interview on Monday and attends the Social Security Office or Jobs and Benefits Office on Wednesday of the same week but fails to demonstrate good cause for failing to attend, a sanction of the loss of a week's jobseekers allowance would be imposed but the claim will remain open. If he/she fails to attend a mandatory interview for a second time in respect of the same claim and cannot show good cause, he/she would lose two weeks jobseeker's allowance but his or her claim would remain open.

The usual appeal rules apply for both cases.

This section also amends Article 10 of the Jobseekers (Northern Ireland) Order 1995 to allow regulations to provide that if the claimant fails to make contact with the Social Security Office or Jobs and Benefits Office within the prescribed period of five working days from the failure to attend, his or her claim would be closed.

Example: If a person fails to attend a mandatory interview on Tuesday and makes contact with the Social Security Office or Jobs and Benefits Office on Wednesday of the following week, his or her claim will be closed.

### ***Section 28: Social security information and employment or training information***

Subsections 1 and 2 insert new subsections into sections 2A and 2AA of the Social Security Administration (Northern Ireland) Act 1992 and relate to the use of Article 69 of the Welfare Reform and Pensions (Northern Ireland) Order 1999. The definition of social security information is also broadened to include information not just related to work-focused interviews, but information shared for the purposes of any provision made by or under the Act, including in regulations.

Subsection (3) adds a new paragraph to Schedule 1 to the Jobseekers (Northern Ireland) Order 1995 and expands the scope of data-sharing powers under that Order to enable information sharing which is relevant for any provision in or made under the Order. It does this by providing that such information should be taken to be social security information. This is linked to the Welfare Reform and Pensions (Northern Ireland) Order 1999, in which Article 69 deals with data-sharing for social security purposes, between Northern Ireland Departments, people carrying out functions on their behalf, or designated by a Northern Ireland Department, and statutory bodies.

Subsection (4) amends Article 69 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, to reflect this change. The amendments would also allow the Department to make regulations concerning the sharing and use of employment and training information. For example, regulations could permit a person providing a training course for a jobseeker's allowance claimant pursuant to arrangements made by the Department for Employment and Learning to provide information to the Social Security Office or Jobs and Benefits Office about the claimant's record of attendance and levels of attainment.

***Section 29: Persons under pensionable age to take part in work-focused interviews etc.***

Subsection (2) amends Section 2A of the Social Security Administration (Northern Ireland) Act 1992 to allow regulations to be made requiring a person who is under 60 years of age who is claiming any one of a number of specified benefits to take part in a work-focused interview, as a condition of continuing to receive the full amount of that benefit.

Subsection (3) amends section 2AA of the Social Security Administration (Northern Ireland) Act 1992 and extends the requirement so that where the claimant has a partner, and both are under 60 years of age, they are both required to attend work-focused interviews.

The process of equalising state pension age at 65 (as provided by the Pension (Northern Ireland) Order 1995) for both men and women began from 6 April 2010. The state pension age for women will gradually be increased over a 10 year period until it reaches 65.

To reflect these changes, the age at which a person will be required to take part in a work-focused interview will also increase.

Section 29 removes the references in sections 2A and 2AA to a person being under 60 years of age, and replaces them with references to a person who has not attained pensionable age. Subsections (2)(c) and (3)(b) provide a definition of when a man born before 6 April 1955 will be treated as having attained pensionable age.

***Section 30: Minor amendments***

Subsections (1) and (2) of section 30 will ensure that the preserved right to a child dependency increase under sections 80 and 81 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 can continue for a child over 16 who meets the relevant conditions.

Sections 80 and 81 of the Social Security (Contributions and Benefits) (Northern Ireland) Act 1992 provided that incapacity benefit, severe disablement benefit, state pension, carer's allowance, widow's benefit and bereavement benefit could be increased where a person was receiving child benefit in respect of a child, defined as a person under the age of 16, or a person under the age of 19 who was still in full time education.

When child tax credits were introduced in 2003, child dependency increases ceased and section 80 was repealed; however it was preserved for those cases where the increase was already in payment, until such time as the child reached the age of 16, or 19 where he or she remained in full-time education.

The definition of a child was amended to a person who has not attained the age of 16 from 10th April 2006 when the Child Benefit Act 2005 came into force. A new definition of ‘qualifying young person’ applies to a person over 16 years of age who meets certain conditions set out in the [Child Benefit \(General\) Regulations 2006 \(SI 2006 No. 223\)](#).

No amendments were made to change the definitions for the purposes of preserved child dependency increases, with the consequence that these may only be paid in respect of a child who has not reached the age of 16.

Subsection (3) of section 30 amends section 146(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (interpretation of Part 10: Christmas bonus) to amend a provision of the Welfare Reform Act (Northern Ireland) 2007. This resulted in entitlement to a Christmas bonus to all claimants of employment and support allowance, including income-related employment and support allowance. This did not achieve the policy intention of taking forward the existing distinction between contributory incapacity benefit and income-related income support.

## **Part 2: Child maintenance**

### ***Section 31: Payments of child support maintenance***

Article 29 of the Child Support (Northern Ireland) Order 1991 provides a general power to make regulations as to the payment of child support maintenance. These regulations allow the Department to specify the intervals at which payments are to be made, having regard to the circumstances and preferences indicated by the non-resident parent. Many non-resident parents prefer to pay calendar monthly, in line with when they receive earnings. Precisely matching payments to weekly liabilities may not be straightforward and may be unclear to parents.

Section 31 amends Article 29 of the Child Support (Northern Ireland) Order 1991, extending the provisions which may be made by regulations in relation to payments of child support maintenance. Subsection (2) allows for regulations making provision for determining the total amount of maintenance payments due in a reference period (a period of 52 weeks or, in some circumstances, a different period - see subsection (3)), and requiring payments to be made, by reference to that amount and that period, at prescribed intervals.

This will enable the notification of the maintenance calculation issued to each parent to show an annual rather than weekly amount. Where the payment interval is to be monthly, the schedule of payments due will show 12 equal monthly amounts. It will therefore be much easier for each parent to see what payments are due to be made, on what date, and how they relate to the maintenance

liability. This will also facilitate the making of payments by regular direct debit because the amounts will be the same each month. Annual amounts will be adjusted if a relevant change in circumstances occurs during the year, requiring a new maintenance liability to be calculated.

### ***Section 32: Child support maintenance: offences relating to information***

Section 32 amends Article 16A of the Child Support (Northern Ireland) Order 1991, which deals with offences relating to the provision of information.

Article 16A(3A) of the Child Support (Northern Ireland) Order 1991 currently provides that a person commits an offence if he or she fails to notify the Department of a change of address. Section 32(2) substitutes a new paragraph (3A), which extends this offence to a failure to report other changes of circumstances. These other changes of circumstances will be specified in regulations made under the provisions of Article 16(1) of the Child Support (Northern Ireland) Order 1991.

Article 16A(2) of the Child Support (Northern Ireland) Order 1991 currently provides that it is an offence for a person to knowingly make a false statement or representation or knowingly provide, or cause or allow to be provided, a document or other information which is false. Section 32(3) adds a new paragraph (6) into Article 16A of the 1991 Order, setting the time limit for bringing such a case to 12 months from the date the false information was provided. Currently, Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 limits the time in which a prosecution can be brought to 6 months. The amendment brings the time limits broadly in line with those for benefit fraud, and increases the likelihood of successful prosecutions under Article 16A(2) of the Child Support (Northern Ireland) Order 1991 due to the increased time in which the offence can be discovered and investigated by the prosecutor.

## **Part 3: Miscellaneous and supplementary**

### ***Section 33: Consequential amendments of orders and regulations***

This section enables the Department to amend or revoke by way of regulations any statutory rules made under other enactments before this Act received Royal Assent, where such amendments and revocations are necessary as a consequence of a provision of this Act. Regulations made under this power may include transitional provisions and savings, and provisions conferring discretion on any person. Regulations made under this power are subject to negative resolution procedure.

### ***Section 34: Repeals***

This section gives effect to the repeals and revocations in Schedule 4. It lists provisions in Part 2 of Schedule 4 that will have effect on 6 April 2010. It protects the operation of Article 3 of the Tax Credits Act 2002 (Commencement No. 3

and Transitional Provisions and Savings) Order 2003 - (savings in relation to the abolition of child dependency increases).

***Section 35: Interpretation***

This section sets out definitions for the purposes of the Act.

***Section 36: Commencement***

Section 36 provides that sections 1, 2, 3, 8, 14, 19 and Schedule 3, 20, 22, 23, 24, 27, 28, 29, 30, 32(3), 33, 34(2) and (3) and Part 2 of Schedule 4, so far as relating to the repeals and revocations, mentioned in section 34(2) and sections 35, 36 and 37, come into operation on Royal Assent (that is on 13 August 2010).

The remaining provisions will be brought into operation by means of commencement orders made by the Department. The orders may appoint different days for different areas and purposes and make necessary transitory, transitional or savings provisions.