Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Clause-by-clause Consideration

17 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
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann
Mr David McClarty

Witnesses:

Mr Maurice Byrne	Department for Social Development
Ms Jane Corderoy	Department for Social Development
Mr Mickey Kelly	Department for Social Development
Ms Anne McCleary	Department for Social Development
Mr Conrad McConnell	Social Security Agency

The Chairperson: We move to our continued scrutiny of the Welfare Reform Bill, with the departmental briefing. We will pick up from where we were yesterday. We will go back to clauses 76 to 94 inclusive, which is on the personal independence payment (PIP), as I recall. That will be our approach this morning. After that, we will return to clauses 107 to 115, which were deferred yesterday.

Without any further ado, I hand over to Anne and her colleagues. The officials will address the Bill clause by clause, and members can ask for any clarification that they require. Then, we will move on, as quickly as we possibly can, to the next clause.

Ms Anne McCleary (Department for Social Development): Thank you very much for the opportunity to brief the Committee on the Welfare Reform Bill. I will address specifically clauses 76 to 94 and schedules 9 and 10, which deal with the personal independence payment, which, as you know, is the proposed replacement for disability living allowance (DLA) for working-age claimants.

Our witnesses today are Jane Corduroy and Mickey Kelly. Mickey is from the Social Security Agency, and he will be able to deal with operational queries that members may have. I will begin with a short summary of the policy background to the new personal independence payment, and the timescale for its implementation. Jane will then give some detail on each of the clauses. Obviously, we are happy to take any comments and questions as we proceed.

I begin with the background and aims. As part of the wider reform of the welfare system, from June 2013 the personal independence payment will replace disability living allowance for people aged between 16 and 64. In replacing DLA, the aim is to create a fairer, more transparent and sustainable system that is fit for the 21st century, ensuring that the personal independence payment continues to support disabled people who face the greatest barriers to participation in society. The Department has consulted with disability organisations here on the detailed design and the assessment thresholds for personal independence payment.

The rationale for replacing DLA is clear. DLA was introduced in 1992 and has never been fundamentally reviewed since then. It has now become difficult to understand and complex to administer. There is no systematic process for checking that awards remain correct. I know that there are some other occasions when cases are reviewed, but there is no systematic process.

In May 2012, there were 189,590 recipients of DLA in Northern Ireland — a rise of almost 25,000 since May 2005. The focus is now on ensuring that disabled people are protected and support is provided to those with the greatest need. The introduction of PIP is intended to provide support to those with a disability who face the greatest barriers to leading full, active and independent lives. The importance of the role that benefits such as DLA play in achieving this is recognised, and it is important to be clear that the personal independence payment will maintain the key principles of DLA. Crucially, it will continue to be a non-means-tested, non-taxable cash benefit available to people both in and out of work.

The personal independence payment will be payable to those who meet the conditions that are set out in regulations. Those include: being a resident and present in Northern Ireland; having a physical or mental condition that limits a person's ability to carry out daily living or mobility activities; having had a disability for the qualifying period of three months with the prospect of remaining disabled for the next nine months, although those with a terminal illness may be entitled to benefit without having to satisfy either the qualifying period or the prospective test; and claimants being assessed on their ability to perform a series of daily living and mobility activities.

There will be a more objective assessment process, with most people receiving a face-to-face consultation with a healthcare professional, which will provide a more accurate and consistent assessment of individual need. The assessment for personal independence payment will look at disabled people as individuals, and will not label them according to health condition or impairment. We are looking at each person on a case-by-case basis. It has been designed to consider an individual's personal circumstances and the impact that their impairment has on their life. The proposed assessment criteria, the weightings and entitlement thresholds, are intended to reflect and differentiate between the barriers and extra costs faced by individuals who require extra support to undertake a range of everyday tasks, taking account of physical, sensory, mental, intellectual, and cognitive impairments. The assessment will also make greater use of evidence from those who provide support to the claimant, such as a GP, consultant or specialist nurse.

There are 11 key activities, fundamental to everyday life, including: preparing and cooking food; washing, bathing and grooming; dressing and undressing; communicating; planning and following a journey; and moving around. Those will all be assessed.

It is important to get the assessment right, and a number of improvements have already been made as this has developed. The formal consultation on the assessment criteria, which sought views from a broad range of local disability and advice groups, was carried out between 16 January and 30 April. Departmental officials are working with the Department for Work and Pensions (DWP) to analyse the replies, and a response to the consultation is due in the autumn.

There will be two components to the personal independence payment: a daily living component, and a mobility component. Awards will be made up of one or both of those components. Each component will be payable either at a standard or an enhanced rate, and that will be set out in regulations. The amount for each rate has still to be decided.

There is a duty to both claimants and the taxpayer to ensure that awards stay correct throughout. All personal independence payment awards, therefore, will be reviewed at appropriate intervals. The Social Security Agency will retain responsibility for decision-making, and decisions will carry a right of appeal. The Department will be working to support people fully on an individual basis as they encounter this new benefit.

I will move on to implementation. The plan is to introduce the new benefit on a gradual phased basis from June 2013. In respect of all new claims from June 2013, personal independence payment will replace disability living allowance for working-age claimants. Existing DLA claimants will be asked at some time between October 2013 and March 2016 whether they wish to claim personal independence payment. From October 2013, if a claimant reports a change of condition, or has a fixed award that is due to expire after February 2014, that will trigger an invitation to claim personal independence payment. Contact with all other remaining DLA customers will be on a random basis from January 2014 to March 2016. At that point, if an existing DLA customer makes a claim for personal independence payment, DLA payments will normally continue until their personal independence payment claim is decided. If they choose not to claim personal independence payment, their DLA will end.

There is clearly public concern around the introduction of this benefit, but we all want to assure the Committee that aim of the personal independence payment is to ensure a fairer, more transparent assessment. It has been designed in collaboration with independent specialists from the disability, social care and health sectors. It is about simplifying processes for people, and targeting the resources at those who are in greatest need. That is what this is about. I will ask Jane to take you through the provisions on a clause-by-clause basis.

The Chairperson: Mickey Brady wants to ask a question at this point.

Mr Brady: I do not want to go into a lot of detail. Obviously, one of the main issues is the healthcare professionals. We have been told that the contract will be announced shortly. There has been a lot of disquiet. Tanni Grey-Thompson, who is disabled herself, has presented a report and was on the radio this morning. There is a lot of unease. Parents are saying that children with disabilities may be put into residential care.

The other issue is around Atos Healthcare, particularly in Britain, where they have made a mess of the work capability assessment. In Lanarkshire in Scotland, its work has been contracted back to the National Health Service, which is a peculiar way of doing things: a statutory body pays a lot of money to a private organisation, which then contracts the work back to the same statutory body, or a similar one.

The detail of that will be extremely important. There is a lot of unease around the whole concept of how people are going to be assessed.

Ms McCleary: I am quite sure that as soon as that contract is let, we will advise the Committee of it.

Mr Mickey Kelly (Department for Social Development): We have indicated that there are just a few approvals and contract issues to work through. It is anticipated that the contract will be formally signed in four to six weeks. I understand, Mickey, where you are coming from with respect to the unease about those issues.

Mr Brady: I think that it has become more than unease. It has turned into an unmitigated disaster.

Another question I must ask is about is terminal illness. In my experience, there is an issue around the DS1500 forms. Obviously, the GP, or whoever signs the DS1500, is, in many cases, reluctant to do so because the person may not know. There needs to be a better way of looking at that and how it is dealt with. There is a whole issue about trauma to the person who may or may not know how bad their condition is. There should be a sensible way of doing that.

Ms McCleary: That is an operational issue which we can look at.

Mr M Kelly: We are working on the specific customer journey for people with terminal illnesses, which will build on DLA, and incorporate its good points. I am happy to work through that in due course.

Mr Brady: Just on DLA, periodic reviews were introduced in the 1990s with some fanfare. Another thing that has changed in DLA after it was reviewed, is that, initially, awards were "lifelong", and then they were changed to "indefinite". So there have been changes, and it is not as though DLA has been there since 1992, sitting on the shelf, with nothing happening to it. A lot of things have been changed.

Ms McCleary: There have been tweaks made to DLA, but not a systemic review.

Mr Brady: There has been case law, for example, on the distance that a person can walk. All of that has evolved over time. It is not the case that it has just been left to its own devices. Medical evidence has been a very important part of it. An impression has been given by the Government that the Social Security Agency has turned into some sort of charitable organisation, and that you can apply for DLA and you will get it, no matter what is wrong with you. DLA is a very rigorous procedure requiring medical evidence. People need to be made aware of that. Sometimes, that is all forgotten amid the black propaganda, for want of a better term.

The Chairperson: We have listened to an introduction, so I have allowed that comment. Michael, do you want to speak? I do not want long speeches; we are taking this clause by clause.

Mr Copeland: No. I do not do long speeches, much.

As I understand it, the examining medical practitioner (EMP) should be a medical doctor. The role of the EMP particularly involves visiting, in their own homes, people who were deemed to be, for whatever reason, incapable of attending an assessment centre. The EMP is, at present, always a qualified doctor. Will that role be undertaken by what they call a "healthcare professional"?

Mr M Kelly: The examiner or medical practitioner at the minute will be part of the new system. The new system will involve healthcare professionals, and some of those people will, potentially, be doctors and some will be other healthcare professionals in the broader sense. There is an indication and, corporately, the Department for Work and Pensions has said, that people who have had visits in their own home and who need visits will still be visited in their home, where that is available.

Mr Copeland: How will you ensure that the EMP or the healthcare profession is relevant to the specific customer's needs? I have heard of occasions where people whose main hindrance is mental health difficulties have presented themselves, only to be told by the healthcare professionals that that is not really their field. I know of three such cases. How can you give an assessment of someone's physical or mental capabilities if you are not qualified? I think that one guy is taking it to the ombudsman. He was not seen by someone who was qualified to sit in judgement of his condition.

Mr M Kelly: The issue is: what is "qualified to sit in judgement"? Because of the complex nature of people's illnesses and those with multiple disabilities, there is an issue of whether you would ever be able to specifically match healthcare professionals exactly with customers, depending on what you perceive to be their needs. The professionals that are recruited by the provider will be fully trained, vetted and qualified. Part of the process involves us, as a Department, to sign those people off as proficient to do the assessment.

The Chairperson: At this stage, I do not think that we can get the answers that we are looking for. We are going through the clauses.

Ms McCleary: Just before we move on, I want to say something about the work capability assessment, which Mickey Brady referred to. To repeat what I think we have said on numerous occasions, the purpose of the work capability assessment and the PIP medical assessment are totally different, and it is important to remember that. Hopefully, lessons will be learned from other fields, whether that refers to the work capability assessment, or whatever. However, I want to stress that they are very different things.

The Chairperson: Some members are indicating that they want to ask questions. I do not want to have a discussion around the issues. People may not agree, and will not agree, with some of the explanations. I do not agree with some of the explanations that I am getting, and I do not accept some of the explanations that I am getting, but this is not the time to have that debate. We are examining the Bill clause by clause for information.

Mr Douglas: I just want clarification on something. Anne, you mentioned people who have a terminal illness. You used the word "may". However, in some of the stuff that I am reading, having a long-term illness would qualify you.

Ms McCleary: Most of the people who you would regard as having a terminal illness will be covered by it. However, the difficulty arises where you have a congenital condition that goes on for a significant time, but is not terminal as such. That is where the difference lies.

Mr F McCann: My question is on the back of what Mickey Kelly said. Given the legacy of the conflict here, far more people suffer from psychiatric and mental health problems. Will the new way of doing things ensure that people with a psychiatric background will be visiting those people to assess them, rather than what are called, in the broadest terms, healthcare professionals?

Mr M Kelly: The provider will gather a mix of healthcare professionals to cover a broad spectrum. It is not going to be possible to say that we will have x number of each professional for each specific thing. I cannot go into the detail of that at the minute, but that will be part of our role as we work with the provider to ensure that they have adequate personnel and specialists who are trained to take into account the circumstances in Northern Ireland.

Mr F McCann: I hate to prolong this, but surely that would be built into any tender or contract that you would put out?

Mr M Kelly: Part of the procurement exercise was to indicate the circumstances in Northern Ireland.

The Chairperson: We have not closed the gaps in the understanding of how that is going to work out. We will move on to the next clause, please.

Ms Jane Corderoy (Department for Social Development): Clause 76 introduces the personal independence payment. As Anne said, the system has become quite complex. People are unclear about who can qualify and decisions about qualification can be inconsistent and subjective.The intention is to create a sustainable system that will support disabled people to overcome the extra barriers that prevent them from leading full and active lives. PIP is intended to be a more dynamic, objectively assessed and transparent benefit, and entitlement will be based on an assessment of the impact that a person's disability or condition has on their daily living and mobility needs. Entitlement to disability living allowance depends on the extent to which someone needs help with personal care, needs supervision or has difficulty walking. The personal independence payment will take account of changes in individual circumstances and will reflect wider changes, such as advances in aids and adaptations. Support will be focused on those who face the greatest day-to-day challenges and who are, therefore, likely to experience higher costs. It will be non-contributory and non-means-tested, and its aim is to help people live more independent lives within their local community. The personal independence payment will focus on the ability of an individual to carry out a range of activities necessary for everyday life and the extra costs arising because of that. It will be payable to people who are in work as well as those who are out of work.

Tests of residence and presence will be similar to DLA and will be set out in the regulations. It is intended to introduce a habitual residence test to bring PIP in line with other non-contributory benefits, instead of the ordinarily resident test that applies to DLA. Entitlement to personal independence payment will be determined by considering all of the evidence, including the new assessment, which will more accurately and consistently assess and determine who will benefit most from additional support.

To make sure that this is right, the assessment is being developed in collaboration with a group of independent specialists in health, social care and disability, which includes disabled people. The Department has consulted on the assessment criteria. The personal independence payment will initially replace DLA for people of working age. The experience of reassessing the working age caseload will be used to inform future decisions on the reassessment of children and for those over 65. The policy aim of PIP is that support should be targeted at those disabled and vulnerable people who face the greatest challenges in leading independent lives.

Mr Brady: I have just one question. Will the disability working allowance be going? We have DLA and disability working allowance.

Ms McCleary: Sorry?

Mr Brady: Disability working allowance: is it now gone, or will it be gone?

Ms McCleary: I am not sure, but we will check on that.

Mr Copeland: Will it be counted as income within the confines of the cap allowance?

Ms McCleary: No; it will be disregarded. In fact, a household where someone is in receipt of DLA or PIP will automatically be excluded from the benefit cap.

Mr Durkan: Is that any level of PIP or DLA, even if it is the lowest?

Ms McCleary: Yes.

The Chairperson: Thank you. Obviously, we will return to that. We move on to clause 77.

Ms Corderoy: Clause 77 sets out the broad entitlement conditions for the daily living component of the personal independence payment. It provides that it can be paid at one of two rates depending on an individual's ability to carry out specified activities. The process of assessing whether someone is limited or severely limited in their ability to carry out the activities will be at the heart of personal independence payment. The clause also provides that someone has to have met the required period condition before entitlement to the daily living component can start. That condition is set out later, in clauses 79 and 80. Nine activities will be assessed, which, as Anne said, are preparing food and drink, taking nutrition, managing therapy or monitoring a health condition, bathing and grooming, managing toilet needs or incontinence, dressing and undressing, communicating, engaging socially, and making financial decisions.

The policy intention is that the daily living component will prioritise those individuals who face the greatest barriers to living full and independent lives, will help protect those who are most in need and will focus support on individuals who face the greatest challenges to leading full and active independent lives. Entitlement to the daily living component and to the specified rate, whether it is the standard or enhanced, will be by reference to an objective assessment, which will consider whether someone is limited or severely limited in their ability to carry out certain daily living activities. The daily living activities will be set out in the regulations. A draft has already been consulted on, and the regulations encompass a range of those everyday activities. Each of the activities will be underpinned by a number of descriptors, which will allow an assessment to be made of the claimant's capability in undertaking the activities.

In terms of subordinate legislation, the clause provides for the regulations that will set out the weekly standard and enhanced rates; the activities that are to be regarded as daily living activities; the details of the assessment to determine whether an individual has limited or severely limited ability to carry out those daily living activities; and further restrictions that relate to the pensionable age for entitlement and terminal illness. The first set of those will be by confirmatory procedure.

The clause is also subject to provisions in clause 81, which deals with terminal illness, and clause 82, which deals with people reaching pensionable age or the age of 65 if pensionable age changes.

Mr Copeland: If I remember right, there are two rates of mobility within DLA — high and low — and three rates of care — high, middle and low. Middle care seems to have disappeared in PIP.

Ms McCleary: There are only two.

Mr Copeland: What is the likely impact of that in terms of entitlement? Are more of the people who are currently on the middle care rate going to themselves chinned, for want of a better word?

Ms McCleary: We do not know what the impact will be, because all those folk have to go through the assessments. Which category an individual falls into will depend entirely on their assessment. You cannot just assume that because we are moving from three to two, half of the group that would otherwise have been in the middle component will go up to the higher category and the other half will go down to the lower category. We just do not know. It will depend on the descriptors and the number of points scored. That will determine each case.

Mr Copeland: At what stage will we as a Committee get sight of those? All these things are critical. It is the mechanics of it.

Ms Corderoy: They have been consulted over. DWP is going to respond to the consultation that looked at those, we hope, soon enough. When it does, we will share that with the Committee.

Mr Copeland: Is this a UK or a GB mainland consultation?

Ms Corderoy: We were included in it. I think that we sent a paper to the Committee in which we made the case for the people who responded directly to us in the Department for Social Development (DSD).

Mr Copeland: So there is no individual pilot scheme being run in Northern Ireland?

The Chairperson: If I recall correctly, the Committee did respond to that, but we can clarify that later on.

Mr Brady: The main thing for people on middle care is that, very simply, if they live alone, they qualify for a severe disability premium. That is quite a lot; at the moment, it is about £58. So you would have to assume that, unless that premium regime is kept in place, a lot of people will be moved from enhanced to standard.

Ms McCleary: There may well be some.

Mr Brady: Those people are going to lose out on quite a lot of money. The severe disability premium is a fair amount of money for a person living alone, particularly given the amount of benefits they are expected to live on. At some stage, clarification will probably be needed on the impact of the premiums on universal credit.

Mr M Kelly: I think the report that was published this morning actually looks at some of the impacts of removing the severe disability premium on universal credit as opposed to —

Mr Brady: This will make a huge difference to a lot of people.

Ms McCleary: There is provision in universal credit for the building blocks of fundamental benefits, including disability factors.

Mr Brady: I suppose, with respect, that sounds good in theory, but the difference is that if you are in middle care at the moment and you live alone, you qualify. Some people who have other income may not get the whole severe disability premium. Then you get into passport benefits, which is a big issue.

Ms McCleary: We will be looking at this report.

Ms Corderoy: Mr Copeland, you talked about the different range. What this will do, in a practical sense, is reduce the combinations from 11 to eight. So people should be clearer on what sort of rate they will get from PIP compared with DLA.

The other thing worth saying is that the criteria and the descriptors take more cognisance of mental health issues. You made the point that mental health is a bigger issue here. We imagine that some people will go up, as well as the fear that some will go down, because mental health will be taken more in the round in this new PIP compared with DLA.

Ms McCleary: That was one of the changes that emerged from consultation on the descriptors.

Mr M Kelly: To build on what Jane said, under the current rules on DLA, to get the highest rate of the care component, someone must require attention day and night. Under the new PIP rules, however, people can get the highest rate of PIP — the enhanced rate — even if they do not need attention at night. So the higher rate will be payable just for significant needs during the day. The people who will gain from that are those who have significant needs during the day but not at night and do not, therefore, qualify for the higher rate at the moment. Obviously, as you say, there may be some people at the other end. However, there is the potential for people to get higher rates of benefit.

Mr F McCann: Anne, you mentioned that a lot of this depended on the number of points scored. How does that differ from the present assessment?

Ms McCleary: Sorry, I am not quite with you.

Mr F McCann: You talked about the level of benefit they would get.

Ms McCleary: Yes, the descriptors and the points.

Mr F McCann: It depends on the points scored. How does that differ from the present system?

Ms McCleary: The descriptors themselves are different.

Mr F McCann: You said earlier that the assessment that people go through, by comparison to employment and support allowance (ESA), is completely different; but the new system is points-based. Are you saying that the PIP system will be points-based also?

Ms McCleary: Yes.

Mr M Kelly: It will, but the descriptors in the work capability assessment are very different to what those that will be in the PIP assessment.

Just to pick up on your point, Fra, in the current administration of DLA there are no points. It is a subjective judgement by a decision-maker based on a round of evidence. It will still be a decision made by a decision-maker, but the assessment will just form a part of that evidence-gathering process.

Mr F McCann: I have to say that, if you are following some of the serious problems under ESA in England, tens and maybe hundreds of thousands of appeals have been made because of the descriptors in the system.

Mr Copeland: I just want to check how you will ensure that the contractor — the company that is successful in tendering for this process — should it already be in possession of a contract for the other process; in other words, if Atos gets it for example — will it be able to use staff, according to availability, to deal with ESA and PIP? You said that they are quite different. If you have one person making judgements according to two different criteria, I would have thought that there could be a very serious pollution of one system by the other, if the same people are involved in both. I would have very serious issues about that. They have to be kept separate, and the people involved in them have to be quite separate and trained for each specific case.

Mr M Kelly: I think that that is a point, Michael, that we will take up with the provider, when we announce the contract.

Ms McCleary: If that is a relevant factor. It may not be.

Mr M Kelly: We are in a position where we cannot go into any detail because of the commercial issues around the contract. It is a point that we have logged.

The Chairperson: We cannot have long conversations about people's opinions.

Mr Durkan: My question is about the contract as well. I know that you are limited as to what detail you can give. It is about lessons that have been learnt from the Atos/ESA debacle and the expense to the Department of so many appeals. Can there be something written into the contract around that, for whoever is successful? Rather than being target-driven, as many suspect it will be, to reduce the amount of money spent on PIP, the contractor should not be so quick to dismiss people's applications. Let the contractor incur the cost of the appeals, rather than have it fall back on the Department.

Mr M Kelly: I must reassure members that there will not be any targeting. I know what people think. The Department and the agency will not be setting any targets in terms of getting people off disability living allowance. The contractor appointed across the water, and the work that has gone on, have been well cited. I know that members have views on some of the stuff that is coming out from Professor Harrington and his recommendations. Those will be built into part of the process as well.

Once we have the announcement of the provider, the Department and the agency will have a detailed discussion with the provider about a range of issues with regard to the provision of the service. There

will be, I assure you, a rigorous monitoring regime in place as well, through the provider, and also through what we do locally to ensure the quality of the work.

Mr Douglas: I have a general point; maybe a bit of guidance from Anne or whoever. Whatever you decide about the eligibility criteria, they are going to be much more restrictive in future. To my knowledge, at this point, someone who has their legs amputated will naturally go on to DLA. Yet, in the new system, would it be right to say that they will be reassessed, even if they were born without legs? I suppose all of us — people stop us in the street and ask how this will affect them. *[Inaudible.]* What is your guidance to us? There is a list of every type of disability or illness.

Ms McCleary: I do not think that there are very many disabilities which you can say, with any degree of confidence, you will definitely get or not get. It is not about the disability. This is about how it affects the individual person. That is the key. The exception would be those who have terminal illnesses, as we discussed. In relation to most other people, it is about how their particular condition affects them. It is therefore not possible to say any more than that.

Mr Douglas: I understand.

Mr Durkan: So, terminal illness is the only exception at the minute?

Ms McCleary: Well, that is the exception in relation to special rules. However, I think that that is probably the only area where you can say that, just because somebody has X condition, they will automatically get automatically not get something. For everyone else, it just depends upon individual circumstances.

Mr Durkan: Previously, it had been applied to some sensory conditions, such as blindness.

Ms McCleary: Yes.

Ms Corderoy: There had been some automatic entitlement for some conditions like that.

Mr M Kelly: More work is still going on to finalise the assessment criteria following the closure of the last consultation, which might deal with some of the issues that we are faced with.

Ms McCleary: Generally speaking, you just avoid saying "I can guarantee you X". It is just a case of "We will have to see".

The Chairperson: We are going to move on to clause 78.

Just before that, I will make a few general points. We have had a fair discussion so far, and I just raise this as a wee concern as to our process. There are a lot of questions around the fundamentals of PIP, and there are a lot of questions on the assessment process. It is fair to say that a number of members have raised those issues repeatedly, and rightly so, and they are on record; but I do not want to have a rehearsal of those arguments clause by clause.

We will have to return to a broader political discussion on the fundamentals of these provisions, whether or not members or the Committee agree. Those are fundamental issues. As we go through the Bill clause by clause, I do not want to return to discussion on the fundamentals. Accept that there is a division of opinion; certainly, a range of concerns has been well flagged up. Let us move on. This is an explanatory process; we are getting the clauses explained. Members may ask questions to get clarification. It is not a debate or discussion of the rights or wrongs of it. Members, please do not give your opinions as to whether you like it or not.

Mr Douglas: I apologise if I am raising stuff. There are so many things here. I forget some of the stuff, to be quite honest.

The Chairperson: I have no intention, nor do I have the right, to try to restrict any member's scrutiny of the Bill. We are here to give the Bill the absolute maximum scrutiny. I am just reminding members that we are getting clarification and explanation of the clauses. After that, and parallel to it, we will be taking presentations from stakeholders. Then we will return to whether we agree with any or all of

those provisions and make our subjective opinions known at that point. Otherwise, we would never get through the explanation of the Bill at all.

I am just recording, for members' benefit, that we have rightly flagged up a range of very fundamental concerns about this Bill. Let us move on to clause-by-clause explanation of the Bill.

Ms Corderoy: Clause 78 provides for the broad entitlement rules for the mobility component of the personal independence payment, with the exceptions for people who are terminally ill or of pensionable age, which we referred to before.

As with entitlement to the daily living component, the intention is that support in the mobility component will be targeted at those disabled people whose health conditions or impairments impact most upon their daily lives.

The mobility component of the personal independence payment can be paid at one of two rates: the standard or the enhanced. The rate paid depends upon the extent to which the ability to carry out mobility activities is limited, or severely limited, by a person's physical or mental condition.

The mobility component will only be paid to people over a prescribed age and to people with long-term health conditions or impairments. Someone has to have had their limitation to carry out mobility activities for a required period. That is set out in clause 80 of the Bill. That has to have been the case for the previous three months, and to be likely to continue to have that limitation for a further nine months.

Subsection 4 provides that regulations will prescribe the activities that are to be regarded as "mobility activities". Within the personal independence payment, mobility will be looked at in a much broader way. Entitlement to the mobility component will be assessed on both the ability to both move around and the ability to plan and follow a journey. The impact of sensory, mental, intellectual and cognitive impairments will be considered in the same way as physical ones.

Entitlement to the mobility component will be determined by an assessment of a person's ability to get around. It is considered that the existing criteria for assessing mobility focuses too much on the physical act of getting around, and not on those other issues. To enable support to be targeted on those who need it most, the assessment will take account of the successful use of aids and adaptations, such as wheelchairs and walking aids, which can help disabled people live more independent lives. It is recognised that not all barriers to participation in society will be removed by the use of support aids. Points will usually be awarded in the assessment where aids or appliances are needed, recognising that a need has not been removed simply because an aid is being used. It will be entirely possible for people using aids to qualify for the benefit, depending on their circumstances.

In most cases, the assessment will involve a face-to-face consultation with an approved healthcare professional. However, people will still be able to provide evidence of their disability, including any relevant documentation from their GP or hospital consultant.

Under provisions in clause 79, regulations will provide whether a person's ability to carry out prescribed mobility activities is limited or severely limited by physical and mental conditions. As with entitlement to the daily living component, the intention is that the support and mobility component will be targeted at those disabled people whose health conditions or impairments impact most on their daily lives. As I said before, the two rates are being retained so that benefit can be paid where ability to carry out mobility activities is both limited and severely limited.

Regulations will also provide detail of the weekly standard rate and the weekly enhanced rate. Subsection 7 of the clause provides that regulations be made for a person not to be entitled to the mobility component if they are unable to benefit from enhanced mobility; for example, if they are in a coma.

The first set of regulations will be subject to confirmatory procedure, so they will come back to the Committee. This clause is vital in safeguarding the principle of mobility in personal independence payment, which will help to enable people with a long-term disability to lead full, active and independent lives.

Mr Brady: I think that you have answered one of my questions, but I just want you to clarify the detail. Where it says that a person is excluded from entitlement to mobility component in circumstances in

which the individual involved is unlikely to benefit from improved mobility. I would have thought that most people, if they are compos mentis or awake, will probably benefit from that. You mentioned coma, so I can understand that.

The other thing is that subsections 1(a) and 2(a) provide the power to prescribe a minimum qualifying age. There is a minimum qualifying age at the moment. It is five years for children, and then I think it changed slightly. Is there going to be a minimum qualifying age?

Ms Corderoy: At the moment, this is just dealing with the working age of 16 to 64.

Mr Brady: So, it is not going to affect children? That is not going to be changed.

Ms Corderoy: No.

Mr Brady: The legislation at the moment states that a person must be able to benefit from enhanced facilities for locomotion. That is the terminology they use. This may be in the regulations, and you can let us know at a later stage, but I had a case years ago where a woman with Alzheimer's could physically put one foot in front of the other, but she would have sat down in the middle of the road because she had no concept of danger. The legislation says that there has to be arrested development of the brain. These are points that need to be clarified. A retired consultant psychiatrist was a member of that panel, and, when I asked him to explain whether arrested development meant physical development or mental development, he could not answer. There were bits in the legislation that were so nebulous that they could not give you any sort of answer. It may be in the regulations, but it is something that needs to be checked.

Ms McCleary: I think it will be in the regulations, but the descriptors have been developed with considerable involvement from psychiatrists and so on, so that kind of thing should be covered.

Mr Brady: The point that I am making is that there was language in the regulations that was so nebulous that people could not give you an answer. If someone like the person that I was representing came before them, they could not make a decision based on the regulations. That is the point that I am making. There needs to be clarification on those kinds of issues.

Ms Corderoy: We will aim to do that. One of the things to do with the mobility component is that it should reflect that, because it is about moving around but also being able to plan and follow a journey. Therefore, it is supposed to be much broader.

The Chairperson: OK, thank you.

Ms Corderoy: Clause 79 outlines provisions related to the proposed assessment. Regulations will provide detail on the assessment, including entitlement to the two rates of the new benefit, which will depend on individuals being determined as having limited or severely limited ability to carry out key activities. Those will relate to either the daily living or the mobility components or both. The greatest support will go to those who are least able to carry those out.

The intention behind the assessment is that it is more evidence-based and consistent. It will take into account the full impact of a person's disability. Draft assessment activities and descriptors have been consulted on, and, in the first draft, the criteria were tested on a sample of existing DLA claimants in order to understand the criteria's reliability, validity and impact. As a result of the testing, which included cases from here, the criteria were refined and improved.

Nine of the 11 activities to be reassessed relate to the daily living component entitlement. The addition of communication as an activity within the daily living component allows impairments' impact on sight, hearing, speech and comprehension to be more appropriately taken into account.

Two activities relate to entitlement to the mobility component. Assessing those activities together provides a broader perspective of mobility. The assessment will consider a person's ability to plan, as well as their ability to undertake a journey, giving equal weight to the mental and physical requirements for this activity.

Using the best and most appropriate evidence, including that from professionals involved in the care of the individual throughout the assessment process, will be vital. It is intended that, in most cases,

individuals should have face-to-face consultation with a trained, independent healthcare professional. That will allow an in-depth look at the individual's circumstances and enable a two-way discussion to take place.

There will be instances where face-to-face consultation will not be appropriate; for example, individuals with the most severe impairments, or where sufficient evidence is already available. In such cases, an assessment on the basis of paper evidence only might be more appropriate. That will be considered further as the process development progresses. However, the final decision regarding an individual's entitlement to personal independence payment will remain with the Department. It is important that individuals engage with the personal independence payment assessment process to ensure that their voices are heard. The clause makes provision that regulations will also provide that individuals will be required to provide information or attend face-to-face consultation. Where individuals do not do so, without good reason, the Department has the power to disallow their claim to benefit. That power will be used sensitively and proportionately, taking into account individual circumstances, in particular the impact of impairments.

Mr Brady: It says that it is likely that the first set of regulations will only address the assessment process for adults, and subsequent regulations will deal with assessment for children. Presumably, that is children who may qualify for PIP. At the moment, the legislation says that if a child is to qualify, they will require substantially more care for the care component and substantially more care and attention than a child of that age who does not have their particular problem. Do we know whether that will be part of the criteria, or will that be contained in the regulations? There has been case law on the issue of substantially more care and attention.

Ms Corderoy: It would be in the regulations.

Mr Brady: It is an important issue in terms of the detail of the legislation. We do not have the regulations, but it is worth bearing that in mind.

Mr Douglas: Anybody applying for the mobility component will also have to meet the required condition in respect of the six-month timeline.

Ms Corderoy: It has been changed. It is now three months and nine months, so it is more in keeping with DLA, but it has to be that they would imagine having it for the next nine months.

Mr Douglas: OK.

The Chairperson: This is a key clause, because it is an enabling one for a lot of these regulations on the issues that we talked about earlier. If everyone is happy enough, we will move on.

Ms Corderoy: Clause 80 is linked with clauses 77 to 79 and makes provision related to what constitutes the required period condition for entitlement to either component of personal independence payment. These essential conditions are intended to distinguish between a long-term impairment or health condition, for which financial support through PIP may be appropriate, and shorter-term conditions, for which other support mechanisms exist.

The required period condition is that an individual will have met the conditions of entitlement to a specific rate of the daily living or mobility component during the three months preceding the date that they become entitled. There is an expectation that they will continue to meet those conditions for a further nine months following that date. These are referred to as the qualifying period and the prospective test.

The qualifying period and the prospective test are also reapplied where an award is reviewed and a higher rate of benefit is merited. This will ensure that any changes in circumstances resulting in an increase from the standard to enhanced rate are also long term. Crucially, people with a terminal illness who are expected to die within six months are excluded from the required period condition by virtue of clause 81.That enables financial support to those in the most difficult circumstances to start as soon as possible. People affected can receive enhanced rates for the daily living component immediately.

Subsection (4) allows for the required period condition to be modified in certain cases; for example, those provisions could allow the qualifying period effectively to be waived where there has been a

short break in entitlement. That may be because someone has been in remission from a disease or illness such as MS or leukaemia and their condition deteriorates again. The combined effect of the required period condition is that the individual will have to be or would be expected to be substantially disabled for a period of not less than 12 months. That definition is in keeping with the definition of long-term disability for the purposes of equality and disability legislation.

Not everyone will have to wait three months after they make a claim before starting to receive personal independence payment if they have already met all or some of the qualifying period before they submit their claim. People with variable or fluctuating conditions will not be prohibited by virtue of the clause from entitlement to personal independence payment. The assessment criteria will be attuned to the needs of people with variable or fluctuating conditions and will not be a snapshot of the ability on the day that the assessment is carried out; rather, the criteria will consider a person's ability to perform activities over a broader time frame. The fact that an individual may, for example, not satisfy them on the day but would be likely to satisfy them on most others could therefore be enough to satisfy the assessment.

Mr Brady: You talk about a period of 12 months. Again, case law would aggregate over time. From personal experience, I am dealing with cases of, for instance, sarcoidosis, which is a lung condition that flares up over a period. Therefore, in one month, somebody could have three bad weeks and one good week. Will such conditions be looked at in the regulations and the general legislation?

Ms Corderoy: It should cover those conditions.

Mr Brady: It is like an aggregate. If you had nine bad months out of 12, would that be considered a long-term chronic condition? It should be, because it is.

Ms Corderoy: It should be, yes.

Mr Copeland: Is there an automatic right to ask for a review of a decision and/or appeal a decision?

Mr M Kelly: The same rules that the Committee discussed yesterday for mandatory reconsideration and all those things will apply to personal independence payment, and it is the same with appeal rules.

Ms Corderoy: Clause 81 provides for special provisions to apply to claims to PIP made by or on behalf of people who are terminally ill. Those are people who find themselves in the most difficult of circumstances, and it is right that financial support be provided as quickly as possible. The special rules for terminally ill people were introduced in response to the very reasonable demand that people made. People with a terminal illness should receive financial assistance with their end-of-life needs. They are tried and tested through DLA, and will, therefore, be carried forward into personal independence payment. Clause 81 will enable terminally ill people — that is, people who have a progressive disease and are not expected to live beyond six months — to be entitled immediately to the enhanced rate of the daily living component, providing unconditional financial support without them having to demonstrate that they have any limitation on their ability to carry out daily living activities.

Terminally ill people will also be able to be paid the mobility component immediately, subject to having their mobility needs assessed. The assessment of someone's mobility needs will be handled sensitively, discreetly and appropriately, and should avoid the need for a face-to-face consultation where possible. The special rules will also allow claims for personal independence payment to be made by a third party without the terminally ill person's knowledge. That is in recognition of the exceptional circumstances in which information might be kept from patients about their prognosis, either because they have clearly stated that they do not wish to be informed or because to do so may cause them serious harm. Robust procedures will be retained to ensure that terminally ill claimants are not informed of the prognosis through the actions of the Department. The clause is designed to support people in very difficult circumstances and to try to make the process of receiving the benefit at that time less stressful.

Clause 82 sets upper age limits for claims to personal independence payment. The upper age limit is 65 years old or state pension age, whichever is higher. Therefore, a person who has reached the upper age limit will not be entitled to personal independence payment. The clause enables regulations to be made to specify exceptions to the provision. Exceptions include people who are already in receipt of personal independence payment when they reach the upper age limit, and, provided that their mobility and daily living needs continue in line with the eligibility criteria, those people will continue to receive PIP.

Clause 83 introduces a new provision that affects people who come from Northern Ireland from another European Economic Area (EEA) state or Switzerland, or who claim benefit from one of those states. The purpose of the clause is to clarify which state is responsible for the payment of benefit within the EEA. People who wish to claim personal independence payment but who are insured for a similar benefit with another country will be unable to receive personal independence payment. In Northern Ireland, being insured means paying national insurance contributions under the UK scheme.

Benefits in cash are normally paid according to the legislation of the EEA state where the person is insured, regardless of which state the person resides in. Currently, people who come to Northern Ireland can receive DLA at the same time as receiving payments from another state, as DLA does not have the restriction that is being proposed here.

The provision will safeguard public funds, and it will be a fairer system that people will be able to understand. People arriving in this country will not, therefore, be in a more advantageous position than long-term residents. A similar provision has already been made for the disability allowance care component for attendance allowance and carer's allowance.

The Chairperson: OK; fair enough.

Ms Corderoy: Clause 84 confers power on the Department to make regulations to provide that the daily living component of personal independence payment is not payable where the person is a resident in a care home in circumstances in which any of the costs of any qualifying service provided for the person is already being met out of public funds. The mobility component will continue as normal.

A "care home" is defined as an establishment that provides accommodation, together with nursing or personal care. Qualifying services are defined as inpatient treatment, accommodation, board, personal care and such other services as may be set out in the regulations. People with a disability who do not get any of the costs of those qualifying services paid for by the state will continue to be paid the daily living and mobility components of personal independence payment.

The proposed rules mirror those for the care component of disability living allowance, which is not payable to those in care homes or similar institutions after 28 days for adults and 84 days for children. That will also help to ensure that a claimant's award is not disrupted during a period of respite care in a care home. It will ensure that the taxpayer does not pay twice for the same need.

Mr Brady: Someone in a care home will be given care and attention, so I can see the principle. You said that the mobility component will not be affected. Relatives of those who are in residential care use that mobility component to take them out during the week and at weekends, and there was a lot of speculation that that was going to be affected. What you are saying is that the mobility component will remain the same and not be affected.

Ms McCleary: There was considerable concern about that during the deliberations on the GB Bill and *[Inaudible.]* .

Mr Brady: I just wanted to confirm that that had not changed. Thanks.

Mr Copeland: I think that somewhere in the region of 700-odd folk were going to be affected by the proposed changes to the special needs maintenance allowance. The nature of their domicile was slightly different: they were viewed as tenants rather than residents. You know, like the Camphill community that we visited.

The Chairperson: Yes. Supported housing.

Mr Copeland: Yes. For qualification for the daily living allowance, will any allowance be made for the difference between supported housing and the categories that you have discussed?

Ms Corderoy: The clause deals only with care home residents, and I am not sure about those who live in supported housing. We will need to look at whether those in supported housing will be provided for in the regulations.

Mr Copeland: Will you do that for us? They are getting a rough enough time as it is.

Mr Brady: Following on from that, I know that, in the light of practice, people in supported housing but who lived in individual flats had the severe disability premium taken off them and then reinstated. That would apply in the same way. The people whom we visited have their own address and flat and are residents within a larger supported housing establishment. They do not receive the severe disability premium, because, technically, they live alone. We should perhaps flag that.

Ms Corderoy: Clause 85 confers a power on the Department to make regulations, provided the daily living and mobility components of the personal independence payment or both are not payable in certain circumstances to inpatients of hospitals or similar institutions, where any of the costs of any qualifying services provided for the person is paid from public funds. The clause also provides that regulations will set our further detail on whether any of the costs of medical or other treatment, accommodation and related services provided for a person is considered to be qualifying services borne out of public funds. Disabled people who do not get any of the costs of those qualifying services paid for by the state will continue to be paid the daily living and mobility components of the personal independence payment.

As with clause 84, which relates to care home residents, there will be an underlying entitlement to cover where an individual leaves hospital, and a 28-day run-on or continuation of entitlement to avoid interference with a claimant's award during short periods of hospitalisation. The proposed rules will mirror the existing rules for disability living allowance and will ensure that the taxpayer does not pay twice for the same need.

Ms P Bradley: I suppose that my question also relates to care homes. You referred to the 28-day run-on period. Currently, when a person is admitted to hospital, all the agencies are notified. When the person comes out of hospital, he or she must be out of hospital 28 days. Is this the same as for DLA?

Ms Corderoy: As far as I understand it, it will be the same.

Ms P Bradley: Therefore, people will have to have that break from hospital for their award to continue.

Ms Corderoy: No. I think that they will retain that underlying entitlement to it.

Ms P Bradley: In hospital settings, you get frequent admissions, and people may be out of hospital for one or two days and then have to go back in again. When I worked in the hospital, part of my job was to point out to those patients that, because they were not out of hospital for long enough, they should notify the authorities. In my experience, very few people ever did that and continued to claim their award while they were in hospital, whether they were in for one week or six months. I just wanted to clarify whether patients still have to have that break of 28 days.

Ms Corderoy: I will double-check that just to be sure.

Ms P Bradley: It would the same for care homes. You would need to have that.

Mr Kelly: I think that the general overriding principle is that this will carry forward the same rules as for DLA. We just need to check that.

Ms Corderoy: It is supposed to be for those who are in and out of hospital. Obviously, a lot of those who qualify will be in and out of hospital. It is supposed to be —

Ms P Bradley: If they are in and out of hospital and are out for two days or two weeks, they think that they are still in the qualifying period, but they are not. They are not aware of that.

Ms McCleary: We will have a look at that.

Ms Corderoy: If they are in hospital for longer than 28 days, it becomes —

Ms P Bradley: If they are in hospital for two weeks, out for one or two weeks and back in for two weeks, they have not had a break. That is a run-on period. You must be out of hospital a certain

amount of time. If they are in for 28 days and then come out of hospital, that would not apply, but if they are only out of hospital for two weeks, that is not seen as a run-on period. The regulations on that are complicated for most people, and especially for those who are in receipt of that benefit.

Ms McCleary: We will have a look at that.

Mr Brady: It is great to hear social services taking such an interest in benefits.

Ms P Bradley: I filled the forms in many items, Mickey.

Mr Brady: To follow on from that, people have less of a period now. Previously, you could be in hospital for up to eight weeks and still get your DLA or attendance allowance. That was reduced, and it seems that it has been reduced again to 28 days. Can you check that?

Ms Corderoy: Yes.

The Chairperson: Were you thinking out loud there? I thought that you were going to come back in.

Ms Corderoy: No. If it is OK, I would rather check it and get the answer right.

The Chairperson: That is fine.

Ms Corderoy: Clause 86 provides that, generally, personal independence payment is not payable when someone is in prison or legal custody. It also confers a regulation-making power to provide exceptions to that general rule.

Under current legislation, recipients of disability living allowance who are imprisoned because of a criminal offence are disqualified from receiving benefit, and payment stops. If, however, they are detained in custody on remand, payment is suspended pending the outcome of the trial or sentence. Where people are detained in custody on remand, they can have arrears of their DLA paid where, at the conclusion of proceedings against them, they are found unfit to plead, not guilty or are found guilty but do not receive a custodial sentence.

The rules relating to periods of detention on remand are currently common to many benefits, including incapacity benefit, carer's allowance and bereavement benefit. However, unlike those benefits, which are intended to provide income maintenance, DLA is intended to contribute towards the extra costs associated with disability. It is therefore important to ensure that the funding of those extra costs is not duplicated.

With the introduction of personal independence payment, the position of those in prison has been re-evaluated, whether they are on remand or under sentence. Disabled prisoners have their disability-related needs met by the prison or through healthcare provided by the local health and social care trust. Accordingly, it is considered that, to avoid duplication of provision, the payment of benefits should cease when someone is placed in legal custody under any circumstances. Clause 86 provides for that. However, the Department does not propose simply to turn people's benefit off the moment that they are put on remand or sent to prison. People may need to settle some outstanding financial commitments when they are in prison, such as a higher than normal fuel bill that arises as a result of their disability. It is proposed that personal independence payment will be payable for a short period — perhaps 28 days after someone goes into prison. Providing such a period of continued benefit also has the advantage of providing some administrative simplification and helps to ensure that a person does not leave prison in overpayment, which then has to be repaid. The measure prevents duplication of provision.

Mr Douglas: You mentioned legal custody. Does that include police stations or holding centres where people have been arrested?

Ms Corderoy: It is anywhere where they get their needs met.

Clause 87 sets out conditions for claims, awards and information for personal independence payment. It provides that payment of personal independence payment cannot be backdated beyond the date on which a claim is made or treated as being made. Awards of personal independence payment would normally be for a specified fixed period, after which a new claim must be made. Information gathered

in the process of determining a claim for personal independence payment is to be treated as information relating to social security. Not backing a PIP payment beyond the date on which a claim is made or treated as being made is a practical provision that has been a feature of both disability living allowance and attendance allowance since their inception. Clearly, this provision needs to be supplemented by measures that will ensure that people who may be entitled to personal independence payment make their claim at the right time.

Subsections (2) and (3) relate to the duration of awards when an entitlement to personal independence payment has been established. The aim is to introduce more regular reassessments into personal independence payments to ensure that ongoing benefit decisions reflect any changes and remain accurate. The majority of awards for personal independence payment will be limited to an appropriate fixed term. Under the current system, the majority of fixed-term awards are given for up to two years. However, there will be a greater range of award durations for personal independence payment; for example, from less than one year to three, five or 10 years, taking account of issues such as the nature of the impairment, the known progression of any condition or the effects of treatment or rehabilitation given or expected to be given. Clearly, exceptions have to be made to that default position for those with the most serious long-term and stable impairments that are unlikely to see any change. Subsection (3) provides that guidance will be issued as to when a fixed-term award would be inappropriate.

Finally, subsection (4) provides that any information gathered during the processing of a claim to personal independence payment will be treated as information relating to social security. That will enable the Department to share relevant information and reduce the requirement for people to provide the same information over and over again.

Mr Brady: Can you clarify a point? At the moment, if someone has an award and there is no end date, it is an indefinite award. Are you saying that it will be less than one year to three, five or 10 years?

Ms Corderoy: Yes.

Mr Brady: It will be fixed-term award, and there are no more indefinite awards?

Ms McCleary: There may well be some indefinite awards.

Mr M Kelly: It is expected that there may be some instances in which there could still be a longer-term award.

Mr Brady: Longer than 10 years, depending on the condition, obviously?

Ms McCleary: Yes.

Mr Douglas: I want to go back to the situation for people with a terminal illness. They go through a lot of trauma, and it may take them a couple of weeks to make a claim. Would that claim be retrospective, or is it from the actual day on which they make the claim?

Ms McCleary: It is from the day on which they make the claim. It cannot be retrospective.

Mr Douglas: There is no flexibility at all? None whatsoever? You can understand the situation. That person is in a dire situation, and finding out about DLA, personal independence payment or whatever is the last thing on his or her mind.

Mr Brady: Just to clarify that point, if you apply for DLA at the moment, and you contact the office, it will note the date. Therefore, it is the date on which you make the claim, and that can be by phone. The office will put that date on the form that it sends out. It might take three months to process, but it will be effective from that date.

Mr Douglas: People with a terminal illness would have a letter from the doctor to say that they were told on that day, although it may take two weeks for them to make a claim.

Ms McCleary: They are likely to have a social worker involved who would presumably advise them.

Mr M Kelly: Macmillan and some of the cancer wards in the hospitals ensure that those who are diagnosed are picked up.

Mr Brady: There are some very diligent social workers.

The Chairperson: We will move on with our diligent officials.

Ms Corderoy: Clause 88 requires the Department to produce two independent reports on the personal independence payment assessment and lay those before the Assembly within two and four years of the legislation coming into operation. The ability of personal independence payment to support disabled people properly will, in a large part, depend on the successful development, implementation and operation of the assessment. The purpose of the review will be to measure that. No decision has been taken on who will undertake the reviews or how it will be conducted. What is important is that it be reviewed and that the review be carried out properly. Providing a report within two and four years of the clause coming into effect will allow time for the process and operation of the assessment to settle down, evidence to be collected and evaluation data analysed.

Clause 89 allows for disability living allowance to be closed legislatively at a future point, when the entire DLA working-age caseload has moved over to personal independence payment. The reassessment of the existing working-age disability living allowance caseload and the movement of people on to personal independence payment is planned over a three-year period beginning in October 2013. Work is ongoing on the design of that process.

Mr Brady: There was speculation that there will be under 1,000 cases processed a week. I think that you gave the figure earlier, but if there are 180,000-odd, logically, if you were doing 1,000 a week, it will take longer than three years. Reasonably, probably nowhere near that number would be processed if they were being processed properly. Therefore, you are talking about a long time. We could all be retired by then.

That figure was put out by the Department, which speculated that 1,000 cases a week would be processed.

Mr M Kelly: No, the 1,000-a-week figure is, I think, predicated on the reassessment of the working-age caseload, which was estimated to be at the point of reassessment in June of in and around only 117,000. The figure of 1,000 is based on the 117,000 as opposed to the full 190,000.

In line with the commitment, the Department will obviously have to ensure that the resources are in place for the provider and the staffing to allow those assessments to take place. Part of our challenge as a Department is to make sure that adequate resources are in place to match that timescale.

Mr Brady: One thousand cases a week is a huge number.

Mr M Kelly: Absolutely.

Mr Brady: Of course, it depends on "healthcare".

Mr M Kelly: And availability.

The Chairperson: But there is no specified time limit?

Mr M Kelly: No.

Mr Brady: It was just to clarify, Chair. The issue was in the public domain.

The Chairperson: I appreciate that. We will move on to clause 90.

Ms Corderoy: Clause 90 gives effect to schedule 9, which makes provision for amending existing legislation. Its purpose is twofold. First, it makes provision to ensure that personal independence

payment binds with common rules for things such as claims, decisions and appeals. Secondly, it updates references to disability benefits in existing legislation to include references to personal independence payment. That will include providing that personal independence payment will be classed as a non-taxable benefit.

Clause 90 works in tandem with clause 91, which provides a broad power to mop up through regulations any remaining references to disability living allowance that may have inadvertently been missed in existing legislation. That is standard practice when an entirely new benefit is legislated for.

As I said, schedule 9 is given effect by clause 90. The amendments in the schedule are in consequence of the introduction of personal independence payment and can be divided into broadly two groups: first, amendments required to the Social Security Administration (Northern Ireland) Act 1992 and the Social Security (Northern Ireland) Order 1998. Those provisions relate to matters such as claims and payments, decisions and appeals and uprating relating to PIP; and, secondly, consequential amendments to a wide variety of legislation, including social security legislation that currently refers to disability living allowance to include, where appropriate, similar references to personal independence payment.

The Chairperson: OK, happy enough? We will move on.

Ms Corderoy: Clause 91 supplements the provisions in clause 90 and schedule 9 to apply consequential arrangements on the introduction of personal independence payment. The task of identifying all the changes that need to be made is substantial. It is clear that, notwithstanding the wide range of consequential and supplementary amendments made by clause 90 and schedule 9, not every change may have been identified. Clause 91 allows the Department to pick up through subordinate legislation any changes identified in future.

Mr Brady: Can the appointed day for the changeover from DLA to PIP vary or is it the day on which PIP kicks in? Obviously, people will be assessed at different times.

Ms McCleary: It will be triggered by a change in their circumstances —

Mr Brady: Yes, and they will then go on to PIP. I am just wondering whether the day on which they go on to PIP will be the appointed day or will there be an appointed day on which PIP will kick in?

Ms McCleary: I think that it will vary.

Mr Brady: That is really what I am asking you. It will therefore vary from person to person almost?

Ms McCleary: Yes. It will vary from person to person, because there will be those for whom it would be triggered by a change in circumstances that they report to the Department. For the rest, it will be done on a random basis.

Mr Brady: Thank you very much.

Ms Corderoy: Clause 92 gives effect to schedule 10, which makes transitional provisions related to the introduction of personal independence payment and the reassessment of individuals currently in receipt of disability living allowance. The clause and the schedule allow the Department to make regulations concerning the replacement of disability living allowance with personal independence payment.

As I said, schedule 10 is given effect by clause 92 and makes provision for the introduction of personal independence payment and reassessment of individuals who are currently in receipt of disability living allowance. It allows the Department to make regulations concerning the replacement of DLA with PIP. The powers provide the flexibility that is required to manage the introduction of personal independence payment and the reassessment of existing DLA in a manner that is both administratively efficient and fair to the individuals concerned. Individuals' conditions can change gradually over time, sometimes so gradually that individuals themselves will not notice. DLA does not have a systematic process for checking regularly the accuracy of awards. There have been 155,577 recipients of indefinite disability living allowance awards. As a result, there may be people who are currently on DLA who are receiving an incorrect amount of benefit. Reassessing the DLA caseload under the new eligibility

criteria for personal independence payment is necessary to ensure that all receive an accurate and up-to-date assessment of their support needs.

The powers that are contained in schedule 10 allow the Department to phase in the introduction of personal independence payment and manage the flow of new claims. Regulations will also enable the Department to terminate an existing award of disability living allowance and make an award of personal independence payment in its place. Each case will be looked at individually and assessed against the new criteria for personal independence payment. Claimants may be required to provide information or have face-to-face consultation before a new award of personal independence payment can be made. As a result, each individual will have his or her particular circumstances and support needs considered individually, ensuring that everyone receives the correct amount of benefit.

There are concerns about the reassessment process and what it will entail. The powers that are contained in the schedule are intended to enable the smooth transition between DLA and PIP for the individuals concerned.

The Chairperson: OK. We are happy enough.

Ms Corderoy: Clause 93 makes additional provision that relates to the regulation-making powers that are required for personal independence payment. Those powers are intended to give additional flexibility to the Department as personal independence payment is introduced and the extent to which it is meeting its objectives is assessed.

The powers will principally enable different provision to be made for different cases or purposes that relate to entitlement to personal independence payment. For example, that will be of use for a possible requirement to vary the assessment criteria for those who are moving from childhood to early adulthood or for those who are approaching pensionable age, at which differing activities and measures of ability may be required. They will also provide for making exceptions from specific provisions, such as those dealing with pensioners.

Subsection (1) makes clear that powers extend to the transitional arrangements and provides for discretion to be applied in certain circumstances. Finally, there is provision that the first set of regulations made to the assessment criteria, whether for working-age adults or children, or for determining the required period condition, will be done by the confirmatory procedure.

The Chairperson: Members are happy enough. Thank you.

Ms Corderoy: Clause 94, which is the interpretation of Part 4, is purely technical. It defines various terms that are used in that Part of the Bill. The definitions are intended to help with the interpretation of the legislation.

The Chairperson: Thank you for that. That concludes Part 4 of the Bill. Therefore, discussion of Part 4 is complete. As I said earlier, some fundamental issues are still foremost in members' minds. They have been well flagged. I thank everybody for their diligence and discipline in trying to get our way through this.

Yesterday, we reached clause 107. Members will recall that we deferred clauses 107 to 115 because of their legalistic nature. We will now resume discussion on those clauses. I propose to suspend the meeting at noon for 30 minutes for lunch. If we are happy to continue until then, we will move on to clause 107.

Ms McCleary: Chairperson, I introduce Conrad McConnell from the Social Security Agency. He will take the Committee through clauses 107 onwards, which are on fraud and error.

The Chairperson: As an overall observation, members had concerns and officials were not in a position to answer them. In general, people's concerns were about the legalistic nature of the clauses and how they interface with the legal system. That is why we deferred these matters for proper consideration.

Mr Conrad McConnell (Social Security Agency): I will deal with clause 107 first. At the minute, if someone commits benefit fraud, there are various ways in which we can take that person through the courts. There are cases that can be tried either way, and cases that can be taken to the Magistrates'

Court only, such as those for summary offences. The issue with summary offences is that we have to take the case within 12 months of the offence having occurred. At the minute, under the social security system, we can also take forward cases that have gone over the 12 months, if the evidence has only come to light recently. We can extend that 12-month period by a further three months. The issue is that the certificate process, as we call it at the minute, to allow that to happen does not apply to housing benefit. This clause simply allows housing benefit to come into that regime with other benefits.

The Chairperson: OK. We will move to clause 108.

Mr McConnell: At the minute, housing benefit fraud proceedings are taken forward by the Social Security Agency and its benefit investigation service. The Housing Executive does not take forward its own investigations. Clause 108 simply allows the Housing Executive at some point to carry out its own investigations if it desires to do so. However, there are no plans to move in that direction. The intention is that we will continue to deal with all housing benefit offences along with other benefit offences. It is simply a provision to allow it to happen at some point, but there is no intention to actually commence that clause.

The Chairperson: Is there any understanding of what that might mean for a Housing Executive officer? Does that person become a quasi-judicial official? What does it actually mean in practice?

Mr McConnell: It simply allows the Housing Executive to act in the way that the Social Security Agency acts in that it has powers to investigate fraud offences. It allows the Housing Executive, as an organisation, to take that power as well. It would carry out similar work to us. It simply allows that to happen in theory. In practice, we do not have any plans to not investigate housing benefit fraud. In fact, as we move to universal credit, there will be simply one benefit fraud offence anyway, which our investigation service will investigate.

Mr Copeland: Does that have any impact on housing associations or private landlords, as they are now some of the main providers of social housing? Does it apply solely to the Housing Executive?

Mr McConnell: It is the Housing Executive.

Mr Copeland: Is the Housing Executive restricted to only investigating suspected fraud in the case of its own tenants, or does it have a remit for all people in receipt of housing benefit?

Mr McConnell: I honestly cannot say. I suspect that it is all tenants. However, I would need to check with our people, who currently investigate the offence for the Housing Executive anyway. I cannot give you an answer now, but I will certainly find out.

Mr Copeland: Given the shift in ownership of social housing from the Housing Executive to associations and private landlords, I would have thought it a bit unfair, in some respects, if Housing Executive tenants were the only ones who were caught in that net.

Mr McConnell: I think that the primary motivation behind this is to do with housing benefit coming under universal credit, of course, and we will investigate that — as we do anyway — as part of other benefit offences. There are parts of the benefit at present, such as the rates relief element, that do not form part of social security benefits. This clause would, perhaps, give the Housing Executive power to look at that, if some sort of offence was committed. It is more about that kind of eventuality in the future rather than a change to what currently happens.

Mr Brady: My question is about the Housing Executive's prosecution powers. Housing benefit is part of the benefits system, and it is a paper exercise when it is paid over to the Housing Executive, so it administers housing benefit; it does not actually pay it. If there was alleged or suspected fraud, it would be dealt with by special investigation officers from the Social Security Agency as opposed to the Housing Executive.

Mr McConnell: Yes; that is right. That is what we are doing currently, and there are no plans to change that.

Mr Brady: That should remain the same.

The Chairperson: We will move to clause 109.

Mr McConnell: Clause 109 relates to the offence of attempted benefit fraud. At the minute, the agency can provide what is known as an administrative penalty as an alternative to prosecution for benefit fraud. That can only be applied to offences where there has been an overpayment of money. This clause allows the agency to offer an administrative penalty as an alternative to prosecution for an offence of attempted fraud, where it did not get to the receipt of money. It is to recognise the fact that attempted fraud is a serious offence as well as actual fraud. We want the power to be able to offer the administrative penalty in those cases too. At the minute, in practice, if we have an offence of attempted fraud, we only really have one avenue for it, which is through the courts, whereas an administrative penalty might be more appropriate. Therefore, it allows us to extend our powers to do that.

Mr Copeland: I am sorry if I sound a bit under-briefed on this issue, but are these offences that take place under civil law or under criminal law.

Mr McConnell: They are all under criminal law.

Mr Copeland: So, in other words, you prepare a file, and it is sent to the Public Prosecution Service (PPS).

Mr McConnell: Absolutely, yes.

Mr Copeland: And they apply the three tests.

Mr McConnell: Yes, including the public interest test.

Mr F McCann: At present, there is a period between what happens in the Social Security Agency and the time that it gets to you. I think that it is called compliance. Is that what you are talking about?

Mr McConnell: No, it is not. To explain what compliance is —

Mr F McCann: They offer people the opportunity to say if they have been working rather than going to court. That is what you are talking about, is it not?

Mr McConnell: No. Compliance is very different. As you described, compliance is where officers of the agency, who are not fraud officers, go out, talk to people and uncover changes in circumstances. They allow the person the opportunity to tell us what they should have told us up to now, and we accept the fact that we need to get this sorted out and get their benefit corrected, and there is no further action beyond that point. That is purely in relation to fraud. What I am talking about is the opportunity to give people the alternative to prosecution, but there is still a sanction for benefit fraud. It is like an internal fine, if you like, but it does not involve going to court. At the minute, we cannot offer that internal administrative penalty to people where we have not actually incurred a loss of money, and it allows us to change that. Otherwise, we would end up taking to court everyone who has attempted fraud, even though it is a very small offence, because we have no other option.

Mr F McCann: How do you determine what the sanction is going to be and the length of the financial penalty?

Mr McConnell: There are further clauses that talk about the administrative penalty and its size. At the minute, it is 30% of the overpayment, so, if you had an overpayment of £1,000, we would apply a £300 administrative penalty to that. That would be your penalty for having committed that offence. You would not go to court because the whole point of the penalty is that you do not go to court.

Mr F McCann: That increases the amount of money.

Mr McConnell: Yes, it does.

Mr Brady: I am intrigued by the alleged fraud without an overpayment. Can you give us an example of that?

Mr McConnell: It is attempted fraud where, for example, someone could change a bank statement or adjust their earnings to try to get benefit. It may be that we then catch that on, and I hope that we do catch that on. If we do, we can then take the person for the offence of trying to commit benefit fraud. It is a bit like shoplifting where someone is caught at the door on the way out. It is a similar issue. Someone has tried to commit an offence, but they did not quite get away with the actual benefit of what it was they wanted. However, it is still a serious attempt.

Mr Brady: With respect, if somebody is caught shoplifting, they usually have the goods on them.

Mr McConnell: But they have not made use of the goods.

Mr Brady: I am not sure if that analogy would stand up in court. It is an interesting one. Essentially, there is speculation, to some degree, that the person is attempting to commit fraud without the actual proof of fraud, which usually comes by way of them having been paid benefit that they are not entitled to.

Mr McConnell: Yes, although the fraud takes place where the facts that are reported are the wrong facts. That may lead to money being received or not, and this is about tackling the situation where it is intercepted and the money is not actually given out, but the attempt was made to try to get it.

Ms McCleary: We come back to dishonest intent — the intent to defraud.

The Chairperson: In practical terms, if someone gets an overpayment through fraud, you fine them 30% of that. Is that right?

Mr McConnell: Yes.

The Chairperson: What percentage of nothing do you fine someone for attempting fraud? It is a serious question. Where is the sanction level drawn from? Where is the reference point?

Mr McConnell: We will have to work through the detail of that in the regulations. It is a valid question. At the minute, the penalty is based on the fact that you have a figure and it is a percentage of that figure. Further on, we are looking at extending the administrative penalty powers to include a minimum of £350. We have to work through the thinking of that for the regulations. At this early stage, there will be something like that £350 minimum, because there is no figure to apply a percentage to in that case.

The Chairperson: In essence, we are being asked to agree — not now — to clause 109, which would enable the Department, by subsequent regulation, I presume, to determine that, if someone is deemed to be involved in attempted fraud, there would be some level of fine. Therefore, this is enabling that, but we do not know what that will be.

Mr McConnell: Yes.

The Chairperson: OK. Fair enough. We move to clause 110.

Mr McConnell: I have just touched on this. The administrative penalty as it is at the minute is 30% of the overpayment. Through clause 110, it is intended to create the power to increase that to 50% of the overpayment or a minimum of £350. For example, if someone has an overpayment today of £100, we would apply a penalty of £30. This clause will give us the power to apply a minimum of £350. The purpose of this is to try to deter people from committing benefit fraud. It increases the current administrative penalty amount.

Mr Brady: Is this the same as you were talking about before? This is the compliance matter and you pay something instead of going to court.

Mr McConnell: Yes, exactly.

Mr Brady: It is going up to 50%.

Mr McConnell: Yes, it is not compliance. It is a penalty for a benefit fraud offence, but it is an alternative to court. It takes the current 30% and brings it up to 50%, and it also brings in the minimum of £350.

Mr Brady: We are back again to subsistence levels.

Mr McConnell: Yes.

Mr McClarty: How do you get blood out of a stone?

The Chairperson: The clause is designed to set the minimum at £350. We do not need to have a discussion on that. We just need to understand what it is going to do. Is everybody happy enough with that? We know what it is designed to do and what the implications will be.

Mr McConnell: I will move to clause 111. At the minute, if someone is offered the administrative penalty as an alternative to prosecution, there is a 28-day period within which they can withdraw their agreement. If the agreement is withdrawn within the 28-day period, we would take the person to court instead. This clause reduces that period from 28 days to 14 days. It is a balance aimed at giving the person a reasonable time to consider their position. At the minute, these things drag on. Someone may not be sure and it may go on for the full month. If the person then withdraws the agreement later on, that holds up the case if it is going to court. It is trying to get a balance between moving cases through the system — good administration — and giving the person sufficient time to consider their position and what they want to do. It brings it back by two weeks.

The Chairperson: OK. Do members understand that? Fair enough.

Mr McConnell: Clause 112 is the civil penalties clause. The intention is to create the power to apply a civil penalty to people who have been negligent in their claims. It is accepting the fact that their behaviour is not worthy of a full fraud investigation, a case going to a court or an administrative penalty being imposed, but at the same time, there may be clear negligence in how the person looked after their case and did not report circumstances or failed to report something that was material to the case. It is trying to tackle that problem where people get the wrong amount of money. It is about trying to encourage people to be really careful about their circumstances and report changes on time. The amount will be set in the regulations, but, at the minute, the intention is to have a civil penalty of £50.

Mr Brady: It goes back to the argument of misrepresentation versus failure to disclose. If you misrepresent something, you are misrepresenting something that you know. With failure to disclose, the person may not actually know what they are supposed to disclose. You cannot disclose something that you know nothing about. It is about the terminology.

Mr McConnell: It is important to stress that this would not be applied in every case — certainly not in every case where there is an overpayment. This is about trying to disaggregate people who very deliberately commit fraud against the system. There are people, as Mr Brady has described, who genuinely make a mistake, and there are people in the middle whose circumstances may not be sufficient to show clear intent but, at the same time, it was obviously not a genuine error that they made; there was some sort of negligence involved.

Mr Brady: I think you will find that, and it was answered yesterday, the point is that, irrespective of who makes the mistake, be it the Department or the person, the Department — under clause 69, I think — has the power to recover it. It is very one-sided.

Mr McConnell: The intention behind it is to encourage responsibility.

The Chairperson: Fair enough. We will move to clause 113.

Mr McConnell: We already have what are known as the loss-of-benefit regulations in place. They are also known as the one-strike regulations, whereby we withdraw benefit from someone who is convicted of a first benefit fraud offence. That applies for a four-week period. The intention, through clause 113, is to increase that four weeks to 13 weeks for someone who receives a conviction for a

first offence for fraud. So, it is strengthening the current provisions by, essentially, increasing the four weeks to 13 weeks.

The clause also creates a first-offence loss of benefit for three years for someone who is convicted of a serious benefit fraud offence. That would be described as an offence that attracts a term of imprisonment of two years or there was overpayment in excess of £50,000. The intention is to tackle serious, organised benefit fraud, whereby there are large overpayments, and fairly hefty imprisonment terms can be imposed by the court on the back of that behaviour.

Mr Brady: I suppose this is where the double whammy comes in. You are caught, get a jail sentence and, when you come out, you are sanctioned. What you are saying is that you could have a three-year sanction but you are in jail for two years and you have another year of sanction.

Mr McConnell: Yes.

Mr Brady: The seriousness of the offence is, obviously, reflected in the prison sentence. Is two years the sort of arbitrary sentence that they are looking at?

Mr McConnell: Yes. If you receive a two-year —

Mr Brady: But, when you come out, there could still be another year's sanction on you. Is that right?

Mr McConnell: Yes, in terms of your loss of benefit. However, I would stress that, in all loss of benefits, hardship provisions also apply. There are also protections for the family and all of that.

Mr Brady: Just on that, the family — the wife or partner and children, let us say — claims while the person is in jail. When the person comes out, they become part of the household again. Will there be a split payment? This is something that we have been discussing. Will the partner and children be paid separately and the person who committed the offence and was sentenced to jail not get anything? How is that going to work?

Mr McConnell: I am not sure of the logistics or whether they would have to make fresh claims. I can say though, that the benefits that apply to the family, not the individual, are protected from loss of benefits and always have been.

Mr Brady: I understand that, but when that person comes back, there would be a change of circumstances, which the partner would have to report because someone is coming back into the household. The issue is about the logistics of how that will be addressed. Will that be in the regulations?

Mr McConnell: I am guessing it would be. I cannot say for sure at this point how exactly that would work, but I can certainly come back to you on that.

Mr Brady: You can see one problem it throws up.

Mr McConnell: Yes.

Mr F McCann: It may be simple, but how do you determine what a serious offence is?

Mr McConnell: The regulations will set out the definition of seriousness. At the minute, in GB, what is being put forward about how you would define that is what I described, which is the two-year imprisonment for a benefit fraud offence, which sets a seal in terms of seriousness, and/or a £50,000 overpayment.

Mr F McCann: So, it is jail or a £50,000 overpayment?

Mr McConnell: Yes.

Mr F McCann: So, if you go into court and are given a suspended sentence for, say, a £50,000 overpayment, you come out and face a three-year loss of benefit.

Mr McConnell: Yes, and the intention behind it all, as with all loss of benefits, is to deter people from committing benefit fraud.

Mr F McCann: I spoke about this in the Assembly. The thing that throws me is that, if I go in and rob a bank of £500,000 and get two years, I can make a fresh claim. However, if I commit fraud against the system, I go in then get sentenced again.

Mr McConnell: Yes, it is the same as the one-strike rule and the regulations at the minute.

Mr F McCann: I was going to say do you not think that is unfair, but I would not put you in that position.

The Chairperson: That was very helpful, Fra. Thank you for that. We will move to clause 114.

Mr McConnell: Clause 114 is around the two-strike rule. It increases the loss of benefits for a second offence from13 weeks to 26 weeks. The intention is the same as for the other loss of benefit regulations, which is to deter people from committing benefit fraud.

The Chairperson: OK, if everyone is happy enough, we will move to clause 115.

Mr McConnell: I think that this is the final clause in this section, and it relates to cautions. At the minute, the agency has the ability to bring someone to court through the Public Prosecution Service, to apply the administrative internal penalty, which I mentioned, or to offer someone a caution for benefit fraud. The intention of this clause is to withdraw the caution as a means of dealing with benefit fraud, so you will have only two routes: go through the courts and prosecution or the penalty. All that is in line with DWP in GB. The intention is to reflect the seriousness of benefit fraud by removing caution as a means of dealing with it and having the internal fine or a court case.

The Chairperson: OK. I think members are happy enough with the information so far. We have finished going through clauses 107 to 115, which concludes our deliberations on Part 5. You will be pleased to know that we have finished Parts 1, 2, 3, 4 and 5. We will restart at 12.30 pm sharp to go through Parts 6 and 7. If we do well, I will let you away a wee bit earlier. *[Laughter.]*

Committee suspended.
On resuming —

The Chairperson: We move to Part 6 and clause 121.

Ms McCleary: I want to introduce Maurice Byrne; he is one of my colleagues from the social security policy and legislation division on child maintenance arrangements.

The current child maintenance system needs to change; it is not fit for purpose. Only half of all children benefit from effective child maintenance arrangements. The current system places too much emphasis on the state determining financial support and not enough on supporting separated and separating families to reach their own arrangements. Family-based arrangements will always be the best option for children. Research shows that children who receive support from both parents throughout their childhood tend to enjoy better outcomes in later life.

The Committee will be aware of the wider reform programme that has been driven by the 2008 Act, about which officials have already spoken to the Committee. The reforms aim at rebalancing child maintenance policy to support parents and to encourage them to work collaboratively. The clauses in the Welfare Reform Bill make only minor amendments to the 2008 Act.

Ms Corderoy: Clause 121 supports the vision of increased parental responsibility. As Anne said, it is in the interests of the children if separating families work together to make arrangements. Such arrangements also produce better and more enduring outcomes.

It is considered that, given access to the appropriate support, many child maintenance clients might be able to reach their own arrangements. Many parents are already making their own arrangements using the existing child maintenance choices service. Clause 121 makes provision that will require an applicant for statutory maintenance to enter through a gateway conversation, which will require them to take reasonable steps to come to a private arrangement. It is not about denying access to the statutory scheme; however, it will ensure that the applicant is fully aware of all the options and that he or she is directed to support that may assist them.

Good relationships between ex-partners and between the non-resident parent and child are a key factor in enabling parents to make their own arrangements. The gateway process will include a discussion of the options available. If, for example, a parent considers that it might be possible to make a family-based arrangement but they need information or guidance to assist with that, they will be directed to that support.

Where it is clear that a family-based arrangement will not be possible, applicants will still be able to access the statutory scheme immediately. That would include situations where a person has been unable to contact the other parent or where they were in fear of a violent ex-partner. They will be advised of the implications of such an application. In that way the clause is personalised, and no person would be asked to take steps, which, in their circumstances, would not be regarded as reasonable. The provision will apply to all parents who are considering applying to statutory schemes for the first time, as well as to those who are using the present scheme and who wish to remain in the statutory system.

The Chairperson: OK, Jane; thank you. Members are happy enough with that.

Ms Corderoy: The intention behind the amendments made by clause 122 is to ensure that there is more choice about how child maintenance is paid. The clause will enable non-resident parents to chose to pay maintenance directly to the parent with care, following an application to the statutory child maintenance service and a subsequent calculation of the maintenance liability. That amends the current position in which the parent with care can insist on the statutory child maintenance service collecting the money from the non-resident parent. That will avoid further involvement through the use of the full collection service.

Most non-resident parents will be permitted to elect to make a direct payment and prove to the parent with care that such payments can be made voluntarily. It is also sensible to change the legislation as per that clause to allow the non-resident parent a choice of paying maintenance directly to the parent with care, which we know as direct pay, in the event that the provision in the Child Maintenance and Other Payments Act 2008 to charge a fee for maintenance collection is brought into operation in the future. It will allow them to avoid getting into the situation in which they may have to pay fees. As long as the non-resident parent pays the maintenance due in full and on time through direct pay, the clause will allow both parents to avoid any collection charges should they be introduced here.The clause will not allow non-resident parents to avoid their responsibilities. Should the non-resident parent chose to fail to pay the parent with care in full and on time, the Department will swiftly move the case into the full collection service, and enforcement action will be taken as appropriate to ensure that payments are made. Additionally, the clause will permit the withholding of the choice completely from non-resident parents, where it has been shown that it is unlikely that they will pay through direct pay.

Mr Brady: Obviously the thrust is for people to make their own arrangements.

Ms Corderoy: Yes.

Mr Brady: That seems a sensible way of doing things. Will the Department take active steps to facilitate that? I am not sure whether that is clear in the Bill. If, say, a woman told the Department that she should get maintenance and that it was possible to come to an arrangement, will the Department consider facilitating that rather than someone coming along six months later to say that they have been trying to get maintenance payments from their ex-partner who will not pay it?

Ms Corderoy: The whole thrust is the gateway conversation. The Department is supposed to make sure that people get the right support.

Mr Brady: I am trying to tease out your involvement. Will the onus be left completely to the couple, or will the Department take a proactive role in facilitating the gateway conversation?

Ms McCleary: It will facilitate it, but whether it will do more than facilitate will be up to the couple. It is not up to the Department to decide what they should do.

Mr Brady: The Department should point out the pitfalls if they do not. That may be part of it. It is all right someone saying that they will come to the arrangement, but the Department may be in a position to say that if they do not they will be penalised in some way.

Ms McCleary: I am fairly sure that part of the gateway conversation will be to tell a couple that they can avoid having to pay x amount of money if they do y. It is factual.

Ms Corderoy: The child maintenance enforcement division is working with the voluntary and community groups that provide those services. It is also working to provide an enhanced service through the gateway conversation.

The Chairperson: Following on from what you said, Jane, we were lobbied recently by people who are not sure whether the new arrangements will introduce another conversation and create duplication and a barrier for people to engage with the Department.

Ms Corderoy: This comes from DWP. There is an active and sophisticated voluntary and community sector, and there are support services available. It is about getting them to work together so that there is no duplication of services, that there is much better co-ordination and that people are pointed to the right service at the right time.

The Chairperson: Thank you.

Mr Copeland: Jane, if I heard you right, you slipped something in there very quietly about the cost of the collection service if we decide to charge it here. Is it being charged somewhere else? What exactly does that mean?

Ms Corderoy: That was in the command paper that we spoke about last week, in which they propose collection fee charges in GB. The proposals in that paper are that non-resident parents will be charged 20% for collection and parents with care will be charged 7%. That is out for consultation, and no decision has been taken on what will happen here.

Mr Copeland: Is that a 27% deduction from the amount of money that will go from the parent without care to the parent with care?

Ms Corderoy: No; it is 20% on top of the money that the non-resident parents pays. The 7% would come out of the money that the non-resident parent pays to the parent with care.

Mr Copeland: Will we be given the chance to address some of the iniquities, for want of a better word, that apply to parents with care and parents without care in the current CMED legislation, or is it just these adjustments?

Ms Corderoy: That would be brought in through regulations that would be brought to the Committee. At the moment, we do not have anything on that. The Minister and the Department are still considering it.

Mr Copeland: Will we get more information in future?

Ms Corderoy: Yes.

The Chairperson: The clause does not relate to that.

Ms Corderoy: No.

Mr F McCann: Returning to the question that Alex asked, with the best will in the world, the legacy of these payments is that there has been complication after complication. If different conversations do arise, can you tweak it rather than have to seek changes to legislation?

Ms Corderoy: The legislation is relatively high level, but conversations and work are going on to develop that. The meetings that I have been at, at which CMED has taken a lead, have been very positive and there has been very good, collaborative working. CMED understands that things may apply in England that we do not need here. It is about taking a bespoke approach to local issues. It would not require a change to the legislation to tweak that.

Mr Brady: Last week, I raised the point that people in my constituency live within a mile of a different jurisdiction. Many non-resident partners have exploited that. England, Scotland or Wales do not have that problem in the same way that we do. Someone could make an arrangement to pay the caring parent but not, necessarily, pay anything.

Ms Corderoy: You are right; they do not have that problem to the same extent that we do. They have cases of people who, for example, live in France, but we definitely have more such cases. Maurice, do you want to say something about reciprocal enforcement of maintenance orders (REMOs)?

Mr Maurice Byrne (Department for Social Development): As I said last week, there is European legislation in place to allow parents with care to pursue maintenance from a non-resident partner *[Inaudible.]*

Mr Brady: It is expensive.

Mr Byrne: I cannot comment on that; I do not know. It may be a matter of their going to the court and getting an order for maintenance. That could then be pursued through the Department of Justice, which will address it on their behalf through the other member state.

The Chairperson: That is not pertinent to this clause.

Ms Corderoy: No; sorry. It is not.

Clause 123 will allow parents to apply to the Department for an indicative calculation of what the child maintenance calculation would be under the statutory rules. That would not create a statutory legal enforceable liability and would only provide information for separating families. The calculation would be a key tool to help parents who want to work together to make their own arrangements. It will provide a calculation based on the same rules as for statutory maintenance. It will, therefore, take account of other children that a non-resident parent may be supporting and whether that parent shares the care of a qualifying child. It will also take account of the non-resident parent's gross weekly income, with that amount normally based on the most recent information held by HMRC.

That supports the objective of empowering parents who are separating to make informed choices on collaborative family-based arrangements. Parents are best placed to make the arrangements that deliver the best outcomes for the children. We understand that many parents would welcome someone to help to work out how much should be paid or received to facilitate family-based arrangements.

The indicative calculation differs from the statutory calculation, in that it is only intended to give the position at the time it is applied for. It will, therefore, not be adjusted for subsequent changes in income or circumstances, as it would be if it was through the statutory scheme.

That service will provide information that is specific to the parent's circumstances and which might not otherwise have been available to both parents. It will enable fairer negotiations between them. Without that provision, a parent would need to apply formally for statutory maintenance in order to obtain that information, even if they did not want to involve the Department in collecting maintenance payments.

Mr Brady: Payment in kind has been accepted in the past. It could have been a pair of shoes for a child rather than money. Will that be included in the legislation? It could be a school uniform or clothes and not necessarily money. Much of this seems to be predicated on the payment of money as opposed to payment in kind, which has been accepted in the past.

Ms Corderoy: I am not sure. We will have to check on that and get back to you. If it is direct pay, it is whatever both parents agree to.

Mr Brady: I just wanted to flag that up. It is worth checking it out now rather than it becoming an issue later when we may not know how to deal with it.

Ms Corderoy: Clause 124 would enable fees, if they were introduced, to be recovered directly from the benefits payable to a non-resident parent. That is essential to ensure a consistent and fair approach to charging in the new scheme. The Department already has the power to make deductions of child maintenance directly from benefits payable to a non-resident parent. This clause also would allow such deductions to be made in respect of charges and arrears payable by non-resident parents. Additionally, the clause would remove the restriction in the current scheme to make such deductions from benefit only where the non-resident parent is liable for the flat rate of maintenance.

As the Committee knows, the proposals to charge for the child maintenance service are provided for by the Child Maintenance Act (Northern Ireland) 2008. Clause 125 amends section 3 of the 2008 Act to clarify the scope of the regulation-making power of the Act, which can be used to make provision regarding the application, collection and enforcement of charging. In particular, it covers the matters to be taken into account in determining when fees could be waived. It also provides for a review and evaluation of the impact of charging powers 30 months after they are implemented. This was covered in the command paper that we spoke to the Committee about last week. To what extent charging will be introduced here is still being explored.

Mr F McCann: Is there a sliding scale in the deduction of benefits depending on how much you owe? Most people are paid at subsistence level. What is the maximum amount that you can remove without it having an effect on a new family, for example?

Ms Corderoy: I do not know what the maximum amount is. I will find out for you. As regards the sliding scale, I know that this clause is changing the arrangement. It only affected people on the flat-rate maintenance. This clause means that now, if you are on benefit but you know that you have more of an income, this will still apply to you. I will find out about the sliding scale.

Clause 126 will clarify in law that arrears of child maintenance cannot be included in individual voluntary arrangements. That supports the belief that parents' obligations to support their children should be a priority and that they should not be allowed to avoid that duty by exploiting insolvency law. This clause will ensure that a non-resident parent entering into an individual voluntary arrangement continues to be liable for the full amount of outstanding child maintenance throughout and following any agreement. It is not a change in policy. There is a general principle in personal insolvency law relating to bankruptcies and debt relief orders that arrears of child maintenance are excluded from those processes. However, that is not expressly set out in legislation for individual voluntary arrangements, which has led to some legal uncertainty. The amendment confirms current policy and legislation and puts the legal position beyond doubt.

Mr Brady: The intention may be to ensure that people do not use bankruptcy as a ploy to avoid payment. However, will individual circumstances be taken into account if someone is genuinely bankrupt, does not have recourse to any other funds and is unable to pay?

Ms Corderoy: As I understand it — and I am in no way an expert on insolvency law — the individual voluntary arrangement is so that the person can avoid being declared bankrupt and come to an arrangement with their debtors. This is so that they cannot avoid paying their child maintenance. I imagine that individual circumstances will be taken into account.

Mr Brady: Presumably the voluntary arrangement will not include an arrangement with the caring parent.

Ms Corderoy: Yes, I think so.

Mr Copeland: It is more on the policy intent of preventing people from paying what they should be paying. I asked a question, but I do not think that I got an answer to it yet about company directors paying themselves the minimum wage.

Ms McCleary: We are investigating that. Clause 127 removes the obligation — and I stress that — for the Department via jobs and benefits offices and jobcentres to advertise certain types of jobs in the sex industry. This removal of obligation applies to jobs where the activity is intended to sexually

stimulate others. It includes jobs such as lap dancers, topless barmaids and strippers. We believe that provisions in the clause are needed because it is absolutely wrong that the Department should advertise jobs that could support the exploitation of people. We should not encourage vulnerable people to apply for those types of jobs. It will enshrine the commitment that we made to stop jobs and benefits offices and jobcentres advertising those types of jobs. The change followed a public consultation that revealed significant public concern about jobs and benefits offices and jobcentres advertising jobs in the sex industry.

The consultation also indicated that the people who worked in that industry could be vulnerable to harassment and discrimination. The ban also serves to protect people who use jobs and benefits offices and jobcentre services from taking jobs where they could experience that.

Mr Brady: I presume that those jobs will not be regarded as alternative employment if you fail the work capability assessment.

Ms McCleary: I could not possibly comment on that.

The Chairperson: We do not need to go any further into that.

Mr Durkan: Would taking the advertising out of jobcentres give protection to vulnerable people?

Ms McCleary: You seem to be suggesting that there would be more protection for them if such jobs were advertised in jobcentres.

Mr Durkan: I am not suggesting that. I am saying that there is a possibility.

Ms McCleary: It is not an ideal situation whatever way you look at it. I suppose you could argue that it is better that they are advertised in jobcentres rather than in —

Mr Durkan: Phone boxes?

Ms McCleary: — shop windows. I do not know, but there was a commitment given to do this, and that is why we are doing it.

Mr Douglas: I know that I will get questions about this somewhere along the line. It talks here about retail being excluded. Is that right? In England, sex objects are manufactured. I do not know of anywhere in Northern Ireland that does that, but we have sex shops here.

Ms McCleary: It is not quite as personal when you are dealing with a sex shop.

Ms Corderoy: The key is that it is any activity intended to stimulate others sexually. If that is what the job entails, that is the thing that is banned.

Ms McCleary: Clause 128 is to do with reduced fees for dog licences. This clause amends the Dogs (Northern Ireland) Order 1983 to introduce reduced fees for persons in receipt of income-based benefits. Provision in the Bill updates the Dogs (Northern Ireland) Order 1983 to include certain income-related benefits for the purposes of a passported benefit and reduced dog licence fees. The benefits to which that applies are: universal credit; state pension credit; income support; housing benefit; income-based JSA; income-related ESA; and working tax credit.

Clause 129 is in connection with orders of the Secretary of State under the Administration Act. Clause 129 amends section 165 of the Social Security Administration (Northern Ireland) Act 1992 by adding the Secretary of State to the list of persons and Departments that can make regulations and orders under that Act.

This amendment is in relation to reciprocal agreements. The need for it has arisen from a previous consequential amendment to section 165 made by paragraph 10 of schedule 4 to the Tax Credits Act 2002, which, unintentionally, narrowed the scope of the power and prevented its exercise by the Secretary of State. Section 165, therefore, does not enable the Secretary of State to make regulations or orders by statutory rule. That was an unintentional oversight, so this is a correction measure, effectively.

Reciprocal agreements between the UK and a number of non-EU countries assist in the satisfaction of conditions for entitlement to various benefits. International relations are an excepted matter under schedule 2(3) to the Northern Ireland Act 1998, and the power to make the necessary order rests with the Secretary of State under section 155(1) of the Social Security Administration (Northern Ireland) Act 1992.

We needed to restore the original position to provide for the Secretary of State to make regulations and orders under the Act by statutory rule. The relevant provisions would cover any future order relating to reciprocal agreements, and the Northern Ireland Welfare Reform Bill is the only available vehicle to do that.

Mr Brady: I am asking this to satisfy my own curiosity. If, for instance, parts of the Bill are approved, does the Secretary of State, under the Social Security Administration Act, have the power to overrule a decision by the Assembly relating to the provisions of the Bill and go ahead and impose something?

Ms McCleary: That is something that I would need to come back to you on.

Mr Brady: It is giving them powers, which, presumably, they may not have had previously. If they had, that bit would not be in the Bill. If we decided on one thing in respect of a devolved issue, he — or she; they change quite frequently, apparently — could come along and overrule it.

Ms McCleary: We will investigate that and come back to you.

Mr Copeland: That would come to us as a statutory rule in the normal way, in which case we could accept it or take it to a prayer of annulment.

The Chairperson: You do not know, because we have to get an explanation. This enables the Secretary of State to make a reciprocal agreement with some other state. How does that impact here? How does it come into effect here, if he or she decided that that was what they had agreed between London and France, or wherever? How does it become enacted here? Is it by way of a statutory rule? Or, does the Secretary of State sign off on it?

Mr Douglas: You mentioned France. What sort of examples are we talking about here?

Ms McCleary: There are a number of reciprocal agreements with various states.

Mr Douglas: I am talking about those that affect Northern Ireland.

Ms McCleary: I know that our division handles a number of reciprocal arrangements in relation to the benefits system with certain countries. In another briefing, we mentioned Switzerland. I think that that was because of a reciprocal agreement. I will get you examples.

Mr Douglas: It would be good if you could get us a few examples, because this is an important aspect.

The Chairperson: Yes, of course it is, but the key question with clause 129 is this: what actual power does it give the Secretary of State over and above the head of a Minister and Department in the Assembly? That is what we want to determine.

Ms Corderoy: I think that it is only to do with subordinate legislation. It would not have an impact on primary legislation.

The Chairperson: It would be helpful to get that clarified for people.

That is clause 129 and Part 6 completed.

Ms McCleary: Clause 130 relates to the rate relief scheme. It amends article 30A of the Rates (Northern Ireland) Order 1977, which is an existing enabling power that allows DFP to make whatever regulations are necessary to maintain support schemes for domestic ratepayers. This amendment will

allow that power to be extended to cover the replacement of the rates element of housing benefit, which will, as you know, cease to exist from 1 April 2013.

The Executive have agreed to preserve the existing entitlements for up to two years and to fund any shortfall out of public expenditure for that interim period. The provision will provide the legislative cover for that holding operation, but will also provide for any new rate support scheme that may emerge beyond then. The details of any rate support scheme will be included in subordinate legislation, which will be subject to normal Assembly scrutiny.

The Chairperson: Members are happy with that.

Ms McCleary: Clause 131 relates to repeals. It gives effect to schedule 12, which makes provision for repeals that result from the introduction of the welfare reform measures. They are listed there. I do not know whether you want me to go through them.

The Chairperson: I think that people can go through them themselves, unless anyone needs to have any of that explained. It is probably self-explanatory. Are members content with clause 131? OK. Thank you. We will move on to clause 132.

Ms McCleary: Clause 132 is a general interpretation clause. I do not think that there is anything that I particularly want to say about it.

Clause 133 is a commencement provision, which will provide for the coming into force of the provisions of the Bill. The provisions specified in subsection 1 will come into force on Royal Assent. The remaining provisions of the Act will be brought into force by commencement orders. Subsection 3 sets out how commencement orders can be used; for example, to appoint different days for different purposes and, in certain cases, different areas.

The Chairperson: OK. Members are happy with that.

Ms McCleary: Finally, clause 134 is the title of the Bill.

The Chairperson: It is not in the explanatory notes. I do not see it in the paper. Is it in the Bill itself?

Ms McCleary: It is on page 98.

The Chairperson: It is blank.

Ms McCleary: It is on page 96 of the Bill.

Mr Copeland: I want to ask a question. I do not expect you to be able to answer it today. Perhaps, you could put it in writing to the Clerk. The financial effects of the Bill, which are listed on page 95, show anticipated projected savings, if that is the right word, of £25·37 million, £111·28 million and £181·25 million in the fiscal years from 2012 to 2015. I would like to see the formula that was applied and how those numbers were arrived at.

Ms McCleary: Well, you will not be surprised that I cannot answer that. I will not pretend otherwise. *[Laughter.]*

Mr Copeland: No. I would like to see the methodology and formula that were applied and the instructions that were given to reach those figures. In other words, what instructions did the people who came up with those figures actually follow?

The Chairperson: OK. Fair enough.

Mr Durkan: On that point, is the Department on target to realise the figure for the financial year 2012-13, by the end of which the Bill may or may not have passed through the Assembly?

On one other point, paragraph 636 of the explanatory and financial memorandum, which deals with the effects of the Bill on public sector manpower, states that, basically, there is expected to be an increase in demand initially, but that there will be reduced demand on public sector manpower in the

long run. Is there a business case anywhere or anything to show how much that demand and manpower will be reduced by?

Mr Brady: So, you are creating employment by reducing employment in one sector?

Mr Durkan: That is particularly important given that, last week, the Minister referred to the 1,500 jobs that will be lost by not passing the Bill.

The Chairperson: Fair enough.

Anne, clause 130 is in Part 6 of the Bill. In the explanatory notes, it is in Part 7.

Ms McCleary: You just want to clarify that. Certainly, in my notes, Part 7 starts at clause 131. In the Bill, it starts at clause 131.

The Chairperson: Obviously, the Bill is the important document. I just want to draw members' attention to the fact that clause 130 is actually in Part 6 of the Bill as opposed to Part 7. I am not sure about the relevance of that. I just wanted to make it clear for people where it sits.

Mr Copeland: I just want to check the difference between a Bill and an Act. Most Acts are accompanied by an interpretation Act, which tells you what some of the stuff that is in the Bill means. Is there an interpretation clause, or are there interpretation clauses, available with this legislation?

Ms McCleary: There is an interpretation Act, which is a totally separate piece of legislation. I do not even remember the year of it. There usually would be a definition section, as there is in this Bill. There is an interpretation clause at 132, which explains the various phrases used. So, there is that.

The Chairperson: I presume, generally speaking, a Welfare Reform Bill, for example, is a Bill tabled for debate and passage, perhaps. The Welfare Reform Act is the outcome of that.

Ms McCleary: Once it has passed Royal Assent —

The Chairperson: It becomes an Act. We will have the Welfare Reform Act 2013, I presume.

Ms Corderoy: The Committee asked for a paper on the Bill. That is being prepared and is in addition to the explanatory and financial memorandum and has *[Inaudible.]* mean.

The Chairperson: We have a fair wee bit of clarification to get. We have completed all the parts clause by clause and need further explanation on some of them. We need to process that as quickly as possible because I was a wee bit unsure as to what we were going to receive by way of written correspondence from the Minister.

Going back to last Wednesday, by the afternoon some clarification was provided and some was not. We were then told that we would have to wait until those were signed off by the Minister. I am confused about this and I was not sure whether that was the case. I just presume that we are working our way through this. If you come back and give us information from last week or this morning, we are happy to take that. Can we just get those issues clarified expeditiously if we can?

Ms McCleary: We will sort out the outstanding issues as soon as possible. A couple of letters are coming officially. They were being progressed over the past couple of days and I expect them to be with you very shortly.

The Chairperson: Are we in danger of causing a problem if we are in writing? All we are doing is trying to get clarification and that may not need to go through Ministers. Maybe some questions do, of course, but where they do not have to go through a Minister —

Ms McCleary: Whenever we get a letter from you and we have to give a written response, it does have to go through the Minister.

The Chairperson: Can we find a way to short-circuit that?

Ms McCleary: We will liaise with the Committee Clerk.

The Chairperson: OK. I just want to ask so that we can keep moving. Anne, Maurice and Jane, thank you very much for your attendance.