Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Universal Credit (Clauses 1 to 44)

16 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann
Mr David McClarty

Witnesses:

Ms Martina Campbell	Department for Social Development
Ms Jane Corderoy	Department for Social Development
Mr Colm McLaughlin	Department for Social Development
Mr Michael Pollock	Department for Social Development
Ms Margaret Stitt	Social Security Agency

The Chairperson: I welcome Michael, Martina, Margaret and Colm, who are here to brief the Committee on the clauses and to answer questions on anything that you are not sure about. I remind members that, at last week's briefing session, we completed clauses 1 to 30, which, I am told, is very good.

If people are satisfied with the process that we used last week, we will continue to use it. Today, we will start with clause 31. Clause 44 is the last clause of Part 1, and, hopefully, we will swiftly move on to Part 2, which will deal with working-age benefits. We are keeping a record of these discussions, which will form part of the report. That will include some correspondence to the Department. Members will be aware that we asked questions last week and we got some answers, but we will raise those questions again. A copy of that correspondence is in your folders.

Martina, last week, there were some questions that you were not able to respond to, and there were some that you did give quick responses to, so thanks for that. Is there anything that you want to update the Committee on now? If not, you might be able to come back to it later, but there were some outstanding matters from last week.

Ms Martina Campbell (Department for Social Development): We have pulled together the written responses to three letters from the Committee, and they need ministerial clearance. We hope that we will get all three letters to you before the end of the week.

The Chairperson: OK. That is fine.

Mr F McCann: Obviously, we are scrutinising the Bill, but does that mean that every question we ask has to get ministerial clearance before it is answered?

Ms M Campbell: Any correspondence with the Committee always goes through the Minister. That is normal procedure.

The Chairperson: We got an answer to some of the issues that we queried last Wednesday morning.

Ms M Campbell: Most of your queries were answered on the day. There was only the odd one that needed confirmation of our understanding.

The Chairperson: It is really just down to the question.

Mr F McCann: We are just asking a question, Chair.

Mr Michael Pollock (Department for Social Development): Some of the questions that were asked and answered last week were brought up in correspondence from the Committee, so it is a formal record of all the questions that were asked at the meeting.

The Chairperson: So, if we do not write to ask for the answer, we will not get a written reply. We will get a verbal reply. OK, we will move on. I remind everyone that this evidence session is being recorded by Hansard. Your explanatory notes are in the memorandum in tab 2 of your Bill folder. I invite you to start with clause 31. We will go through the same routine as last time. We will deal with clause 31, get the explanation of it, and then Martina will take a moment to see whether anybody needs any clarification, and we can get that.

Ms M Campbell: That is fine. If you are happy enough, we will crack on.

Clause 31 introduces schedule 1, which allows the Department to bring forward regulations to cover some of the more detailed arrangements for universal credit. Schedule 1 is on page 97 of the Bill and page 20 of your explanatory and financial memorandum.

Schedule 1 contains supplementary regulation making powers. It relates to key definitions or areas where additional flexibility is needed. In the current system, the equivalent issues are all covered by regulations already. Paragraphs 1 and 3 of schedule 1 enable regulations to deal with detailed issues around couples and joint claims; for example, so that we could convert a joint award into one or two single awards where a couple breaks up or where one half of the couple —

The Chairperson: Sorry, Martina. I think members seem to be struggling to find what is being referred to. It is tab 2 of your Bill folder.

Ms M Campbell: Sorry. The explanatory memorandum may be easier for members to understand. I think, Chair, you said that it is at tab 2.

Mr Durkan: It depends where the member put it back last week.

Ms P Bradley: I put mine back in tab 3.

The Chairperson: It is the thick, stapled one at the back of tab 2, for those who did not interfere with its position. Page 20, did you say, Martina?

Ms M Campbell: It is page 20 in my version. It starts at paragraph 115. Schedule 1 is on page 97 of the Bill.

The Chairperson: Clause 31 is on page 19 of the explanatory notes, and schedule 1 is on page 20. We are working through the explanatory notes.

Ms M Campbell: The explanatory notes are slightly easier to understand. I am sort of working between the three; I am multitasking.

As I was saying, schedule 1(1) and 1(3) deal with issues around couples and joint claims. Last week, we talked about a situation where one half of a couple did not accept the claimant commitment. This schedule would allow us to separate the couple out and allow the half that would accept the claimant commitment to make a claim on their own account, but we would take into account the joint earnings.

Schedule 1(2) provides powers for linking rules, which may be needed, as now, in situations where there are short breaks between claims and that would otherwise result in unfairness. The simpler structure of universal credit should mean that linking rules are less of a feature than they are now, but the need for them still needs to be considered.

Schedule 1(4) contains powers to define in regulations what counts as income and capital, including the treatment of earned and unearned income and tariff income in respect of savings. So, as now, there will be a sliding scale where the claimants have savings in excess of £6,000 up to a maximum threshold of £16,000.

Schedule 1(5) provides for regulations to set out the circumstances in which a claimant is to be considered responsible for a child or young person and, therefore, entitled to additional support.

Schedule 1(6) provides what is essentially called a reserved power to pay certain amounts of universal credit by voucher. This has been discussed as a possible way of making payments for childcare, and although it is not the preferred option, it makes sense to have that facility and flexibility in the legislation. I should say that this is not about food vouchers but about childcare vouchers and, possibly, vouchers for other elements. The power relates back to clause 12. It is for particular needs or circumstances, which, obviously, would not include food.

Schedule 1(7) allows for regulations to provide for claimants who have a right to reside in the UK under EU treaties and who would otherwise fall within clauses 19, 20 or 21. Those clauses are about work requirements and detail the claimants who are subject to no work requirements, work-focused interview only or work preparation only. It is to make sure that they fall into the group in clause 22, which is that they are subject to all work requirements.

Schedule 1(8) enables regulations to define the term "good reason". That is used in various places in the Bill, especially in connection with conditionality and sanctions. We do not, as we discussed last week, intend to prescribe matters to be taken into account when determining whether a claimant has good reason, but, again, it makes sense to maintain the flexibility to do so if necessary in future. "Good reason" — I probably do this a lot — is the same as "just cause" or "good cause". They are moving to the term "good reason". I lapse into the use of the term "just cause" because that is what it was in my day.

All the detailed aspects of universal credit need to be covered, and it is appropriate to do so in regulations. Of course, as I said last week, most of the regulations in the schedule will come before the Committee in the first instance and will be subject to confirmatory procedure. That completes my explanation.

Mr Brady: Paragraph 132 of the explanatory and financial memorandum states:

> *"A determination as to whether a claimant has good reason is not appealable, as is the case under the current benefits system."*

Presumably, the decision on whether they accept good reason is appealable. It is a bit confusing. Paragraph 132 also states:

> *"Paragraph 8 provides for regulations to set out the circumstances in which there is or is not to be good reason and the factors which must or must not be considered when determining whether or not a person had good reason for a particular act or omission".*

The acceptance or otherwise of good reason is not appealable, but presumably that will make it further to whether the person is disallowed or sanctioned. Is that appealable?

Ms M Campbell: That is appealable.

Mr Brady: That is confusing. Why did they not just say that you can or cannot appeal? Do you get my point? One decision follows on from the other.

Ms M Campbell: We can look at that and put some more clarification in there.

Mr Brady: In terms of good English, it is confusing.

Ms M Campbell: I get your point. It is a good one. We will look at expanding that further.

Mr Copeland: I just wanted to check that we can be sure that some sort of guidance will be given regarding the reaching of those determinations so that two people, on two different days, given similar circumstances, might not come up with an acceptance and a refusal.

Ms M Campbell: Yes.

Mr Copeland: How will that be enforced?

Ms M Campbell: Guidance will be issued to staff; there will be guidance for decision-makers. We hope that the guidance for decision-makers will be shared with relevant stakeholders, but that is still to be decided. It would make sense for that guidance to be shared.

Mr Copeland: Will we ever get sight of that guidance, so that we can start to understand how determinations and decisions are taken?

Ms M Campbell: If they agree to do that, yes.

Mr Copeland: Can you ask them?

Ms M Campbell: Yes. I am awaiting an answer from them on that.

The Chairperson: We will move on to clause 32.

Ms M Campbell: Clause 32 introduces schedule 2, which is about supplementary and consequential amendments. It is about making amendments to existing legislation as a consequence of introducing universal credit. As members know, there are very many references to existing benefits in legislation. That is legislation on not only social security but in other Departments, such as in the Department of Education for free school meals, etc. All those need to be replaced with appropriate references to universal credit. Schedule 2 covers all of the legislation that we are aware of at the moment that needs to be amended. It does not cover everything. I am sure that we have missed something. Therefore, clause 33 provides us with powers to make further amendments by regulation as opposed to taking up Assembly time by doing it through primary legislation.

Amendments to existing social security legislation will bring universal credit within the common set of rules for the benefits system as a whole: that will involve claims, claimants, decisions and appeals. The schedule also provides for the rate of universal credit to be uprated annually and for changes to the amount of benefit as a result of uprating, changes in earnings and certain routine changes to be made without a formal decision or fresh rights of appeal. The schedule also provides, for example, for information to be shared in order to investigate fraud and error, prosecution of fraud, recovery of social fund payments and for reciprocal agreements with other countries in relation to universal credit.

There are also numerous references to welfare benefits and tax credits in the legislation of other Departments. This enables entitlement to certain benefits through tax credits to be used as a test for low income. As I mentioned before, free school meals is one of the most obvious ones. A test based on universal credit as a whole will be wider than the current test, because universal credit will bring in people with earnings, as opposed to just those who are out of work and relying solely on out-of-work benefits. Therefore, you will be bringing in a wider range of people. As a result, the test for other

benefits will need to be re-examined, and this provision will enable additional criteria to be attached or a power to prescribe the limitations to be applied. Therefore, it will be up to other Departments to look at that.

Finally, paragraph 49 of the schedule amends the State Pension Credit Act (Northern Ireland) Act 2002 to exclude couples in which one partner is of working age from claiming pension credit. That will end the anomaly that working-age people can be supported by the benefits system without any conditionality just because they have an older partner on pension credit. That concludes my explanation.

The Chairperson: Thank you, Martina. Has anyone anything to say about clause 32? Michael, did you want to go back to clause 31?

Mr Copeland: I would like clarification of the last answer about us getting sight or some knowledge of the process and the guidelines. You said, "If they agree". Who are "they"?

Ms M Campbell: We do not write the guidance. It is done by another section in the Social Security Agency, and we have asked them to share the guidance.

Mr Copeland: Will you then share it with us?

Ms M Campbell: Yes.

The Chairperson: So, clause 32 is complete.

Mr Durkan: I have a question about paragraph 146 of the explanatory and financial memorandum, which relates to couples. If one person has reached the state pension age and the other has not, the younger person is still required to claim universal credit, but one household payment or not nominated person. What impact will that have on other legislation involving housing or under-occupancy? The couple will not be exempt because it will go with the younger person who has not reached state pension age. Is that right?

The Chairperson: Say that again, Mark?

Ms M Campbell: It concerns under-occupancy when one person is under pension age. You want to know whether they will be exempt from under-occupancy?

Mr Pollock: No, I do not think so.

Mr F McCann: I think that it would refer to the younger person as the head of household.

Mr Pollock: We will check it out for you.

Ms M Campbell: We will come back on that after lunch, if that is OK?

The Chairperson: We will move on to clause 33.

Ms M Campbell: We are whistling through them rightly. Clause 33 builds on the previous clause and schedule 2, which amends a wide range of other Acts and orders to reflect the changes introduced by the introduction of universal credit. As I said, the task of identifying all the changes needed to pick up every reference to social security legislation across the board is no mean task. Clearly, we expect that we will not have picked them all up. This clause allows us to pick up changes identified in the future by way of regulation and allows us to make consequential, supplementary, incidental or transitional provisions. It allows us to make amendments by regulations that are not of any significant policy impact. That completes my explanation of that schedule.

Mr G Campbell: The issue has been mentioned several times, and I know that this is the standard format of change by regulation. However, if something requires to be changed by regulation and an unintended consequence of that is more fundamental than you thought at first, how might the Committee and the Assembly deal with that?

Ms M Campbell: I suppose it depends on the unintended consequence and whether it would be within social security legislation or —

Mr Pollock: Or within the broader remit of the Executive to do something on the ground.

Mr G Campbell: I have nothing in mind, but I am thinking of a situation where, at first glance, you think that a change needs to be made by regulation because it looks to be quite minimal but then, on closer examination, appears that it will affect a more significant number of people than you originally thought. What would happen then?

Mr Pollock: Ordinarily, the first set of regulations under universal credit will be confirmatory, and that means that there is a six-month cooling-off period before the end of which the regulations will be debated in the Assembly. So, we will look closely to monitor the impact of the regulations on the ground. In circumstances where regulations are moved to negative resolution, you are generally talking about fairly minor changes. The consensus would be that you would not be changing anything in the social security system and that it would be for another Department or the Executive as a whole to do something, if minded to do so, if there was an unusual consequence of a regulation that was unforeseen at the time when it was drafted.

Ms M Campbell: It should be picked up by equality screening as well.

The Chairperson: No other member wants to speak. We will move on to clause 34.

Ms M Campbell: Clause 34 abolishes various benefits and tax credits that will be replaced by universal credit. As we have said previously, the current web of benefits and tax credits is very difficult for claimants to understand and for us, as administrators, to explain. This can lead to errors and make fraud more difficult to detect, and, more importantly, it is very difficult for claimants to see how paid work will leave them better off. One of the fundamental aims of universal credit is to simplify the process and reduce error and to build claimant confidence by introducing a single and simplified system of support for people in and out of work. As a single payment that will be withdrawn at a single rate when a claimant has earnings, universal credit will also help claimants to see the advantage of taking a job.

The benefits to be abolished are administered by four different bodies, each with their own claim application procedures. The DSD is responsible in the case of income-based jobseeker's allowance (JSA), income-related employment and support allowance (ESA), and income support. The Northern Ireland Housing Executive is responsible for housing benefit. The Department of Finance and Personnel's Land and Property Services is responsible for the rates element of housing benefit, and Revenue and Customs is responsible for child tax credit and working tax credit.

In the case of the other benefits that this clause will abolish, universal credit will be administered by a single organisation, namely the Social Security Agency, with a single claim procedure providing a greatly improved service to claimants and lower administration costs. This clause paves the way for making that transition by providing for the abolition of help with rates under housing benefit. It also contains provisions for consequential amendments as a result of the abolition of benefits.

Mr Brady: Your comments on the reduction in fraud and error were interesting. I thought that the purpose of the Bill was to make it simpler for people to claim. Obviously, fraud and error is still subliminal in the thinking behind the Bill. That is not a criticism of what you are saying, but I think it illustrates the purpose of the Bill: rather than make it easier for people to claim and access benefits, the emphasis seems to be on reducing fraud and error, which, in fact, as we know, has been reducing here.

Ms M Campbell: It is very low.

Mr Brady: It highlights one of the differences between what happens in England and what happens here. I wanted to make that point, because you mentioned fraud and error specifically.

Mr G Campbell: I want to comment on fraud and error as well. Figures are available, and we have looked at them before. I think that it was Mickey Brady who, at a previous meeting, alluded to the fact that it was a declining problem. If we have the factual position with respect to the current scale of fraud and error, and allow a settling-in period for the first year, in which one would expect there to be

teething problems, would it be possible in the second year, after everything had hopefully bedded in whatever route the Bill takes, to compare the level of fraud and error in those two years? You are saying that there should be an improvement. If we have the figures now —

Mr Pollock: That would be the rationale. There is a published figure in respect of loss. Someone can hang a pound sign on that in respect of fraud and error. It is published in the agency's accounts.

Ms M Campbell: It is in the report as well.

Mr G Campbell: Yes, but the point I am making is that most people would accept that, given the scale of the change in the first year, it is going to be difficult to compare like with like. We can allow the first year as a bedding-in year. However, in the second year, this Committee should be able to say that fraud and error amounted to x in 2011, for instance. You are saying that, as a result of the changes that we are discussing, you should be able to compare things in the second year and see an improvement.

Mr Pollock: It seems reasonable. You also have to determine what you are measuring. Are you measuring instances of fraud and error or are you measuring loss? Presumably, you are measuring both. So, you would have different comparators. You should be able to draw some reasoned conclusions over a longer period.

Ms M Campbell: We will be discussing fraud and error later. I think it is in Part 5. We will have the head of fraud policy with us then. Hopefully, he will be able to answer your questions more fully.

The Chairperson: If that is the case, are people content to leave any questions they might have on fraud and error until then? I am easy; it is up to you. If we are going to have the head of policy here, it might be useful to reserve the questions on that issue until then.

Mr Douglas: I have a more general point. This might have been answered already, so I apologise. Obviously, this legislation came through in the UK. There is the whole aspect of monitoring and evaluating the impact of the changes. What is the process, once the Bill is implemented in Northern Ireland?

Ms M Campbell: The Department for Work and Pensions (DWP) has committed to developing a programme of monitoring and evaluation, and the agency is working on developing a similar programme. The details have not been ironed out yet, because a lot of the detail still has not been ironed out in the regulations. Once that is finalised, we will come back to the Committee with the monitoring and evaluation programme.

Mr Douglas: Gregory made a very good point, because other things might go belly up somewhere along the line; there could be unforeseen circumstances.

Ms M Campbell: Later, I will talk about running pilot schemes.

Mr Copeland: This is another general point. You might feel that I am putting it into the mix in the wrong place. I am not sure if we have covered it or if it will be covered in the future. A substantial number of people, all of them retired, diligently tried to do what the welfare state suggested they did throughout their lives. They acquired occupational pensions and little pension schemes, and, as I said, a substantial number find themselves thrust into the morass of current benefits, with, in one case I have, an income of 75p above what is allowed. That 75 pence, which was acquired by diligence and by doing what they should have done for a very long time now militates against them. Will universal credit look at that injustice? This is what many people see it as. A lifetime was spent acquiring that 75p. However, all of a sudden, it is wasted. They might as well have drunk it, smoked it, or put it on horses, to be frank. Will this in any way simplify the process and overturn any of the injustice that lies there?

Ms M Campbell: If they are in receipt of an occupational pension, they are, presumably, over state pension age, so they are out of universal credit, unless the —

Mr Copeland: Not always.

Ms M Campbell: They will be out of universal credit, unless they have a younger partner. The occupational pension will be considered to be what is called unearned income, so it will be taken into account. Since the thresholds here for disregards are slightly higher a few more people should be let in, but I cannot promise. I know that there are some really tough cases out there with people being only pence over the limit, and it is heartbreaking. The system is not designed to catch all cases; it is designed to catch the majority.

Mr Copeland: I know that there are a substantial number of people who receive an occupational pension prior to pension age, as a result of the conditions of their discharge.

Mr Brady: Michael mentioned injustice. It seems to me that injustice and welfare reform go in tandem. Years ago, under the supplementary benefit scheme, a person who was over the limit by a small amount still had an underlying entitlement. It applied much the way that carers who are pensioners are now treated. I imagine that the policymakers would see that as a retrograde step, because it used to work in benefits 30 or 35 years ago. Then it was abolished. If you were over by £3 to £5, I think it was, you still had underlying entitlement. I am old enough to remember that. Most of you probably are not. I do not know about you, Michael. *[Laughter.]*

The Chairperson: Stop digging.

Mr Brady: That used to happen. It has not happened for a long time, and it is unlikely to happen. It would be seen as a retrograde step in the benefits system, but it worked when it was in place. It brought in the people Michael is talking about — those who are slightly above the threshold.

The Chairperson: Remember that we on this side are asking the questions; we are not giving the answers.

Ms M Campbell: I take the member's point.

The Chairperson: OK. Thank you for that. We will move swiftly to clause 35.

Ms M Campbell: Clause 35 sees housing benefit abolished, as we have talked about. Clause 35 introduces schedule 4, which provides for the addition of a housing element within pension credit. This is to protect those people who are getting pension credit but who do not qualify because they are both over state pension age. The clause is there so that there will be continuity of support for eligible pensioners' rent or housing costs.

As I have said, it provides for the addition of a housing element within pension credit and amends the State Pension Credit Act (Northern Ireland) 2002 to introduce the new housing credit. It will also do away with the need for pensioners to make two claims: one for pension credit and one for housing benefit. It sets out the general conditions of entitlement and provides for regulations to specify how the credit will be calculated, who will be eligible, what can be paid and the rules around income and capital.

The intention is that housing credit will broadly follow the current rules that apply in housing benefit, so most people will not notice any difference. For someone to be entitled to the housing credit element of pension credit, they will need to live in the UK, have reached pension credit qualifying age and be liable for housing costs that relate to the accommodation they live in.

The extent to which a person is liable for housing costs, what constitutes accommodation, how you treat temporary absences from home, for those people who are lucky to go to Spain for the winter, and how we calculate the amount of housing credit will also be included in the regulations. A person may be entitled to housing credit whether or not they receive the guarantee credit or savings credit elements of pension credit.

The schedule also allows us to specify that rates of support may differ by area. For example, different local housing allowance rates will apply in different parts of the Province.

In introducing the new housing credit, we will look for opportunities to streamline the benefit and align the rules where possible. That includes extending pension credit provisions to the housing credit wherever possible. That is mainly about the assessed income periods. That is pretty much it.

Mr F McCann: When all that is said, Martina, the housing credit is the same as housing benefit.

Ms M Campbell: Yes. That is it in a nutshell. I just thought I would blind you with science to see if you were listening.

Mr F McCann: You are making it easier for people to apply. Does that mean that they will automatically go on to it rather than having to apply for it?

Ms M Campbell: Those who are entitled to housing benefit at the minute will be migrated across, so they will be none the wiser. However, when new claimants come on stream and apply for their pension credit, that will take in the details of their housing costs, so it will be on one form. Hopefully, that should make it easier for pensioners.

Mr F McCann: Can we just dust down the old forms and change the name on the front of them?

Ms M Campbell: I did not say that.

Mr Copeland: If I remember correctly, the current housing benefit form includes a couple of questions that have always mystified me. The questions are "are you receiving any money as a result of Creutzfeldt-Jakob disease?" and "are you receiving any money as a consequence of compensation for being a Far Eastern prisoner of war?" For some reason, they are required to know that information. There are about seven questions, but those are the two that spring to mind. Is that likely to transfer on to the new form?

Ms M Campbell: I imagine so. Colm, do you know?

Mr Colm McLaughlin (Department for Social Development): A lot of questions on certain claim forms are designed to find out specifically the income that people are getting, because, as you know, for benefit purposes, certain income is disregarded. I do not deal with housing benefit, but perhaps those particular incomes are disregarded for housing benefit purposes.

Mr Copeland: Or "regarded", as the case may be.

Mr C McLaughlin: The idea is to get the full picture of the income for the household.

Mr Copeland: That is the only form I have ever seen those specific questions on. I am just curious about how it would be transferred.

Mr C McLaughlin: Normally, claim forms ask for people's income. When anything specific is asked, there is a particular reason for it. It could be because they will disregard that particular income for benefit purposes.

The Chairperson: I thought that if you were a prisoner of war, you could maybe *[Inaudible.]* Clause 35 has been covered.

Ms M Campbell: Clause 36 introduces schedule 5, which contains provisions relating to the overlapping relationship between universal credit and contributory JSA and ESA. As members will know, contributory-based benefits will still exist after universal credit comes into place, but income-related JSA and income-related ESA will be taken in with universal credit.

The schedule includes regulation-making powers to determine how much someone may be paid if they are entitled to universal credit and the contributory-based benefits, the treatment of earnings in those benefits, and how we will manage the relationship between the work-related conditionality and sanction regimes that apply to both benefits. Therefore, it is to try and simplify that relationship.

In schedule 5, universal credit is attempting to simplify the benefits landscape, but it does not replace all the existing benefits as I have already said. Paragraph 2 of the schedule allows regulations to be made where someone is entitled to universal credit and the contributory benefits. In those situations, it will be important for us to ensure that people are paid the right amount of benefit in the most straightforward way.

We intend to deliver new claims for the contributory benefits on the same IT system as universal credit. Under powers in this schedule, we can reduce the contributory payment where the person would be entitled to universal credit, so it is to avoid the overlapping benefit rules. From the claimants' point of view, the amount of payment will be the same. They will not really notice any difference. It will be whichever is the higher element, whether it is the contributory-based benefit or universal credit, that is what the claimant will get.

There is provision there to allow us to make regulations so that a sanction relating to the award of universal credit can be applied to the award of a contributory benefit and vice versa, and for sanctions relating to the award of one contributory benefit to be applied to the other contributory benefit. Those powers are needed to ensure that claimants cannot avoid a sanction in cases where they move from one benefit to the other.

We plan to take forward the current policy that applies in JSA and ESA so that, where a sanction is applied to a contributory benefit, it does not lead to a concomitant increase in the amount of universal credit, so that the claimant does not benefit because they are sanctioned and their universal credit automatically goes up because their JSA has gone down.

Paragraph 4 enables claimants who are sanctioned while on a contributory benefit to be able to apply for universal credit hardship payments. Contributory benefit claimants who are sanctioned and face hardship will first have to apply for and be awarded universal credit. The sanction that applied to their contributory benefit will then be applied to their universal credit award to ensure that they do not avoid the sanction. There will be no separate contributory benefit hardship payments. That is effectively the same position as under the current JSA regime where hardship payments are reduced payments of income-based JSA.

Finally, paragraphs 5 and 6 of the schedule amend the rules for calculating earnings in contributory JSA and ESA so that they are consistent with the tapering arrangements in universal credit.

Mr Brady: In the explanatory and financial memorandum, it states:

"ESA and JSA will continue to be available as contributory benefits."

When JSA was introduced, it cut the period of entitlement for the contributory benefit from roughly 312 days down to six months. That is already in place. The ESA contributory benefit will only last for a year.

Ms M Campbell: Michael will talk about that later.

Mr Brady: That is one of the things that people are not aware of. People talk about all these people who are "scroungers", but if someone who is working now and becomes sick in the morning, they will only get the benefit of 30 years' contributions paid for one year.

Ms M Campbell: That is correct.

Mr Brady: People simply are not aware of that. You are confirming that that will be the case on the universal credit.

Ms M Campbell: Yes. Michael will talk about those provisions later.

Mr Copeland: On the previous occasion, we heard that the social fund had discretionary payments and that those discretionary payments could continue to be exercised until the money runs out. Is this hardship fund subject to any limitations to what would be available? Is it ring-fenced, or will it match need?

Ms M Campbell: It will match need.

Clause 37 introduces schedule 6, which enables the Department to bring forward regulations to cover some of the more detailed arrangements for migration to universal credit. The clause sets out the legislative framework for the move from the existing benefits and tax credits to universal credit. The schedule makes it clear that regulations can ensure that benefit and tax credit claimants are not worse off in cash terms simply through moving to the new system. It also deals generally with the

arrangements for migration. As you will appreciate, it is a huge change, involving around 500,000 existing benefit and tax credit claims, which will translate into around 300,000 universal credit awards. The reason for the difference is that, obviously, there is double counting in there, because the man, to use that example of one half of the couple, could be claiming jobseeker's allowance and his partner could be claiming tax credits. There would be two claims in the one house, so this would bring it down to one claim.

Although we would like to move people to the new system as quickly as possible, it is a major undertaking, and it is appropriate for the transition to be conducted carefully. The schedule provides some very practical powers for handling claims in a sensible and logical fashion that will ensure that the transition is as smooth as possible for the claimant and that they are basically none the wiser. Paragraph 1 of the schedule sets out a general power to make regulations and define some key terms. It brings within the scope of the regulations prescribed benefits in addition to those that are abolished by the Bill. This is necessary so that we can deal with any interactions with other benefits that people may be receiving when they transfer over.

Paragraphs 2 and 3 of the schedule deal first with claims procedures either side of the date on which universal credit goes live, referred to as the "appointed day". We do not want a claim to fail just because someone has claimed the wrong benefit on the wrong day, so we need to be able to treat claims for existing benefits as claims for universal credits and vice versa. There also needs to be scope to make an advance award of universal credit ahead of the appointed day and a retrospective award for an existing benefit after the appointed day. Paragraph 3 also allows for migration to universal credit to be controlled by phasing. Margaret is in charge of the migration strategy, so she will talk about that in a minute.

As I said, clearly, we cannot convert all of the awards in one go. It will take a number of years, between October 2013, when we go live, and, we estimate, 2017, before everyone is migrated over. During that period, existing claimants will move on to universal credit in one of two ways. The first is that, if, at any time, their circumstances change and they would have moved to a different benefit or tax credit under the current system, they will move onto universal credit at that point. Secondly, if they do not move on to universal credit as a result of a change of circumstances, they will do so in what is called natural migration, so they will be part of a planned migration that will take place between April 2014 and 2017. A key principle is that people will not be able to volunteer to move on to the new system before they are due to move, hence the provisions enabling various exclusions from universal credit. Once they go on to universal credit, they will not be able to switch back to the old benefits.

Paragraph 4 of schedule 6 deals with the conversion of existing awards, the processes that are involved and the amount of the award. We have given an assurance that no one will lose out as a direct result of the change to universal credit, and we will ensure that this happens by providing cash protection to households where the universal credit entitlement is less than the entitlement under the old system. That transitional protection will last for as long as there is no change of circumstances.

Paragraph 5 deals with the transitional treatment of work-related requirements and sanctions. Requirements and sanctions made in respect of a legacy benefit may be transferred to universal credit. However, provision is also made for sanctions temporarily not to be applied for the purposes of the transition or, in the case of work-related requirements, to be removed. The transition from the current tax credit system will need to be handled very carefully, especially because of the current delay between provisional award notice and finalisation. We are considering how best to handle that transition. Paragraph 6 of the schedule may be used to align certain tax credit rules more closely in order to facilitate that change and make it easier for the claimant. It also allows for the overpayment of tax credits to be treated as overpayment of universal credit.

Paragraph 7 of the schedule provides for regulations that will allow those transitional protections to operate even if there is a gap in entitlement that would otherwise mean that they could not be used.

That is basically it. To sum up, we are intending to use the powers in the schedule in a practical, sensible way that will smooth the transition for claimants. Chair, if you like, Margaret will say a wee bit about migration.

Ms Margaret Stitt (Social Security Agency): Thanks, Martina. I will try to keep it at a fairly high level.

There are three ways that you can move on to universal credit. You can make a fresh claim, you can move across under a natural migration, which I will explain in a wee minute, or you can move across under a managed migration.

Basically, a fresh claim can be made by anyone who would have ordinarily claimed, for example, jobseeker's allowance but who will have to make a claim for universal credit because jobseeker's allowance will no longer be available after a particular date in the process. As Martina has explained, universal credit is a household payment. So, if one member of the household who ordinarily claimed JSA moves across to universal credit and their partner is in receipt of, for example, tax credits or employment and support allowance, the whole household will move across to universal credit. So, that deals with new claims.

Natural migration will happen in cases where there is a change of circumstances that involves the recalculation of a benefit. For example, if another child were born into a household, there would be a claim for universal credit and the whole household would move across to universal credit.

The third way you can move across is through a managed migration, which Martina explained. That will happen in cases where there has not been a new claim to universal credit or a change of circumstances that has involved a recalculation of benefit. The Department has to move customers across by the final date, which, at the minute, is around October 2017. The intention is that migration will start in October 2013 and will run for a four-year period. In NI, we are still working on our launch approach and our migration approach.

I will say something about the GB situation just to give you an idea of what is happening there. It has agreed on a phased approach. We are likely to go with a phased approach as well, because it is safer. GB will start off fairly slowly. It has certain percentages calculated. I think that it is going to do it on a geographical basis in October 2013. It will then roll that out over a period of months. It is going to start with jobseeker's allowance and then move on to tax credits, both child tax credits and working tax credits, followed by income support, employment support allowance and housing benefit.

That was the migration at a very high level. I am happy to take any questions.

The Chairperson: Thanks for that, Margaret.

Mr F McCann: You broke it down into a fresh claim, managed migration and natural migration, but how will the whole process work in reality? Will people be moved across in alphabetical order? How do you choose the first claims to go across?

Ms Stitt: We have not yet worked out the detail of that. At the minute, I can tell you that GB is using a geographical approach; it has picked certain regions within what would have been fresh claims to JSA. We are still working through the process of ours.

Mr F McCann: I think that you said that any break in benefits — you mentioned a child being born — would automatically move people over to universal credit. Maybe I have just picked this up wrong. You talked about a family unit coming in under universal credit. Say there are five people: a mother, a father and three children all aged over 18. I take it that the three over-18s do not count?

Ms Stitt: No, they do not.

Mr F McCann: They go for individual claims.

Ms Stitt: Obviously, there is a household, and there could be different benefit units within that household. There are some exceptions, but, generally speaking, it would be mother, father and children up to the age of 18.

Mr F McCann: I take it that there will be non-dependant allowances? That will have an effect on the overall benefit.

Ms Stitt: Yes, it will. Universal credit is one payment, but, as Martina said, there are various components and elements to that. They will all come into it.

Mr G Campbell: What you said about the regional basis was very clear. As I understand it, they will start with, say, JSA in the north-west of England or wherever. I understood a phased basis to mean that, gradually, people would be migrated across, but I got the impression from your assessment of the regional basis that that meant, for example, that the north-west of England would all be transferred across. It would not see a phased basis; it would be done immediately.

Ms Stitt: There are, I think, six regions in GB, and they are going to take a small amount in each of those geographical areas and run them at the same time. So, if they decide, for example, that they will go with 20% of the workload, they will take individual caseloads in those areas that will make up the 20%. That will probably roll out for six months. So, they will take particular areas in each of the six regions all at the one time, and then, the following month, it will be another area from each of the six regions.

Mr G Campbell: That is clear enough now. However, given Northern Ireland's size, are you contemplating —

Ms Stitt: We are looking at variations. We are still developing those models at the minute.

Mr G Campbell: Is it likely that you will break down Northern Ireland on a regional basis and do the same here on a micro level?

Ms Stitt: At this point, we have not yet made any decisions on that. We are working through various options. You could do it on a geographical basis; that is just one way to do it.

Mr G Campbell: I would have thought that the scale in GB would be significantly larger than ours; about 30 times larger. Each of its six regions is probably larger than Northern Ireland.

Ms Stitt: They are; yes, indeed.

Mr G Campbell: But they are not contemplating going to a subregional level, are they?

Ms Stitt: No. Well, sorry, they are going to a subregional level in that they will take a percentage within each of those regions and those will build up. We could do the same, but it would be on a smaller scale. You have to bear in mind that the staff that we would have to deal with those would be on the same scale as the staff they have to deal with their cases.

Mr Douglas: I think it says somewhere here — I cannot find it — that universal credit can be awarded without the claimant actually applying for it. Can you give us an example of that?

Ms M Campbell: No. *[Laughter.]*

Ms Stitt: The only thing that I can think of is where we manage a migration across. That is what I think it is, but we can certainly check that point for you.

Mr Pollock: That would be when there has been a claim for an existing benefit and that is migrated across.

Mr Douglas: Would the claimant know?

Ms Stitt: There will be a publicity campaign, and so on.

Ms M Campbell: They will be notified, but they will probably not have to do anything.

Mr Douglas: It sounds too easy, does it not?

Ms Stitt: It is not easy.

Ms M Campbell: It is not.

Mr G Campbell: Famous last words.

The Chairperson: It is on a need-to-know basis, Sammy.

Mr Brady: You mentioned that it will be jobseeker's allowance initially, then tax credits, then income support, etc, and that it will be run on a phased basis. We have been told that the IT system could not cope with different changes, but presumably there will be two IT systems running in parallel.

Ms Stitt: There will be; yes.

Mr Brady: So, obviously there is a facility in the IT system to accommodate that. You will have phased benefits, so some people will get jobseeker's allowance initially and then move to universal credit but other people will still get income support, ESA and so on. How will that work?

Ms Stitt: They will run down the old system as they build up the new system, so two systems will be running at the same time.

Mr Brady: There will still be a period of about four years when there are two systems.

Ms Stitt: Yes.

Mr Brady: The impression that the Department for Work and Pensions gave us is that this IT system will be super-duper, that there will be flaws, and that it could not accommodate changes. However, it is obvious that changes will be accommodated for at least four years.

Ms Stitt: I am not sure that they are changes. What we are doing is running two systems in tandem, which we do when we introduce any new benefit.

Mr Brady: But not on the same scale as this, it has to be said.

Ms Stitt: No; absolutely not.

Mr Copeland: Martina, I want to talk about clause 38. I think that we have got that far. There is a curious term: "capability for work-related activity".

Ms M Campbell: I am about to start talking about that.

Mr Copeland: Oh, we have not got that far yet.

Ms M Campbell: No.

I cannot remember whether I said in relation to the last clause that we will bring regulations on migration forward to the Committee. There will be another opportunity to discuss all that.

Clause 38 allows us to continue to use the work-capability assessment when determining whether a claimant has limited capability for work and, if so, whether they also have limited capability for work-related activity, which would be work prep or work-focused interviews. The determination of a claimant's capability for work following a work-capability assessment determines their work-related requirements and eligibility for an additional element within universal credit. Those who are unable to work because of the effects of a disability or health condition will be entitled to a higher amount of universal credit based on their capability for work. Similar to the current system, they will be allocated to either the work-related activity group or the support group. The work-capability assessment assesses individuals' functional ability to work rather than assuming that a health condition or disability is automatically a barrier to work. We know that work is generally good for people, including disabled people and those with health conditions. So, although we remain committed to supporting those who cannot work, we want to help as many people as possible to return to work.

In his first independent review of the work-capability assessment, Professor Harrington concluded that it is the right process to use but it is not currently working as effectively as it could. We have endorsed that review fully and implemented all of the recommendations from the first report. Improving the work-capability assessment is not a static process, so Professor Harrington has undertaken a second

review. Of the 23 recommendations made in that review, 12 have been fully implemented, and work is ongoing to implement the remaining 11.

A call for evidence for his third review was carried out between 14 August and 14 September 2012. Work is ongoing on consultation on the descriptors for customers with mental health conditions, cancer or fluctuating pain conditions. Professor Harrington will report back before the end of the year. We look forward to the outcome of that review. That concludes my explanation.

Mr Copeland: Forgive me for this, Martina, but there appears to be a sort of a change in paragraph 190, where it describes:

"limited capability for work-related activity owing to a physical or mental condition."

The current system actually allows for a physical and/or mental condition because, in many cases, the physical condition could be variable, as could the mental condition. The combination of the two conditions limits capability for work. If the language is correct, that appears to limit it to a physical or mental condition. Is that an actual projected outcome from this or is it just the way in which it has been worded? Do you follow what I mean?

Ms M Campbell: Yes, I see what you mean, but I do not think that is the intention. The intention would be as it is now, which is to include physical and/or mental conditions. It does not have to be both.

Mr Copeland: Could you try to get that put into the language?

Ms M Campbell: We can get that changed.

The Chairperson: You are reading from the explanatory notes. Is it in the Bill?

Ms M Campbell: It would be in regulations anyway.

Mr Copeland: We have not seen those yet. It could mean a significant change for a large number of people.

Ms M Campbell: Is it "or" in the Bill as well, Colm?

Mr Copeland: Is "and/or" in it?

Mr Pollock: No, just "or". I do not think that we would see a problem with "and/or".

Ms M Campbell: I will have a look at lunchtime to see whether I have the DWP work-capability regulations with me and check that for you.

Mr Copeland: OK. Thank you for that.

Ms M Campbell: Clause 39 puts beyond any doubt that information collected by the Department for all aspects of universal credit is social security information. So, it is really about data-sharing, in a way. In making legislation for work-related benefits, such as income support, employment and support allowance and jobseeker's allowance, the Department recognised that it needed to obtain and use information that did not solely relate to the benefit itself. So, for example, people coming in for work-focused interviews may tell you that they have caring responsibilities that the adviser may not necessarily be aware of. So, it is about making sure that the adviser gets the whole picture.

The simplicity of the provision makes it clear that all information supplied when determining a person's ability and capability for work or as part of the conditionality regime is to be treated as social security information. I do not think that any of us would doubt that financial, family and home information supplied for the purposes of universal credit is social security information. However, it is sometimes questioned whether all of the information supplied in a claimant's everyday dealings with the Department is social security information. As I said, information collected at a work-focused interview that relates predominantly to employment or health-related information supplied during a work-capability assessment might not immediately be considered as social security information. So, the

Department's powers enable it to use information based around its core interest, particularly social security. It is crucial to ensure that all information supplied during the process is considered to be owned by the Department. Without this clause, there could be doubt about how this information could be shared. It might not be possible to share the information with partners who provide professional services for work-related matters, and it might not be possible to use the information to determine the effectiveness of departmental policy or to design new policy or processes. So, that is about collecting statistical information to use in identifying the consequences of policy changes.

This provision is nothing new. The Department already has legislation making exactly the same provisions for income support, employment and support allowance and jobseeker's allowance. However, that legislation is specific to those benefits, so we cannot use that information, and we need to make it an even playing field. That is my explanation of that clause.

The Chairperson: OK, Martina, thank you. No members have indicated, so I am happy for us to move on to clause 40.

Ms M Campbell: Clause 40 defines what is understood as a couple for the purposes of universal credit. As I said, the couple is one of the fundamental units of the universal credit system. We intend to carry over the existing definition used for current income-related benefits, so couples are defined as a husband and wife, civil partners who are members of the same household, or two people living together as if they were spouses or civil partners. That definition hinges on the couple being members of the same household. Universal credit will be assessed against the total income and capital of both members. It will be payable to them jointly. Couples who maintain separate households and who are not merely temporarily living apart are not considered as couples and will be able to claim as individuals.

There may be circumstances where it is appropriate to consider two people as not being a couple, or for them to be considered part — or not part — of the same household for the purposes of universal credit. Those instances are not common. A member of a couple will only be treated as a single person in the narrow circumstances where their partner would not meet some of the basic conditions. An example is where the claimant's partner is abroad and the absence is not treated as a temporary one, or, indeed, where the claimant's partner is in prison.

It is essential to define couples in order to be able to assess pay and apply conditionality within this system. That completes my explanation.

Mr Brady: Flexibility is often used in relation to this matter. The definition of a couple is really two people living in the same household, and you mentioned civil partnerships. In my experience, which goes back a long time, there are people living in the same household whom the Department assumes are a couple but, in fact, they are not. It is quite difficult for them to prove that they are not actually living together. They share the same household, but they want to claim benefits separately. It becomes even more complicated when there is a couple whose marriage or partnership has broken down and, human nature being what it is, one of them does not want to move out or whatever. It is quite difficult. Will there be any difference in the approach? That has been problematic. You mentioned that it does not happen that often, but, in my experience, it happens fairly often. I just wonder whether there will be an approach as to how that definition of a couple may be addressed. For a lot of people, it is problematic. I have seen appeals in the past where two people are living in the same house and, because it is a man and a woman, usually, the Department assumes that they are a couple, but they are not. That can be quite difficult to prove. There is an opportunity in the definition to address that situation and have that flexibility built in. It can be difficult for people to prove that they are not a couple. There used to be legal separation, and that was accepted because people had gone through legal procedures. There is also divorce, obviously. However, people who are no longer a couple but are still in the same household may not want to claim as a single unit.

Ms M Campbell: I imagine the proposal is that the same methods of ascertaining a couple will apply, but we will take your point back and feed it through to the guidance writers.

Mr Brady: I am bringing it up at this point because there is always an assumption — wrongly, in some cases — that they are a couple. That can cause difficulty because the Department is starting from the premise that you have to prove otherwise. That can sometimes be quite difficult.

Mr Douglas: Martina, somebody raised a point with me at the weekend that I had not considered. What happens in the case of a foreign national or migrant worker who, for example, has two wives?

Ms M Campbell: I have the answer to that somewhere here. I will come back to you on that, Mr Douglas. I have the answer to that but I cannot find it at the moment. We do not recognise polygamy or multiple wives.

Mr G Campbell: Or husbands.

Ms M Campbell: Indeed. I do not think that it applies to husbands. Only the man gets the choice.

I have found the answer. Universal credit will not include special rules for polygamous marriages. It will treat the polygamous husband and one wife as a couple. Other spouses will have to make separate claims in their own right and will be required to satisfy the standard conditionality requirements, including residency.

Mr G Campbell: It is make your mind up time then? *[Laughter.]*

Ms M Campbell: It certainly is.

The Chairperson: We will move on.

Ms M Campbell: Clause 41 is about interpretation and defines some of the key terms used in the universal credit clauses. It just brings together in one place terms used frequently throughout the Bill and, hopefully, makes the legislation easier to understand.

Clause 42 allows the Department to set up and run pilot schemes for the purpose of testing the application of universal credit and the extent of the impact of its provisions. Mr Douglas asked earlier about monitoring and evaluation, and, as part of a monitoring and evaluation programme, the Department might choose to use a pilot scheme to test, for example, a different taper rate. There has been some talk in the past about regional benefit rates, and a pilot scheme could test those. However, the purpose of the pilot scheme has to satisfy one of three conditions. It has to make universal credit simpler to understand or administer; help people remain in work, obtain work or increase their pay or hours; or affect the behaviour of claimants or others. Under this clause, pilot schemes will, in the first instance, be limited to three years, although that could be extended, and they may apply only to a limited number of people, as suggested by the term "pilot". Regulations under this clause will be subject to the affirmative resolution procedure, and members will get a chance to debate and discuss those fully.

Mr Brady: Surely the whole notion of parity means that there should not be different regional benefit rates.

Ms M Campbell: The coalition Government have mentioned the question of regional benefit rates frequently and, indeed, regional pay for the Civil Service. There are no plans at the moment to introduce regional benefit rates, but that clause will give the Department the power to operate a small pilot to test how that would work.

Mr Brady: So, technically, there could be a change in parity if that were introduced. When I was in the Civil Service many years ago, there was an issue around the Imperial Civil Service, because people who worked for it and were based in Belfast got paid more.

Ms M Campbell: They still do.

Mr Brady: They also got time off for stress. That was a big issue because people here were, presumably, experiencing the same stress but were not getting that kind of leave or as much money. Therefore, there have been regional variations. However, you are suggesting that there may be changes both in the regional pay structure and, possibly, in the benefits, which would kind of blow the parity argument out of the water.

Ms M Campbell: Yes, but it would be parity with the rest of the UK. People in London, for example, would have a higher rate of benefit than people in Merthyr Tydfil or wherever.

The Chairperson: We do not need to argue the ins and outs of it. We just need to understand what the provision is supposed to do and what the clause covers. We can argue the rights and wrongs of it another time.

Mr Brady: It was just to clarify that point.

The Chairperson: I appreciate that, and it is important to do that.

Ms M Campbell: It is not usual for Northern Ireland to carry out pilots because, generally, DWP does the pilots and we, generally, follow suit.

Mr Brady: Logically, you could argue that, if parity is parity and, comparing like with like, we should have a pilot scheme.

Ms M Campbell: Yes, but there is a great cost. Therefore, you have to take the cost of running a pilot into consideration, and the commensurate effort.

Mr Copeland: If they are indeed considering regional rates of benefit, are they also considering regional rates of contribution?

Ms M Campbell: No; I would not have thought so.

Mr F McCann: I think that a pilot scheme was run in 2007 or 2008 when there were changes to housing benefit. A local housing allowance was going to be introduced here and there was some argument at that time that there were variances in other regions. If we were to run a pilot here, how would you decide where it would be held and how many people it would involve? Would you look at running a pilot scheme when the underoccupancy rules come in?

Ms M Campbell: There are no plans to run any pilot schemes. As I said, it would be very unusual for Northern Ireland to run its own pilot, simply because of cost and commensurate effort. At the end of the day, it is a matter of the protection of the public purse.

Mr Pollock: There is the timing as well. To run a worthwhile pilot, you have to decide what you are trying to find out and what the differences are. As Martina said, DWP has run a raft of different pilots across the UK. Unless we could point to a situation where we would learn something materially different, it would not be worth investing in a Northern Ireland-specific pilot. Indeed, we would not have the lead time to determine or discern what you would find out from it. You would have to set it up and monitor it over a period. By that time, the changes will have happened.

Mr F McCann: We are talking about the possibility of regional variations. The impact of that would be different here than in other places. I go back to the local housing allowance. They actually waited a year and then tested out the local housing allowance in a pilot scheme in some places here. That was about three or four years ago. I am just trying to work out how that would impact.

Mr Pollock: I remember something around the introduction of local housing allowance, but it predates all of us here. Colm would be the only one who would remember that, and his memory has gone. *[Laughter.]* He did not actually work on the housing side. We can look at the introduction of the local housing allowance, but I am not sure whether there was a pilot as such.

Mr F McCann: As Mickey said, why is it in there if you are never going to use it?

Ms M Campbell: It just gives you the flexibility. Any pilot that would be run would be brought before the Committee by virtue of the fact that regulations would have to be made to allow us to run it. It is simply to give the Department the power. It is like a couple of other instances that I talked about earlier. It is included for efficiency purposes, because otherwise we would have to bring a piece of primary legislation forward and take up Assembly time. However, if we put it in now, it is there and, although it may never be used, it gives us that flexibility and allows for efficient use of Members' time.

Mr Douglas: Martina, there is reference to affecting the behaviour of claimants or others. This is meant to simplify the system, but I assume that it is also about sanctions.

Ms M Campbell: Yes, it is.

Mr Douglas: Who are the "others"?

Ms M Campbell: "Others" could refer to the partners.

Mr Douglas: OK.

Mr Copeland: Going back to pilot schemes, presumably DWP carries out pilot schemes in the rest of GB, whether it is in Scotland, Wales or England. Presumably, it must find some value in those schemes. Does a pilot scheme give an accurate indication of the likely outcomes in Northern Ireland, given that, as we have heard, there are regional variations? Are people in Northern Ireland affected positively or adversely by information and changes that take place based on pilot schemes in the rest of GB? We know we are different here. Surely, that is the responsibility of DWP, even though the actual thing has been devolved. DWP is not running pilot schemes for the sake of it: they must be of some use and they must be capable of yielding some information.

Mr Pollock: Any of the pilot schemes that DWP is running would be closely monitored when it comes to the population cohort that they are looking at. Any of the findings from those schemes would be extended to the UK as a whole. So, if there were a scheme running in London on housing, you would expect people in the likes of Scotland, Northern Ireland, Wales and everybody else to say, "The findings from that do not stack up because London housing costs have a premium. You cannot extrapolate and apply the findings from such a scheme directly here". The findings of the pilot schemes are closely monitored from a statistical standpoint. What population of claimants does the cohort represent? Could the findings be extrapolated from a statistically valid perspective?

Mr Copeland: An example is disability living allowance, for which there is a much higher uptake in Northern Ireland than elsewhere in UK. There are reasons for that, given our recent history. What does DWP use the information from the schemes for? It is not doing it for the sake of it, so there must be some purpose to the pilot schemes.

Mr Pollock: Yes.

Mr Copeland: What is it?

Ms M Campbell: An integral part of monitoring any benefits system or any policy is learning, evaluating and checking down the line whether the originally intended policy outcomes are being met and whether a little tweak to the system — as Mr Douglas said, perhaps around sanctions — is needed. Before you go to the effort of bringing in regulations or perhaps primary legislation, you test that by means of a pilot. Good policymaking is always backed up and evidence based.

Mr Copeland: How would we achieve that outcome in Northern Ireland?

Ms M Campbell: You would take the learning from the DWP pilot, look at its impacts, match that to the population cohort here and consider the different circumstances that are operating here. You would do that in an equality impact assessment. In housing, for example, DWP is running six demonstration projects on direct payment, including one in Scotland. We are not running similar projects here because our circumstances are obviously different. However, the Minister has commissioned a number of pieces of research.

Mr Copeland: Our Minister?

Ms M Campbell: Yes. Our Minister has commissioned research on housing. I think he mentioned that yesterday when he launched the housing strategy. We are expecting the results of some of that research before the end of the year. That will help to inform some more of the policy development on housing.

Mr Copeland: So, in fact, we will take the DWP statistics that have been gathered from a pile of projects, use those for analytical purposes, but apply regional factors to them.

Ms M Campbell: Yes. Our statisticians have a DWP model that is based on the various information that has been gathered from, for example, the family resources survey and other survey tools. We will feed all that information into a software programme, and it will churn out the Northern Ireland impact.

The Chairperson: This is a clause that enables the Department to do that by way of regulations. The efficacy or otherwise is a discussion for another day.

Mr G Campbell: Is there any way of accessing the conclusions that have been drawn from what has been done in GB?

Ms M Campbell: I think that there has been an interim learning report. I will check whether that it is public. If it is not, we will certainly be happy to bring that to the Committee once it becomes public.

The Chairperson: We will move on to clause 43.

Ms M Campbell: Clause 43 explains how the regulation-making powers in this Part of the Bill may be exercised. It allows for regulations to make different provisions for different cases. It explains that where regulations provide for an amount, that amount may be zero. It also allows for regulations to provide for different amounts depending on whether the claimant is single or in a couple, and according to age. That is in line with the current structure for existing benefits.

With your permission, Chair, I will move on to clause 44, because the clauses are related.

The Chairperson: OK.

Ms M Campbell: Clause 44 provides for the procedure by which the Assembly will control the making of the regulations. The universal credit regulations will, in the main, follow the more common form of control, namely negative resolution. That follows the conventional approach to delegated legislation in this area. However, we have accepted that regulations that introduce new concepts into the benefit system should be subject to confirmatory procedure in the first instance. That will apply to the first set of regulations in each of the cases identified. Those are as follows: claimant commitment; capital limits; income to be deducted; the standard allowance; the children and young person's element; the housing costs element; other needs and circumstances, such as the childcare element; the work availability requirement; claimants subject to no work-related requirements; sanctions; hardship payments; calculation of capital and income; migration, which I mentioned earlier; and pilot schemes.

All those regulations will be brought before the Committee and will be made by confirmatory procedure in the first instance. That is because the detail of the policy will be in the regulations, and because we recognise that Members are likely to have a number of concerns about those areas. That will ensure that there is a debate six months after the regulations have been introduced, allowing for a bedding-in period. We will then know how well the regulations are working. Obviously, it will also maintain flexibility for us to amend the legislation in the future in order to respond to changes, as I said, without disproportionate demands on the Assembly and Members' time.

The Chairperson: Are members content with that explanation of clauses 43 and 44?

Mr Brady: You can have a debate six months after the regulations are introduced, but is it likely that they will be changed?

Ms M Campbell: That would depend on the outcome of the debate.

Mr Brady: Realistically, it is paying lip service. You have to be cynical about these things. I cannot imagine them changing it. If universal credit does not work, full stop, are they going to change it? I do not think so.

Mr Copeland: If I understood you correctly, six months after the introduction of universal credit —

Ms M Campbell: Sorry; the debate can take place up to six months after the introduction.

Mr Copeland: Having established that this is a sort of rolling process, how many of those likely to be affected ultimately will have been affected?

Ms M Campbell: All new claims will be affected. Then, you are into the managed migration —

Ms Stitt: Natural migration.

Ms M Campbell: Natural migration people. They are people who have had a change of circumstances.

Mr Copeland: I am just wondering —

Ms M Campbell: I do not have the numbers at this stage.

Mr Pollock: I do not think that we could quantify it.

Mr Copeland: Could we get those?

Ms M Campbell: It is not finalised yet.

Ms Stitt: We have not finalised the launch or the migration approach yet.

Ms M Campbell: We might get that closer to the end of the Committee Stage process, although I cannot promise that.

Mr Copeland: Might it be better to extend the six months to a longer period to give us a better notion of what the ultimate effects will be?

Ms M Campbell: I think that the rules under Assembly procedures is that it is up to six months.

Mr Pollock: The legislative protocol is that it is within six months of the regulations. Some of the regulations will not necessarily be commenced on D-day in respect of universal credit.

The Chairperson: It could be a year later. The operative thing for us is that, once it is introduced, it is then subject to debate for confirmatory resolution. That is what the clause does.

Mr F McCann: Once the changes start to be made, you could have a considerable number of people being paid at one rate, and the rest being paid at another rate. There is an unfair balance there over the four-year period that takes you from the start to the finish.

The Chairperson: I understand that comment. It relates to the phasing in, and all of that, which clearly requires a separate discussion. As the officials have heard, members have concerns about how you will do that: whether it will be regionally, sub-regionally, broken up, thematically or whatever. We do not have those answers. Those are concerns, and members are right to put them on the table.

Mr Pollock: It may help to clarify that it will be every housing benefit claimant or every JSA claimant within a region. It will not be a case of me and Colm, for example, both being on JSA or whatever but getting different rates at different times. All of those will be migrated across at the one time.

Mr F McCann: All new claims and all claims in which there has been a change of circumstances will be paid at the universal credit rate. However, it might take the rest of the people four years to get to that stage, so there will be different rates of pay.

Mr Pollock: My circumstances as a JSA claimant would be roughly comparable to Colm's as a JSA claimant and to someone else's as a JSA claimant. It is that population that you have to try to migrate across.

Mr F McCann: But they would still be paid at different rates.

Mr Brady: Can you clarify something? You mentioned the changeover starting with jobseeker's allowance and income support coming at the end. What happens to someone who is on jobseeker's allowance and income support when one is changed initially?

Ms Stitt: When you move to universal credit, everything moves across.

Mr Brady: That is all that I wanted clarified: you will not have to wait.

Ms Stitt: No; it will be one universal credit payment.

The Chairperson: Any new circumstances in the household will trigger the entirety.

Ms Stitt: Any new circumstances that involve a recalculation of the benefit.

Mr Douglas: Martina, you mentioned the pilot areas in the previous discussion. You mentioned sanctions and used the word "tweak". Would a tweak be subject to confirmatory resolution? Define a "tweak".

Ms M Campbell: In the first instance, the regulations to ask for the pilot to be carried out would be subject to confirmatory resolution. Then, if the pilot worked and we decided, for example, that for the third strike in the sanction, instead of disallowing benefit for three years, or whatever, we would reduce that to one year, those regulations to amend the sanctions would be subject to negative resolution because we have already discussed the high-level policy detail. The regulations to carry out the pilot in the first instance would be subject to confirmatory resolution, but any tweak arising out of that would more than likely be made by the normal negative resolution, because it is only a small change.

The Chairperson: It is conceivable to amend clause 44 or 43 if you so wish to make it subject to confirmatory resolution, for example. It can be amended.

Mr Douglas: There is that option; OK. Thank you.

Ms M Campbell: That completes my section.

The Chairperson: Sorry, Mickey; did you want in again?

Mr Brady: No; I am just starting to twitch. *[Laughter.]*

The Chairperson: We have completed clause 44, which takes us to the end of Part 1.

Ms M Campbell: That is all of the universal credit aspect.

The Chairperson: At this very timely juncture, I propose that we suspend the meeting and come back at 1.00 pm. We will resume with Part 2, which deals with working-age benefits, starting at clause 45.

Committee suspended.
On resuming —

The Chairperson: We are now into Part 2, which deals with working-age benefits. We will start on clause 45.

Ms M Campbell: Chair, before you start, I will provide some clarification on the work capability assessment, which I promised I would check. In the DWP regulations that are published, the clarification is that it is bodily, mental, disease, illness or disablement or a combination of any.

The Chairperson: Kevin, please give us a quick recap.

The Committee Clerk: Just a quick overview of 31 to 44; the issues that have been raised, the questions asked and the answers given. Clearer wording is required in clause 31 in respect of good

reason and clarity is required on grounds on which to appeal. A question was asked about whether guidance would be given in relation to good reason, and the point was made that guidance should be shared among decision-makers. The Committee asked to see the guidance when it is produced, and the Department agreed to follow this up with SSA.

On clause 32, Mr Durkan raised the issue of underoccupancy. I will go back and have a look at the tape to get more detail on that. I think that the Department said that it would come back on that issue in respect of clause 32. On clause 33, Mr Campbell raised the making of statutory rules when the change was much greater than anticipated. The question was: where does that leave the Committee? The Department replied that, among other things, that should be picked up by the equality screening process.

On clause 34, a key issue was raised about fraud and error. For example, would it be possible to compare fraud and error in the second year under universal credit with current rates? The Department said that that should be possible. The head of policy on fraud and error will be briefing the Committee in a few weeks on this. Monitoring evaluation will take place as a matter of course. Also on clause 34, Mr Copeland raised the issue of a person who finds themselves over a certain eligibility threshold for a claim; about the 75p and —

Ms M Campbell: Yes, the underlying entitlement.

The Committee Clerk: On clause 35, confirmation was given that housing credit is the same as housing benefit.

Ms M Campbell: Yes.

The Committee Clerk: It was asked whether the perhaps unusual questions on the current forms would stay the same.

Ms M Campbell: We tried to clarify that at lunchtime. We are more or less certain that the questions will be the same. Those questions will continue. We will come back on that.

The Committee Clerk: The point was made about clause 36 that, despite potentially many years of payment, ESA will be paid for only one year. There was concern about that. There was also confirmation that the hardship fund will match need. On clause 37, there was discussion around how migration will work. For example, could it work on a regional basis here? The answer is yes, but the process has yet to be decided on. There was an acknowledgement from the Department that the current and new IT systems will operate concurrently for a while after the introduction of universal credit. Some clarity was required on when universal credit can be awarded without a claimant applying. I think that that was the question that Mr Douglas raised. I am not entirely sure if there was a —

Ms M Campbell: I think that is where they are migrated over. There would not be a need for —

The Committee Clerk: You have just clarified the next point in relation to clause 38, which concerns physical and mental health conditions. Clarity was asked for on clause 40 in relation to the definition of "couple". That was in the case of people who maybe had been a couple —

Ms M Campbell: It would be how it is practically ascertained.

The Committee Clerk: It was about the approach that the Department would take to address it. You said that you would bring that back to the Department for consideration when drawing up the guidance. Clarification was provided on polygamous relationships as well.

A range of issues were discussed in respect of clause 42, which concerns pilot schemes. It was mainly the relevance of GB schemes to Northern Ireland given that our circumstances are different. There was an indication that an interim learning report might be made available from DWP.

Ms M Campbell: Yes. I will check the position on that.

The Committee Clerk: You said that you will investigate that and report back to the Committee on if and when that can be released.

The Chairperson: OK. Are members happy to move on to clause 45?

Members indicated assent.

Mr Pollock: Thanks, Chair. This, effectively, is me giving Martina a break. That said, she has done a lot of the heavy lifting in terms of introducing a lot of the things that are covered in Part 2 of the Bill, such as working-age benefits and things like claimant commitments, sanctions and hardship regimes. If you like, I will adopt the same sort of format; I will give you a brief description of the clause, and we will take questions afterwards.

Clause 45 amends the Jobseekers (Northern Ireland) Order 1995 to introduce the claimant commitment for jobseeker's allowance, which builds on the jobseeker's agreement. Effectively, it aligns all the requirements on a claimant in one place, making it clear what claimants are required to do when they claim jobseeker's allowances and the consequences of any failure. As for now, that includes the same sort of requirements to be available for work and to actively seek work, and specific actions that they need to take to meet those conditions.

The claimant commitment will also include information that is not currently covered by the jobseeker's agreement: information about general attendance requirements, any directions and other relevant information, and a duty to report changes of circumstances and the like. It is all about the underlying thread of personal responsibility that underpins a lot of the reforms. The commitment will be drawn up in agreement with the client adviser and the employment officer. However, the commitment contains mandatory issues, so it does not have to be agreed with the claimant. Instead, the claimant will be required to accept the commitment that is proposed by the employment officer and client adviser in order to be entitled to jobseeker's allowance. The commitment can be altered in discussions between the client adviser and the claimant, depending on circumstances. Essentially, however, it is the same as the jobseeker's agreement. It builds on that to smooth the transition to universal credit.

Mr Brady: Mandatory issues are involved, so it is not a legally binding contract in that sense because, essentially, it is one-sided. I brought this up before: when people are actively seeking work, I presume that there will be guidelines for the client advisers about what that constitutes. People — this is likely to happen again — were going into work premises, saying that they needed to show that they were actively seeking work and asking for something to say that they have applied. They were then being charged. That should be factored into guidelines. It may sound vague in the sense that it might not happen, but it happened before and it is likely to happen again because employers, particularly small employers, will see the opportunity to get money for nothing. The excuse was that they had to spend time typing and that kind of thing; it was almost a cover charge. I know that we are not discussing that, Chair, but it is important sometimes to raise these issues while you think of them, because they are important. It happened in the past, and it is possible that it will happen again.

Mr Pollock: That is well noted.

Mr F McCann: Again, we raised this, and it is going back a couple of years: it is in relation to distance. If somebody in Belfast goes in and the client assessor says that there is a job in Newry, will the person be expected to travel to Newry? You know the way, in some places, they draw circles two miles out and four miles out or whatever. Will that be taken into consideration? I say that because I read somewhere in the past couple of days that there are six applicants for every job that is available, and it is getting worse. You end up with perhaps six or 10 people chasing the same job. It is a never-ending vicious circle.

Mr Pollock: It will be whatever is considered reasonable in an individual's circumstances to show that they are available for work and actively seeking work. Regulations in the past have talked about something like 90 minutes' travel. It depends on what sort of car you are driving in that respect. That would not be unreasonable; people in our office travel from Newry and beyond every day to Belfast.

Mr F McCann: The way I drive, it would be seen as totally unreasonable.

Mr Brady: It would never be considered reasonable.

Mr F McCann: Under those circumstances, if it is 90 minutes — say that it is Belfast to Derry — I take it that all expenses would be covered by the Department. Would it include the likes of food and other stuff to sustain them throughout the day? It is going to be a day-long exercise if you are travelling that distance.

Mr Pollock: I do not know what the rules are for travel to work interviews. There could be some reimbursement in that respect.

Mr McClarty: Surely food would not be an issue, because people have to eat anyway, immaterial of whether they travel five miles or 60 miles.

Mr F McCann: People are paid at subsistence level here. It would be a substantial amount of money out of their already-meagre benefits to travel 90 miles to get to a job. It might be all right for someone like you, David, who could afford something like that, but we are not on benefits.

Mr McClarty: I am not talking about the fuel. There is extra expense in fuel.

Mr F McCann: We are talking about buses, trains —

Mr McClarty: But food? You have to eat anyway, immaterial of where you are.

Mr Pollock: There was some discussion, when we were going through the universal credit, about the claimant commitment. Ordinarily, it is a case of discussing with the client adviser what is deemed reasonable in their position. If you were a highly paid electrician or electronics engineer or something like that, for the first period in which you claim universal credit or benefit, or jobseeker's allowance as it is now, you would have an expectation that you would be looking for jobs in a particular area in a particular field at a particular salary rate. As you move further away from the labour market, your expectations tend to get lower in order to get work. However, the claimant commitment can be adjusted. It is a living document to take account of changes in circumstances and what is reasonable for an individual.

Mr F McCann: I do not want to labour this, but say, for talk's sake, that I am on jobseeker's, I go in and the person says that there is a job in Derry they want me to go to. I say that I am skint; I do not have the money and I cannot afford the transport, and I do not have the money for food on the way up. They are able to tap into a crisis loan, but they will have to pay that back again.

Mr Pollock: For a job interview or for the job itself?

Mr F McCann: A job interview. This is all about job interviews and actively seeking work. Do you understand what I am saying?

Mr Pollock: I know what you are saying, yes, and there are certain schemes on travel to work and getting expenses to go to interviews. I do not know the detail but I can certainly get that for you.

Mr F McCann: Thanks very much, Michael.

The Chairperson: The key issue is what support is there for someone to go to an interview for a job.

Mr F McCann: When they are saying that it is reasonable.

The Chairperson: I understand that. That is the issue. Ultimately, that could result in sanctions for somebody, so you want a reasonable level of support. You are asking what that is, and we will get that information.

Mr F McCann: You could get to Cork in 90 minutes the way Mickey drives.

Mr Copeland: Fra has very kindly taken me into exactly the question that I was going to ask. In the border counties, there may be centres of population and places of work in the North or the South that might be closer in terms of travelling distance. Does this go across the border as well? In other words, if you are sitting in a job centre in Newry, Derry/Londonderry or Strabane, and a factory across

in the South is advertising, is the availability of those jobs factored into the legislation — that there is a job in Bundoran or wherever?

Mr Pollock: There is no directional compass on the 90 minutes. It is 90 minutes' travel in whatever direction.

Mr Copeland: So it goes across national boundaries?

Mr Pollock: No one will restrict you from looking across the border.

Mr Copeland: I am not so much talking about looking; I am talking about being looked for. In other words, would the employment officer — I think that is what he is called — routinely tell you that there are jobs in Buncrana?

Mr Pollock: He might be able to advise you, Michael, but he would not necessarily have the detail on jobs that are available in the other jurisdiction.

Mr Copeland: He would not necessarily not, either?

Mr Pollock: No.

The Chairperson: So they do not know until you find out.

Mr Brady: I want to clarify something, Michael. You raised the issue of tradespeople and people having qualifications — electricians and that. Going back again, for people who were signing on it was "suitable employment". That was dispensed with so that you could, after a period of time, be offered anything. Will there be flexibility in the guidelines to deal with that? Essentially, one difficulty with people taking what they might have considered unsuitable employment was the wage rates, but some people were worse off, even with working tax credit.

Mr Pollock: I imagine that there would be if there is a dearth in particular trades. It is reasonable to expect that, if you are in a dying profession, for want of a better term, you will try to seek employment and expand your own horizons.

Mr Brady: I assume that there is no great rush for blacksmiths. However, is there a point at which, if you cannot find what you consider suitable employment for your particular skills, you are expected to take anything? It is already at that stage.

Mr Pollock: I do not think that there is a set period of, for example, a month or two months.

Mr Brady: It used to be, but —

Mr C McLaughlin: I think that it is three months at the minute that you are allowed to apply for a job in your usual occupation, and, after that time, you have to actively seek and be available for any type of work.

Mr Brady: It used to be six months.

The Chairperson: OK, members, we got clarification there. Fair enough. We will move on to clause 46.

Mr Pollock: Clause 46 allows jobs and benefits offices greater flexibility, where required, and allows claimants to participate in interviews other than the face-to-face interviews at the minute. That provision was probably touched on as we went through the universal credit in terms of future-proofing. So the provision relates to the wider government agenda of access to IT for making job applications, and so on. At present, there are no plans for jobs and benefits offices to deviate from face-to-face interviews and talking to clients at first hand. This provision would allow people to avail themselves of IT developments and technological advances. That is pretty much all that is involved in clause 46.

The Chairperson: There are no questions, so you can move on to clause 47.

Mr Pollock: We touched on clause 47 when going through universal credit. Effectively, it makes legislative change to reform jobseeker's allowance sanctions and hardship payments. The consequences for those who repeatedly fail to meet their responsibilities under the claimant commitment are a progression to tougher sanctions. That replaces the provision for sanctions under the Jobseeker's Order 1995. As Martina explained in reference to universal credit, there are three levels of sanctions: higher, medium and lower. As I said, it is important to point out that there is no conspiracy theory as far as sanctions are concerned. They are designed to act as a suitable deterrent. The underlying principle of individual responsibility, which is throughout welfare reform, is supported through this sanctions regime.

It is also important to point out that, irrespective of the introduction of universal credit, it was always the intention to review the sanctions regime, because it was not being effective as a deterrent.

The higher level sanctions would be imposed on claimants who failed to comply with the most important labour market requirements, such as applying for or taking a job. The sanction for a first failure would be three months; for a second failure, six months, and for a third failure, three years. However, there would be some exceptions, such as cases in which a failure occurs before a claimant's claim to jobseeker's allowance is made. That could occur in the case of someone leaving employment voluntarily and then claiming jobseeker's allowance. We do not expect very many claimants to be sanctioned for three years, but it is important to include that option to deter serial non-compliance.

Currently, sanctions for those types of failures are generally set on a case-by-case basis and can be anything from one week to 26 weeks. The purpose of clause 47 is to clarify the whole sanction regime, including the claimant's commitment and the responsibility of individuals to comply. It provides greater visibility of the consequences of not complying with the requirements.

Mr Copeland: Paragraph 224 in the explanatory and financial memorandum details the failures which may be sanctioned for up to this duration. One is losing a job through misconduct. Today, very many people who lose their job through misconduct appeal to the Labour Relations Agency (LRA). How are they treated during the period of the appeal?

The second failure that may be sanctioned is refusing or failing to apply for or accept a job about which an employment officer has informed a claimant. A number of organisations, such as the army and the Fire and Rescue Service, run jobs fairs. Might there be an instance in which someone would be required to attend an army jobs fair despite being doctrinally against joining the army? Could someone be sanctioned for that?

Ms M Campbell: No. I gave examples of when someone would be excepted from applying for jobs, and those include some religious beliefs.

Mr Copeland: A vegetarian may not want to be employed in a butcher's shop.

Ms M Campbell: There are conscientiously held objections, and those would have been specified in the claimant's commitment at the outset.

Mr Copeland: What about the period between someone being dismissed through misconduct and lodging an appeal to the Labour Relations Agency? What happens while the appeal is ongoing?

Ms M Campbell: I assume that the situation remains as it is now.

Mr C McLaughlin: The decision-maker bases the decision on whatever evidence he or she gets from the employer about what happened. A decision would have to be made, but it could be overturned if the individual was successful at the employment tribunal.

Mr Copeland: Could that not then be used by the employer as justification? The employer could say that x, y and z happened, and the Department might have accepted that x, y and z happened for its purposes. Could that not be used against the guy in the industrial tribunal?

Mr C McLaughlin: The decision-maker would have to look at the two parties and at both sets of evidence, and then come to a decision on that basis, not just on the basis of the employer's evidence.

Mr Copeland: You do not think that there is an element of prejudging the outcome of the Labour Relations Agency process?

Mr Pollock: I do not think that it would be prejudicial to the LRA process. As Martina said, and as far as I know, the sanction remains in place until you have something to tell you otherwise. If a decision was overturned as part of an LRA decision, for instance, it could be looked at again.

Mr Brady: My question follows on from Michael's point. One of the failures that may be sanctioned is losing a job through misconduct or leaving voluntarily. Legally, people are entitled to terms and conditions of employment, which would include *[Inaudible.]* I have another point about leaving voluntarily. Constructive dismissal is very difficult to prove, even at an industrial tribunal. Many people feel that they have been constructively dismissed but do not pursue it. Any adviser will tell you that you could have a go at making a case but that it is quite difficult. Are such situations factored in? It is important that they are looked at, particularly in relation to the terms and conditions of employment. As I said last week, an inquiry could determine that, in its opinion, there had been misconduct, but that "misconduct" might be something that the person concerned considered innocuous.

My other point is that people cannot appeal the sanctions, but they could appeal the disallowance of benefit, presumably. There is a lot of discretion in that. When those guidelines are published, I would like the opportunity to see how flexible they are and what could be factored in — *[Inaudible.]*

Ms M Campbell: Common sense.

Mr Pollock: It is very difficult to legislate for every eventuality.

Mr Brady: Absolutely, because each case is individual.

Mr Pollock: The underlying rationale for the sanctions is that they are an effective deterrent and a support to the claimant commitment. They aim to encourage people to accept individual responsibility.

The Chairperson: Paragraph 225 states that a person will be treated as not having left work voluntarily in prescribed circumstances. From where do you get the prescribed circumstances? Is that by way of regulations or guidance?

Mr C McLaughlin: Regulations and guidance, Chair.

Mr F McCann: I am stuck on what happens when a person who is paid off or sacked is told that he or she will be sanctioned. Let us say that this person has two or three kids. The person's spouse then says that he or she is experiencing hardship because of that sanction. From listening to what you have said, I take it that the spouse would have to make a separate claim for benefit. Given the way things are now, there could be a four-week wait for such a new claim to be assessed. So the person might want a hardship payment or a crisis loan, and it can take days for those to be processed. What happens to the family in between times? If they say that they are experiencing hardship and do not have food for their kids as the result of a sanction, is there a procedure that allows for an immediate payment, or are they told to go away while their situation is assessed and that they will be informed of the decision?

Mr Pollock: I do not think that there are any plans to change the existing regime for hardship payments, other than proposals to make some hardship payments recoverable under jobseeker's allowance. Whatever procedures exist currently will remain.

Mr F McCann: I have heard about a number of people who asked for a payment after being sanctioned. Say, for example, someone gets a week's sanction, by the time a decision is made on whether to give them something, the sanction period is up, so he or she has gone through a whole period without any payment. This Bill means that we could be dealing in future with people facing one, two or three years of sanctions. A person being sanctioned could have an adverse impact on the family unit.

When we talked about misconduct in the past, we were told that this sort of sanction would be considered only in cases of gross misconduct. There is a big difference between misconduct and gross misconduct. The reference here is to "misconduct", not gross misconduct.

Mr C McLaughlin: That was a reference to the work experience regulations, where the only sanction was for gross misconduct.

Mr F McCann: It is "misconduct" in this case. A year or two ago, when we tabled a motion in the Assembly against sanctions, we were told by the Minister that they would not be used that much. Yet, the response to a question for written answer was that thousands of people had been sanctioned in the space of only a few days, or maybe a week or two. It is not that these sanctions will be applied only occasionally. The number of people already sanctioned is on record. We could be led to believe that a considerable number of people will fall foul of the sanction regime.

Mr Pollock: As I said, it is not the objective of sanctions to punish people. The sanctions regime is part of the overall integrated process, and it is an integral process, of individuals taking responsibility for themselves in trying to move closer towards the labour market. The sanctions regime is designed to be a supportive part of that, in so far as individuals know what is expected of them through the claimant commitment. They know what they are required to do, and they are clear from discussions with their client adviser and everybody else about what the consequences are if they do not comply.

Mr F McCann: We all know what the consequences are. Mickey has said often enough that what you term welfare reform, we class as welfare cuts. So we are playing with words. It is a punishment. People are being punished for not fulfilling the requirement of what is laid down.

The Chairperson: OK, fair enough. That is a fair point. Did everybody get the clarification that they were looking for?

Mr Brady: I have one final point. All the empirical evidence on sanction-led regimes indicates that they are not a deterrent.

The Chairperson: OK. We will move on to clause 48.

Mr Pollock: Clause 48 deals with the procedure for regulation-making powers and relates to the change from confirmatory to negative resolution procedure. We touched on this previously when going through universal credit. The natural protocol is that, under any new policy direction, regulations falling from primary legislation would be confirmatory subject to debate in the Assembly. This removes that requirement, because jobseeker's allowance was implemented in about 1995. So any changes will be fairly minor and technical in nature.

Mr Copeland: This will probably sound very silly, but I make no apologies for it, because I am still pretty new here. What is the difference between confirmatory resolution and negative resolution?

Mr Pollock: In a nutshell, regulations subject to negative resolution are just brought through as a matter of course. Once the Minister approves them, they can be made, laid and brought into force. If subject to confirmatory resolution, they are debated by the Committee and everybody else, but they are then subject to a debate in the Assembly within six months of coming into operation.

Mr Copeland: So the former would remove any possibility for the Assembly or this Committee to influence the outcome?

The Chairperson: Negative resolution means that you would have to get the Committee to intervene to put a motion to the Assembly to have the rule negatived. It is like a prayer of annulment. As Michael says, regulations subject to confirmatory resolution are tabled and come into operation, and, after six months, have to be confirmed by the Assembly; otherwise they fall.

Mr Copeland: OK. Thank you. Sorry for the question.

Mr Pollock: Clause 49 is to be read in tandem with schedule 7 to the Bill. Clause 49 gives effect to schedule 7, which makes amendments to the existing jobseeker's allowance legislation as a consequence of the changes and measures in the Bill. This morning, Martina went through a list of consequential changes in respect of universal credit, and this is the same type of thing for jobseeker's allowance.

Clause 49 provides for consequential amendments to the legislation. Amendments are essential to ensure that references are up to date. They include the sanctions and disentitlement-related provisions and the substitution of "just cause" for "good reason." Amendments are necessary to reflect the replacement of "jobseeker's agreement" by "claimant commitment" and changes to contracting out provisions. In addition to these consequential amendments, schedule 7 provides for the repeal of sections of the Jobseekers Order, which would allow for sanctions for violent conduct by claimants. We have no plans to introduce such sanctions but are confident that we have robust processes in place for taking appropriate action against claimants demonstrating violent behaviour. We feel that those processes effectively protect the staff in jobs and benefits offices.

The Chairperson: OK. We will move on.

Mr Pollock: Clause 50 is part of the transition from jobseeker's allowance to universal credit. Universal credit replaces income-based jobseeker's allowance. Jobseeker's allowance will still continue as a contributory-based benefit. We need to ensure that the rules and responsibilities that apply for contributory jobseeker's allowance claimants are aligned with the universal credit changes as far as possible. That is for three reasons: to ensure that all claimants, subject to the work search and work availability requirements, are treated in the same way as they would be under universal credit; to smooth the transition where a claimant's time-limited contributory benefit ends and they become entitled to universal credit; and to avoid unnecessary complexity in the handling of claims through the jobs and benefits offices. Clause 50, therefore, mirrors the work-related requirements and sanctions that apply comparably to claimants of universal credit.

Clause 51 deals with dual entitlement. It amends a technical defect in section 1 of the Welfare Reform Act 2007 — we do not always get it right. This currently provides that a person is not entitled to employment and support allowance if they are a member of a couple entitled to a joint claim for jobseeker's allowance. The purpose of the joint claim provisions is to ensure that both members of a couple are subject to jobseeker's allowance conditionality. However, there are circumstances in which one member of a couple making a joint claim is entitled to jobseeker's allowance without meeting all of the conditions of entitlement: for example, if a member of a couple is not able to work because of ill health or disability. The policy intention is that such a person should be entitled to claim ESA while becoming or being part of a joint claim to jobseeker's allowance. However, the Department realised that the current provisions do not work as intended. Clause 51 rectifies this by ensuring that such people can make a claim for ESA while being a member of a couple entitled to a joint claim on jobseeker's allowance. This does not mean that such people will be overpaid and receive a full award for both benefits. Any employment and support allowance payable would be deducted from the income-based joint claim for JSA.

The Chairperson: OK. Fair enough.

Mr Brady: It is not really a change, is it? Any other income will be taken into account for income-based ESA or jobseeker's allowance anyway. It is really just tidying up.

Mr Pollock: It is just tidying up a technical point in the 2007 Act.

The Chairperson: We move to clause 52.

Mr Pollock: This clause limits an award of contributory ESA for people in the work-related activity group to a maximum of 365 days. ESA for people in the work-related activity group was only ever intended to be a benefit for temporary, short-term interruptions in employment. It is considered that a limit of one year allows people time to adjust to the effects of their health condition, and the benefit provides support for them while they do so. Introducing a time limit on the entitlement of people in the work-related activity group is more consistent with the rules of contribution-based JSA, which has a limit of six months. It aligns the two, and it recognises the different nature of ESA for the purposes of the benefit.

Under this provision, it would be possible for a person to requalify for a further 365 days of contributory ESA if they leave benefit for more than 12 weeks and meet the national insurance contributions in full without using the same tax year as the previous claim. This is the same as JSA currently, and it means that people who leave benefit for work can requalify if they satisfy the contribution conditions afresh. People who already receive contributory ESA in the work-related activity group when the time limit is introduced will have the period that they have already been on the benefit counted towards their 365 days of entitlement. This includes people in receipt of incapacity benefit who are reassessed

and qualify for contributory ESA and are placed in the work-related activity group. They will have their ESA time limited to 365 days from the point of conversion.

Clause 52 also contains provisions to apply a time limit where an existing award for severe disablement allowance is reassessed and converted into an award for ESA and the individual is in the work-related activity group. This is considered to be the fairest approach for all claimants. The most vulnerable people in the support group, whose medical conditions mean that they have limited capability for work-related activity, are unaffected by this measure. Equally, the poorest claimants in receipt of income-based ESA will be unaffected whatever group they are assigned to. This is deemed an important step in simplifying the whole benefits system and making work pay.

Mr Brady: In fairness, whatever way you dress it up, it is designed to ensure that more people get less benefit. Previously, if you were sick and certified as being incapable of work, you went on to indefinite contributory incapacity benefit. The change was made when jobseeker's allowance was introduced, and the benefit period went from a year to six months. People were not paying any less in contributions.

My point is this: if you get contributory ESA for a year, and your partner then works for 24 hours a week or more, you will not qualify for income-based ESA, or universal credit, whatever it is changed to. Essentially, you will get the contributory benefit for a year, and, if your partner is working at the end of that year, you will not then qualify for any income-based allowance. Your partner would then, presumably, have to claim universal credit or the equivalent working tax credit. That is the reality. You can dress it up in whatever way you want in the legislation, but the policy intention is to ensure that more people do not quality for benefit. The same thing happened with jobseeker's allowance. I just want to clarify that, because it is undeniable. There is an attempt to try to dress this up as an incentive to get people into work, but the policy intention is to cut benefit. That clause reinforces the argument.

The Chairperson: If that is the final point on clause 52, we will move on.

Mr Pollock: Clause 53 deals with further entitlement after time-limiting. It provides, in certain circumstances, for a further award of contributory ESA after time-limiting of 365 days under clause 52. Where entitlement to contributory ESA has ceased as a result of time-limiting, a person may become entitled to a further award if, since that cessation, the person has not ceased to have, or to be treated as having, limited capability for work; the person satisfies the basic conditions; and the person has, or is treated as having, limited capability for work-related activity. This means that, where a person's contributory ESA has ceased as a result of time-limiting and their health condition deteriorates to such a degree that they are placed in the support group, they will be able to requalify for an award of contributory ESA if the above conditions are satisfied. The entitlement to the award exists only for as long as the person has, or is treated as having, limited capability for work-related activity and so falls into the support group. If the person goes through a subsequent work-capability assessment and is placed in the work-related activity group, entitlement to the award arising under this section would cease. The further entitlement is to be regarded as a contributory allowance. Effectively, the clause links periods of entitlement.

Mr Brady: Can you confirm that this applies only to contributory ESA, which means that, even though you requalify, you will still get only a year?

Mr Pollock: Yes.

The Chairperson: We move on to clause 54.

Mr Pollock: This is another contentious clause, in so far as it deals with the abolition of the ESA youth condition. Clause 54 abolishes the special concessions that currently allow certain young people to qualify for contributory ESA without meeting the usual paid national insurance conditions that apply to everybody else. This measure applies to new claims only, so existing claimants will remain on contributory ESA, but this will be time-limited. This means that contributory ESA youth claimants in the work-related activity group will be subject to a 365-day limit for assistance. Those in the support group will be unaffected, as will anybody receiving income from ESA, whatever group they are assigned to. To qualify for contributory allowance, the normal rules are such that a person must have paid and been credited with sufficient national insurance contributions in the tax years relevant to the claim.

The existing rules for young people, as set out in the Welfare Reform Act 2007, exempt certain young people from the usual paid national insurance contributions: a person between 16 and 19 years of age, or between 20 and 25 in certain prescribed circumstances, who is not in full-time education and has had limited capability for work for 196 consecutive days is entitled to contributory ESA.

Clause 54 repeals that provision in the Welfare Reform Act 2007 and, from the date on which it comes into operation, prevents new claims for contributory allowance being made on the grounds of youth. After that date, people who have formally benefited from that decision would be required to meet the national insurance contribution conditions that must be met when making an ordinary contributory ESA claim. No other age group can qualify for employment and support allowance without having paid national insurance contributions. No other contributory benefit has similar type arrangements.

The vast majority — at least 90% — of claimants who currently receive ESA on the grounds of youth are expected to receive income-related employment and support allowance. Those who do not have qualify for income-related ESA are likely to have capital in excess of £16,000 or a partner in full-time work who may be entitled to working tax credits. That change is another step in simplifying the benefit system ahead of the introduction of universal credit.

Mr Brady: This clause is a very contentious one. It is worth pointing out that the severe disablement allowance was introduced for young people who would never be able to work, in the normal sense, because of a learning disability or other problems. When that was abolished, youth incapacity benefit was introduced, which waived the contribution conditions. People who have, in many cases, quite severe disabilities are now going to be sucked into this. Therefore, it is wrong to say that this is simplifying it for them: it will actually make it a lot more difficult.

The intention seems to be to disenfranchise people with quite severe learning disabilities, learning difficulties, and so on, because they will now have to qualify for income-based ESA, income-based universal credit, or whatever. This affects quite a large cohort of young people who were previously treated sympathetically and had their conditions recognised. That recognition of their condition and of their ability to cope is being taken away from them. It is quite difficult for some of them to cope on a daily basis, without having to deal with this whole mix-up that is universal credit and what they may or may not be capable of.

The reason that I am giving a bit of an explanation is that a lot of people are not aware of the purpose of the severe disablement allowance and the youth incapacity benefit, and the whole issue of contributions. Again, if you qualified for youth incapacity benefit, the contributions were waived indefinitely, as long as your condition persisted. That has all changed. There has been a change to the definition of "disability". I think that that needs to be pointed out, because people are not necessarily aware of it.

As I say, this is a very important and contentious clause. You are right to say that it is contentious, and that will continue to be the case, particularly for large numbers of young people. They are already getting hammered by the provision of single room rent and all that. This is an attack on youth, regardless of the way in which you want to dress it up.

Mr Pollock: As I say, it is not deemed or presented as a cost-saving measure as such. There are no other concessions to age in any of the other —

Mr Brady: With respect, they are not going to publicise the fact that they are hammering young disabled people, which is what they are doing. That would not go down well.

The Chairperson: We are now getting into —

Mr Brady: I thought that it was necessary to say that.

The Chairperson: I appreciate that. You have outlined your understanding of the outworking of that, and Michael is not challenging that.

If we are happy enough, we will move on to clause 55.

Mr Pollock: Clause 55 — again at the danger of repeating myself — deals with the claimant commitment for employment and support allowance. Martina explained that for universal credit, and I mentioned the same type of thing earlier for jobseeker's allowance.

Clause 55 introduces the claimant commitment for employment and support allowance in the period leading up to the introduction of universal credit. A claimant commitment, which is a record of a claimant's responsibilities, sets out the information, the requirements placed on a claimant and the consequences if the claimant fails to meet those requirements. It can be reviewed and updated if a claimant's circumstances change. A claimant commitment will be a condition of entitlement to employment and support allowance. It will ensure that claimants have to consider and accept their responsibilities at the beginning of the claim and when the commitment is updated for particular changes.

The requirements that can be placed on a claimant — for example, to attend a medical assessment, take part in work-focused interviews, or notify about a change of circumstances — would be imposed in the normal way. Any work-related activity that the claimant is required to do would be drawn up by advisers in exactly the same way. However, the action plan would be incorporated into the claimant commitment.

Beyond requiring claimants to accept a claimant commitment, the clause makes no change to the requirements that can be placed on a claimant. They may still be required to comply with their requirements as appropriate for their particular group, whether a person is *[Inaudible.]* group, the content of the claimant commitment would be expected to be pretty minimal.

The Chairperson: Thanks you. We will move on to clause 56.

Mr Pollock: Clause 56 deals with work experience and the like. There will be increased conditionality for employment and support allowance claimants in the work-related activity group for the introduction of work-related activity regulations. For the first time, those who are able to prepare to return to work will be required to do so when it is reasonable. Claimants will receive support to get back to work that is tailored to their own particular circumstances. We expect to use the powers flexibly so that the adviser can devise tailored action plans for each claimant. The nature and amount of work-related activity that is required can vary for each individual. However, the requirement must always be reasonable in the individual's circumstances.

Clause 56 makes provision for us to make it clear that work-related activity can include work experience and work placements for employment and support claimants in the work-related activity group. It is necessary to make it expressly clear that, although it remains unreasonable to require those claimants to undertake actual work, it may be deemed reasonable — depending on an individual's circumstances, obviously — to require them to undertake work experience or a placement to meet the requirement to undertake work-related activity.

The inclusion of clause 56 simply avoids the question of doubt over whether someone with limited capability for work can be required to undertake those activities to help them to prepare for work. We want to give advisers, both in jobs and benefits offices and jobcentres, as much flexibility as possible to require the work-related activity that they think would be most effective in moving a claimant back to work. Any activity that is required of the claimant, including work experience or placement, must be deemed as reasonable in the individual's circumstances.

Advisers would work with each individual to understand his or her capabilities. Work experience and work placements help claimants to understand more about their career options and skills, increase their confidence, provide valuable work experience and make them more attractive to employers. They will not necessarily be more demanding than any other forms of work-related activity. They could take many forms and do not need to be full-time. The focus of placements would be on learning new skills and getting experience of the workplace — quite different from the more taxing demands of actual work, which would normally require a longer-term and less flexible commitment, with much higher expectations of the individual.

Mr Copeland: Michael, does that cut across or have any bearing on the current work that is permitted under the employment and support allowance? If you have limited capability, you can work up to 16 hours a week for £99·70 a week for up to a year. If you are in the support group, you can do that almost indefinitely. Is there any inference to be drawn? If someone is, let us say, in the support group, and he or she undertakes permitted work within the terms of the current legislation, is there any likelihood that that person who is involved in that process might be called to enter into some other sort of training? Will permitted work as it is now continue under the new benefits?

Mr Pollock: I think that it will. Colm, do you know anything about permitted work? My notion is that, because permitted work is permitted, effectively, by the client adviser and must have some added value for individuals, such as improving their skills or keeping them in touch, it could form part of —

Mr Copeland: However, it allows people in a support group, who are not required to attend work-related interviews, to derive an income of up to £97 a week for 16 hours. They can do that forever, essentially.

Mr Pollock: You asked some questions about permitted work last week when we were here. We are researching the answers to those questions. Therefore, we will wrap the whole thing up when we come back to you formally on those questions.

Mr Copeland: Thank you.

Mr F McCann: I want to raise an issue that has sort of been raised before: the ability of the client adviser to determine the level of work that a person can do. What training do advisers receive to deal with people with various illnesses? That goes back to the whole question that Mickey raised about assessing somebody who is bipolar, somebody who suffers from autism or somebody who has some other mental health difficulty.

There is also a problem for people with physical health problems. Mickey has also said previously that this is not about helping people to live with their illness; rather, it is about the work that they can do with their illness. What training do the client advisers go through? Is there anything on paper that specifies the level of training required? Is there a two-week course, a six-week course or a longer course so that client advisors are able to determine how a person's illness is affected by work-related activity?

Mr Pollock: We have already asked the question about the client advisers and their particular training programme, and I think that it was raised again last week. We have a response to that, which we will be formally coming back to you with in writing. It explains that client advisers undergo a fairly extensive training scheme. Presumably, that incorporates up-to-date training methodologies.

I do not know whether the specifics of incapacities, particularly mental health disability, are covered by the training. Certainly, it is not in the response that we have received. We will build on that detail to see whether we can give you those sorts of assurances. The idea is that the client advisers need to possess the relevant information before they can take informed decisions on what is suitable for a claimant.

Ms M Campbell: They also take into account the medical assessment — the work-capability assessment.

Mr F McCann: Questions have been raised about serious flaws in the work-capability system and over how it has been handled. Therefore, I do not place a great deal of store in the system's ability to deal with the problems that I have outlined. Mickey talks of people being treated abominably when they have gone through the assessments.

I would like to see something that we asked for in 2007. At that time, we were told, "Don't worry about it. There will be training so that the client advisers will be able to make those decisions." I have spoken to people who have difficulties in dealing with people who come in with illnesses, mental or otherwise, and assessing them for work. It baffles me that doctors can say that they think that someone is not capable of work, yet somebody who gets four-to-six weeks training can say, "I believe that the person is capable of work."

Mr Pollock: Undoubtedly, as a public representative, you will get the cases where things do not work out according to plan. We need to look at particular issues around mental health to see whether there are those sorts of provisions in client adviser training.

The Chairperson: This is a substantive point that has been raised on the record. What we will have to do eventually is say what we are going to do about these things. Are we clear that we know what this is supposed to do?

Mr F McCann: I would like to see the type of training that is given to advisers, find out how long it is for and who provides it.

The Chairperson: We are expecting a full response, because it is a substantive and a contentious issue.

Mr Brady: We are not dealing with isolated cases. There are quite large numbers of cases, and this highlights the flaws in the clause.

We talk about permitted work, but it was called "therapeutic allowance". The idea was that people, particularly those with mental health issues, such as depression, would be able to get some relief and get out of the house. The work would be therapeutic in the sense that it would offer rehabilitation and help towards getting them on to an even keel. I cannot imagine that those people would be allowed to continue on under this regime.

Mr Pollock: I appreciate that. The only point that I am making is that you would hear about only those for whom it does not work out according to plan.

Mr Brady: The point that I am making is that there are quite large numbers of them.

The Chairperson: That is not specific. I am not going to parry you on that, but that is not necessarily the case. We are all aware of cases that do work out.

Mr Douglas: I would like to know something. I was going to take on a young person from the Step Ahead programme, through DEL, but politicians and MLAs were not allowed to take on anybody. Will it be the same in this situation?

Mr Pollock: Will what be the same?

Mr Douglas: Someone with an interest in politics, for example, might want to work in my office. Could I let them work on reception to try to give the person some work experience? There may be jobs coming up in the political sector. Would we be eligible to take someone on? There was some legal question about us taking somebody on from the Step Ahead programme.

Mr Pollock: We can perhaps talk about that outside. I cannot imagine that it would be good for anybody's health to go into politics for work experience.

Mr Brady: It was probably thought that you would be a bad influence on them, Sammy.

Mr Douglas: I had a young fella who had gone through a heart transplant recently. He actually died last Sunday. He was with me for a year. He was very limited, but he was able to sit at a desk, interview people and do reception. Getting him out of his house was the best thing for him, apart from anything else.

Mr Pollock: The limitations would tend to relate to the individual's capabilities.

Mr Douglas: Are you talking about learning difficulties?

Mr Pollock: They would relate to their particular condition rather than to the occupation.

The Chairperson: Sammy, you were wondering whether there would be an exclusion in place from working in politics. You are not sure, Michael; you are shaking your head. You are not aware of it.

Mr C McLaughlin: We will check that with DEL. It might be able to give us some guidance on that.

Mr Douglas: I suppose that the question is that if we were not allowed to take someone from the Step Ahead programme in the past but allowed to do it here, there must be anomalies.

The Chairperson: Fair enough; it is a good question. Why would someone not be able to take up a post in your office, apart from the fact that you would work them too hard?

Mr Pollock: Clause 57 is good news, of a type. It introduces a hardship payments regime for employment and support allowance, which did not previously exist. In context, the reform agenda announced the intention to raise the amount of sanctions that would be imposed on claimants in the work-related activity group. Sanctions apply where claimants fail to meet their responsibilities.

Under the proposed new system, sanctions for that group, in most cases, would be open-ended until the claimant recomplies with requirements for a short fixed period thereafter. Although the consequences of non-compliance are made stronger, we want to improve the incentive to re-engage with the requirements. Alongside those reforms, we recognise the need to protect those who are sanctioned from falling into hardship. The clause also provides for hardship payments for employment and support allowance claimants. Many aspects of the system would be similar to the current arrangements under jobseeker's allowance. For example, in determining whether the person is, or would be, in hardship, we would continue to look at matters such as the level of resources available to the claimant's family and the risk that, without hardship payments, such essential items as food, heating and accommodation might not be available to the claimant or the family, or be available at considerably reduced levels.

We now intend to set those matters out in regulations. We expect the rate of payments to be broadly similar to the current rates within jobseeker's allowance. However, unlike payments to jobseeker's allowance claimants, hardship payments under proposals in the new scheme would not be recoverable under the employment and support allowance.

Mr Brady: Would it not be simpler not to sanction them in the first place and save all that money that is spent on staff having to check up —

The Chairperson: Just ask a question or ask for clarification.

Mr Brady: I would like clarification. Presumably, it will take a period to put the sanction into place, and the person will become aware of that. It may take a while for the hardship payment to kick in. It may take a week or two. I suppose that it goes back to Fra's point. If staff are going to investigate, how long will the person have to wait for the money that is meant to alleviate the hardship? Surely, that is the point of having it.

You mentioned ESA. Are there any other recoverable benefits?

Mr Pollock: Jobseeker's allowance.

Mr Brady: It is only ESA that it will not be recoverable from. What is the rationale for that?

Mr Pollock: It is possibly the fact that you are dealing with particularly vulnerable clients.

Mr Brady: You could be dealing with vulnerable clients who are signing on.

The Chairperson: There was a question in there around time lapse, which goes back to Fra's point.

Mr Brady: It goes back to what Fra said the last time.

The Chairperson: That been addressed for now. Fair enough.

Mr Pollock: Clause 58 deals with the claimant's responsibilities for employment and support allowance. As Martina mentioned earlier, universal credit will replace income-related employment and support allowance. As with jobseeker's allowance, employment and support allowance will become a contributory benefit only.

Clause 58 aligns the work-related requirements and sanctions that can be applied to claimants of contributory employment and support allowance with those for similar claimants under universal credit. That is equivalent to the changes to jobseeker's allowance made in clause 50. It replaces the current provisions for employment and support allowance. Although the clause generally mirrors universal credit provisions, the number of differences is worth noting. No employment and support allowance claimant will be required to search for or be available for work, so clause 58 does not include parallel

work-search or availability requirements. As a result, the higher-level sanction cannot be applied to an employment and support allowance claimant who fails to meet his or her particular requirements.

Some ESA claimants will not be subject to any work-related requirements. That will, of course, include those who are found to have limited capability for work-related activity and fall into the support group.

Claimants with substantial and regular caring responsibilities, or lone parents or main carers of a child under the age of one, will not be subject to any requirements. Lone parents or main carers who have limited capability for work or are responsible for a child over the age of one and under the age of five will be subject to work-focused interview requirements openly. All other claimants who are found to have limited capability for work may be subject to work preparation for work-focused interview requirements.

It is also worth making clear that, although there is no provision for hardship payments in the clause, other provisions in the Bill will ensure that employment and support allowance claimants who meet certain conditions will be able to access hardship payments through a claim for universal credit.

Mr Brady: I want to clarify something. The Welfare Reform Act 2012 explanatory notes state:

> *"Claimants receiving ESA may be subject to a sanction for an open-ended period until a compliance condition is met, for a fixed period of up to 26 weeks or a combination of both."*

Does that mean that it will be open-ended indefinitely?

Mr Pollock: It is indefinite in so far as the expectation will be that it will encourage the individual to re-engage with the service.

Mr Brady: Presumably, if it is does not, it could last for forever and a day.

Mr Pollock: Hopefully not.

Mr Brady: According to how it is worded, it could, technically. You could be sanctioned for four years rather than three, if you did not comply. That is a possibility. I just wanted clarification on that.

Mr Pollock: Clause 59 deals with entitlement of lone parents to income support. Legislation currently provides that income support must be made available to lone parents with a child under the age of seven. The clause lowers that age to five. There has been a gradual reduction in the age over a number of years. The intention now is that lone parents with children aged five or over will no longer be entitled to income support solely on the grounds of lone parenthood.

Support for those lone parents will be available through jobseeker's allowance or employment and support allowance, if they meet the relevant conditions of entitlement, or through income support, if they qualify on grounds other than lone parenthood, notably if they are carers. Policies for lone parents are based on the key principle that work is the purist and most sustainable route out of poverty. The intention is to align the age at which lone parents can reasonably be expected to work with the time that their youngest child enters the education system — school.

The Chairperson: OK, fair enough. We move on to clause 60.

Mr Pollock: Clause 60 introduces the claimant commitment for income support. Again, that is to try to align the existing benefits with the start-up for universal credit. The claimant commitment will be a record of the claimant's responsibilities that sets out the requirements placed on them and the consequences of failing to meet them. It will be reviewed and updated as necessary, except when the claimant commitment will be a condition of entitlement for income support. That ensures that income support claimants will have to consider and understand their own responsibilities at the beginning of their claim and when the claim is upgraded. Beyond the need to accept the commitment, the clause does not change the conditions of entitlement for income support or the requirements that income support claimants must meet.

Mr Copeland: I want to jig back to what we talked about last. Benefit payment, in some cases, can influence accessibility to preschool and playschool groups and put the ability to get a place above and

beyond others. Will that change impact on people being able to access preschool and nursery groups? It is bound to.

Mr Pollock: It depends on the conditions of the nursery. I do not know that there are hard-and-fast rules for nursery places. Do you know, Martina?

Ms M Campbell: That is an education matter.

Mr Pollock: It is a matter for the Department of Education.

Mr Copeland: There is a perennial problem in east Belfast that, to the exclusion of local children, children are being placed in nursery schools on the basis that their parents are in receipt of income support.

The Chairperson: I presume that that will fit into the category of passported benefits.

Mr Pollock: And that is a much wider issue.

The Chairperson: I presume that that is where that will have to be addressed.

Mr Copeland: I am happy *[Inaudible due to mobile phone interference.]* .

Ms M Campbell: It is the Department of Education that sets the criteria, or at least the guidelines, within which each school operates. It is not us.

Mr Copeland: The benefit is changing. Will it be used as a matter of course?

Ms M Campbell: Yes. Any Department that uses social security benefits as a criterion or an automatic lead-in —

The Chairperson: With respect, it is the other way around. The destination of the Department is as a result of a passported benefit, so the issue starts with this Department and the welfare reform change. It is the benefit that will determine entitlement, or not, beyond that. Therefore, Michael's question is very relevant.

It does not matter what the Department of Education might do next week as a result. It will have to do that. A number of Departments will have to take a political decision. The Department of Finance, the Department of Health and the Department of Education are all currently considering what they might have to do if the Welfare Reform Bill is enacted. Those Departments will have to decide what the consequence are for them. They are not causing the problem, but they will be in receipt of it. Therefore, the problem starts here.

Ms M Campbell: It is a moot point whether or not they are causing it. They have chosen —

The Chairperson: It is not. It is a very important point.

Ms M Campbell: They have chosen to use receipt of social security benefits as a means of automatic entitlement. It is not this Department that does that. That is something that each individual Department decides.

You are exactly right to say that it is a matter for the Executive to consider the consequences of the changes in the Bill for individuals Departments that choose to use receipt of social security benefits as a means of deciding entitlement.

The Chairperson: However, it is beyond the issue that you raised. There is a range of passported benefits, and it starts with the benefits system and eligibility. A Department might use the criteria of another Department. Free school meals is an example of that. However, these clauses will determine whether someone is eligible or not. That is Michael's question. That is all that we need to establish here. Whoever else has to worry about the consequences has to worry about them. We have addressed what is a likely consequence. We are trying to establish whether that is what this clause will do. Whoever has to pick up the pieces is another issue, and I am not getting into that discussion.

Mr Pollock: Martina touched on this earlier when she talked about universal credit, which is available to both out-of-work and in-work low-income families. The population in receipt of universal credit could be a lot more than those who receive out-of-work benefits now. Therefore, in theory, low-income families could qualify for some of the passported benefits, such as preschool places.

Departments are having to put their thinking caps on and consider what would be the financial consequences of their opening the door rather than saying that it must be someone who is in receipt of ESA or JSA, which means that you have x number of people. Departments are not quite sure how many people will qualify for universal credit award, so they do not have a full idea of the financial consequences for their departmental spend.

The Chairperson: OK. I go back to the point that a Department may use this for eligibility for something else. However, the difficulty for some people — and Michael put his finger on it — is that the clause removes that entitlement. At the end of the day, that is what it does. That is the point that Michael was making.

Mr Copeland: Essentially, yes.

Mr Brady: At the moment, the main qualifying benefit for passported benefits is income support. Income support is disappearing and being subsumed into universal credit. Therefore, Departments will have to come to some new arrangement about what benefit is the qualifying benefit. That is the important issue.

Mr Pollock: Well, that is if they even use benefits at all. They may have some other more discerning arrangement. A process has evolved over a number of years — probably decades — whereby Departments have said that if you are in receipt of incapacity benefit, income support or a supplementary benefit, you are automatically entitled to a free school uniform, free school meals or whatever. Social security benefit was usually the easiest tag to hang those things on. The Department of Education, for example, could start with a clean sheet of paper now and say that, unless you have six kids or live in a certain area, you are not entitled to free school meals. A Department could redefine the qualifying criteria for a particular passported benefit.

Mr Brady: Or they could abolish passported benefits altogether.

Ms M Campbell: That will be a matter for the Executive. It has been discussed in the Executive subcommittee on welfare reform.

The Chairperson: They will pick up the tab for it, too.

Mr Pollock: Clause 61 deals with entitlement to work. Under current legislation, there is a possibility that people who are, or have been, working illegally could access contributory jobseeker's allowance. Under current legislation for contribution, an inference can be drawn that a claimant must have entitlement to work through the requirement to be available to work. This is for clarification, to put it beyond doubt and to introduce a specific condition of entitlement that states clearly that, to become entitled to this benefit, a person must have entitlement to work.

It is around residency conditions. There was never any policy intention that a person with no entitlement to work in the UK should receive out-of-work benefits. This new condition of entitlement will ensure that that situation can no longer arise.

The exact same issue is covered in the clauses for employment and support allowance, which is dealt with in clause 62, and for maternity allowance and statutory payments under clause 63.

Mr Brady: Presumably, if you have no entitlement to work, you have not made contributions. Therefore, are they looking at people who worked and paid contributions but were working illegally? Some people have their passports stamped to show that they can work but do not have recourse to public money or benefits. Does it apply to habitual residents? It is not clear. People coming to England, the North or wherever could have stamped on their passport that they are not allowed to have recourse to public funds, but they may be entitled to work, because they have a partner or some such reason. Presumably, they could work and get contributions.

Ms M Campbell: Yes.

Mr Brady: Would that debar them from that recourse to public funds when they eventually qualify? Under European Union legislation, contributions are transferable.

Mr C McLaughlin: It is supposed to. The problem with immigration authorities and us is that, as you say, Mickey, people are allowed to enter a country but there should not be recourse to public funds. If they go ahead a do a job illegally and the employers give them contributions, by our social security law, they are entitled to contributory benefits, despite the fact that the immigration authorities have said that they should not have recourse to public funds.

Mr Brady: People from some of the non-accession countries such as Albania and Romania were entitled to come in and work but did not have recourse to benefits or public funds. That is borne out by cases that I have dealt with. In one case, a Romanian baby was getting inoculated and, when the practice found out that Romanian people were allowed to come in and work but did not have recourse to the National Health Service, for instance, it stopped giving the baby the vaccinations. That is the kind of situation that is evolving, and it will probably happen more. Presumably, that is aimed at those cases.

Mr C McLaughlin: Yes. If people are not legally entitled to live here, they should not be getting anything.

Mr Brady: Obviously, they did not after the practice found out. The baby got one injection and that was it. It is abhorrent that that should happen.

The Chairperson: Michael, did you suggest that you were doing clauses 61, 62 and 63?

Mr Pollock: Clauses 61, 62 and 63 are all of the same policy intent. Clause 61 deals with jobseeker's allowance, clause 62 deals with employment and support allowance and clause 63 deals with maternity allowance and statutory payments. As I said, that is to regularise the position to determine who is entitled.

The Chairperson: We have completed up to and including clause 63. We will break for 10 minutes and start at Part 3, which deals with other benefit changes.

Committee suspended.
On resuming —

The Chairperson: We are back in play. We will move to Part 3, which concerns other benefit changes. It starts with clause 64.

Mr Pollock: Before we move on, I want to clarify something about clause 53, which relates to further entitlement after time-limiting under ESA. If someone is moved into a support group, that is when their period of requalification for the contributory support allowance would be reinstated. It would be in place only for the period in which they are in that support group, not for a further 365 days, which we possibly said.

The Chairperson: OK. That is understood. Thank you, Michael.

Mr Pollock: We are moving to Part 3, which concerns other benefit changes. Jane Corderoy, who will lead on parts of this, is with us. I will be dipping and out as well. I will hand over to Jane to deal with clauses 64 to 68, which concern industrial injuries benefit.

Ms Jane Corderoy (Department for Social Development): Clause 64 repeals the legislation that maintains a separate scheme for providing no-fault compensation for work injuries that occurred before 1948. At present, there is separate provision for state compensation to be paid for accidents and diseases picked up at work that occurred before 5 July 1948 through the Workmen's Compensation (Supplementation) Scheme 1982. The scheme is known as the pre-1948 scheme. When this provision comes into operation, existing payments and claims for no-fault compensation for

work injuries will be dealt with as claims under the main industrial injuries disablement benefit scheme, regardless of when the disease or accident occurred. That change is about removing unequal treatment and ensuring that everyone who is injured through their work is treated fairly. Essentially, it provides for the pre-1948 scheme to be abolished and responsibility to be transferred to the main industrial injuries benefit scheme. It will simplify and rationalise the scheme, reducing the complexities caused by separate schemes, with the aim of making it easier for claimants to understand. No one will lose out financially. New claims under the pre-1948 schemes are now extremely unlikely. Any current claims will receive the same rate of payment as they are currently on or a slightly higher rate. The clause enables the Department to make regulations, subject to negative resolution, with the aim of ensuring that new and outstanding claims are made, decided and appealed under the same rules.

Mr Copeland: Does that impact on reduced earnings allowance that flows from the *[Inaudible due to mobile phone interference.]*

Ms Corderoy: I do not think so.

Clause 65 removes the lower rate of industrial injuries disablement benefit that is payable to those who are under the age of 18. That means that all successful claimants, existing and new, will, in future, be paid at the normal industrial injuries disablement benefit scheme's rate, whatever their age. At present here, there are no claims to the lesser rate of payment for people who are injured and under the age of 18, but that may not always be the case. There is no reason why payments should vary on the grounds of age; everyone who is injured through their work should be treated equally and paid on the same basis. People suffering the same effects of any injury should receive the same rate of payment, whatever their age. Claimants under 18 will, in future, receive the same rates as people aged over 18. That will simplify the administration of the scheme and remove unjustified discrimination against those who are under 18.

The Chairperson: Are members happy enough?

Members indicated assent.

The Chairperson: OK. We will move swiftly to clause 66.

Ms Corderoy: Clause 66 makes provision to enable trainees to be paid under the main industrial injuries disablement benefit scheme. Currently, because trainees are not employed earners, as is required by the existing legislation, they are not entitled to the main scheme but are required to apply to the analogous scheme, which is designed for those very few trainees who are disabled by an accident at work while participating in certain training schemes or courses. That is provided for by the Industrial Training (Northern Ireland) Order 1984. The scheme for trainees is being abolished, and responsibility will transfer to the main industrial injuries disablement benefit scheme. Trainees will, therefore, be treated as if they are employed earners and so will be eligible to claim under the main scheme. All claims will, in future, be made and decided using the same rules that apply to industrial injuries disablement benefit. No one here will lose out financially. Both schemes are identical, and the scheme for trainees has the same basic rules and payment rates as the main industrial injuries disablement benefit scheme. Payment levels will not need to be altered.

Subsection (3) provides for regulations that are subject to negative resolution. The regulations will enable trainees to be treated equally as if they are employed earners under the same rules that apply to industrial injuries benefit. The aim of the clause and the regulations is to simplify and rationalise the scheme by reducing unnecessary complexities that are caused by running more than one scheme for the same purpose. It will make the scheme easier for claimants to understand and claim under and easier for staff to administer.

The Chairperson: Thank you. If members are content, we will move to clause 67.

Ms Corderoy: At present, industrial death benefit is paid to widows or widowers for industrial deaths that occurred before 10 April 1988. Claims in respect of deaths after that date are paid for under the bereavement benefit provisions. There have been no new claims for industrial death benefit in many years. Any new claims are now extremely unlikely as the death would have had to occur before April 1988, which is almost 25 years ago. Clause 67, therefore, removes the right to claim industrial death

benefit. Payment will still continue on the existing caseload, so no one will have a reduction in payment. Essentially, the removal of that redundant right to claim industrial death benefit removes unnecessary legislation from the statute book.

Mr Copeland: I wanted to check about civil partnerships. Saying widows or widowers suggests marriage, but that is being taken out of the equation. Is anything being put into the equation?

Ms Corderoy: No, it will be replaced by bereavement benefit provision.

Mr Copeland: Will civil partnerships be recognised for that aspect?

Ms Corderoy: Yes.

Mr Brady: Industrial death benefit was specific to somebody who died in the course of their work and, in some cases, could have been payable if their work involved travel to and from work. It was quite complex in that sense. With bereavement benefit, which is essentially for the surviving partner, I wonder, from a legal point of view, about a legal claim for compensation. Industrial death benefit was quite specific in that it was relatively easy to prove that the death had been directly as a result of an industrial action. Bereavement benefit is different because it really replaced the old widows' benefit, and survivors' benefit basically came into being because men, as a result of a European court case, were able to claim widowers' benefit. How might that impact? Has that been factored in or thought about?

Ms Corderoy: I think that it has, yes. These are just technical things that are tidying it up.

Mr Brady: It could make a difference in some ways. That particular benefit was specific for death caused by an industrial action, as opposed to bereavement benefit, which is a totally different concept. We need to clarify that.

Mr Copeland: Will there be any changes to the perceived entitlement where, for example, a man or woman has disappeared and, after 30 or 40 years — this question is based on a real set of circumstances — the surviving partner has been informed by the Historical Enquiries Team (HET) or the police that the deceased partner is presumed to have been murdered but no death certificate has ever been issued because there is no body available? How do you establish whether there is an entitlement to that sort of benefit?

Ms Corderoy: This Part relates solely to industrial injury.

Mr Copeland: Is this not now going to partners? Sorry, you are right. I will ask you the same question outside because it is exercising me slightly at the minute.

Ms Corderoy: If you ask me, I will find out.

Mr Douglas: I have a question about deaths before the date. I knew some people who died of airway disease or an asthma-type disease before that date, and their families are still pursuing that even though it happened then. Does that mean that it just stops for them? One example involves the old Belfast Corporation. The family was trying to get records, and I know of someone who worked in Belfast Gasworks. I know that it is a lot of years ago, but some of those people are still widowers in their 80s or 90s.

Mr Copeland: Pleural plaques and asbestosis are the same.

Ms Corderoy: Has a death occurred because of that?

Mr Douglas: Yes.

Ms Corderoy: OK.

Mr Douglas: They are trying to prove that it happened because, for example, the person worked in the gasworks.

Ms M Campbell: They are getting normal bereavement benefits now. If that is proved, any difference in money will be paid. We can check that as well.

The Chairperson: OK. We will move to clause 68.

Ms Corderoy: Clause 68 abolishes the right to request an accident declaration. It has no effect on a person's right to claim industrial injuries disablement benefit in respect of that accident. To do that, it repeals article 29(2) of the Social Security (Northern Ireland) Order 1998. This provides for people to apply for an accident declaration confirming and recording that an accident has occurred without claiming industrial injuries disablement benefit at the same time.

If an accident causes disability at a later date, it will be investigated and decided upon in the usual manner by a decision-maker at the time of the claim. All available evidence is considered in all cases at the time a claim is made. The lack of a declaration will not in any way disadvantage or affect the claim. The decision is already made in the majority of claim cases when no accident declaration exists, irrespective of when the accident occurred. It is about simplifying processes, and the provision removes the need for separate decision and storage, meaning that the claimant only has to contact the Department once.

Mr Brady: I have a question about unforeseen aggravation. Is that encapsulated in the legislation? For example, somebody could break their arm in an industrial accident, and, 10 years later, directly as a result, they could develop arthritis, thereby restricting the use of that arm. Provisions are in place at the moment to deal with that. People can go back and, because the Department has a record of the accident, which would have checked with the employer, it is easier to prove in a sense. If you do not have an accident declaration, effectively, it may abolish the right to claim for unforeseen aggravation.

Ms Corderoy: We are assured that employers keep records of accidents at work under section 6 of the Social Security Administration (Northern Ireland) Act 1992. That would suffice as they keep a record of all —

Mr Brady: It is my understanding that, in the initial stages of this, the right to claim for unforeseen aggravation was to be abolished. Is it possible to get clarification on that? Obviously, there are people who are making claims now for something that happened maybe 15 or 20 years ago because, as a direct result of the original industrial injury, other conditions have developed.

Ms Corderoy: I think the decision-maker will investigate all the evidence at the time. You are saying that would be a problem because there is no declaration, but we feel that the information would already be recorded by the employer.

Mr Brady: Again, that will require enforcement around the employer actually recording it. The legislation will abolish the right to request an accident declaration, so you are really relying on the efficiency of the employer. With respect, that is not a cast-iron guarantee, because the employer may not do it. Over the years, I have dealt with loads of cases where people go to the employer and report an accident but it was not recorded. It will rely on enforcement. I would like clarification on that point.

The Chairperson: We will move to clause 69.

Mr Pollock: I will deal with clause 69. It is another nice and contentious one about housing benefit. There has been lots of discussion in Committee and elsewhere around housing changes in particular. Clause 69 introduces two particular changes. One is the uprating according to the consumer price index instead of the retail price index. That is in line with other operating changes being applied across the board to other benefits.

The second is the change that affects the working age claimants who are living in a social rented sector house. Housing benefit claims will be limited to reflect household size as now happens in the private sector, though there will be no equivalent of the shared accommodation rate, which, again, the Committee will be familiar with.

The local housing allowance size criteria will be used to determine whether there is underoccupation. It is a more generous measure than the bedroom standard, as, for example, it allows an extra room for adults aged between 16 and 21, as it is under the bedroom standard.

There will be two different percentage reductions made to the maximum housing benefit available. Generally, that is the amount of eligible rent that they could claim. It is based on whether the claimant is underoccupying the property by one bedroom or two. A 14% reduction will be made for people who underoccupy by a single bedroom, and a 25% reduction for underoccupancy of two or more bedrooms.

It is a new approach to housing benefit in the social sector, and it is acknowledged that it will have a significant impact on various levels, as a large number of claimants could be affected. The average amounts of reductions in housing benefits are estimated at around £11·50 a week or £15 a week based on 2013-14 prices. The details of the policy will be set out in secondary legislation through regulations.

Mr Copeland: Michael, I will put a few possible scenarios to try to establish the reality of this. In a situation where the Housing Executive has built a downstairs bedroom to be used by a disabled person, which renders an upstairs bedroom no longer occupied, would a reduction in housing benefit apply? Secondly, would it apply in a case where a single mother or father or, indeed, a new family has access or occasional access to children from previous relationships? *[Inaudible due to mobile phone interference.]*

Ms M Campbell: Foster carers, from memory of the last time.

Mr Copeland: The other situation is that of a disabled person who, by reason of physical or mental disability requires someone to stay overnight to attend to their needs.

Mr Pollock: There is provision in housing benefit legislation for a rate for an overnight carer, although it feels a bit incongruous if you are a carer and are charged with looking after someone. On separation or access to children, housing need is ordinarily based on whoever is regularly domiciled in the house.

Mr Copeland: Does two nights every week constitute "regularly"?

Mr Pollock: It would be the main residence. It would relate to whoever resides in the house for the majority of the time.

Mr Copeland: Would the reduction apply to a situation where a downstairs bedroom or shower room was built for someone by the Housing Executive, thereby freeing a bedroom upstairs? Again, that would probably give rise to underoccupancy, but, in my view, there would be a justifiable cause in the circumstances.

Mr Pollock: On the generality of the clause, we have not gone about setting out broad categories for exemptions. In due course, in GB and here, there will be the application of discretionary housing payments. For example, people with shared responsibility for children could possibly access discretionary housing payments for making up rental shortfall.

Mr Copeland: Would the money available to satisfy the need for discretionary housing payments match the need before it ran out?

Mr Pollock: That is still all up for grabs. The detail of how this would be applied in a particular situation in Northern Ireland in the social sector with the available housing stock is still to be thrashed out.

Mr Copeland: Lastly, will that affect people who are of a pensionable age and in receipt of pension? A lot of pensioners find themselves in properties that their families grew up in. Possibly, their partner has died. Will they be included in this? In some cases, they could have one or two or three bedrooms empty.

Ms M Campbell: Only where one partner is under pension age and in receipt of universal credit.

Mr Copeland: That situation would cease when they achieve pension age?

Mr F McCann: The clause mentions the determination of appropriate maximum. You gave a figure for what is being called the bedroom tax. Have you worked out how much people will lose in housing benefit by the new determination under clause 69?

Mr Pollock: Under the operating —

Mr F McCann: Yes. It goes back to the debate we had earlier on. People are being told that the changes are reforms, but the vast majority of the stuff that we are dealing with points to reductions. In clause 69, there is talk about liabilities to pay rent, and built into that has to be a reduction, given the way it is laid out. Will you check for me?

Mr Pollock: I will. This Committee and the Assembly would have approved the regulations that effectively set a baseline to allow it to operate using the consumer price index. So, those baseline figures would have been set out in April last year. We will be using the consumer price index from this September to operate from next April.

Mr F McCann: Where the clause says "Executive determination", is it talking about the Executive here or the Housing Executive?

Mr Pollock: The Housing Executive.

Mr F McCann: If this has been worked on, you must be able to get a figure for the reduction in benefit.

I will move onto the bedroom tax. I asked in the Assembly last week about the rooms that people call "box rooms", which are found in most of the older Housing Executive and housing association properties and usually measure 8 feet by 10 feet. Are those rooms going to be reclassified? For many people, those rooms are large storerooms rather than bedrooms.

Mr Pollock: That has been mentioned. I do not think that DWP has issued any particular guidelines on what constitutes a bedroom. We are looking at the issue of box rooms and what is the appropriate size for a room to count as bedroom.

Mr F McCann: What were the two figures you mentioned for the cost of underoccupancy? You said there would be a 25% reduction in benefit for two rooms.

Mr Pollock: A reduction of 14% for one bedroom, which is around £11·50 a week. The majority of individual claimants are likely to experience losses of less than £15.

Mr F McCann: For two bedrooms, it is £11 a week.

The Chairperson: It is £15 a week.

Mr F McCann: That is £60 a month.

Mr Pollock: Possibly, yes.

Mr F McCann: That all boils down to the debate about the number of people who could lose their houses because they were in arrears. That is taking £60 a month from a benefit that is already stretched. In addition, people cannot necessarily move from area to area due to the legacy of the Troubles, which places a major difficulty on them. People will be getting £60 a month deducted from their benefits. What level of arrears could you build up before action is taken? The £60 a month will have a knock-on effect for people. Will you check that out for me too?

Mr Pollock: The level of arrears you can build up?

Mr F McCann: Yes.

Mr Pollock: I will certainly have a wee look at that. As you know, nothing about housing is simple in Northern Ireland.

Mr F McCann: I appreciate that.

Mr Pollock: The Minister has his own views on direct payments, the Housing Executive and the housing stock. Those are all interlinked with this, but the general premise of the reforms, and particularly the housing benefit reforms, is to make things fairer for the taxpayer. A family on a certain level of income should not be disadvantaged. A family on benefits should not be able to afford a house better than someone's who is getting a certain level of income.

Mr F McCann: That goes back to the issue of it being a punishment.

The Chairperson: That has been well flagged up and identified as an issue. However, the clause is designed to do certain things. Regardless of whether we agree with the reforms, the points have been made, so we are not going to have debate on whether they are a punishment. I accept what you said entirely.

Mr F McCann: I have heard that upwards of 40,000 tenants will be directly affected by that. It goes back to the discretionary payments that Michael mentioned, and they are paid at the full rate for the first 13 weeks, 80% for the second 13 weeks, if you apply, and then nothing after that. So, there is no safety valve in there for the continuity of payments. For many people, all you are really doing is putting off the inevitable.

The Chairperson: OK. The point is well made.

Mr Pollock: We are getting considerably lower figures than the 40,000 that you are suggesting, but rest assured that we will come back and forward to Committee with further clarification.

Mr F McCann: What figures are you getting, Michael?

Mr Pollock: I do not have them in front of me, Fra. I cannot quote them.

The Chairperson: That will form part of people's arguments. People will argue for or against this, but what we are trying to establish here is cut and dried, and that is the purpose of the clause as stated. People can clarify what they are not sure about. People can argue for or against the provisions, but that is another day's discussion and a separate day's work entirely. I want to steer clear of all that.

Mr Douglas: We are still on clause 69, is that right?

The Chairperson: Yes.

Mr Douglas: Michael, this other paper says:

> *"the Department may make regulations that limit the amount of housing benefit other than by reference to an Executive determination."*

It says "may"; it does not "will". Is the flexibility there? Secondly, what does that actually mean?

Mr Pollock: What are you reading from?

Mr Douglas: It is 244. This big one.

The Chairperson: Did you say 244?

Ms M Campbell: Is it 344?

The Chairperson: Is it 334?

Mr Douglas: No, it is in this other paper.

The Chairperson: Are you on the explanatory memorandum? It is on page 50, is that right, Sammy?

Ms M Campbell: Is it 334?

Mr Douglas: It says 244 on mine. It is Part 3, clause 69, housing benefit determination. Do you want a wee duke at this?

The Chairperson: Share it over there, Sammy. The one we have is page 50 of the explanatory memorandum. It is 344 on page 50. It looks like you are reading a different paper.

Mr Douglas: It is under clause 69, Chairman, on housing benefit. Do you want to leave it until later on?

Mr Pollock: I will take a wee look at it and check with you later. It is 335 in ours. I am not sure about the detail of it. That is the standard reference grid point at the minute. I am not sure of the exact detail, but I will come back to you on it.

The Chairperson: Are you happy to get a response later, Sammy?

Mr Douglas: Yes.

Mr Brady: I want to come back to a point that Michael raised. The alternative accommodation issue is for another day, but a disabled facilities grant is a legal entitlement from the Housing Executive. Will that be factored in to alternative accommodation if money has been spent? You may not want to move, or the Housing Executive will not want you to move.

Ms M Campbell: I will pick up on Mr Copeland's point. Where the house has been adapted and public money has been spent on it, that will all be taken into consideration. It is all about good use of public money at the end of the day and that old friend common sense.

Mr Copeland: I refer to 337 on page 51. It is a bit complex for now, but, in the future, we could maybe get further explanation about it. The Housing Executive set the local housing allowance at the moment based on the information that is available to it. That will be transferred to the Department. What methodology will the Department use? Will it use the same figures? What will the impact be of assessing housing benefit not on what the Housing Executive says but, as it states:

"by reference to the lower of either the CPI or the bottom 30th percentile of private sector rents."?

I want to see what that means; there are a lot of words in there.

Mr Pollock: It would be the same process. GB has rent officers; here, that work is done by the Northern Ireland Housing Executive.

Mr Copeland: Will they do it for the Department now instead?

Mr Pollock: That is still in the melting pot.

Ms Corderoy: Clause 70 allows for the abolition of the discretionary part of the social fund. The social fund was introduced more than two decades ago as part of the Fowler reforms of the social security system. Since then, welfare delivery has changed significantly. Clause 70 provides for the abolition of the discretionary social fund by repealing section 134(1)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, which provides for community care grants, crisis loans and budgeting loans to be paid from the social fund. It also abolishes the Office of the Social Fund Commissioner and allows the Department, by order, to make provision for the transfer of property rights and liabilities from the commissioner. It also makes provision for the transfer of money from the social fund into the consolidated fund.

As the Committee is aware, there was a public consultation on the Department's new policy for discretionary support, and details of the proposed new scheme to replace the discretionary social fund will be brought forward in due course.

Clause 70 also provides for schedule 8 to the Bill, if you want the schedules in order. The schedule amends the Social Security Administration Act 1992 as a consequence of the abolition of the

discretionary social fund. Those are minor amendments to clarify or ensure continuing application of remaining powers in sections 74 and 75 of the Social Security Administration Act 1992.

In summary, schedule 8 does three things. First, it clarifies that the reference to payment to meet funeral expenses are those made out of the social fund under the revised section 134 of the Contributions and Benefits (Northern Ireland) Act 1992. Secondly, it clarifies that outstanding existing social fund loans made under the GB legislation can continue to be recovered by deductions from certain benefits payable in Northern Ireland. Thirdly, the amendment to schedule 4 ensures that the Social Fund Commissioner and any staff who have been involved in the social fund will still be subject to penalties for unauthorised disclosure of personal information and data, even when they have finished working in the social fund field and the Office of the Social Fund Commissioner has been abolished.

Mr Brady: Will the Office of the Social Fund Commissioner last for the transition into the consolidated fund, or whatever alternative to the social fund is brought in? Will it go at that stage? Is it only a transitory measure?

Ms Corderoy: Yes. The contract has been extended until the new discretionary fund comes in. I think that they are considering how that will be independently —

Mr Brady: I would like clarity. At last week's long and protracted debate, we were told that the social fund would lose £200 million if the Bill was not ratified by a certain date. Surely, what is in the transition period will carry through until the new consolidated fund, or whatever they will call it, comes into being.

Ms Corderoy: When I mentioned the commissioner, I meant that the commissioner in GB has gone.

Mr Brady: In GB or Britain, or whatever you want to call it, they have gone to the local authorities because they have the infrastructure. We do not. Presumably, the social fund will carry on until an alternative is put in place.

Ms Corderoy: As I understand it, that cannot happen because the money and the IT operational equipment will not be there.

Mr Brady: Surely, it is incumbent upon the Department to get the alternative into place as soon as possible. They told us that it would be our fault, when, in fact, if they do not do the business, it will be down to them.

Mr Pollock: As part of the legislative process, the replacement scheme would be facilitated by a Government amendment at Consideration Stage that will set out the detail of how that is to be handled. That is for the Executive to agree. Once it has been agreed, it can be allocated to the block proper.

Ms M Campbell: Regulations will be brought forward as well, but you need the primary power before we can bring the regulations forward.

Ms Corderoy: Clause 71 extends the scope of budgeting loans from the existing social fund to include maternity and funeral expenses. At present, there are two types of social fund payment: regulated payments in the form of Sure Start maternity grants and funeral payments to meet maternity and funeral expenses, and discretionary payments in the form of budgeting loans, crisis loans or community care grants to meet other needs. The regulated payments are non-repayable and designed to help with extra costs at certain times in a person's life, such as a funeral or a new baby. Budgeting loans as part of the discretionary payments are repayable interest-free loans that are designed to help claimants to meet expenses that are difficult to budget for out of their regular benefit. Currently, payment is not available from the discretionary social fund to help people to pay for any funeral or maternity expenses. This clause will amend that.

Since March 2011, the Sure Start maternity grant has been restricted to the first child in the family. That restriction recognises that families face the highest levels of expenses when a new baby is the only child in a household. Continued support for low-income families at that expensive time is provided for by the £500 grant.

Extending the scope of the budgeting loan scheme to include maternity expenses will provide an alternative source of support for families having their second or subsequent child. Similarly, making budgeting loans available for funeral expenses will be helpful where the full cost of a funeral cannot be met by the funeral payment or the estate of the deceased. That may also reduce the need for some benefit recipients to turn to high-cost lenders when faced with such additional expense in times of need. It will not replace funeral payments or Sure Start maternity grants, which will be unaffected by the change.

Making the change now, in advance of the introduction of universal credit, will not only help people in the interim but will ensure that wider access to assistance is carried forward to universal credit, where budgeting loans will be replaced with an advanced payment of universal credit.

Mr F McCann: I am trying to work this out. What that actually means is that you can still get a community care grant or a non-repayable grant for a funeral payment, but, if it falls short of the required amount, you can apply for a budget loan to make up the difference.

Ms Corderoy: Once this comes in, you will not be able to get a community care grant or crisis loan; however, you can still get the regulated help for funeral expenses or your first baby. That means that you will still be able to apply for a budgeting loan for those things that you would not have been able to apply for before.

Mr F McCann: There will still be part of the funeral expenses that you do not have to pay back.

Ms Corderoy: Yes.

Mr F McCann: In most cases with people on benefit, there is a large shortfall in the amount of money that is required, so you can apply for a budget loan.

Ms Corderoy: Yes. It exists now so that it will be in place for when it goes into universal credit. Clause 72 is a technical amendment that puts beyond doubt that the Department has control over the maximum amounts that budgeting loan applicants can borrow and how those amounts can be arrived at. To do that, the new provisions are inserted into section 136 of the Social Security Contributions and Benefits Act 1992. That section sets out the principles of the determination of the discretionary social fund.

Clause 72(2) makes it clear that directions that are issued by the Department may prevent an award of a budgeting loan being made for an amount above that specified or calculated in a specified way. The provisions inserted by clause 72(3) relate to the way in which that amount may be arrived at. The maximum amount is variable. Clause 72 includes specific provision that affirms the Department's power to set a limit to be applied in all budgeting loan decisions. That will cover budgeting loans for the interim period before universal credit is fully operational.

Mr F McCann: In respect of funeral payments and applying for a budget loan for the shortfall, does that include the purchase of a grave?

Mr C McLaughlin: Yes. As you know, the funeral payments regulations contain a list of what you can claim for. If there is a shortfall, they can look for a budget loan.

Mr F McCann: That is fine.

Mr Copeland: When you have a family unit with joint claimants, is the entitlement to a budgeting loan on the basis of the two people as a joint claim, or do they have an individual entitlement?

Ms Corderoy: It is on a sliding scale. They can get more if they are a couple or a family.

Mr Copeland: What I mean is when one component part of a couple is axed out, does there become an availability in the other, or is it judged on the basis of them as a legal entity as a couple?

Ms Corderoy: I will have to come back to you on that; I do not have that detail.

The Chairperson: Does anybody have any questions on clause 72? If not, we will move on to clause 73.

Ms Corderoy: Clause 73 repeals sections 15 to 17 of the Welfare Reform Act (Northern Ireland) 2010, which made provision for community care grants to be awarded as items rather than as cash payments. Those provisions were never commenced, and, given the intention to abolish the existing social fund scheme, the Department does not intend to use them. The repealing of community care grants provided for in the Bill makes the provisions in the 2010 Act unnecessary. The replacement discretionary support scheme is still under consideration, and proposals for that will be brought forward in due course.

Mr Pollock: Clause 74 amends the State Pension Credit Act (Northern Ireland) 2002 to change the entitlement conditions for the additional amount of guarantee credit in respect of caring responsibilities and to remove the explicit link to carer's allowance in that Act. Clause 74 amends section 2 of the State Pension Credit Act 2002 to provide for an additional amount to be added to the guarantee credit where the claimant has regular and substantial caring responsibilities. It also amends section 17 of that Act to provide that the term "regular and substantial caring responsibilities" is defined in regulations. The clause changes the entitlement conditions for the additional amount for carers and enables the criteria for its award to be set out in regulations. That will enable the initial amount to be awarded where, as now, the customer or the partner is entitled to carer's allowance. It gives the flexibility to set an alternative test to award the additional amount to those who have regular and substantial caring responsibilities but who do not claim carer's allowance.

The policy intention is that any new qualifying criteria specified will ensure that the same group of people as now will be entitled to the additional amount for carers. That is, those who would be entitled to carer's allowance under the current rules if they were to make a claim. Additionally, that flexibility will allow us to remove an element of irrationality in the existing rules, whereby customers must claim and establish entitlement to carer's allowance to become entitled to the additional amount for carers even when they know that they will not be paid because they are already in receipt of state pension credit.

Mr Brady: The criteria at the moment for substantive caring responsibilities are normally defined by — *[Inaudible.]* — carer's allowance. Many people carry out the responsibilities and the 35 hours a week minimum but do not claim it, for whatever reason . Will there be some discretion in deciding on the definition of substantive caring responsibilities?

Mr Pollock: It is to be defined in regulations.

Mr Brady: There will be guidelines, presumably. We will look to see what those may be, because it will only apply, presumably, to people under state pension age. At the moment, a pensioner is not entitled to carer's allowance but has an underlying entitlement. That needs to be clarified.

Mr Pollock: We will certainly look at that.

Mr Brady: Particularly if the disabled person is under state pension age and the carer is state pension age and the premium would be included if the younger person was the claimant. *[Inaudible.]* contributions, I suppose. We need to clarify that, if possible.

Mr Pollock: OK. I will get something for you. Clause 75 is again about state pension credit and deals with the capital limit. The clause amends the State Pension Credit Act to provide for a capital limit to be applied to state pension credit. Universal credit will replace housing benefit for working-age claimants. We are now introducing a housing credit into pension credit, which will provide support for rental costs for people over women's state pension age. There is currently no capital limit for entitlement to state pension credit. However, a claimant can only be entitled to housing benefit if they have capital below the prescribed limit, which is set at £16,000. An exception to that capital rule applies where a claimant is also in receipt of the guaranteed credit element of pension credit.

In those cases, receipt of the guaranteed credit provides a passport to full support for eligible housing costs, irrespective of the level of the capital held. The aim of the change is that the existing housing benefit rules should be broadly carried across housing credit and pension credit. However, as set out,

that is a complicated picture. We recognise that it is important that pension credit continues to operate in a way that is clear to customers and staff once housing credit has been incorporated. Making the power to introduce the capital limit that can be exercised in respect of one or all elements of pension credit allows for the possibility of simplification through alignment of the rules across pension credit.

Again, this is complicated. It goes without saying that one of the main issues in the reform agenda is the need to simplify things, and this change is a fair example of that.

Mr Copeland: I want to try to get something right in my head. I know about a specific case where a caravan that was purchased 10 years ago for £3,600 has been classified as a holiday home and a ridiculous value has been apportioned to it for the purposes of pension credit. An overpayment of pension credit has now arisen in this case, even though the caravan itself has deteriorated to such an extent that it cannot be used, but, because of the contractual agreements, the customer cannot get rid of it. I was wondering whether there is an appeal mechanism to challenge the classification of something as capital outside the value that is locked in a person's house. How is it that a caravan that is worth nothing suddenly acquires a value, which is then applied against the owner for pension credit?

Mr Pollock: I can certainly look into that for you, Michael. As with all assets, there should be some sort of recognition of its depreciation to say that it is worth nothing now. Is there is some benefit or value ascribed to it?

Mr Copeland: Because of the contractual arrangements, they are committed to maintaining the pitch, which is, I think, £1,300 a year, but it would cost them more than that to take the caravan away. I am just curious because it is classified as a holiday home.

Mr C McLaughlin: Has a valuation been put on it?

Mr Copeland: The valuation put on it by the Department was far in excess of what the thing is actually worth. I am just wondering whether there is an appeal mechanism.

Mr C McLaughlin: There is.

Mr Copeland: I will talk to you outside about that.

The Chairperson: Fair enough, Michael?

Mr Copeland: Will that be ameliorated into the new proposals. In other words, will cases such as that cease to exist?

Mr Pollock: There is no intention to dilute any of the appeal mechanisms.

Mr Brady: To clarify, for pension credit at the moment, there is no outer limit for capital. You lose a £1 for every —

Mr C McLaughlin: Two pounds fifty.

Mr Brady: Therefore a person could end up with a small amount of pension credit and still be entitled to passport benefits. What the regulation does is limit the amount of capital that you can have when claiming a state pension and brings it into line with the amount that you can have when claiming housing benefit, which is, as I say, £16,000. It is actually a cut for people on pension credit, because the outer limit will be capped.

Mr Pollock: The idea is to simplify it, not cut it.

Mr Brady: Again, another euphemism for "cut".

The Chairperson: OK. We will move on to clause 76.

Mr Pollock: That is Part 3 finished, Chairman.

The Chairperson: OK. Thank you. The officials who were due to deal with Part 4 are on their way. They did not get the times mixed up; they just did not think that we would have progressed so far. Given that it is 3.50 pm, I propose that, rather than have those officials come up to deal with what is a hefty section, we move on to the next section and complete it this afternoon. Part 5 on benefit cap is on page 69 of your explanatory memorandum. As I said, there is no point in bringing officials up at this late hour when you are here. We can deal with the next part of the Bill, which is substantial enough itself. If members are content, we will skip Part 4 and do it in the morning, and we will move now to Part 5.

Mr Pollock: Clause 95 deals with the benefit cap and provides the power that allows us to apply a cap on the amount of welfare or benefit that a household can receive, taking account of the average earnings of working households in Great Britain. The average in Great Britain is slightly higher than that in Northern Ireland and will ensure parity across the United Kingdom.

Although the measure will provide some valuable savings, it is not primarily a financial savings measure. The primary objective is to tackle the culture of welfare dependency by setting a clear limit on what people can expect to get from the benefits system.

It is important that the benefits system is fair and is seen to be fair to both the individuals who are claiming from it and the taxpayers who pay for it. It is not reasonable or fair that households getting out-of-work benefits should receive greater incomes than the average weekly net wage for working households.

The clause will allow us to prescribe in regulations how the cap will operate. The regulations will set out how we will calculate a household's overall entitlement to welfare benefits, the amount of any deduction to be made and the benefits that the deduction can be made from.

The clause makes it clear that we will not include state pension credit or the state retirement pension in the operation of the cap.

The reforms to the welfare system will ensure that the most vulnerable households will continue to be supported. Therefore, the clause will allow us to set those circumstances that we believe to be appropriate to exempt households from the impacts of the cap. That is, broadly speaking, the intention of clause 95.

Mr Durkan: I asked whether child benefit is included in the benefit cap, and it is. How many families or households in Northern Ireland do you think the proposed cap of £500 will affect? Given that child benefit is included, is it discriminatory against large families?

Ms M Campbell: The number of households affected is 620 by the time you take out all the exclusions, which is less than 1% of the total. The total number of households estimated to have payments in excess of the cap is 13,300. The vast majority of those households are excluded because of their receipt of the exemption benefits, such as DLA. When you strip that all out, you are left with approximately 620 households. That figure does not take account of any future socio-demographic or economic developments that may impact, so the numbers are all heavily caveated by statisticians. Of the households affected by the cap, 61% will lose up to £50 per week and a further quarter will lose between £50 and £100 per week.

Mr Durkan: OK.

Mr Pollock: Clause 96 is also related to the benefit cap and makes supplementary provisions. Clause 96 makes supplementary provisions to introduce the cap in clause 95. The provisions explain how we intend to use the powers in clause 95, making different provisions for different purposes. For example, the cap will affect couples and single people differently.

The clause amends the Social Security Administration Act 1992 to state that we will review the level of the benefit cap each year to see whether it has retained its relationship with the level of average earnings. It also allows us to increase or decrease the level of cap following the review as considered appropriate. Finally, the clause clarifies the position for appeals against the application of the benefit cap.

Mr Copeland: I would like clarification on the level of average earnings. Is that the increase or decrease in the level of average earnings or the actual level? There is already an assumption that, in some cases, people are better off on benefits than they would be in employment. Will there be a period of equalisation? In other words, if average earnings go up by 3% according to the CPI, or whatever it is, will that be reflected in an increase in the benefit?

Ms M Campbell: Yes. It is actually advantageous to claimants in Northern Ireland because the cap is based on the GB median wage, which is higher than the Northern Ireland median wage.

Mr Copeland: Therefore, in some respects, trying to close the differential by making people who are in work more advantaged could build in a degree of continuing variance.

Ms M Campbell: Possibly. However, I do not think that we would want to shout about that as it is to our advantage.

Mr Copeland: I understand that. I am just curious.

Ms M Campbell: The benefit cap will be reviewed annually, I imagine, in line with the annual minimum wage up-rate. I think that that is done by regulations.

Mr Copeland: This may be stupid, but I want to understand precisely what is meant by benefits: these are benefits above and beyond entitlements that people might have to other payments such as income from CMED; that is not a benefit as such.

Ms M Campbell: There is a list of benefits that take people out of the benefit cap. We will send that to you through the Chair.

Mr Copeland: Thank you.

Mr F McCann: I was trying to work this out. If a family has £400 a month taken out of their budget, that will have severe consequences on their ability to survive. Is a safety valve built in to allow such families to tap into any additional resources that are available?

Mr Pollock: The safety cap would be the things that we have talked about, such as hardship provisions —

Mr F McCann: They will have to pay that money back.

Mr Pollock: In some cases, yes.

Ms M Campbell: What the agency plans to do now is identify the families that are likely to be affected and start working with them in advance of the cap coming in to help them to effect a change in their circumstances. That could be a change of house, an increase in their hours, a move to higher-paid work or whatever. However, there will be losers. There is no doubt about that, and you cannot hide it.

Mr F McCann: Are many of those 620 working and also classed as low-earners?

Mr Pollock: I do not think that we have any breakdown of them as yet, Fra.

Ms M Campbell: I am not sure whether we have that.

Mr F McCann: I heard somewhere that 37% of those affected by the shared room allowance will be low-paid people. Rather than penalising people who are not working, it seems that this too will have a mixture of people. People could be penalised just because they come from a large family.

Ms M Campbell: The 620 households were ranked in order of their household income and split equally into five groups called quintiles. Their income was then compared to the benefit cap threshold. Those in the bottom quintile — those who have the lowest welfare income — were estimated to receive £5·91 per week in excess of the cap. Removing that excess would mean that they will lose approximately 1%.

Mr Pollock: These are benefit recipients as opposed to people in work. The idea is that those on low income would have access to universal credit as well. In that sense, I cannot see how they would be affected.

Mr F McCann: It has not worked for them as far as the shared room allowance is concerned. People who are entitled to housing benefit at the moment will lose out because their benefit will be cut. They will have to move out of one-bedroom apartments because they need housing benefit to supplement their rent. I am probably going off at a tangent, but I am trying to work out how many people on low pay will be affected by the cap.

Mr Pollock: I cannot see how anybody on low income would be affected by the benefit cap.

Mr Durkan: Is child benefit included?

The Chairperson: OK, so, we are not 100% sure.

Mr Douglas: This question is not related to your number 4, or whatever it is. It says that the benefit cap can be applied to a couple. Different benefits apply to couples in different ways; for example, for some benefits one member of the couple could be the claimant, while for other benefits both members must claim jointly.

Mr Pollock: Must claim jointly?

Mr Douglas: Yes. Will you give us an example?

Mr Pollock: Universal credit would be a joint couple claim, as such.

Mr Douglas: In other words, there would be one person.

Mr Pollock: There would be one claim for the household.

Mr C McLaughlin: JSA is the same, with joint couples.

The Chairperson: OK, let us move to clause 97.

Mr Pollock: Clause 97 deals with claims and awards. It amends the existing rules governing how claims for benefits may be made. Most benefit claims are governed by the rules set out in the Social Security Administration (Northern Ireland) Act 1992. Those rules determine how benefits are claimed and the ways in which they may be paid.

The rules govern, for instance, the way in which a claim should be made and the information that must be supplied when making a claim. The payment rules govern issues such as the frequency and power to pay some of a claimant's benefit to a third party.

In general, the existing rules will apply to universal credit and personal independence payment, which is the replacement for DLA, ensuring that the administration of the scheme will fit consistently with the administration of other benefits. This clause makes minor amendments to the provisions to deal with situations in which benefit claims may be made jointly.

The clause also provides for regulations to specify the conditions that must be met before a person can receive an award of benefit in advance. This brings the Social Security Administration (Northern Ireland) Act 1992 provisions into line with the advance awards for ESA under the powers of the Welfare Reform Act (Northern Ireland) 2007.

Finally, the clause expands the changes in circumstances that a claimant is required to notify; for example, where those might affect the work-related requirements that a claimant is expected to meet but do not have an immediate effect on work.

The Chairperson: OK, thank you. We shall move to clause 98.

Mr Pollock: Clause 98 deals with the information, and the powers to require information, relating to claims and awards. This provision replaces existing powers relating to regulations to require information or evidence relevant to claims or awards of social security benefits.

Current legislation only allows that such regulations relate to existing individual claims and awards. The proposed amendment will extend the power so that information can be required in relation to potential claims and awards. Information on potential claims will help the Department in the development of future policy initiatives for payments.

The Chairperson: OK, let us move to clause 99.

Mr Pollock: Clause 99 deals with payments for and to joint claimants. It clarifies the existing power in the Social Security Administration (Northern Ireland) Act 1992 to decide who should be paid benefit and includes power for the Department to determine which person should be paid in a joint-award situation. Currently, payments of benefits are normally made to the claimant. For couples, ordinarily one partner will make the claim, with their partner's income and capital being taken into account and rates paid accordingly. The exception is joint claimants of JSA, where partners can decide between them who receives the payment. As we discussed when Martina was going through the clauses on universal credit, it will routinely be a single payment to a household, with couples who live together claiming jointly.

Determining the recipient of the payment in cases with a single claimant is straightforward; the claimant receives the payment. However, where a claim is made by a couple, a decision must be made as to who will receive the payment. In most cases, it is believed that the couple should decide between themselves who should be paid the money and how the funds are then apportioned within the household. This clause provides for couples to nominate in this way. It is envisaged that this will happen in the majority of cases. However, there may be a limited number of cases in which it is not appropriate for the couple to make the decision. It may be as simple as cases in which a couple cannot or does not decide. Alternatively, it may be necessary when it is clearly in the best interests of the family for one partner rather than the other to be paid; for example, if someone has substance or alcohol abuse problems or whatever.

Again, this issue was raised a few times previously and in the debate. The general intention is that a single payment under universal credit will be paid to the household.

Ms M Campbell: It allows the flexibility for split payments.

The Chairperson: Under what circumstances? This is one of the more contentious aspects of the Bill. If two partners decide to split the payment between them, that is their choice. Given that such flexibility is provided for, how will the Department respond if two people, by choice, want to split the payment but do not state that one of them is an alcohol abuser, or whatever?

Ms M Campbell: Again, the decision-makers' guidance will specify the circumstances in which departmental intervention is required or where the payment can be split or paid to someone other than the person making the claim. That is why it will be important that the guidance is explicit. We can expand the explanatory note further to provide clarification on that as well.

Mr Copeland: As you, quite rightly, said, the key to this will be the guidance. Personally, I think that this is a recipe for disaster. It is an instance in which legislation meets the real world, and I am not keen to endorse this in any way until we have seen the guidance. I do not know whether it has been developed yet, or even scoped. In my view, this provision will give rise to major difficulties.

Mr Brady: To clarify: it gives flexibility to the Department to use discretion to pay one partner. The definition does not encompass split payment. That is a different issue.

Ms M Campbell: It does allow for the personal allowance to be paid to one party and the balance paid to the other.

Mr Pollock: So, that would be a split, if you like.

Mr Brady: We will need some guidance or clarification on that. The old split payments provisions allowed for the single person's allowance and the rest to be paid separately.

Ms M Campbell: I think that the legislation is fine as drafted, but we could put something more in the explanatory memorandum, which holds a lot of sway because it explains the policy intention behind the clause.

The Chairperson: Thank you. Fair enough; we will return to that at some point. We will move on to clause 100.

Mr Pollock: Clause 100 deals with payments on account that are currently awarded on a discretionary basis when a claim for benefit cannot be paid or determined immediately. They are provided for by regulations made under the Social Security Administration (Northern Ireland) Act 1992. Clause 100 amends that Act to extend the range of circumstances in which payments on account can be made. These changes are needed primarily as a further consequence of the ending of the discretionary social fund, which Jane touched on earlier. This clause will allow for a single system of recoverable payments known as short-term advances to replace interim payments of benefit and social fund crisis loans. Short-term advances will be available when it is not practical for a benefit claim to be made or determined immediately, for an award to be determined or paid in full immediately, or in cases of extreme need.

There will be additional flexibility in the new system to take account of the fact that claimants will continue to receive universal credit while in work. For example, short-term advances will be made to prevent severe financial difficulty when a person in work who also receives universal credit does not receive their wages as a result of their employer going into administration or receivership.

The clause will also allow the Department to pay in advance of benefit where it considers, in accordance with the criteria to be set out in regulations, that such payment can reasonably be expected to be recovered. These types of payments on account, to be known as budgeting advances, will replace social fund budgeting loans. The system for applying for budgeting advances will allow for online applications and automated decision-making. This will make the system simpler for claimants and significantly cheaper to administer.

There will be greater transparency over the maximum amount of advances that can be made and the terms under which they will be recovered. That will support claimants to make sensible budgeting decisions and take control of their personal financial situations. Claimants will be able to borrow only what they can reasonably be expected to pay back through regular deductions from benefit. It is imperative that there is provision to enable benefit claimants to cope with short-term expenses, and when the need arises, to offer support for budgeting to those on the lowest incomes.

Mr Brady: It seems like a switch in emphasis because it talks about living expenses that are difficult to budget for out of normal benefit income, such as fridges or cookers. In particular, replacement of a cooker breaking down would generally have been considered essential under a community care grant. The emphasis has changed. Presumably, too, the recovery aspect would encompass hardship payments, apart from the ESA that you mentioned earlier, which would be from the likes of JSA.

When the social fund came in, budget loans were seen as a good idea and self-financing. The difficulty that I found, however, was that after a relatively short period, they were probably taking back huge amounts of money. I had people 15 years ago who were getting £28 deducted from their weekly benefit, putting them £28 below subsistence level. When we talk about caps, will there be a cap on the amount recoverable on a weekly basis from someone in receipt of benefit? At the moment there is not, as far as I am aware.

I want to make a point about parity: historically, the recovery of payments, overpayments and other payments here has been higher than in Britain. I think even the Department would acknowledge that. Parity tends to be selective when it comes to that.

The Chairperson: OK, so you are looking for more information at a later point?

Mr Brady: Yes. Will there be a cap on repayments, because that is what causes hardship for people. The Department is saying, "We will give you money for an item because you are stuck" — and they talk about kids being on holiday during the summer. There is realisation or acknowledgement that school meals are so essential that families cannot afford to feed their kids during the summer. That is reality. However, if you recover too much from benefit, it goes below subsistence level. That was at the discretion of the social fund people.

The Chairperson: OK, you can come back on that.

Mr Pollock: Clause 101 deals with the power to require consideration of revision before appeal. It should be read in tandem with schedule 7. Clause 101 and schedule 11 relate to decision-making and appeals. They provide enabling powers to make regulations to introduce a formal reconsideration stage before a person is able to apply to an appeal tribunal.

Currently, if a claimant is dissatisfied with their social security decision, they can apply for a revision of it on any grounds, normally within one month. That triggers an internal reconsideration process, at the end of which a decision notice is issued that revises or refuses to revise the original decision. If the revision is refused, the claimant has a further month in which to appeal the original decision. Alternatively, the claimant can simply appeal the decision. In those cases, the decision is routinely considered, but the reconsideration process takes place after the claimant has already decided to appeal to a tribunal.

The proposed change will enable more disputes to be resolved through the internal reconsideration process. The process will allow a claimant's decision to appeal to be informed by whether a reconsideration has provided them with a clearer justification for the original decision and a clearer explanation of it. The reconsideration process also enables new information or evidence to be taken into account that may not have been available when the original decision was made.

Claimants will, therefore, be able to make a positive choice to appeal after their case has been reconsidered. That contrasts with the present position in which they have to make a positive decision to withdraw their appeal if they are content with the reconsideration process. The change does not alter a person's right of appeal. It just requires them to go through an internal reconsideration process first. Schedule 11 makes the corresponding provision in relation to child support, recovery of benefits, housing benefit and lump sum payments in respect of diffuse Mesothelioma. That is clause 101.

Mr Brady: Just to clarify; the explanatory and financial memorandum states:

> *"In particular, regulations may provide that there is to be a right of appeal only where the Department has considered whether to revise the decision".*

What happens at the moment in a lot of cases, given that there is already a reconsideration process in place, is that people tend to appeal immediately because they believe that the reconsideration process will not go further and because of the length of time it will take to get a decision. You say that claimants will now have a further month in which to appeal but, for a lot of people, that will just add another month to the length of time that they are left waiting. The process is already in place, so I am not sure how this is going to improve the existing situation, which is not that effective.

The other issue is that if someone is turned down for benefits, they may not get paid during the reconsideration period. If they then appeal, they may not get paid for another month.

Mr Pollock: I think that the aim is to resolve more disputes and to do so internally through the reconsideration process.

Mr Brady: I accept that that is the aim, but the reality is that there is already a reconsideration process in place, which does not really work. There is nothing in this legislation that will enhance what is already there. I take your point about what it is saying — that the policy objective is to make sure that more decisions are made more quickly by the Department.

Mr Pollock: It will be quicker, and if there is additional information that was not available at the time, that could be —

Mr Brady: I suppose the crux of the question is this: how will this differ from what is already in existence?

Mr C McLaughlin: It is mandatory. They actually have to seek a reconsideration.

Mr Brady: Exactly. That is my point. All it is going to do is prolong the agony.

Ms Corderoy: As part of this, the agency is looking at the wider appeals process, in which this is included, in order to improve and define it and make it faster. Mandatory consideration is really about providing more information to a person earlier so that they can decide whether it is worth appealing.

Mr Brady: I admire your tenacity in explaining that, but I do not necessarily understand it.

Mr Copeland: I may have got my wires crossed entirely here. Under the current system for social fund loans, when you apply for an oven or a cooker from the social fund or a community care grant, you get a decision. You can then ask, by telephone, to have that decision looked at again. After that, you can ask for a face-to-face meeting in a social security office, and if all that fails, you can then go to the appeal stage. Are we are talking about the same thing here? Will the face-to-face entitlement still pertain? Will claimants be entitled to a face-to-face meeting to have a decision reviewed? Or is this nothing to do with that at all?

Mr C McLaughlin: This is nothing to do with that.

Mr Copeland: I got confused by the reference to a cooker, which appears to be a perennial issue.

Mr Pollock: That was the previous clause.

Mr Copeland: In other words, clause 100 and clause 101 relate to two totally different things, and one does not refer to the other.

Mr Pollock: This is clause 101.

Mr Copeland: I understand that, but clause 101 is not a progression from clause 100 apart from numerically?

Mr Pollock: No.

The Chairperson: OK. We will move on to clause 102.

Mr Pollock: Clause 102 clarifies the Department's approach to legislation that enables the use of electronic communications. Currently, if the Department wishes to authorise electronic communications for business, it has to make an order under the Electronic Communications Act (Northern Ireland) 2001. That Act enables Departments to modify existing legislation, including Acts, to facilitate electronic communication and electronic storage.

This clause makes it clear that regulations made under social security legislation can include the type of provision that could be made under the Electronic Communications Act (Northern Ireland) 2001. This could include, for example, provisions about the form that the electronic communication must take and the conditions under which electronic communication is allowed.

Amending the existing provision in the Social Security Administration (Northern Ireland) Act 1992 and the Social Security (Northern Ireland) Order 1998 will enable the Department to include provision for electronic communications in regulations, rather than to have to make a separate order. In essence, this is not anything new. The clause simply allows provision to be made under social security legislation rather than electronic communications legislation. It enables a simpler, more transparent and more effective approach to introducing electronic communications into the benefits system. That is the general thrust of clause 102.

Mr Copeland: About three months ago, there was a bit of a furore about the Government collecting cookies when people were using their computers to interface with government computers. Some regulations and changes were introduced in England. Will that will be factored in here. In other words, when someone logged on to a government website, the website was collecting information from the person's computer. About three months ago, it was a real big story on the mainland.

Mr Pollock: It sailed right over my head.

Mr Copeland: I will try to get the detail on that. I asked some questions about it at the time.

The Chairperson: If you do not know anything about it, let us move on.

Mr Copeland: I am content that we do not know anything about it. Maybe we are better not knowing.

The Chairperson: You can come back and pop up later on with it.

Mr Brady: I presume that electronic communications relate solely to computers and IT rather than to mobile phones. Obviously, people can access information through mobile phones. To widen this slightly, the majority of people on benefits who I deal with have pay-as-you-go phones and have great difficulty in accessing information from local offices because it costs them so much money and no provision is made. Provision is made for landlines with free phone numbers but not necessarily for mobiles. It depends, of course, on your provider. Has any of that been factored into these provisions for electronic communication?

Mr Pollock: I do not think so, Mickey.

Mr Brady: It really is a big issue for people. I had one case recently, for example, in which a woman tried to contact the local office and it cost her £17 of mobile phone credit of the £20 that she had left. That is unacceptable.

Mr Pollock: Clause 103 deals with the recovery of benefit payments. It sets out when and how overpayments of benefits, payments on account, and certain hardship payments can be recovered. The introduction of universal credit provides the opportunity to introduce a more straightforward recovery regime. All overpayments of universal credit, JSA, ESA and the housing credit element of state pension credit will be recoverable, either from the person to whom it was paid or another person, who may be specified, for example, a landlord. This includes overpayments arising due to official error.

Where the Department makes a mistake, claimants should not expect to have the right to keep taxpayers' money to which they are not entitled. Regulations made under this clause will specify how the amounts to be recovered will be estimated or calculated. Although most overpayments of universal credit, JSA and ESA will be deemed recoverable, in certain circumstances, the Department will decide that the overpayment, or part of it, does not have to be repaid. The circumstances in which action will be taken to recover overpayments will be governed by a code of practice to ensure consistent, considered decision-making. Where a payment is deemed recoverable — whether overpayment, payment on account or recoverable hardship payment — it will be recoverable, in the first place, from the person who actually received the money.

Regulations will also allow for recovery to take place from any person who was not the intended recipient of the payment but who benefited from it. It could be, for example, an appointee who appropriates excess benefit for their own use or where a payment has been made directly to a landlord in respect of a claimant who has committed housing benefit fraud. The clause also deals with four specific methods of recovery: deduction from ongoing benefit, through court action, adjustment of benefit and deduction from earnings. That will allow a deduction from earnings to take place by the Department's authority without the necessity of obtaining a court order. The clause also enables the Department to recover court costs where there is a court judgement in the Department's favour.

Mr Brady: Section 69 of the Social Security Administration (Northern Ireland) Act 1992 eliminated departmental error. It did not matter who was responsible, the Department could recover. Will departmental error still be part of the equation? The explanatory and financial memorandum states:

> *"Subsection (6) allows for an amount paid to one member of an award which is made to persons jointly to be recovered from the other by any method (as listed in subsection (7))."*

Say one partner in a couple gets a budget loan or the equivalent of a budget loan and does not tell the other person, who has absolutely no input, which does happen. That person may go off somewhere while the other person is still claiming benefit. Will both people still be treated as a couple, or will the second person be liable for the recovery from their benefit as a lone claimant? I am not sure whether this has been factored into the equation.

The memorandum says "by any other method". To me, this rings alarm bells. The person who is going to carry the can might not even know that the other person made a claim. I have had cases

over the years in which wives have gone out to work and husbands did not know about it. It does not happen often, but it is reality. It does not happen often, in fairness, but it has happened. There are people who borrow money or get budgeting loans and do not tell their partners, but the partners may be liable under this legislation eventually. The phrase "by any other method" sounds fairly draconian.

Ms M Campbell: There were some discussions about that, but I cannot remember the outcome or whether they have been concluded yet. Those things will be specified in regulations.

Mr Brady: Could you participate in the discussion so that it comes to an equitable solution and decision?

Mr Pollock: We are involved in the decision-making process. With respect to departmental error, I thought I had mentioned that, where the Department makes mistakes, the claimant is not expected to be able to say, "OK, I can keep that money." The amount will be recoverable.

Mr Brady: So, it does not matter whether the person has no responsibility whatsoever for the error?

Mr Pollock: It is a departmental error.

Mr Brady: Years ago, they used to raise overpayments against the person.

Mr Pollock: They used to.

Mr Brady: It was a long time ago, obviously.

The Chairperson: OK. We understand what the clause is supposed to be about. We move to clause 104.

Mr Pollock: Clause 104 concerns deductions from earnings for other cases. It is a follow-on from clause 103. Clause 104 provides for the recovery of certain overpayments of benefit, including overpayments of housing benefit and recoverable social fund payments by deduction from earnings. That will be known as direct earnings attachment (DEA).

Overpayments of universal credit, JSA and ESA will be recoverable by DEA by virtue of the provisions in clause 103. Regulations will set out the rates of deduction and will include safeguards to ensure that the deductions do not take the debtor beneath a given level of earnings. They place a duty on claimants to disclose details of their employers and require employers to make deductions and pay them to the Department. It is intended to use DEA to enforce recovery when debtors are in PAYE employment and will not come to a voluntary arrangement to pay back their debts. It is important, therefore, that, when someone refuses to meet their obligations to repay benefit debt, the Department should be able to use those powers to make recovery. Clause 105 relates to application of the Limitation (Northern Ireland) Order 1989. It clarifies the application of the statute of limitations to the recovery of benefit overpayments and social fund loans by means of deductions from a person's ongoing benefit entitlement. The statute of limitations, whilst preventing action being taken thorough the courts after a given period, has no application to the recovery of social security debts by deduction from benefits through social security legislation. Social security legislation rightly restricts the level of deductions that can be made from income-related benefits, and the Department operates a hardship policy whereby deductions are often reduced below the legal maximum. This means that the recovery of even moderate-sized debts can take in excess of six years.

The Department's duty to protect public funds and recover overpayments and social fund loans means that it is right that it should be able to do so over an extended period. Without this, there would be higher repayment rates, which could put undue financial pressure on those repaying a debt. This measure is also retrospective, which ensures that all recoveries already made since the introduction of the limitation Order can clearly be deemed to have been made correctly. This maintains the longstanding principles in relation to recovery by deduction from benefits.

Mr Brady: To clarify, does this mean that, following the discovery of an overpayment, the Department can take six years to recover it?

Mr Pollock: All we are saying here is that it means that even a moderate-sized debt could take in excess of six years to be recovered.

Mr Brady: Does it have to be paid back within six years?

Mr Pollock: No. There is no statute of limitations on that. They could recover it over a longer period.

Mr Brady: Why the six years? Is that an arbitrary period?

Mr Pollock: That is just an example.

Mr Brady: There are people who owe a lot of money that has built up for whatever reasons over the years, and it could take a lifetime to repay that.

Mr Pollock: I could have said seven years or five years. I am just saying that it can take a fairly long time.

Mr Brady: All I wanted to find out was whether six years was an arbitrary figure or a mandatory figure.

Mr Pollock: The basis of the clause is that there is no statute of limitations on the Department recovering overpayments.

Mr Brady: It can take as long as it wants.

Mr Pollock: Yes. What they are saying is that, because of hardship provisions, they would invariably recover less than they would do normally.

Mr Brady: What I was trying to find out was whether, if a large overpayment had to be paid within six years, larger amounts would have to be taken weekly or monthly. However, that is not the case.

Mr Pollock: That is not the case.

Mr Brady: OK. That is really what I wanted to check.

Ms M Campbell: The last sentence in paragraph 543 of the explanatory and financial memorandum states:

> *"it secures that the time limits do not apply".*

Mr Brady: I had not reached that part.

Mr Douglas: Paragraph 543 also states:

> *"puts beyond doubt that the Department may recover social security overpayments ... by means other than court action."*

Have you covered that bit?

Ms M Campbell: That would be where the Department makes recoveries by means other than court action.

Mr Pollock: Recovery and deduction from benefit.

Mr Douglas: So, that is what that means.

The Chairperson: Is that OK, Sammy?

Mr Douglas: So, you are not thinking about taking the furniture and selling it.

The Chairperson: Let us move to clause 106. I am trying to get to clause 120 before 5.00 pm.

Mr Pollock: Clause 106 deals with section 103(B) of the Social Security Administration (Northern Ireland) Act 1992, which covers the powers to require information relating to investigations. The section specifies from whom the Department can require information when investigating whether benefit is properly payable.

Clause 106 inserts a new subsection to add a regulation-making power to prescribe persons from whom an authorised officer under existing section 103B can require information. An example of how this might be used would be to require information from those who are presently asked to provide information for tax credits, which will come in under the universal credit regime.

Clause 106(b) amends the existing section 103B(2)(j) to include a new subsection stating that the persons from whom the Department may require information includes their servants and agents. This amendment allows it to extend to a new subsection.

Mr Brady: Does it really widen the scope as regards people from whom the Department can get information? It is a bit old-fashioned to talk about servants. I am sure that not many people on benefits have servants, and maybe not agents. It widens the scope. Is that what you are saying?

Mr Pollock: It widens the scope, particularly with tax credits coming in under universal credit.

Mr Brady: Presumably that would apply, because it specifically mentions the person responsible for childcare. Would that be taken if there was a registered childminder? Is it in order to access the childcare element? That is one example, I suppose.

Mr Pollock: I do not think it is meant to be prescriptive.

Mr Brady: None of it is meant to be prescriptive.

The Chairperson: It will all be dealt with by way of the clauses. Do not worry about it.

Mr Pollock: Clause 107 deals with the time limits for legal proceedings and permits the Department to issue a certificate allowing proceedings for a summary only offence to be commenced later than 12 months from the date an offence was committed if it is within the period of three months from the date on which the evidence comes to the Department's knowledge, and that evidence is, in the Department's opinion, adequate to justify a prosecution for the offence.

The Department will now be able to issue a certificate to extend the period when proceedings may be commenced where a claimant is to be prosecuted for a housing benefit offence; where that benefit is administered by the Housing Executive through DFP; and where, although the 12-month period after the offence was committed has expired, the date is within three months of the date on which evidence came to the Department's knowledge that is sufficient to justify a prosecution.

Mr Brady: It talks about legal procedures. Would they have to look at the legal implications? I ask that because, presumably, there are different rules of evidence for court cases. The Department says that, if it has only just found out about the situation, it can extend the period. It might take a couple of years for it to become aware of that situation. I am just wondering about the statute of limitations in relation to the legal aspect rather than the social security aspect. Is there any contradiction there? There are criminal proceedings for alleged fraud, for instance. I am wondering if there is a statute of limitations from the courts in prosecuting that kind of offence, given that the Department is extending the period for which it can do that. Maybe you could find that out.

Ms M Campbell: I think that that is one for our colleagues in fraud.

Mr Brady: I think those questions have to be raised, because it is something that may or may not come up in the future. Unless it is clarified, there is no point in bringing it up.

Ms M Campbell: It is better to get clarification now than to hold things up later.

Mr Brady: Absolutely.

The Chairperson: Yes. We are being asked to look at a clause that may or may not be impacted on by the judicial system. The process is there, as are the standards of evidence and time frame for evidence. It is important. We will have to return to that in due course.

Mr Pollock: Clause 108 inserts a new section relating to Housing Executive powers to prosecute housing benefit fraud. It will restrict Housing Executive powers to bring proceedings relating to housing benefit offences. It provides that the Housing Executive may not bring a prosecution for suspected benefit offences unless certain circumstances apply.

Under the new section, where the Housing Executive has already started an investigation in relation to a suspected fraud of housing benefit, the Housing Executive may prosecute that offence.

There is a lot of detail in that, Chair. I would feel better if you went through that clause with our fraud colleagues. Is that something that you could do?

The Chairperson: It is also relevant to the previous clause. I think that we need to see if it is compatible with current legislation. You could argue that it is, but that is what we are trying to establish. Are members happy enough to deal with it that way?

Mr Brady: The Department is, in a sense, the agent of the Housing Executive, because it pays the housing benefit, although it is paid through the Housing Executive. It is obviously a paper exercise. When talking about agents, there could be implications there.

Mr Douglas: I have a general point, although this may be the wrong arena. Over the past year or so, I have noticed that hardly a week passes without one of our local newspapers mentioning housing benefit fraud or whatever. Is part of the policy to try to scare people? Has that information been leaked?

Mr Brady: It never happens in Newry, Sammy.

Mr Durkan: They are never caught. *[Laughter.]*

The Chairperson: Remember Hansard.

Mr Douglas: These people are being prosecuted. They go through all the hassle of that and then it is splashed all over the papers as well.

Ms M Campbell: If it is a court offence, it is the court reporter who would record it.

Mr Douglas: It is lazy journalism.

Mr Durkan: The Department puts out press releases to name them. That is part of departmental policy.

The Chairperson: OK. We move on to clause 109.

Ms M Campbell: Clauses 109 to 115 all deal with fraud.

The Chairperson: We will defer all those clauses up to and including clause 115. Are Members happy enough to do that?

Members indicated assent.

Mr Pollock: Clause 116 is about information-sharing in relation to the provision of overnight care. It allows for information to be used and supplied for the purpose of ensuring that the correct amount of housing benefit is awarded in relation to people who are entitled to overnight care in their own homes,

which we touched on earlier, and for the purpose of assessing awards of benefit when a person is admitted to or discharged from hospital or residential care.

Claimants of certain social security benefits have their benefit awards reassessed when they go into or are discharged from hospital or residential care. Claimants are already required to report such changes. This provision will allow a relevant body to use the information itself or supply the information to the Department, the Housing Executive or the Department of Finance and Personnel for purposes relating to the payment of benefits.

People who are disabled and require an overnight carer will also be able to qualify for a higher rate of housing benefit if they have an extra room that is used by a non-resident carer or team of carers. The provision will also allow Housing Executive housing benefit teams to use information from social services teams to confirm whether a person may require an overnight carer; if social services are providing the carer; and that the care has been provided.

Subsection (8) defines the term "relevant body" for the purposes of clause 116 and clause 117, which deals with information-sharing in relation to welfare services, as a health and social care trust or the Regional Health and Social Care Board.

Mr Brady: It says that this is to ensure that the correct amount of housing benefit is paid to people entitled to overnight care. It then goes on to talk about carers and the extra housing benefit for that. There was talk of the underoccupancy aspect. It mentions a team of carers and one room. Two carers who had to come in would obviously not want to share the same room. Some carers would lie down for an hour or two and may then have to get the person up during the night to take them to the bathroom and that kind of thing. Will all that be factored in? It might not be limited to one room, as it might involve two rooms and carers of different sexes.

Mr Pollock: I do not know that it would involve multiple rooms, but there is provision for an additional room in existing housing benefit legislation.

Mr Brady: I suppose the point I am making is that, in certain cases, it could and should. The reality is that some people are so disabled that they need at least two overnight carers. It is all to do with health and safety in lifting and all of that. That cannot be ignored.

Mr Pollock: I would not say never, Mickey. I am sure that there is an exception to every rule.

Mr Brady: Can I quote you on that, Michael?

Mr Pollock: My general understanding is that, in specific circumstances, an additional room is effectively discounted. It is available because —

Mr Brady: I understand that. I am just saying that it may be additional rooms. You could have a three-bedroom house with the disabled person in one and a team of carers coming in during the week; that happens. So, it is not just one room that is occupied. All the bedrooms may be occupied, and, therefore, the underoccupancy aspect would not apply. That needs to be checked.

Ms M Campbell: We will clarify that for you.

Mr Pollock: Clause 117 is about information-sharing in relation to welfare services. This replaces the information-sharing gateway in section 39 of the Welfare Reform Act (Northern Ireland) 2007. It broadens the scope of data-sharing that is provided for under the existing section 39. Relevant information can be shared between the Department, the relevant bodies, the Housing Executive, and Land and Property Services. Information can be shared in relation to the provision of a welfare service and for certain rates or housing benefit purposes. This is the standard information-sharing gateway, but it is slightly broader in the Welfare Reform Bill. It relates to the discussion that we had earlier about passport benefits and the number of Departments and bodies that access social security information to facilitate delivery of some other benefit or service. That is what clause 117 facilitates.

Clause 118 is the corollary of data-sharing legally; it is about the unlawful disclosure of information. Section 40 of the 2007 Welfare Reform Act makes it an offence for a person to disclose without lawful authority information supplied by virtue of section 39 of that Act. Clause 118 creates a similar unlawful disclosure provision in relation to the information that we discussed in respect of clause 117. As with

all data-protection or data-sharing legislation, it is incumbent on the people who are sharing the data to specify what data is being shared, what the purpose is and what it will be used for. In that context, it is reasonably wide in so far as it embraces new data-sharing gateways with the likes of HMRC. It also has to be sufficiently broad to facilitate delivery of passported benefits such as free school meals or free school uniforms.

Mr Brady: Can you give us an example of that unlawful disclosure? It says that staff are specifically covered. Civil servants sign up to the Official Secrets Act. What examples would there be in relation to people outside the agency?

Mr Pollock: I cannot think of any off the top of my head, Mickey. We are not conditioned to break the law.

Mr Brady: I could not think of any either; that is why I asked you.

Mr Pollock: I suppose it depends on who jumps up and down. You are sharing personal information, so that data has to be protected. If I am a social security claimant, and, for some reason, you share my information with God knows who, I may have a case for redress against you.

The Chairperson: OK; fair enough.

Mr Pollock: Clause 119 is entitled, "Sections 116 and 118: supplementary". Clause 119 enables regulations under clauses 116 and 117, which are about information-sharing, to make incidental, supplementary, consequential, transitional or saving provision. It also provides that all regulations under clause 116 will be subject to the negative resolution procedure. Most of this is standard in so far as information-sharing gateways have been long established in respect of social security information. It should not be anything remarkably new.

The Chairperson: If Members are content, we will move to clause 120.

Mr Pollock: Clause 120 is about information-sharing for social security or employment purposes. It puts data-sharing in the context of the Department for Employment and Learning. When we were starting to draft the Bill, there was quite a bit of discussion about the continued existence of that Department. So, in drafting terms, it was simpler to carry all the references in one particular clause. Clause 120 amends article 69 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and enables the Department to make regulations that allow certain persons, including the Department for Social Development, to share social security and employment and training information with other Government Departments and their service providers, and with persons designated by an order. The regulations can also make provisions about the use of such information and its supply by such persons.

Mr Brady: So, is it more or less in-house in that it is in the context of different Departments as opposed to outside agencies?

Mr Pollock: Yes is the simple answer.

Mr Brady: It will apply to the likes of the Social Security Agency, the Department for Social Development and the Department for Employment and Learning.

Mr Pollock: And their agents or bodies.

Ms M Campbell: And their training providers. It is to stop the Department having to continually do an order every time it changes the list of contracted providers.

Mr Brady: It is all encompassing in that sense.

Ms M Campbell: Yes.

The Chairperson: That is the discussion on clause 120 finished. That is the conclusion of the discussion on Part 5, save for, I think, clauses 107 to 115 inclusive, on which we will receive a further briefing from other officials.

At this stage, I propose to suspend the meeting and resume tomorrow morning at 10.00 am. I am tempted to ask people to work until 7.00 pm or 8.00 pm to finish this, but I do not think I will get too many takers.

Ms M Campbell: We are happy to stay if you are. *[Laughter.]*

The Chairperson: I am happy enough. I am going nowhere in a hurry, let me tell you. If members are content, we will resume tomorrow morning when we will have a short recap and work our way through to completion. Thank you very much.

Ms M Campbell: Thank you very much.