



Northern Ireland  
Assembly

Committee for Social Development

# OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Consideration of  
Stakeholder Comments, Proposed  
Amendments and Departmental Responses

6 November 2012

# NORTHERN IRELAND ASSEMBLY

## Committee for Social Development

### Welfare Reform Bill: Consideration of Stakeholder Comments, Proposed Amendments and Departmental Responses

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**Members present for all or part of the proceedings:**

Mr Alex Maskey (Chairperson)  
Mr Mickey Brady (Deputy Chairperson)  
Ms Paula Bradley  
Ms Pam Brown  
Mr Gregory Campbell  
Mrs Judith Cochrane  
Mr Michael Copeland  
Mr Sammy Douglas  
Mr Mark Durkan  
Mr Fra McCann  
Mr David McClarty

**Witnesses:**

Mr Maurice Byrne	Department for Social Development
Ms Martina Campbell	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 Colm McLaughlin	Department for Social Development
Mr Michael Pollock	Department for Social Development

**Ms Anne McCleary (Department for Social Development):** Thank you for giving us this opportunity to go through the Bill and provide you with further information. As you can see, there are quite a few officials here today, and I am taking a back seat at this stage. You will be familiar with Colm McLaughlin, Martina Campbell and Michael Pollock, who will take you through the document in relation to universal credit and the working age benefits.

We also want to thank all the stakeholders who took the time and trouble to respond to your call for evidence. The amount of time that they have put into all this, the amount of time that the Committee has allocated to it, and the amount of time that the Committee has spent on this has been quite significant. We have listened very carefully to everything that has been said, and we are still working through the written submissions. We recognise the scale and depth of the concern that has been expressed by stakeholders, but we also recognise that there is a degree of confusion in some sectors. We want to advise the Committee and the stakeholders that the Social Security Agency (SSA) has a communications plan — I know that there have been some concerns about that — and there have been a number of events for stakeholders and more are planned, including one aimed at employers,

which is to explain the role in relation to the real time information. A lot of that is ongoing, and a lot more is planned. In particular, there is the event in the Long Gallery coming up later this month.

We understand and acknowledge that much of the detail will be in the regulations or in the guidance that is provided to SSA staff. Where possible, we will try to give you reassurance on that, and we will see where that takes us. That is all that I want to say at this stage. I hand you over to Martina and the team.

**Mr F McCann:** The question of reassurances from the Department came up time and time again last week. At the start of the process, you talked about seeking and getting reassurances from the Department at this stage, in the absence of being able to look at the regulations. People seem to indicate that the regulations could dramatically change the workings of some of the stuff that we are talking about. Will the reassurances that we may be given today be changed or affected by regulations?

**Mr Michael Pollock (Department for Social Development):** I would not have thought so. In going through the Bill quickly, we have explained the policy intent, and that would be the intent that we want to see coming through in the regulations. If there is an unwarranted outcome as a result of some of the regulations, we would not be happy about that either. If we are telling you now that a particular clause is designed to do something, we want to see that translated through into the regulations. What was said previously was that, following Final Stage in the Assembly, we will try to share regulations — any of the regulations that have been drafted through the Department for Work and Pensions (DWP) — with you in advance of our own regulations coming through. We will try to share with you anything that is in the public domain so that you will have longer to go through and scrutinise them before we bring ours forward.

**Ms Martina Campbell (Department for Social Development):** In our responses to the questions raised during the various evidence sessions that we have attended, we have stated, where the regulations are available, the relevant regulation in the DWP published version. As you know, the DWP regulations have gone to the Social Security Advisory Committee (SSAC), and it has responded to DWP with a list of comments and recommendations. DWP is working through those. There may be a slight tweak to the regulations, but that would be only in response to the recommendations made by SSAC, which would obviously mirror concerns in the Committee and among stakeholders.

**Mr F McCann:** I have no doubt that you are trying to guide us through the regulations as far as you know them at this stage. I noticed that you mentioned SSAC. There have been a number of occasions in the past when SSAC made recommendations that came down in opposition to elements of the Bill — the shared-room allowance was one — and its advice was disregarded. I think that somebody from the Law Centre sits on SSAC. The Law Centre representatives said that the devil was in the detail of the regulations. The Human Rights Commission, the Equality Commission and a number of other groups were asked whether they were considering taking legal action, but they said that they could not, based on what was in front of them. The main thrust of this will come in the regulations. So, there seemed to be an indication that although the main thrust of the Bill points in one direction, the regulations, when they are published, may take us in another direction. We will not know that until December.

**The Chairperson:** OK. The point has been put on the record as an issue. *[Inaudible due to mobile phone interference.]* We will start with the document that we have in front of us. Part 1 deals with universal credit. *[Inaudible due to mobile phone interference.]* Obviously, as we go through this with the departmental officials, this is our best guess at what the outstanding matters are for response from the Department. I will hand over to Martina and her colleagues.

**Ms M Campbell:** We will start with clauses 1 and 2 and the issues of frequency of payment, the recipient of the payment and the direct housing costs payment. I will take points 1 to 4 in the issues paper together.

In his statement of 22 October, the Minister clearly stated that he has secured flexibilities from Lord Freud and that the outworkings of that in relation to the definition of exceptional circumstances and the circumstances in which those flexibilities will be operated will be consulted on. In our evidence sessions, we told you that the legislation as drafted allows for those flexibilities in exceptional circumstances.

The first way forward, on page 2 of the issues paper, says:

*"The Committee may wish to consider if it is content with this approach or if it wishes to pursue the potential for twice monthly payments ... as an option for all claimants".*

Again, I remind the Committee of the overall policy intent, which is that the purpose of universal credit is to get claimants used to going back into the world of work. The monthly payment mimics what happens for the vast majority of people, according to the stats that we use, who receive a salary monthly.

As I have said, there will be an exceptional service for claimants who are deemed to be vulnerable. There will also be a range of budgeting products, to which I have also referred. We have given you more detail about those products in our responses. We will be doing all that we can to support claimants who receive a monthly payment to manage their money on a monthly basis and, indeed, those claimants for whom a monthly payment is not appropriate at this time.

Do you have any questions about that, Chairperson?

**The Chairperson:** I just want to establish a point for the record, Martina, because we are not debating any of these provisions at the moment. In his statement to the Assembly, the Minister made it clear that the default position will be that payments for rent support will go directly to landlords.

**Ms M Campbell:** Yes, that is correct.

**The Chairperson:** Although, as you rightly point out, the Bill provides for such payments to go on, the Minister's announcement also dealt with establishing a board or whatever else to have a look at all that. What was agreed with Lord Freud — I spoke to David Freud after that as well — was that there would be an examination of what the nature of the payments might be within the facility of particular circumstances. There is no default mechanism for more frequent payments or split payments.

I am just putting this on the record. There is a default position that rent support will go directly to a landlord.

**Ms M Campbell:** Directly to landlords, unless they opt out.

**The Chairperson:** Whereas the issue around more frequent payments or split payments, whatever they may be, in detail, is not at a default position. It will be in the core legislation by way of exceptional circumstances, but the detail of that is to be agreed.

**Ms M Campbell:** Yes. That is correct.

**The Chairperson:** I am just getting that for the record. Michael, did you want to ask a question?

**Mr Copeland:** I just wanted to check whether that gave landlords the right to insist on getting payment from tenants in a particular way. In other words, a landlord taking on a new tenant could say that he wanted paid directly, whereas the tenant may wish to accord with the policy intent, as indicated in the clause.

**Mr Colm McLaughlin (Department for Social Development):** In relation to a landlord requesting it from the claimant himself, the claimant would have to come to the Department if the norm for him was that he wanted it paid directly to himself.

**Mr Copeland:** The thing about exceptional circumstances, Colm, is that someone has to make their mind up about what exceptional circumstances are. What may be exceptional circumstances for the customer may not be for the Department.

**The Chairperson:** The default position is that the rent will be paid directly to the landlord, unless the tenant opts out of that.

**Mr Pollock:** Do not lose sight of the fact that it is the individual who is entitled to the payment, not the landlord.

**Mr G Campbell:** I wanted to make sure that there is no distinction between what the Minister said and what Martina said. In paragraph 1, headed "Frequency of Payment", the Minister's statement is cited, beginning:

*"In the majority of cases there will be a single monthly payment".*

Martina used the phrase, "the vast majority".

**Ms M Campbell:** Yes, except where there are exceptional circumstances and the claimant wants it paid in a different way.

**Mr G Campbell:** Yes. However, you have no idea, at this stage, what will constitute "the majority of cases" or "the vast majority of cases": whether it will be 55% or 95%?

**Ms M Campbell:** No; we have no stats on that.

**Mr G Campbell:** Not yet. Right, OK.

**Mr F McCann:** At present, what happens is that there is an opt-out on the back of the housing benefit form, which states that you can get it paid directly to the landlord, or you can receive it yourself. I think that that provision already exists in applications for housing benefit. I take it, from what the Minister says, that that is not going to change?

**Ms M Campbell:** This is a new IT system, so it was originally designed that the payment would go directly to the claimant. That is a part of the outworkings of the Minister's statement. We are trying to get it built into the IT system that there may be an option.

**Mr F McCann:** I was offering that as a point of clarification. However, you have raised the subject of the IT system. If it is not capable of doing that, there will not be that option. Is that what you are saying?

**Ms M Campbell:** No. We are saying that Lord Freud has committed to making that change for Northern Ireland.

**The Chairperson:** There are two issues in all that for me. One is that there is an IT system, and, two, there is the political decision to make the payment by whatever way. For me, the IT system should follow what the Government decide that they are going to do. The IT system should not dictate it; it should be the other way around.

**Ms M Campbell:** Yes.

**The Chairperson:** OK, so the decision has been taken that payments for rent will be paid directly to the tenant, unless the tenant opts out. However, that is not the case in respect of universal credit, in any which way. It will be paid according to the determination of exceptional circumstances.

**Ms M Campbell:** Yes: the split payment and frequency.

**The Chairperson:** That is to be agreed at some point and further consulted on. That is not a default position. That is still in special circumstances.

**Mrs Cochrane:** I was just going to ask about the phrase "where necessary". The document cites the Minister's statement:

*"payment flexibilities will allow for different payment arrangements where necessary, not least where vulnerable customers will find budgeting difficult."*

At what point will we know what the definition is? Who will be defined as being one of those people?

**Ms M Campbell:** The Minister has tasked officials with consulting on that issue and what defines an exceptional circumstance.

**Mrs Cochrane:** Will that come to us before we are supposed to have finished our report?

**Ms M Campbell:** Probably not.

**Mrs Cochrane:** We would need to decide whether we would want to amend that. We might not be happy with how it is defined.

**Ms M Campbell:** I appreciate that. I would say that that work will not be completed by the end of November.

**The Chairperson:** I want to remind members that this paper was provided by the Committee Clerk as a help. We do not need to deal today with the part on the way forward. We are not dealing with the way forward, because those are considerations, which, obviously, will have to be looked at. We are still trying to clarify that we all understand what the Bill is about. Ignore the part on the way forward, because that is for another discussion. Once we have all of this, we can seek some understanding and clarification.

**Mr Brady:** I would like some clarity. Paragraph 3, which deals with regularity of payment, states:

*"only the most 'vulnerable' (however defined) will be eligible for split/twice monthly payments."*

If we start with the premise that everybody on benefit is vulnerable, to a larger or lesser degree, who makes the decision about who the most vulnerable are? Who defines that?

**Ms M Campbell:** The consultation, which the Minister has committed to undertake, will define the criteria for exceptions, and the decision will ultimately lie with the decision-maker.

**Mr Brady:** So they will define some kind of vulnerability pecking order?

**Ms M Campbell:** The criteria will be defined in consultation with stakeholders.

**Mr Pollock:** There will not necessarily be a pecking order, as such.

**The Chairperson:** That is as per the announcement from the Minister. All that detail will have to be worked out.

**Ms M Campbell:** Paragraph 5 deals with who makes a claim. Clause 2 makes provision for a member of a couple to make a claim as a single person, but that is to be defined in regulations. The Committee has heard from stakeholders that, where one member of a couple refuses to sign a claimant commitment, they would like the option for the member who is willing to sign the commitment to be able to make a claim in their own right. That is currently not permitted in the legislation. The legislative position is that both members of the couple must sign the claimant commitment. If one member of the couple does not sign the claimant commitment, there will be what we are terming a cooling-off period, and, obviously, they will be encouraged to re-engage and make their claim on that fashion.

**The Chairperson:** So, Martina, beyond what may be a cooling-off period — *[Inaudible due to mobile phone interference.]*

**Ms M Campbell:** There is no claim.

**The Chairperson:** There is no claim. OK. Do members understand that?

*Members indicated assent.*

**The Chairperson:** There is nothing further on that.

**Ms M Campbell:** Paragraph 6 deals with third-party verification. We heard from a lot of stakeholders that homeless people in particular might not have the documentation available to them to enable them

to have their verification completed. We will definitely consider that issue, but we think it is probably unlikely that the system would permit third-party verification. However, we will discuss that with Conrad McConnell, the fraud policy lead. He may be able to give the Committee more clarification on that tomorrow or Thursday, when we are back.

**The Chairperson:** So that is a deferral.

**Ms M Campbell:** Paragraph 7 deals with mixed-age couples. I think there is some confusion here. I want to clarify that where one partner in a mixed-age couple is under pension age and the other is over pension age, they will have to make a claim for universal credit for new claims. In those circumstances, only the working-age member of the couple will have to complete a claimant commitment. We would not expect the member of the couple who is over pension age to complete a claimant commitment. That is in line with government policy that working-age people should be encouraged and supported into work where they are fit and able to do so.

There was an issue in respect of the impact on passported benefits. As I have said previously, the issue of passported benefits is under consideration by a cross-departmental group. All these issues and the criteria for defining passported benefits and access to passported benefits will be considered by the individual Department that owns the passported benefit.

**Mr F McCann:** There was no confusion from the Committee. The Committee understood perfectly that the change in the benefit would mean that the older person would have to rely on the younger person to make the claim. The argument from the Committee at that time was that it is unfair that a person who has worked all their life and is in a partnership with a younger person would lose out because the younger person would assume the lead role in a claim for benefit because they are working. I do not think that there was any confusion from the Committee. We were raising concerns that this could have a direct impact on the relationship. I just wanted to make that point.

**The Chairperson:** Was the issue not that some organisation — it might have been the Law Centre — made the point that it was not clear about whether a person over pension age who has a joint claim with someone of working age would have to join the workforce. We are now being told that that is not the case; is that right? That was a query from a number of organisations. Do you have a further query, Fra?

**Mr F McCann:** I thought that we were still being told that it would have to be the younger person who makes the claim. That would have a direct knock-on effect on the older person in the relationship who, until they reached pension age, would have had to make the claim themselves.

**Mr C McLaughlin:** The younger person would claim for both.

**Mr F McCann:** If the older person in the relationship hits 65 or 66, whereas normally they would claim, this pulls them back into the system because the young person will be making the claim in their place. Therefore, there would be a net loss for the people in that relationship.

**Mr C McLaughlin:** The younger person is of working age. The work-related activity, actively-seeking-work and available-for-work regulations are appropriate only to the person who is of working age.

**The Chairperson:** Is there any adverse impact on the older person in that situation?

**Mr C McLaughlin:** No.

**Mr F McCann:** So they would still be able to claim for their old-age pension in their own right?

**Ms M Campbell:** Yes. When they reach state pension age, they will be able to claim pension. That will be taken as unearned income.

**Mr F McCann:** That is not what I picked up.

**Mr Pollock:** You thought that the younger person has to claim the pension on behalf of the older person.

**Mr F McCann:** Yes.

**Mr Pollock:** I do not think that that is the case.

**Mr F McCann:** If the younger person in the relationship has to claim for both people, that has to have a knock-on effect on the older person in the relationship. That is the point that I am making.

**The Chairperson:** Yes. I thought that what we were being told is that the younger person in the couple would have to make the claim.

**Ms M Campbell:** The younger person has to make the claim.

**The Chairperson:** On behalf of both of them?

**Ms M Campbell:** Yes.

**The Chairperson:** The older person does not have to meet the job commitments, and so on?

**Ms M Campbell:** No.

**The Chairperson:** Is there any other adverse impact on the older person, in respect of passported benefits for example?

**Mr F McCann:** In respect of finance and pension benefits?

**Mr Brady:** On that point, presumably their income will be aggregated, so if the older person is entitled to contributory state pension, that is OK, but, presumably, for the younger person, the number of hours they work could then impact on the overall benefit coming in. If the younger person is eligible for universal credit, or the whole claim is eligible for universal credit, the older person is going to be subject to the tapers, depending on what the younger person is doing. Inevitably, it has to have an impact. You cannot divorce, and hopefully they will not in some cases, according to what Fra is saying. The point I am making is that it has to have an impact. You cannot say it does not. It is inevitable that it will have an impact, because they will not be making separate claims. That is the point. So it will inevitably have an impact. It will depend very much on what the younger person is doing. If, for instance, the younger person is sanctioned, how does that impact on the older person? The younger person is the one who is going to be subject to all the rules and regulations under universal credit. Again, I go back to the phrase "inextricably linked in benefit terms". You cannot get away from that. So it is going to have an impact.

**Ms M Campbell:** We will have another look and come back to the Committee on impact.

**The Chairperson:** I am a wee bit concerned, Martina, to be honest with you, because I asked a direct question twice about whether there would be an adverse impact, and I was told that there would not. I am concerned that now, on further investigation, I am getting different responses. I just want to say that. I do not want to repeat it again, so I will leave it at that for now. Do you want to move on?

**Ms M Campbell:** The next paragraph is related to temporary absences from Northern Ireland. The proposed change allows for temporary absences of between one month and 26 weeks, depending on circumstances. Stakeholders have raised some concerns that there may be some disadvantage compared with the existing rules. That issue is under consideration by DWP, so we cannot give a definitive position on that.

**The Chairperson:** Is there any particular reason? It was raised by some stakeholders. Do you have any indication as to what the consideration by DWP will be based on?

**Ms M Campbell:** I think it is being reconsidered based on some of the comments arising from SSAC.

**The Chairperson:** OK.



**Ms M Campbell:** Paragraph 9 deals with under-16-year-olds and under-17-year-olds. Under the current rules, 16- and 17-year-olds are entitled to payments made on a discretionary basis where severe hardship occurs within job seeker's allowance (JSA). Under the new rules, it is proposed that there will be no such provision. In terms of the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) point about people who are registered for training but have not secured an immediate placement, again, DWP's position is that those people will not be entitled to any payment. We have sought further clarification on that from DWP, but the initial indications are that that will be the position, unless, obviously, they are a lone parent, or are leaving care, or one of the types of exceptions that are already defined.

**Mr G Campbell:** Numbers-wise, do you have any idea of how many people might fall into that category?

**Ms M Campbell:** No, I do not think we have any numbers on that, but I will check that for you.

**Mr Brady:** I want to check something. You mentioned lone parents, etc. At the moment, child benefit is a qualifying benefit, so if the parent is receiving child benefit, the child or young person is still dependent. That can lead on to the issue of estrangement from the family household — not kids coming out of care or whatever, but —

**Ms M Campbell:** That exception is still there. If there is no parental support, they are still entitled. The next paragraph is entitled, "Receiving Education". The definitions are in the regulations and are similar to the position now. So anybody on income support who gets benefit now whilst in education will continue to do so, as those rules are being carried forward. We are not aware of any disadvantage there.

With regard to the tariff income provision in clause 5, there has been a suggestion that it will impact on older claimants who have savings over the £16,000 limit, and we are aware that there will be an impact. We have not been able to assess that impact, because the sample size for Northern Ireland is too small. However, DWP has done some work on that, which we can provide copies of to the Committee. We realise that there will be an impact, but we go back to the overall policy intent, which is that the benefits are for people who are in need: those who have savings and are able to maintain themselves should do so. The benefit is only there for when people need it.

**Mr Brady:** Another effect will be predicated on the passported benefits because, for a lot of people, a tariff income will qualify them for a small amount of benefit, which will bring them in. So I do not know how the passported benefits will operate, because, for the majority of older people, even that small amount of benefit —

**Ms M Campbell:** It gets them access, yes. I appreciate that.

**Mr Brady:** That is important, and I wanted to flag that up because the number of older people who have that kind of money is relatively small.

**Ms M Campbell:** From memory, DWP research found that it was one in five.

**Mr Brady:** There would be a much more drastic impact if the passported benefits were affected.

**Ms M Campbell:** Yes, absolutely. That is why it will be important that Departments, when they come to define their criteria for passported benefits, take into account all those factors.

**Mr Brady:** The difficulty is that it will still then go back to the amount of capital. At the moment, for people on pension credit, it is open-ended, which is a much more effective way of ensuring that older people have access to passported benefits. To me, this measure is a way of stopping that.

**Ms M Campbell:** I might be able to get the figure for cost of raising that for older people to you tomorrow — I thought I had the information with me. I think, from memory, it was something like £50 million.

**Mr Brady:** Maybe you could supply us with the figure.

**Ms M Campbell:** I will have it for tomorrow.

**Mr Brady:** Thank you.

**Ms M Campbell:** Clause 6 is entitled, "Restrictions on entitlement", and should be read in conjunction with clause 8. It is about the number of waiting days. The clause states that the regulations may prescribe that the period of waiting does not exceed seven days. That does not mean that the number of waiting days is seven, it just means that we cannot prescribe the number of waiting days to be seven, if that makes sense. It states that a period prescribed "may not exceed" seven days. The purpose of that is to administer the benefit. There are waiting days in benefits, and where a person is only entitled to universal credit for one or two days and the amount is small, where the administrative cost is more to pay that out, the payment will not be made. The Department reserves the right not to make the payment.

**Mr Brady:** At present, if someone is entitled to 10p, the Department legally has to pay them that, because it could impact on other things. For instance, we are back to passported benefits. Even if it is a miniscule amount, it could still bring them in.

**Ms M Campbell:** Yes, but there should be something in the award notice that gives them that underlying entitlement.

**Mr Brady:** Obviously, that is in the future. We will check that through the regulations.

**Ms M Campbell:** Through the regulations and through the passported benefits.

**Mr Brady:** You are saying that it could be seven days; it could be three days.

**Ms M Campbell:** Yes. It is highly unlikely that it will be. Generally, they are saying that a payment for less than seven days is unlikely.

**Mr Brady:** What you are saying is that that is an administrative difficulty of the Department. It is making a unilateral decision. It may cost us money administratively to pay that. The claimant is losing out. The Department is not losing out. It is making that kind of decision because it may cost it money.

**Ms M Campbell:** It is about the cost to the taxpayer as well.

**Mr Brady:** It is all a cost to the taxpayer. The point is that the person who is on benefit is still entitled to benefit, and they are also entitled to the passported benefits that that miniscule amount may bring them into. That is a matter for discussion. I just wanted to flag that up.

**Ms M Campbell:** Next is the basis of awards, which is dealt with in clause 7. The issue is about monthly payments, and so on. We have already covered that.

**The Chairperson:** Members, that is in your CBC folder. By CBC, I mean clause by clause, not a new digital channel.

**Ms M Campbell:** Clause 8 concerns calculation of awards. This is about benefit cap. Citizens Advice raised an issue about statutory sick pay and statutory maternity pay. It said that the first six months should be categorised as earnings. The proposal is that they will be treated as earnings.

There are different rates for younger people, and this is the same as the position in the current system. Younger people will receive lower rates, and that is proportionate and justifiable because younger people have expectations of lower wages and are more than likely to live at home and have fewer expenses.

**The Chairperson:** There is a reference to the fact that the potential restriction of EU jobseekers to standard allowance may be unlawful. There is a general sense around EU people, and that has been referred to on a number of occasions as being quite discriminatory. That is one point, and other points might arise later.

**Ms M Campbell:** I will cover that now. People from within the EU are free to come to live and work in any country and enjoy the benefits. However, they are not entitled to be supported by the benefits system unless they are working or actively seeking work. To be entitled to universal credit, you have to have a right to reside and be habitually resident. EU workers have a right to reside if they are not seeking work or are a student, but they must be self-sufficient. This is a way of testing that EU workers are actively seeking work by putting them in the all-work requirement so that they are proving their right to reside and receive benefits.

**Mr Brady:** I have a couple of questions. There is an assumption that younger people, or people under 25 — *[Inaudible due to mobile phone interference.]* There has always been a bone of contention — *[Inaudible due to mobile phone interference.]* — the difference between someone who is 24 years and 364 days and someone who — *[Inaudible due to mobile phone interference.]* The other thing is the self-employed. A lot of self-employed people who have small businesses — *[Inaudible due to mobile phone interference.]* Would the minimum amount be based on the minimum wage and would it be predicated on people — *[Inaudible due to mobile phone interference.]*

**Ms M Campbell:** The minimum income floor rate has not been decided yet. That will be in the autumn statement. However, all the indications are that it will be based on the national minimum wage, which is £6.19 an hour.

**Mr Brady:** That would make more sense, because that applies in Britain and here, the argument being —

**Ms M Campbell:** Not the median wage.

**Mr Brady:** OK. You will earn less than £7 an hour.

**The Chairperson:** We have had a response around EU stuff.

**Ms M Campbell:** I also point out that the Bill has a slightly different wording to GB, in that we have tweaked it. Paragraph 7(a) of schedule 1 states "asserts a right to reside", rather than the GB legislation, which contains the wording "has a right to reside". There is a slight difference, in that ours is slightly less onerous.

**The Chairperson:** Less onerous or less obligatory. I do not have the Oxford English Dictionary here, but someone who has a right and someone who asserts a right — *[Inaudible due to mobile phone interference.]* People may assert that right but they may not have that right. *[Inaudible due to mobile phone interference.]*

**Mr C McLaughlin:** In the GB legislation — *[Inaudible due to mobile phone interference.]* We investigate it anyway. It clarifies the investigation process.

**The Chairperson:** Where is right to establish — *[Inaudible due to mobile phone interference.]* Do you investigate?

**Mr C McLaughlin:** We investigate.

**The Chairperson:** *[Inaudible due to mobile phone interference.]*

**Mr C McLaughlin:** And he has a right — *[Inaudible due to mobile phone interference.]*

**The Chairperson:** *[Inaudible due to mobile phone interference.]*

**Mr C McLaughlin:** *[Inaudible due to mobile phone interference.]* — get the evidence to ensure that he has a right.

**The Chairperson:** Why would the Department — *[Inaudible due to mobile phone interference.]*

**Mr C McLaughlin:** *[Inaudible due to mobile phone interference.]* — clarification, more or less. *[Inaudible due to mobile phone interference.]* Investigation mechanism has to take place to find out whether he has a right or not.

**The Chairperson:** *[Inaudible due to mobile phone interference.]*

**Mr Pollock:** *[Inaudible due to mobile phone interference.]*

**The Chairperson:** *[Inaudible due to mobile phone interference.]*

**Mr C McLaughlin:** There has to be evidence or proof that a person has a right to reside — *[Inaudible due to mobile phone interference.]*

**The Chairperson:** To put it to you another way — *[Inaudible due to mobile phone interference.]*

**Ms M Campbell:** We will write to you further on that.

**Mr Brady:** *[Inaudible due to mobile phone interference.]* Will that change with the right to reside? If you assert the right to reside, you have to prove it. In that sense, it is a two-sided coin: you have to prove to the Department that you have the right to reside and the Department accepts that. It used to be that if you wanted to prove habitual residence, you had to show that you were on the housing list and show your passport and your aeroplane ticket if you were coming from America or Australia. You would also have to have your kids registered in schools. That was all proof that you were here to stay, rather than coming over for a month's holiday and heading back. I suppose what I am asking is whether that will be more clearly defined.

**Mr C McLaughlin:** Habitual residence?

**Mr Brady:** Yes.

**Mr C McLaughlin:** It will be the same. A person will still be able to come here and provide evidence after two weeks that he is going to be a habitual resident.

**Mr Brady:** At the moment, one office could decide that two weeks is enough for it to accept your claim while another could make another decision. The Newry office could decide that it is two weeks, the Banbridge office could decide that it is four weeks and the Lisburn office could decide that it is three months.

**Mr C McLaughlin:** It depends on the circumstances of each individual case and what evidence is produced to the decision-maker. For example, if people register their children in a school and register with a doctor, that would provide a lot more evidence a lot more quickly that they are habitually resident.

**Mr Brady:** With the European Union stuff, someone has the right to reside here for work. Some people who are not from the accession countries, such as those from Romania, have the right to reside here, but they do not have the right to access public funds. Therefore, there are all sorts of permutations around that. I think that that needs to be clarified by the Department in the guidelines, as opposed to necessarily the regulations. You need to clarify all that.

**Mr Pollock:** In the guidelines that are given to decision-makers, it was never the intent that there would be anomalous situations.

**Mr Brady:** Anomalous situations are prevailing at the moment.

**Mr Pollock:** Part of the underlying trend of the Welfare Reform Bill is to simplify things —

**Mr Brady:** Allegedly.

**Mr Pollock:** — so that claimants know what is required of them, and, in turn, that the decision-makers and everybody else should be able to apply the rules consistently.

**Mr Brady:** I want to flag that up, Chair. It is a bone of contention with a number of people, and it will continue to be so unless it is dealt with.

**Ms M Campbell:** We will write to you and try to provide further clarification on that one.

Moving on to the calculation of awards, I do not have anything in my version, so I am looking at the clause-by-clause stuff. Sorry, that is about the different rates, and we have done that.

Clause 10 deals with the responsibility for children and young people. There is a concern that, under the new arrangements, families with a disabled child may see a reduction in the disability element of their child tax credit from £54 to £27 a week. If they are in receipt of child tax credits, they will have transitional protection when they transport on to universal credit. Therefore, there should be no disadvantage. The whole reason that the disability premiums are being reconfigured is to bring them more into line. There will also be higher disregard for disabled people within the earnings disregard. That is probably all that I want to say on that.

**Mr Brady:** I know what you are saying about someone who already gets it.

**Ms M Campbell:** Transitional.

**Mr Brady:** That will obviously affect people who come on to benefits.

**Ms M Campbell:** Yes.

**Mr Brady:** The rationale from the Government appears to be that by cutting it from £54 a week to £27 a week —

**Ms M Campbell:** There will be two rates. The £27 is the lower rate.

**Mr Brady:** That will spread it wider. However, really, that misses the point. It is about the degree of disability. That is the issue, Although there is transitional protection, it will be the people who come on to benefits who are going to be affected. By spreading it, you are not necessarily helping. If the child is disabled, families may lose out. That is the issue, and that is what the stakeholders were arguing, reasonably in those circumstances.

**Ms M Campbell:** That point is noted.

**Mr F McCann:** On the back of that, Martina, you said that people will be transported. However, if there is a break in their benefit, that will impact on them just as if it is a new claim. What the people said to us last week was that, over time, that will come into effect. Over time, benefits will change, so there will be an impact on people's benefits.

**Ms M Campbell:** I do not think that we have ever denied that there will be some winners and some losers. That will inevitably be the case. What we have to look at is what we can do to mitigate that. The whole point of this is to try to make the system simpler and fairer, not only for the claimant but for the taxpayer. There needs to be some work done on that. As far as I know — I will confirm it tomorrow — DWP has committed to undertaking a review of the disability rates in 2015, when there will be enough evidence to show whether the action has achieved the intended aim.

**Mr F McCann:** The point that Mickey and I are making is that as this rolls out over time, everybody will eventually be affected by what people have said to us: a lower amount of benefit will be paid to people. There will be that transitional protection, but, as your benefits change, the payments that you get will change along with that.

**Ms M Campbell:** I accept that point. There are elements in the award that are supposed to mitigate that. There will be higher earnings disregards, and the taper is more generous. In the published equality impact assessment (EQIA), the incentives to work are higher for disabled people than for non-disabled.

**Mr Brady:** The only question would then be whether there are incentives for an employer to employ them.

**Ms M Campbell:** That is different. You are into employment equality legislation. That has nothing to do with the Bill.

**Mr Brady:** I understand.

**Mr G Campbell:** You said that DWP would be conducting a review.

**Ms M Campbell:** I think so. I will confirm that tomorrow for you.

**Mr G Campbell:** If that is the case, what automaticity or otherwise would there be in any outcome of a review that DWP conducts into the impact that we find in Northern Ireland? Would there be a degree, or would the Minister just review the outcome of that review?

**Ms M Campbell:** I think that we would probably seek to be part of that study in the same way as we were part of the Harrington review. Obviously, we would seek to influence it here. The Minister may decide to do a similar review, which would feed into the DWP one, but it probably makes more sense from a cost-effectiveness point of view that we be part of its study. DWP would bear the bulk of the cost of the review, and we would feed in.

**The Chairperson:** OK. Thank you for that.

**Ms M Campbell:** Clause 11 concerns housing costs. It is on the underoccupancy stuff. There is a suggestion to defer the general implementation of the clause until there is a sufficient supply of appropriate housing stock. That is not an option. Housing division colleagues are conducting a number of pieces of research that will inform this. An interdepartmental group, made up of the Housing Executive, the Council for the Homeless and other stakeholders, is looking at how we can manage the outworkings.

**Mr Pollock:** The outcome of some of the research is probably due very shortly. A cost is attached to all the options to defer or delay. We have some figures. I cannot find them in the myriad papers, but I will come back to you if you have not already received them by way of our responses. Significant amounts are attached to not implementing the underoccupancy provision. Some safeguards have been mentioned in the past, such as discretionary house payments. Obviously, individual circumstances and things like that will be taken into account. Members raised concerns about the segregated society still in Northern Ireland. All of that has to be factored into the implementation.

**The Chairperson:** Before I bring in Fra, I want to ask about two things that are on the minds of members. The first was the Housing Executive's presentation, in which its representatives talked about the need to balance the implications of the Welfare Reform Bill as drafted with people's needs. Secondly, and more importantly, the Minister confirmed that David Freud will be here in person at some point, I think, in November.

**Ms M Campbell:** He will be here on 27 or 28 November.

**The Chairperson:** OK. I am not sure what guidance, if any, your Department has received on how to proceed on this. There will certainly be a difficulty for this Committee, because the Committee is due to report by Tuesday 27 November. It means that the issues of underoccupancy, and so on, will be difficult for us to deal with.

Have you had any guidance? You said a minute ago that you did not think it would be possible to defer. The bullet points that the Committee Clerk has provided are a synopsis of points that have been put by various stakeholders. Have you been given any further guidance on what you may or may not be able to do about this issue in the context of the Minister's announcement that David Freud is coming here at the end of November? I see us as being in limbo until 27 November because, in theory, we will not be able to have a full deliberation. The Minister may well announce something later on, but I do not know what the outcome of that discussion will be. We are in a difficult position.

**Ms M Campbell:** I appreciate that. We will try to get you some costs attached to each of those bullet points.

**Mr Pollock:** We have probably already provided those in the formal responses. I can check that, but in the past couple of days, I have seen the figures that we have been attaching to non-implementation.

**The Chairperson:** It is just that a moment ago you were saying that it would not be possible to do something, and you may be right, but we have had an announcement from the Minister that David Freud will be here to look at all this. Can you qualify whether you may not be able to do anything with it at the moment? I am looking for any guidance that you have. Under the current time frame, the Committee will have to make a decision by 27 November on what it thinks of the Bill as drafted and what it might look like.

**Mr Pollock:** We provided figures on the numbers of households affected. Latterly, as I said, we have put a cost figure on those. There are some figures available.

**Ms M Campbell:** The discretionary housing fund has been increased. Is that what you were talking about?

**Mr Pollock:** No, the actual cost attached to it.

**Ms M Campbell:** We will have that with us tomorrow, hopefully.

**The Chairperson:** It is about not just the cost but the policy intent. The Bill provides for certain things. Stakeholders, including the Housing Executive, have given us counterarguments to that. The Minister has announced that the Department will have a look at that with David Freud in November.

Are you coming here to argue for the provisions as they stand, without any guidance to say that you should hold off for a few weeks until you have had another look at it?

**Mr Pollock:** No, there is guidance. There are some exemptions; for example, for families with disabled children.

**The Chairperson:** That is in the Bill.

**Mr Pollock:** That will be carried forward in the same way as the provision for overnight carers is. We need to spell all that out for you, but we will also spell out the costs attached.

**The Chairperson:** I am just making the point that our deliberations, at some point before 27 November, have to come down to what we have in front of us. I am asking you for the record whether you are able — you are probably not — in light of the Minister's recent statement that he is going to look at some of this with David Freud in late November. Are you in a position to tell me to hold on to this for a while or to work on the clauses as they are because you have no guidance on whether we can change anything? I am presuming that that is your position.

**Mr Pollock:** The policy intent, which we went over, is clear, in so far as it is not expected that benefits would be paid for an individual or a household to overoccupy a particular premises.

**The Chairperson:** You do not know that.

**Mr Pollock:** We know that that is the policy intent.

**The Chairperson:** *[Inaudible due to mobile phone interference.]* — 28 November. You have no deviation from what is on the table?

**Mr Pollock:** At the minute, no.

**The Chairperson:** I do not expect you to, but I need it on the record.

**Mr F McCann:** You have asked part of my question. I was a bit concerned when Martina said that it is not an option, because the facts remain that considerable numbers of people will not be able to move because of the property that they live in. One of the big issues that was raised was that, within the next two or three years, housing associations want 150 units to become available, and the figures

range from 25,000 people to 30,000 people. I take it from what you are saying that, regardless of whether anything is going to be built, people are still going to be penalised.

**Ms M Campbell:** No, that is not what I am saying. I am saying that the interdepartmental group, which includes relevant stakeholders, is looking at options. As far as I understand it, a pilot scheme in Lurgan is ongoing, and the group is looking at that model, as well as other options for mitigation, including the use of discretionary payments.

**Mr F McCann:** My understanding is that the pilot scheme in Lurgan is a survey of people rather than an active scheme to find out what would happen. Secondly, by the very nature of discretionary payments, they are made over a short period, so people will be hit two years down the line rather than six months. Therefore, it is going to have an impact. I have spoken to people, and it seems that the increase in benefits will not meet the need that will be there for the number of people who could be impacted on by this right away. There is a direct impact, and people will be faced almost immediately with some severe problems.

On the legacy of the conflict, I know that, in certain areas of Belfast, houses are lying empty. If people wanted to move into them or put their names down for them, the Department and the Housing Executive would be the first to say that they cannot move into them because they are designated as different. There are serious problems here that go far above what might exist elsewhere.

**Ms M Campbell:** Yes, and that is why the Department has set up an interdepartmental group with key stakeholders to look at the matter. We will confirm all those points and the costs, but I take what the Chair has said about the Minister committing to discuss this further with Lord Freud and that we do not know the nature of those discussions or their possible outcome.

**Mr F McCann:** Martina, you said that it was not an option. Last week, we had in some of the people whom you are talking about sitting on the key stakeholders' group, and the Council for the Homeless in particular was very opposed to what is going on here.

**The Chairperson:** The point has been made.

**Mr F McCann:** The point is that Martina said that it was not an option. All the stuff that comes after it seems to say that it will not have any impact on it at all.

**Ms M Campbell:** Can I provide clarification? Anything that the Committee or Assembly chooses to do is an option within the legislative context, but there is a cost attached to it, and that has to be considered. The point that I was making was that some of these bullet points would, in all likelihood, be cost-prohibitive, but we will come back to you with costs for each of them. All of that is notwithstanding any discussions that the Minister has with Lord Freud on flexibilities around this issue.

**The Chairperson:** The point that Fra is making is that we all have to work out and consider the implications of all of this.

**Ms M Campbell:** Absolutely.

**The Chairperson:** And take our decisions accordingly. We are still trying to clarify the final aspects of the Bill.

The issue of foster carers was raised by a number of organisations in the context of underoccupancy. It seemed to be quite restrictive or problematic for people who are long-term foster carers but have a room for a child that is not currently being used. At the moment, that would be classified as underoccupancy. That seems difficult.

**Ms M Campbell:** I appreciate that point. That is one of the considerations that are ongoing.

**The Chairperson:** OK.

**Ms M Campbell:** I move now to the shared accommodation rate. Again, just to clarify, the shared accommodation rate for under-35s is not in the Bill; it is already in place. Members will remember that



when there was a debate on this, the costs attached to the shared accommodation rates were in the region of £9 million.

**Mr Pollock:** It was about £10 million, I think.

**Ms M Campbell:** However, that is not within the Bill.

In terms of support for mortgage interest — *Inaudible due to mobile phone interference.*]

**Mr Pollock:** Again, that is probably — *[Inaudible due to mobile phone interference.]* I think I mentioned previously — *[Inaudible due to mobile phone interference.]* The jury is still out on that. We have not come to a decision — *[Inaudible due to mobile phone interference.]*

**Mr Brady:** The issue around somebody getting a part-time job and losing their support — *[Inaudible due to mobile phone interference.]* Surely, that flies in the face of the policy intent, which is to encourage people into work. Who is going to take a part-time job if it is going to cost them, because they are going to lose their mortgage interest? They probably would not be getting enough, if they are on the minimum wage, to pay the mortgage anyway. How does that square with the policy? I know that that is not — *[Inaudible due to mobile phone interference.]* I am just raising the point. It seems that you have a policy intent in all of this to encourage people — *[Inaudible due to mobile phone interference.]*— but then you come down to the nuts and bolts, and it actually discouraging people — *[Inaudible due to mobile phone interference.]*

**Mr Pollock:** It is basically — *[Inaudible due to mobile phone interference.]*

**Ms M Campbell:** Exempted accommodation or supported accommodation. That is paid through the Department of Health. As far as I am aware, it is demand-led. I am not sure what the issue is there.

**Mr F McCann:** I appreciate that — *[Inaudible due to mobile phone interference.]*

**Mr Pollock:** *[Inaudible due to mobile phone interference.]*— definition of social housing.

**Mr F McCann:** No, what I am saying is that the problem with supported housing is that — *[Inaudible due to mobile phone interference.]*

**Ms M Campbell:** Their housing costs are outside of universal credit. Therefore it does not apply, because it is paid from the Department of Health, Social Services and Public Safety. That is how I understand it.

**Mr F McCann:** There is going to be — *[Inaudible due to mobile phone interference.]* The question was raised last week by some of the disability action groups. They said that the difference existed because houses that had been paid for special adaptations by the Housing Executive, for the likes of chairlifts —

**Ms M Campbell:** I get your point that in a lot of cases it would be nearly cost-prohibitive to move and make the same adaptations to another property. That is one of the issues in the mix of options for dealing with under-occupancy. In terms of those people in supported accommodation being affected by under-occupancy, we will confirm that position, but their housing costs are outside of universal credit.

**Mr Brady:** Do you know whether there has been any discussion with the Department of Health? Supported housing is under Transforming Your Care for people with a disability and older people. The premise of 'Transforming Your Care' is to keep people at home in the community rather than having to go into acute hospital care. That will become a bigger issue because a lot of those people will presumably, because of the nature of their disability, be on benefits and, by definition, be claiming housing benefit. Has there been any discussion at this stage? The consultation period for Transforming Your Care finishes in December, and we will start to get detail from January as it rolls out. Has there been any discussion, because that will certainly have some impact on the issue of supported housing? One issue from stakeholders was that money for that should be ring-fenced. That will become a bigger and bigger issue and cannot be done in isolation. It needs to be addressed at this stage.

**Ms M Campbell:** Yes, I appreciate that point. I am not aware of whether colleagues in housing have been having any of those conversations, but —

**Mr Brady:** Far be it from me to suggest that they should, but it might be an idea.

**Ms M Campbell:** Absolutely. I totally agree.

**Mr Brady:** Thank you.

**The Chairperson:** All right.

**Ms M Campbell:** Moving on to clause 12, "Other particular needs or circumstances". We have already discussed removal of the severe disability premium. The rates are not yet available. We hope that they will be available on 10 December in the autumn statement. The general thrust is that claimants in receipt of severe disability premium will have transitional protection for as long as that lasts. Couples will be able to claim a limited capability for work element. One member can claim that, and the other can claim a carer element. There are higher earnings disregards for disabled people. Finally, anyone in receipt of disability living allowance (DLA) is exempt from the benefit cap.

**The Chairperson:** Martina, can I just take you back a wee second for clarification on the housing costs of run-ons and extended payments? Under the current —

**Ms M Campbell:** I beg your pardon. For clarification, as far as we understand the position, there is no provision for run-ons under the new system. That comes back to the whole idea that work is going to pay and that the higher earnings disregards, etc, will enable the claimant to meet all their commitments.

**The Chairperson:** OK, thank you.

**Ms M Campbell:** Moving on to clause 14, "Claimant commitment". I discussed that earlier. Where one member of the couple refuses to sign the claimant commitment and the other is willing to sign it, there is no claim. That is the current position.

**Mr Brady:** Just on that, can I just check with you. Under the guidelines, if one member of the couple does not sign, it would seem reasonable that the reason why that person has not signed may be that they have mental health problems that may not have been diagnosed. They may have had a particular run-in. I am only trying to think of reasons. It would be ridiculous for someone not to sign it if it would mean that they were not going to get any money.

**Ms M Campbell:** That is why there will be a cooling-off period. Obviously, the other partner will try to highlight any such issues.

**Mr Brady:** The difficulty with the cooling-off period is that it could run for two to four weeks, and they would not get any money.

**Ms M Campbell:** No.

**Mr Brady:** So, therein lies the difficulty. The reason why that person is not signing needs to be addressed. Is it just because they are an idiot or is it because they have particular reasons for not signing?

**Ms M Campbell:** I have said that the claimant commitment will be drawn up in consultation with the claimant and will be tailored to their particular circumstances. Where there is a known mental illness, obviously that will be taken into account. Where there is an undiagnosed illness, I do not understand how a claimant adviser could possibly diagnose it if it is undiagnosed.

**Mr Brady:** With respect, if you are a claimant adviser and deal with people on a regular basis — I did as an adviser, as did many other people here — there is, possibly, a way of finding out whether that person is doing it for a particular reason or whether they are just being bolshie about it and saying that it is the system and they are not —

**Ms M Campbell:** Complying.

**Mr Brady:** It goes back to the point that we have been making for a number of years —

**Ms M Campbell:** It is common sense.

**Mr Brady:** Training.

**Ms M Campbell:** Absolutely; I agree.

**Mr Brady:** Thanks.

**Mr Copeland:** This is a very small point. Where a claimant has surrendered or given up their status as a claimant to someone, say, with a power of attorney, has any thought been given around who is entitled to say whether they should sign?

**Ms M Campbell:** Whether they should be?

**Mr Copeland:** Let us say, for example, that someone has a vested interest in keeping someone at home and they have power of attorney —

**Ms M Campbell:** Right.

**Mr Copeland:** Under this, you are saying that if the person who is the subject of the power of attorney wishes to do one particular thing and the person with the power of attorney refuses to sign the document, then that, effectively, deprives the person of the right to claim.

**Ms M Campbell:** Yes. There is something covered under power of attorney, but I imagine that it is in the guidance, rather than in the Bill.

**Mr Copeland:** The reason I ask is that I had a very specific case to do with power of attorney that took months to sort out.

**Ms M Campbell:** Some consideration has been given to that, and I will try to dig out the correspondence with DWP.

**Mr Pollock:** It would not be markedly different from what is already happening in practice.

**Ms M Campbell:** Yes.

**Mr Copeland:** It took about three months.

**The Chairperson:** OK.

**Ms M Campbell:** In a partnership approach to the claimant commitment, what we are saying at the outset is that one of the aims of universal credit is that it is a partnership between the claimant and the Government, and it is about setting out what is expected and what is reasonable. There is no right of appeal against what is in the claimant commitment, because it is felt that that should be drafted in consultation with the claimant; therefore, there should be very little debate around what is in it once the claimant signs it. However, there is, obviously, a right of appeal around any sanction that would be subsequently imposed if the claimant failed to comply.

**The Chairperson:** OK, Martina. Thank you. That is the provision where, if someone does not sign a claim — a partner does not sign the commitment — then the whole claim falls.

**Ms M Campbell:** The claim falls.

**The Chairperson:** There is no provision for dealing with that beyond that?

**Ms M Campbell:** No.

**The Chairperson:** OK. Thank you.

**Ms M Campbell:** No comment was made on clause 15, which is on the work-focused interview. Clause 16 is on work preparation. The Law Centre has raised issues around the need to reintroduce a work-focused health-related assessment for people with limited capability. I should advise the Committee that this is under consideration, so this may change. It is based on the fact that there has been a two-year suspension for employment support allowance (ESA) claimants. That lapsed in August, and DWP is considering the evidence gathered during this period. This will possibly change.

**The Chairperson:** Thanks for that.

**Ms M Campbell:** I totally accept the point about the work-search requirement that the policy intention is that the claimant should be available to search for work 35 hours a week. We all accept that proving that and doing that will be, I would suggest, very hard. That is where the guidance and an element of common sense comes in. As the legislation states, the claimant is expected to spend all their working hours looking for work.

**The Chairperson:** Thank you.

**Ms M Campbell:** I am not sure what the point was on work availability.

**Mr Pollock:** It is to do with the lack of jobs.

**Ms M Campbell:** As the Chair said, this is an Executive Bill. Benefits are intended to be there for people who are in need, but the overall aim is to get people and support people back into work. That is an Executive function as well, so welfare reform does not exist in a vacuum. It is a priority one commitment under the Programme for Government, and it ties in with the priority two commitment of the Department of Enterprise, Trade and Investment and the Department for Employment and Learning (DEL) — *[Inaudible due to mobile phone interference.]* It is about the Executive working together — *[Inaudible due to mobile phone interference.]* The time frame for that is set out in the regulations. I am not sure whether it is in the draft that is available. *[Inaudible due to mobile phone interference.]* As I said when I was speaking to that clause, there will be no change to the current system where lone parents with a child under the age of five will only be subject to a work-focused interview — *[Inaudible due to mobile phone interference.]* Couples will obviously be able to nominate a responsible carer, so that person, for sake of argument the mother, will be able to restrict their availability for work to suit the childcare arrangements. *[Inaudible due to mobile phone interference.]* — programmes to help disabled people.

Clause 22 deals with claimants subject to all work-related requirements. We have already discussed that regarding the EU workers being placed in that group, so I do not think — we have agreed to write and provide further clarification on that. Claimants who are in part-time work are currently, under tax credits, not expected to seek any other work on top of their part-time commitments. It is unclear how that will work in practice. When the claimant makes their claim they will obviously come in to discuss their current work arrangements and will sign a commitment saying what they will do to either increase their hours or get a better-paid job. However, obviously, we will take into account their obligations and limitations in getting those hours. Again, that will be covered in guidance.

Somebody has suggested that the commitment is in consultation with the claimant and with reasonable regard to the circumstances. We do not believe that that needs to be on the face of the Bill. That is within guidance. It is what happens now, and we can certainly expand the explanatory memorandum on that point. That is not an issue.

Clause 24 is about the definition of domestic violence. It encompasses other forms, such as emotional, psychological and financial. The definition will be the same as that used in the current JSA regs, so it covers all of those. DWP has made it known recently that it is extending that to cover those issues raised around hate crime and race stuff. That is not in the published regs, but it will be in the draft that comes to you early in the new year.

That covers all those points, so we are on to clause 25, dealing with compliance and sanctions. There are sanctions in the current system, but these obviously strengthen the system. There are provisions in the Bill to introduce a stronger sanctions regime for the existing benefits. The sanctions will only be applied where people persistently and repeatedly do not comply with the requirements of their claimant commitment. It is certainly not the intention for people to be penalised on a whim. They will be given every opportunity to explain, and good cause and all of that will be taken into consideration. On the point about leaving people destitute, people who have been sanctioned will be able to apply for a hardship payment. Also, it is only their personal allowance that will be affected, not the rest of their award.

I will ask Conrad to comment on the point about the double whammy where somebody, having been convicted of fraud and subject to a sentence, is then subject to a three-year sanction after they have come out.

Regulations in GB suggest a period of five working days to establish good cause, but stakeholders believe that that is not enough time. That point is probably best covered in guidance, or we can put it in the explanatory memorandum. We accept that there will be cases, particularly if there is some medical or mental health reason, where it may take longer than five days. We suggest that it is better not to define the number of days, because that restricts you. We will look at that in the guidance.

**The Chairperson:** OK.

**Mr Brady:** On the hardship payments, you say that people will not be destitute because they can get a hardship payment, but that is recoverable. So when a person's benefit kicks in again, they will be paying back x amount a week, which means that they will be living below subsistence level and could be left destitute in the future.

Obviously, the guidelines will designate how much is to be recovered. Historically, in the North, people on benefit have paid back proportionately more in overpayments and stuff like that than those in Britain. That kind of knocks the parity argument a wee bit. I am just wondering whether that will be considered. Presumably, hardship payments are there to get people over a bad period until their benefit comes in. Take, for instance, the social fund: in some cases, people were asked to pay back huge amounts that were totally disproportionate to the amount of benefit they were getting.

**Ms M Campbell:** The hardship payment will be recovered. The plan is to recover it in 12 equal installments, but obviously that will depend on the period of the sanction.

**Mr Brady:** It will depend on the amount of hardship payment given.

**Ms M Campbell:** Yes.

**Mr Brady:** That could vary from person to person.

**Ms M Campbell:** Yes.

**Mr Brady:** I just wanted to clarify that.

**The Chairperson:** Thank you. Sorry, Martina. Go ahead.

**Ms M Campbell:** On the point about access to childcare, I think that we are on record, a number of times, as saying that we are not aware of any claimant being sanctioned for not having access to childcare. That will certainly be covered in the guidance. Again, as I have said before, there is protection there for lone parents and for members of couples to restrict their availability around their child's school hours. Is that fine?

**The Chairperson:** Yes.

**Ms M Campbell:** I will move on then to clause 27, which deals with other sanctions. As to whether hardship payments go back into a hardship fund, I should put it on record that there is no such thing as a hardship fund. That payment is demand-led.

Paragraph 32 deals with the concurrent exercise of functions by the Department. I think that that has been covered. If DEL is dissolved before the Bill comes into place, the transfer of functions Order will pick up all those points and set out how the functions will be carried out.

Delegation and contracting out is mainly for DEL, but I see that there are issues there about the personal independence payment (PIP). Any issue arising in connection with a contracted-out function is a contractual issue. It is not a legislative issue per se.

**The Chairperson:** That is clause 30, and paragraph 33 of our document.

We will adjourn now. There will be lunch at 12.30 pm.

**Ms M Campbell:** So you want us back at 4.00 pm? That is fine.

**The Chairperson:** Thanks very much.

*Committee suspended.*

*On resuming —*

**The Chairperson:** We have reconvened for our scrutiny of the Welfare Reform Bill. I thank the officials for kindly being with us again this afternoon. Mark, this is for your benefit: Hansard has advised us that this morning's recording was quite poor due to interference from telephones. Therefore, I ask people to switch off mobile phones and other electronic devices.

Martina, over to you. We got to clause 30.

**Ms M Campbell:** I think that we had completed it.

**The Chairperson:** I think so. A great deal of time was taken up by the first 30 clauses, which is understandable, given the nature of them. We have moved through some of the parts a bit more quickly. With members' and officials' indulgence, we should try to work through and get much, if not all, of this completed this afternoon. I do not think that we will go through every clause. Bear in mind that this is for clarification, for the most part, or further explanation. Can we proceed on the understanding that we will work through until people's heads drop?

**Ms M Campbell:** Clause 31 is about supplementary regulation-making powers, and the query is about clarification on whether there is any further change around the issue of deprivation of capital. That clause power is actually more beneficial, because it is better and clearer for the claimant than the present position. It introduces specifics such as the capital can be used to reduce or to pay a debt. It includes reasonable spending, which would be day-to-day living expenses and, obviously, a requirement to look at everything together. That is spelt out further in clause 47 of the DWP published regulations, so I do not think that there is any issue.

**Mr Brady:** There will be an infinite or a finite list in the guidelines, presumably, for what is reasonable spend. Years ago, it used to be holidays, cars and all sorts of miscellaneous stuff.

**Ms M Campbell:** Yes. There are issues specified in the regulations, but it is then back to the guidance and our good friend common sense.

**Mr Brady:** There is a certain discretion.

**Ms M Campbell:** Yes. It leaves the claimant more scope. Probably taken into account is the fact that —

**Mr Brady:** Depending on the decision-maker.

**Ms M Campbell:** We are straying off the point, but there is an independent decision-making standards committee that scrutinises decisions. That report is published. We have a very high degree of accuracy in that regard.

**Mr Brady:** I have no reason to think otherwise.

**Ms M Campbell:** Clause 32 gives us powers to make regulations. It makes consequential amendments. That would pick up any amendments to primary legislation required by other Departments, for example, around passported benefits. There was an issue about the claimant commitment. I have clarified that already. Where one claimant is over pension age and the other is under, only the working-age person will be subject to a claimant commitment. Is any further clarification required?

**The Chairperson:** No.

**Mr Durkan:** While we are on this, I nearly raised the issue of mixed-age couples earlier in the very early clauses. It is around the passported benefits associated with pension credit. When there is a single household claim, how is it intended that the likes of the winter fuel payment will be processed?

**Ms M Campbell:** Winter fuel payments will continue.

**Mr Durkan:** To the individual or to the household?

**Mr Pollock:** If you are an individual who is over pension age, you will get a certain amount under the winter fuel payment; if you are both over pension age and you live in the same household, it goes up.

**Ms M Campbell:** There is also a couple rate.

**Mr Pollock:** There is a couple rate as well.

**Ms M Campbell:** Clause 33 provides powers to make supplementary and consequential amendments. With regard to the query on transitional protection and the cash top-up being eroded unless it is index-linked, if I understand the point that Citizens Advice is trying to make here, it is talking about the fact that benefits are up-rated by virtue of the consumer price index as opposed to the retail price index. That amendment is already in place. The consumer price index is considered to be more reflective of inflation rates.

With regard to the cash top-up being eroded, I will give you an example. If the claimant is entitled to £100 under current benefits but is entitled to only £70 under universal credit, the claimant will get transitional protection of £30 for whatever time it takes during which he or she does not have a material change of circumstances. Therefore, when the universal credit payment is up-rated the following year, it will go up to, say, for the sake of argument, £75, to keep the numbers round, the claimant will still get £100. Therefore, the claimant is still £25 better off by virtue of his or her transitional protection. I am not sure that the point about the cash top-up being eroded by inflation really stacks up because the claimant is still better off. It is like a marked time thing.

**Mr Brady:** Can I clarify that? There is transitional protection for those who are already on benefits. However, someone who comes onto benefits in the same circumstances will be £25 worse off.

**Ms M Campbell:** In that example, yes. However, that person never had the £25.

**Mr Brady:** I know that. However, they will be £25 worse off than someone else in exactly the same position.

**Ms M Campbell:** Yes. However, that will always be the case in life.

**Mr Brady:** Only if the change is made. It is an issue of equality. You could reasonably argue that although two couples are in exactly the same position, logically, under the same benefits system, one is £25 a week worse off. There is something inherently unfair about that.

**Ms M Campbell:** They are not the same benefits because there are different rules.

**Mr Brady:** However, it is the same "social security".

**The Chairperson:** There are rights and wrongs. The provision is that it is a transitional arrangement.

**Mr Brady:** I understand that. I was just making the point that one couple will be much worse off than another.

**The Chairperson:** I understand that.

**Mr F McCann:** Earlier, the point was made about transitional payments that if there is any break in your benefit — that is, where people are mostly caught in it over time — you will lose the £25.

**Ms M Campbell:** Yes.

**Mr F McCann:** That is the point that I am making.

**The Chairperson:** I understand that. That is clear. OK. Thank you.

**Ms M Campbell:** Clause 34 deals with the abolition of benefits. It relates to reinstating the reduction in tax credits for childcare by 10% from 70% to 80%. As the Committee Clerk has pointed out, that is an excepted matter and is not for the Executive. Therefore even if there was a will to do that, we could not do it. However, the Executive could decide to do something outside social security, which is their prerogative. The estimated cost of reinstating the 10% is £17 million. That would give an average of £12 extra per claimant. If we were to do that, DWP would have to take a view on that, we think. The total cost of our meeting the 80% cost is £117 million. In the last Employers for Childcare report, which I think was based on 2011 rates, Northern Ireland had the lowest average cost of childcare in the UK and the highest number of childcare tax credits claimed back. That is down to some of the work done by the Office of the First Minister and deputy First Minister and Playboard, Jacqueline O'Loughlin's group, and funding under Executive funds. When they go in to help organisations, they make it a condition that parents must claim child tax credits. That is one reason, along with our good advice service in pointing claimants towards tax credits.

There were no comments on clauses 35 or 36.

Clause 37 is "Migration to universal credit". As we said, the migration strategy is being developed, and no decisions have been taken about the stage at which claimants will migrate, whether all ESA or all JSA. None of that has been decided. The point was made on a number of occasions by Committee members about the transitional protections. We are aware of those concerns.

Clause 38, "Capability for work or work-related activity", is about the work capability assessment for work-related activity, and about medical records being given primacy in a medical-based assessment. Medical evidence will be taken into account and given due consideration, but there are other factors to be considered. It is about what work the claimant is capable of doing, obviously taking into account fluctuating conditions.

**Mr F McCann:** I do not want to distract the meeting, but I happened to listen to a debate in Westminster yesterday regarding work-related assessments and especially about Atos and the number of people who have died as a result of decisions that were made. It must concern officials and others that these people are maintaining those assessments when all that is happening around them. That concern has been continuously pushed by this Committee.

**Ms M Campbell:** Yes, and it is a concern that is shared by the Minister and us.

**The Chairperson:** OK, fair enough.

**Ms M Campbell:** I think that was and/or "physical or mental condition". Mr Copeland asked for clarification that it included physical and mental. I think that I confirmed that when the issue was raised; it is in the regulations.

**Mr Brady:** When we were talking about the primacy of medical evidence, it was not necessarily medical records. For DLA purposes for appeals here, medical records are made available with the permission of the claimant. That has never been the case for DLA appeals in England. It just seemed that it was better to have an overall picture of the medical condition. If you are being assessed primarily on a medical condition, which is what the assessment is all about — or what it is supposed to



be about — you know that it is not because it is a tick-box exercise looking at what you can do rather than what you cannot do.

The object of the primacy of medical evidence was if the decision-maker, who is a civil servant who is not medically qualified, would have that at hand as well as the tick-box exercise carried out by the assessor, which is useless in the sense that it has been accepted as being not fit for purpose. Therefore our argument was that if the decision-maker was making the decision, it would be an informed decision based on that particular person's medical condition. You have mentioned fluctuating conditions, which could be MS, bipolar disorder, or many other things. That medical evidence would be available to the decision-maker. The argument was that, at the moment, it is not available. Decisions are made, people are turned down, they then appeal, the medical evidence becomes available and they win their appeal. It is to cut out all that peripheral stuff. It just makes sense. It is a money-saving exercise as well, because, to get back to the taxpayer argument, it all comes out of the same pot. It is not necessarily about the medical records; it is about good, informed medical evidence that the decision-maker would have to hand. That would come along almost as an add-on at some stage later down the line.

**Ms M Campbell:** It is a good point, and we will certainly feed it back.

There is no comment on clause 39. Clause 40 deals with couples. That is when a relationship has broken down but the parties continue to share the house. There is no change on that; the position is as now. We all recognise that that is more and more common and that, because of negative equity and such, people cannot move out of their house. There is a great deal of commissioner case law already on that. All of that will be carried forward in the guidance.

Clause 41 is just about interpretation, so there is no comment on it.

Clause 42 deals with the pilot schemes, apparent differences between Northern Ireland and GB and the relevance of the results. When I looked at the stakeholder comments, I saw that the crux was about the direct payments on the demonstration projects that DWP is running, the direct payments to the landlord, the frequency of payment, the split payment, and the pathfinder. The pathfinder starting in GB in April will inform events in Northern Ireland, but that is really more about testing the IT, for example. We expect DWP to release the early findings from the demonstration projects any day now. There has been something on its website from 30 October, but I could not find a link, and my contact person was on leave, so I could not check it yesterday. As I said, there has been a press release on DWP's website on the demonstration projects from 30 October. We expect some learning reports to be published, and we will provide the Committee with them as soon as we get them. We take into account the learning from any pilots in GB, and we would have to build in local differences in infrastructure, etc.

**The Chairperson:** The crux of the issue was that there are no such bespoke projects here.

**Ms M Campbell:** There are no projects here.

**Mr Brady:** That is the question that I was going to ask: why not? That was raised during the last mandate by one of Paul and Sammy's colleagues in the Social Development Committee. We are constantly told about parity and that what happens in London or Oxfordshire or wherever may have some relevance, but the argument is that prevailing conditions here are so much different. There does not seem to be any logic. The Department has not come up with any rationale, as far as I can see, for why there should not be one here.

**Ms Martina Campbell:** As I tried to explain last time, it boils down to costs. Many of those pilots are expensive.

**Mr Pollock:** There is also the issue of validation. It is about having statistically valid samples and ensuring that you have enough of a cohort to draw statistically valid conclusions.

**The Chairperson:** We are getting into a discussion about this. The question was whether there is a bespoke project here, and the answer is no.

**Ms Campbell:** No.

**The Chairperson:** Therefore, you cannot really tell us much more about how to extrapolate that because you do not have enough of a cohort here to do a single project. How do you extrapolate it from somebody else's project? To my mind, the answer is no, you do not have a bespoke project. We can discuss whether it is a good or a bad idea later.

**Ms M Campbell:** At the minute, we have no legislative cover. Therefore, in any event, the Bill will need to be in place and then the regulations will need to be brought forward in order to give you cover to do a project.

Clause 43 is about the regulations. The Department was asked to clarify whether it anticipates providing different levels of support for housing costs in different areas, and, if so, on what basis will that be made. The current position is that local housing allowance rates are based on eight broad market rental areas. Each month, the Housing Executive monitors rent in an area and decides the local rate for that area. Therefore, there is no change on that really.

The final one is about Assembly control for the various regulations. I have already submitted the timetable for when we expect to make the list of regulations and the different types of control attached to them. We have been alerted by the Examiner today of an error in our delegated powers memorandum around clauses 110 and 112, so we will take steps to rectify that.

**The Chairperson:** Thanks for that, Martina.

**Ms M Campbell:** That is my bit. I will pass over to Michael.

**Mr Pollock:** Thank you, Chairman. Again, thanks to Martina, because she has ploughed much of the ground on the common issues with working-age benefits.

Clause 45 deals with the claimant commitment for jobseeker's allowance. Members should note the Department's response. The unions are opposed. Citizens Advice wants the claimant commitment drawn up in consultation with the claimant. That is the case; it was always the intention to draw up the commitment in consultation with the claimant. There is nothing to suggest that it will be drawn up — *[Inaudible due to mobile phone interference.]* — or anything like that. There is nothing much more to say about that. It is deemed to be an improvement on the existing jobseeker's agreement in so far as it spells out more clearly what is required of the claimant and what would be the result if someone did not comply with the requirements of the claimant commitment.

Clause 46 deals with the different ways in which to conduct interviews. It is seen as a future-proofing exercise, in legislative terms, to allow the Department to conduct interviews of that nature by telephone or online. There are no immediate plans for anything like that at the outset. However, as I say, it is a future-proofing exercise in line with the Government's move towards conclusion through IT. Clause 47 deals with sanctions. Martina has covered the ground on the different levels of sanctions and clarified what is expected of an individual. The higher-level sanctions apply for misconduct, dismissal and those types of things. Individuals who are able to look or prepare for work should be required to do so as a condition of receiving benefit. So, it is not something that is deemed to be punitive, as such.

Members should be aware that the sanctions regime has been deemed ineffective for some time. Therefore, irrespective of welfare reform, there were plans to review the sanctions regime to make it more effective. The different level of sanctions and the clarity on the claimant commitment are all part and parcel of that process.

**The Chairperson:** OK.

**Mr Pollock:** Clause 48 deals with the procedure for regulation-making powers. There are no comments on that, and the same applies to clause 49.

We received stakeholder comments on clause 50 from Citizens Advice about work experience programmes. All those points have been well made. It wants to ensure that the client advisers are adequately trained on those programmes. We will provide quite a bit of clarification about what DEL and the employment service do to ensure that there is no job substitution and to ensure that employers take work experience placements seriously. Employment staff have a robust monitoring regime for any programme of work placement. That includes on-site visits to support the participant and to confirm that the placement is operating within the guidelines.

**The Chairperson:** OK.

**Mr Pollock:** Are there any questions on that?

**The Chairperson:** I do not think so, so you can move on.

**Mr Pollock:** Comments were made about the dual entitlement arrangements under clause 51, which could see a person sanctioned under not ESA but universal credit if they had dual entitlement. That is where an individual would be entitled to ESA of around £50, with a top-up of universal credit of £10 or £15. We are trying to bottom that out to what the sanction would refer to. However, if an individual were sanctioned for £20 and had a top-up of only £15 of universal credit, depending on why they were being sanctioned, such as being in breach of the universal credit rules and the JSA or ESA terms and conditions, logically, you would say that the amount comes out of both. However, we are going to bottom that out and come back to you on it.

**The Chairperson:** Thank you.

**Mr Pollock:** Clause 52 deals with ESA time limiting and is pretty controversial. For clarification, we talked about the prescribed number of days and the 365-day limit starting to run from when the claimant is notified of the change in regulations. This measure has been introduced in the rest of GB, and it has been in operation since April, I think.

**Ms M Campbell:** Yes.

**Mr Pollock:** People in the rest of GB were notified towards the end of November last year, I think, that time limiting was going to be applied to ESA contributory. So, in that way, there is nothing any different here. The agency has plans for a couple of mailshots to notify people about time limiting once the Bill goes through. The first of those might be in January after the Bill has completed its Assembly passage but before it receives Royal Assent. Depending on the IT, a further mailshot could be done later but before May, which is when the provisions kick in. Some serious costs are attached to not introducing those time-limiting measures. The overall programme for welfare reform has something like £36.5 million in 2013-14 earmarked for cost savings that would be made by introducing this measure. In 2014-15, that figure is £51 million, and it is £62.2 million in 2015-16. Those are the result of saving on costs that would be incurred where individuals are compensated by income-related employment and support allowance. So, there are serious issues and serious costs attached to this provision. Any increases in the length of the time limit would erode savings, so that is something that we have to think seriously about.

Clause 53 is about further entitlement after time limiting. The stakeholder comments on the clause are about some of the people who are not affected by time limiting. In that respect, there are quite a few exemptions, such as people who are in the support group, and so forth. I do not have too much detail on the comments, but I will come back to you.

Clause 54 deals with conditions relating to youth. We have some figures to clarify the savings that are attached to that measure and to the people who are part and parcel of the ESA youth cohort and who would not be affected by the change. At the moment, the figure that we have is that 90% will be affected, but the latest figures indicate that, of the 16- to 24-year old cohort, somewhere in the region of 96.9% would not be affected by ESA time limiting.

**Mr Brady:** I was going to ask about the 10%, which has now been reduced to roughly 4%. What will be the difference? The whole idea of the severe disablement allowance and the incapacity in youth benefit was that they were for kids who would never be able to work in the normal sense, so the contribution conditions were waived. They are now going to be put into that employment pool, if you like. You are saying that 96% will go to income-based ESA. The conditions will not be waived for those people, because they will then have to qualify under the normal criteria for income-based ESA. What is the difference between those people and the ones who will not have to do that?

**Mr Pollock:** It would obviously be considered on a case-by-case basis. Part of the philosophy has been that individuals have been condemned to a life on benefits — at least, that is what the Government are saying.

**Mr Brady:** With respect, they are condemned to a life on benefits because of their conditions. It is not a lifestyle choice. That was the whole issue behind the severe disablement allowance. I am wondering about the policy intent of moving these people into the work-related area. Presumably, their conditions are not going to change overnight, and in most cases, they will still have the same conditions that they were born with. I suppose the question that I am trying to ask is: how bad will you have to be before you do not have to go into that work-related group? Has that been decided upon? Is that in the guidelines and regulations or whatever?

That is just something that I wanted to flag up now because it is going to affect a large cohort of those young people.

**Mr Pollock:** It is going to apply to all new claims. I do not have an answer to how we will differentiate between individual claims. I think that that is for —

**Mr Brady:** I know. I understand that, because each case is going to be individual. I am just wondering about it in the general sense. It is a general intent, so some thought — or maybe lack of thought — has to have been put into how it is going to affect those young people. It was always accepted that there was a group of young people who, because of their condition, would not be able to work in the normal sense. Those people are going to be expected to go into an employment pool, if you like, where all that will have been taken away from them. That is really what I am saying. Obviously, it may be something that you have to come back to us with. However, I just wanted to flag it up.

**The Chairperson:** All right. Thank you.

**Mr Pollock:** Clause 55 deals with the claimant commitment for employment and support allowance. It mirrors what I said about JSA and what Martina said this morning about simplifying the process for universal credit.

There are a couple of points relating to disability groups, which want assurances that proper support will be provided. We envisage that that would be the case. We would need to look at that to see what assurances we can give the Committee on the details of that. We will do that when we get back to you formally on all those issues

**The Chairperson:** OK. Thank you for that.

**Mr Pollock:** Clause 56 relates to work experience. Placements are to be included as part of the customer obligation. I think that we went over the work experience previously when we discussed its nature. It is voluntary in that sense. As such, no one will be press-ganged into it. I spoke earlier about the response from DEL on client advisers. DEL imposes quite an onerous regime on employers who participate in those sorts of employment schemes and work experience schemes, as it tries to ensure that the individual, as well as the employer, gains from it and that no one abuses the system. A fairly robust checking system is in place for that as well.

**The Chairperson:** OK.

**Mr Pollock:** Clause 57 relates to hardship payments. It introduces hardship payments under ESA, if I am thinking right, where previously they were not in place.

**The Chairperson:** That was a part of the NIPSA presentation. Have you seen page 159 of the submission?

**Ms M Campbell:** Our version uses slightly different page numbers, because we started to fill in the response.

**Mr Pollock:** We started to fill in the blanks.

**The Chairperson:** I am sorry about that.

**Mr Pollock:** There was no hardship regime under ESA previously. Is that not right, Colm?

**Mr C McLaughlin:** Yes.

**Mr Pollock:** The claimant commitment and, I suppose, the potential for sanctions, essentially now affords the opportunity for someone who would be sanctioned under ESA to avail themselves of hardship arrangements.

**Mr Brady:** Can I just ask whether that applies to both contributory and income-based ESA?

**Mr Pollock:** I do not know, but I can find out.

**The Chairperson:** OK. Thanks for that.

**Ms M Campbell:** Another important point to note is that hardship payments are not recoverable for ESA claimants.

**The Chairperson:** OK.

**Mr Pollock:** Clause 58 deals with claimant responsibilities for employment and support allowance. Members should note that that clause relates to delegation and contracting out, and they may wish to view that clause in the context of their previous deliberations on the matter. I think that that is essentially —

**The Chairperson:** Is that not a timing issue?

**Mr Pollock:** I can only assume that the contracting out relates more to DWP in GB and the delivery of some particular aspects of its work. It relates to the privatisation of functions that are connected to work-focused interviews, and so forth. Again, there is absolutely no intention at the moment of doing that in Northern Ireland. So, it is a legislative future-proofing process.

**Mr Brady:** As I said, we were told that in 2007, and three weeks later —

**Mr Pollock:** I was not here in 2007.

**Mr Brady:** No, I know. Forgive me for being sceptical.

**Mr Pollock:** Earlier, when I was talking about alternative interview arrangements and such things, such as — [*Inaudible due to mobile phone interference.*] I said that DEL adopts the philosophy that face-to-face contact is better in all those things. I cannot see anything happening on that in the near future. It is something that we, as civil servants, are also interested in.

Clause 60 deals with claimant commitment for income support. There are no particular issues under that clause. I think that NIPSA raised the same types of issues about contracting out, and so forth.

**The Chairperson:** I am sorry, Michael, you skipped clause 59.

**Mr Pollock:** Is that the clause that deals with work experience?

**Ms M Campbell:** No, it deals with lone parents' entitlement to income support. Is this the childcare issue?

**Mr Pollock:** As Martina pointed out this morning, there has not been a raft of people who have been sanctioned because they have no childcare. We did have one blip, and a clutch of people were supposedly sanctioned for a lack of childcare, but we are investigating that. The overwhelming evidence is that decision-makers and everyone else look very sympathetically on anyone who cannot fit in work placements or whatever because of childcare responsibilities. There is flexibility in the legislation, and we envisage that that will be carried forward under any new arrangements.

**The Chairperson:** OK. Fair enough.

**Mr Pollock:** Where are we now?

**Ms M Campbell:** Clause 60.

**The Chairperson:** Is it not really clause 64?

**Ms M Campbell:** No, we are on clause 60.

**The Chairperson:** I do not think that there is anything under that clause. You can skip clauses 61, 62 and 63 and move to clause 64 in Part 3, which deals with industrial injuries benefit. You may not need to cover that.

**Mr Pollock:** I do not think that I would particularly raise anything else about those clauses. I have looked through the material that you provided on clauses 60, 61, 62 and 63, but no particular issues have been raised.

**Mr Brady:** Where industrial injuries are concerned, elements such as unforeseen aggravation will all go. Is that the case?

**Mr Pollock:** Unforeseen aggravation?

**Mr Brady:** If you were to suffer an accident, such as breaking your arm, and if, as a direct result, arthritis were to set in 10 years later, you can claim retrospectively. That is called unforeseen aggravation, as it could not have been foreseen at the time. From my reading, I understand that that will all go.

**Mr Pollock:** I am not sure, Mickey. Colm, do you have any notion of that? Is that Jane's area?

**Mr C McLaughlin:** It is Jane's area.

**Ms M Campbell:** Yes. She is behind us.

**Mr Pollock:** I do not know about that. Jane will join us now anyway. Does she want to come forward?

**Mr Brady:** I asked that question only because I knew that Jane is looking forward to getting into the debate.

**Mr Pollock:** You knew that she was chomping at the bit to get in.

**Ms M Campbell:** We will have a quick changeover.

**Mr Pollock:** Jane, do you know anything about industrial injuries?

**Ms Jane Corderoy (Department for Social Development):** As I said previously, the changes on industrial injuries are largely technical to clarify legislation. Maurice, would you like to take that question?

**Mr Maurice Byrne (Department for Social Development):** You asked about unforeseen aggravations, and that is a feature of the post-1948 scheme rather than the pre-1948 scheme. That will not change. The clauses will abolish only the —

**Mr Brady:** When I read the Bill initially, it seemed to me that that was going to change. That is what I wanted to check.

**Mr M Byrne:** No, the post-1948 scheme will not change in that respect.

**Mr Brady:** There are changes on other accidents.

**Mr M Byrne:** There are changes on industrial accidents, payments to under-18s and trainees. However, unforeseen aggravations will remain unchanged.

**Mr Brady:** I just wanted to clarify that. Thank you.

**The Chairperson:** We are nearly halfway there.

**Ms Corderoy:** Do you want us to go through the queries in your table about industrial injuries? There are a couple. We could discuss the query about the reduced earnings allowance.

**The Chairperson:** Yes.

**Ms Corderoy:** As Maurice said, the reduced earnings allowance is a feature of the post-1948 scheme. It is not affected by the abolition of the pre-1948 scheme.

We have come back to the Committee on a couple of queries that were raised the previous time. The first is whether bereavement benefit would still be paid under this clause. As I said previously, the clause will remove redundant legislation from the statute book. Industrial death benefit is payable only when the death occurred before 11 April 1988, so claims for deaths that occurred before that date are no longer being made. Deaths that occurred after that date are dealt with through bereavement benefit.

There was also a question about what would happen if people were pursuing long-term cases for respiratory illness that were proved after the legislation has been commenced. When we looked at that, we felt that persons who found themselves in that position may have already received benefit for it.

There was another question on clause 68 and the determinations.

**Mr M Byrne:** That is to do with the — *[Inaudible due to mobile phone interference.]* — of the declaration of death in industrial accidents and how evidence would be gathered. At the moment, claims can be made without a previous declaration for industrial accidents, and there does not seem to be a problem with them. Most employers are required to keep accident books, which is one source of information for the Department. Other than that —

**Mr Brady:** I was thinking about experiences that I have had with claimants over the years. When an accident is not reported or recorded, difficulties are created. If a person then, for instance, makes a civil claim for injury, it becomes more difficult. It is really about enforcing that. Do they have to have accident books? Is it a legal requirement?

**Ms Corderoy:** Yes.

**Mr M Byrne:** Yes, it is a legal requirement to have an accident book. It is then about enforcing whether it is actually used. If a person is going on to make a claim and possibly a civil claim for damages, those are the important issues.

**Mr M Byrne:** Depending on the severity of the accident, the Health and Safety Executive may be involved. So, there is another source.

**Mr Brady:** That is where unforeseen aggravation came in. It may have seemed relatively innocuous at the time but became much more serious down the line.

**Ms Corderoy:** Our discussion can go up to clause 68, so it is back to you for the clause on housing benefit.

**Mr Pollock:** It is back to me for housing benefit? I missed that. We have been through quite a bit on housing benefit. Under-occupancy is the housing benefit measure that is particularly exercising everybody. As we said this morning, quite a bit of work is ongoing in trying to quantify the issues on under-occupancy. We have some facts and figures regarding the groups and numbers that would be affected, the number of people who would be exempt from the under-occupancy measure, and the cost attaching to some of the things that we mentioned, such as the schemes, pilots or trials that were ongoing with conversions and such. We will be providing those facts and figures to the Committee for clarification.

An awful lot of work is being done on this issue, and, hopefully, we will be able to give you as much clarification as possible to inform the Committee's decisions and the discussion with Lord Freud before the end of the month. Is there anything in addition to that?

**Mr Brady:** The issue of couples who live in the same house but separately came up earlier. That may have an impact on under-occupancy. I wonder whether two people who are occupying two bedrooms in a three-bedroomed house will impact on the Department's interpretation of under-occupancy. Will it influence one interpretation of one issue having a bearing on under-occupancy? Has that been factored in or thought about? Martina mentioned it, and she talked about negative equity and seemed very magnanimous about how that might be addressed. However, when it comes to under-occupancy, people are up against the cold, hard fact that they are going to have a house that the Department may say they do not need because they are not using two bedrooms, or whatever. So, it could well have an effect.

**Mr Pollock:** I assume that it would be a case of taking all the evidence in the round. If the individuals were claiming as individuals, presumably why they were claiming as single people and not as a married couple would have been explored when the claim was made.

**Mr Brady:** To finish, those decisions might have been made in isolation. A decision on under-occupancy may have been made for housing benefit and a decision on whether the couple is living together or separately may have been made for benefit purposes. There needs to be some coming together of the two —

**Mr Pollock:** Certainly, everybody needs to be talking to one another.

**Mr Brady:** It is not necessarily about joined-up government but joined-up administration in the Department. I just wanted to flag that up.

**Mr Pollock:** That is a good enough point.

**Ms Corderoy:** Clauses 70 to 73 —

**The Chairperson:** I am sorry, Jane. Michael, you said that you are going to try to come back with some additional information on that. When we come to the clause-by-clause consideration, we will have to deal with what is in front of us. Any evidence that you provide will be quite pertinent. I know that you understand that, but I am just putting it on the record.

**Mr F McCann:** I intended to raise some issues, but in light of the earlier questions, I take it that they will still be in the mix when Lord Freud comes over. I know that local housing allowance is set at the thirtieth percentile. If under-occupancy kicks in and quite a number of people have to seek other accommodation, the thirtieth percentile is at the lower end of the private-rented sector in which some of the accommodation is atrocious. I just want to make the point that people are being forced out of houses into what is probably the worst of living conditions. On top of that, they might have to pay a top-up after losing their housing benefit. Has the Department taken that into consideration?

**Mr Pollock:** Yes. The Department has to factor in all the information that is available. The thirtieth percentile is not in this Bill. It is already on the statute books.

**Mr F McCann:** It says it in front of us, Michael. I am raising it because it says it in relation to the local housing allowance.

**Mr Pollock:** It is a factor in setting the local housing allowance, but that legislative change is already in and implemented. My Department is looking at the impact of all the housing benefit reforms in the round to try to assess the best way forward. Under-occupancy raises issues around the housing stock and segregated housing and all the things that we discussed this morning. So, all those factors are in the mix in that respect.

**Mr F McCann:** The point that I am making is that, if the local housing allowance is set at the thirtieth percentile, it is usually in and around the lower end of the private rented market. If people lose their house through under-occupancy and falling into arrears and they apply for housing benefit to move on,



they will only be paid enough to go into the group that falls into the thirtieth percentile. Therefore, they will be forced into the worst elements of the private housing sector.

**Mr Pollock:** I know that that is a point. Part of the agenda as far as the housing benefit reforms and the spiralling costs of housing benefit in particular are concerned is to try to create some sense of fairness for the taxpayer, in so far as benefit recipients would not have access to a level of accommodation that, say, a low-income family would have access to. That has to enter into the overall consideration as well. The state of the accommodation is something different again.

**The Chairperson:** From the Committee's point of view, evidence has been presented that there is very limited accommodation within that thirtieth percentile.

**Mr F McCann:** Even the recent housing bulletin released by the Department showed an increase of 870 in the number of people presenting as homeless, and 40% of them were single males. That is a clear indication that what happened in and around the shared-room allowance is starting to bite. When we talk about percentiles, we are actually talking about people and about families.

**Mr Pollock:** I understand that. None of that is lost on us.

**The Chairperson:** Fair enough. Obviously that is a big issue and a big area of work.

**Ms Corderoy:** Clauses 70 to 73 deal with the abolition of the discretionary part of the social fund. The majority of the stakeholders' comments relate to the replacement scheme, which is the new discretionary support scheme. Our colleagues are taking that forward with great urgency, and they are due to come up later this week, so they will be able to answer those questions.

**The Chairperson:** We were supposed to — *[Inaudible due to mobile phone interference.]*

**The Committee Clerk:** I remind the Committee that it took a briefing from the SSA on the social fund a few weeks ago, and we have a paper from it. I meant to put it in the tabled items folder, but we will have it for tomorrow's meeting just to remind members of the agency's intention in respect of developing that.

**Ms Corderoy:** Maternity payments, funeral payments, cold weather payments and winter fuel payments are outside of all of that. They are just staying the same. They are not affected by those clauses.

**Mr Pollock:** Clauses 74 and 75 deal with state pension credit. NIPSA had some comments:

*"Amends the State Pension Credit Act (NI) 2002 but instead of Invalid Care Allowance being the measure of entitlement it has changed to a definition of 'regular and substantial caring responsibilities'. This has yet to be defined"*

In response to that, we say that there will be a degree of discretion, which will be defined in the regulations and guidance. If the member giving the care is under pension age, they would have to claim carer's allowance, the same as it is now, to receive the additional carer's premium as they are not receiving a state pension. So, there is no overlapping benefit rule. If the member of the couple who is giving the care is over pension age, the new rule would apply.

The Law Centre had a couple of issues about the clause appearing to extend entitlement to the additional amount of the guarantee credit beyond claimants receiving carer's allowance. It says that it is not clear what the extension would be as that is being left to the regulations. Again, that would be specified in the regulations, and a degree of discretion would be spelled out in the guidance.

**Mr Brady:** The Bill talks about "regular and substantial caring responsibilities". At the moment, I think that 35 hours is the minimum. It is possible that that may be changed, affecting people who are over pensionable age. Pension credit age is 60 at the moment, so people are still entitled to claim carer's allowance until pension age. Then, you have an underlying entitlement. Is that likely to change? I am a bit wary of the talk about changing the definition, which the Bill is essentially doing, and the talk of "regular and substantial caring responsibilities". At the moment, 35 hours is the prescribed minimum. If, for instance, that was extended to maybe 40 or whatever hours, that would put people in a position where carers might, possibly for therapeutic purposes, want to take on part-time employment to have

a balance between their caring responsibilities and doing something else. Will that be contained in the regulations?

**Mr Pollock:** I do not know that, Mickey, at the minute, but it would be contained in the regulations and there would be more detail in the guidance. Certainly, we will try to check it out as much as possible for the clause-by-clause scrutiny. *[Inaudible due to mobile phone interference.]*

**The Chairperson:** We move to Part 4.

**Ms Corderoy:** Anne had wanted to say a few words about some of the issues that had been raised in the stakeholder sessions, but she is not here. She has had to go to a meeting with the Minister. If it is OK, I will read a bit of what she had wanted to say.

She wanted to emphasise that the personal independence payment assessment would be very different from the work capability assessment (WCA). The assessment for PIP will focus on the ability to carry out key everyday activities, the challenges people face and the support they need, rather than on the functions linked to a person's ability to work, as is the case with the work capability assessment. The work capability assessment looks at an individual's ability to work, whereas as the personal independence payment would be payable to disabled people regardless of whether they are in work. She wanted to say that ESA and PIP are very different benefits paid for very different reasons. That fact alone means that the assessments will be different. In most cases, the assessment for PIP will involve face-to-face consultation with an independent health professional. That will give customers the opportunity to explain how their health condition or impairment affects them on a daily basis. Customers will be encouraged to bring a family member, carer or advocate with them to the consultation if they wish. Where enough paper evidence is held to make a fair and accurate assessment without the need for face-to-face consultation, that will be done.

The Department is seeking to learn from the experience of delivering the work capability assessment to ensure that we get the personal independence payment right from the start. As part of that, we are looking at the findings of the independent reviews of WCA carried out by Professor Harrington to ensure that, where appropriate, his recommendations are fully taken into account. The assessment will continue to be monitored to ensure that it reflects any further best practice arising from future recommendations that may be appropriate. Guidance will make it clear to the assessment provider that customers must feel that the assessment is a two-way conversation and that they have been genuinely listened to. We will have a monitoring regime in place to ensure that that type of service is delivered.

The PIP assessment criteria have also been the subject of extensive consultation. All the consultations were issued here at the same time as the consultations in Britain, beginning in May 2011. The second draft of the assessment criteria document was published in November 2011 and a further supplement was issued in January 2012. The consultation closed earlier this year. The Minister and the Department continue to make representations to GB and DWP to make them fully aware of the particular circumstances that we are facing here and to ensure that they are factored into the design of the new benefit. That is important, given the differences, of which we are all aware in Northern Ireland, in the disability living allowance customer base, with its much higher proportion of mental health cases. Following the latest consultation exercise, the Minister wrote to DWP and secured a commitment from its Minister that all views and concerns expressed from Northern Ireland during the most recent consultation exercise would be given careful consideration as DWP evaluates what further changes need to be made to the personal independence payment assessment criteria to ensure that they are a fair reflection of disabled people's needs.

Anne felt that it was important that that be put on the record, given some of the concerns that came back from the stakeholder evidence. People were seeing mistakes — I am sorry; I should not say that, being from the Department — seeing issues with the work capability assessment. *[Laughter.]*

**The Chairperson:** You were right the first time.

**Ms Corderoy:** We did not want to replicate them.

**The Chairperson:** You will not be back tomorrow. You just lost two brownie points.

**Mr Copeland:** I just wanted to check that the skills base of the healthcare professionals will be matched to the perceived primary disability condition of the claimant.

**Ms Corderoy:** I understand that that is the intention.

**Mr Mickey Kelly (Department for Social Development):** It is the intention that the provider will be asked to consider in certain circumstances who is best placed to do the face-to-face consultation when it arises. It may be a health professional from a specific profession or it may be a health professional with particular skills and expertise, for example, in mental health. Given the prevalence of mental health issues in Northern Ireland in the existing caseload, the provider will have to blend its resources to deal with the scenario.

**Mr Copeland:** Is there any difference in the tender document that was issued in connection with PIP to reflect the need for more people, perhaps, in Northern Ireland who are skilled in mental health diagnosis and assessment?

**Mr M Kelly:** I will confirm that for definite for you, but my understanding is that the contract would not have been specific. We were part of a national framework that was drawing down a contractor. The documentation would not have been specific; I think it would have mentioned that there is a higher proportion of mental health issues in Northern Ireland, but it would not have said, at that stage, that we needed more of a specific type. That will come during the discussions with the provider when we announce the successful bidder.

**Mr Copeland:** So, the successful bidder, on the assumption that people who are qualified in mental health may be more expensive than others, will have to take a judgement, but your view is that anyone who has mental health issues should be seen by a skilled mental health professional.

**Mr M Kelly:** For the record, I said that the provider will consider who is best placed to say. I cannot give you a categorical assurance that x will be seen by y. Those are the sorts of things that we will work through as part of the operation of the provider's contract to ensure that skills are best matched to the people, taking into account the particular circumstances here.

**Mr Brady:** The fear is that the disaster that has happened in Britain with Atos will be replicated here. We have been told over the past couple of months that we are going to find out to whom the contract has been awarded, but it seems to be moving away from us all the time. Have you any idea about when that might happen?

**Mr M Kelly:** I think we would probably expect to be able to announce the provider towards the end of this month.

**Mr Brady:** I live in hope.

**The Chairperson:** That is fair enough. You do not know the answer.

**Ms Corderoy:** I hope that what I read out earlier answers those first three or four queries in your document. The assessment criteria have been extensively consulted on and disabled people and disabled people's organisations have been involved in designing those criteria. We have sent our analysis of the consultation responses to the Committee, and we have sent it to DWP. The Minister there has written to our Minister saying that it will take on the various points that have been raised in Northern Ireland, consider those and evaluate what further changes may need to be made to the assessment. We hope that that response to the consultation will be published next month.

**Mr M Kelly:** I should add that a lot of the comments raised during the meetings with stakeholders were about the monitoring and performance within the contract. I know that people might have reservations, but the contract will include an annual review. It will include monthly performance reporting on service levels. Penalties are in place for scenarios in which thresholds are breached. Obviously, those penalties are commercial in confidence, but I want to put on record that there is a system in place through which the agency and the Department will be monitoring the providers' performance.

**Mr F McCann:** You say that there will be monthly reviews. Have you the ability to change anything? Has that been built into the contract as well?

**Mr M Kelly:** It may not be explicitly built into the contract, but there are penalties in place for underperformance and the breaching of thresholds. A number of thresholds have been set. The provider would, obviously, be given an opportunity to redress below par performances before we would, I imagine — I am not a commercial expert — move in with some sort of contract variation.

**Mr F McCann:** When you say underperformance, it throws up all sorts of concerns.

**Mr M Kelly:** I do not expect it, and we do not want it. That is not what we want to deliver, in any shape or form, for the people who are going to go through the assessment process. I am conscious and mindful of the concerns that members have about the current WCA and the performance of the provider. It is to set in context that there will be a vigorous performance management regime in place to ensure that the standards that we want are delivered.

**Ms Corderoy:** The first bullet point in the paper asks that the severest cases be dealt with by a paper exercise. We can reassure the Committee that the legislation provides for that.

The second bullet point recommends that the required waiting condition — *[Inaudible due to mobile phone interference.]* We know that the qualifying period has changed from six months to three months. The combined effect — *[Inaudible due to mobile phone interference.]* — definition of long-term disability for equality and disability legislation.

Next one down is clause 86 to ensure — *[Inaudible due to mobile phone interference.]* — subsequently released, or whose conviction is quashed. The withholding of that is nothing to do with the presumption of guilt or innocence. *[Inaudible due to mobile phone interference.]* Next is the mandatory requirement for independent advice. Obviously, people are entitled to independent advice through this.

**The Chairperson:** That arose from a number of stakeholders — *[Inaudible due to mobile phone interference.]* — access to that as a right. That is what the monitoring requirement relates to.

**Mr M Kelly:** I know that some members will be aware that the agency has developed a series of customer journeys for people who are claiming personal independence payments. We will intervene with people at a number of junctures. Whether that is perceived as being independent advice is another matter, but there will be a number of instances where we have conversations with customers.

**Mr F McCann:** It would be interesting to find out how that works in practice.

**The Chairperson:** It is a separate thing, but independent advice is outwith the Department. We will have to consider that as well.

**Mr Douglas:** Chairman, are we putting a price on this? One of the agencies told us that its work is going to increase by at least 30%, and there have been cutbacks already. It is not just a matter of saying, "We will get you support." There has to be something to say that we are going to support this financially.

**The Chairperson:** In fairness, the stakeholders are putting the case for such statutory access to independent advice. In one sense, it is up to the Department to say it can work with that. It is also up to the people who are making the proposals to suggest how it might look to have them delivered. It is a two-way process. We do not have a model from the proposers of the idea, so we can invite them to suggest one if they wish. The key thing is whether the Department will be willing to embrace that. The detail of it could be a bit like the detail in the universal credit or housing benefit discussions elsewhere.

**Ms Corderoy:** The next point is that DWP proposes that, after four weeks abroad, DLA and PIP should no longer be payable and entitlement should end unless the absence is for medical treatment, when the period of absence can be extended to a maximum of 26 weeks. The proposal for the temporary absence rule for PIP and DLA is to be brought into line with incapacity benefit and employment and support allowance. Around 75% of working-age claimants are also in receipt of incapacity benefits, including JSA. Those benefits will only allow an absence of four weeks abroad. Also, I think there is research that shows that those DLA recipients who are in work are unlikely to be able to take more than a four-week holiday abroad, but we have noted that comment and will take it back to the Minister.

**Mr McClarty:** Are those four consecutive weeks or four cumulative weeks?

**Ms Corderoy:** Consecutive.

The next thing is to ensure that people of 65 or pensionable age who are in receipt of PIP continue to receive it, and they will do. That is exactly the same as DLA, and it will continue.

The current rules allow people who have come off DLA to reclaim the benefit within two years if they need it again without having to requalify. The Government plan to limit that to one year for PIP. The Committee may wish to consider a proposal. Those are the current proposals, but we certainly noted that comment and the comments made by stakeholders.

The next bullet point is:

*"Address concern that people held on remand (clause 86) and are not convicted do not lose motability component."*

That is the same as the provision for people who are in hospital. Payment will continue for the first 28 days of detention. As I said, the clause is not a reflection on perceived guilt or innocence; rather, it is a measure that aims to prevent duplication of provision. DLA and PIP are intended to contribute towards the extra costs associated with disability, and it is important to ensure that funding of those extra costs is not being duplicated. Disabled prisoners have their disability-related daily living and mobility needs met by the Prison Service or through healthcare provided by health and social care trusts. To pay PIP on top of that would be to duplicate public funding.

**Mr Brady:** One of the criteria for people in residential accommodation was that the Motability component would be used for visits and that kind of thing. So, that will not happen for somebody on remand.

**Ms Corderoy:** They will have it for the 28 days.

**Mr Brady:** Yes, but after that they could be on remand for quite a long time. So, that is not going to happen.

**Ms Corderoy:** The next bullet point is the recommendation:

*"the mobility component for adults is brought into line with the extended timeline provided for children under this clause".*

I think that the Equality Commission mentioned that.

**The Chairperson:** It did, yes.

**Ms Corderoy:** PIP is for working-age people only. It does not apply to those under 16. Extension to 12 weeks for children under 16 is a condition and recognition of the additional special needs they may have for support from their parents while they are adjusting to hospital life. I think it is possibly linked to continuation of child benefit as well.

Clause 88, "Report to the Assembly", refers to making a report to the Assembly within two years.

**Mr M Kelly:** To clarify for members, the Welfare Reform Act stipulated two years. The reason for that was to allow, I suppose, for the system to bed in and to allow a sufficient number of people to go through the assessment to get a feel for it. That was the rationale and thinking behind that. Because the assessment criteria are UK-wide in how they operate, if we thought about conducting a review earlier than that, it is unlikely that we would get any changes through until GB conducted its full review and necessitated changes to the overall criteria. There is consideration of a period of a year, but I am just not sure what the benefits of that would be at this particular juncture.

**Ms Corderoy:** A couple of suggestions came through from stakeholders about what that review might include or look at.

**Mr M Kelly:** In the context of what the review consists of, we are quite happy to work with customer representative groups. We work with them quite a lot on the PIP stuff that we are doing. We are quite happy to involve them in discussions about how the review would look.

**Mr Douglas:** Are you saying that, in GB, the period is two years?

**Mr M Kelly:** Yes. It was just a comment on the rationale for that and the impact of having an earlier review. We might not get any benefits from doing that.

**Ms Corderoy:** The next bullet point is to do with "competent state". I am trying to think of an easy way to say this. The EC regulation co-ordinates the social security schemes of member states and sets out in detail the persons and matters covered. The regulation applies directly to all member states and is open to interpretation by the European Commission and the Court of Justice of the European Union. Therefore, we feel that it would be inappropriate for domestic legislation to seek to expand or limit European law, which has a direct effect here, although we do provide guidance to decision-makers.

There might be stuff that we can reassure people on. It was the cross-border aspect. If somebody is living here, we are obviously the competent state, but the query was about what happens if they are working over the border. I think that was the particular issue to do with the Republic. If they are working over the border and they are paying the equivalent of national insurance there, that would be the competent state for them, but they would be covered either way. We checked out the specific issue that somebody raised about somebody who gets paid DLA here but then takes a job in the South. That is exportable. They have already qualified for it here. I hope that is clear.

The final point is:

*"The Committee may wish to clarify that the definition of 'care home' under clause 84(3) and the reference to 'personal care' ... does not include establishments such as hostels where people might receive such services."*

That is correct. It is the same as DLA, and there is no change to it. At the last meeting, you mentioned an issue to do with supported housing. It is not counted as a care home, so those people will still get their allowance.

**Mr Brady:** That happened locally a few years ago. Praxis had supported housing, and the severe disability premium was taken off people because the Department argued that they did not need it because they were not living alone. That was sorted out. It was brought up under the same kind of argument because there is obviously a difference between a care home and a hostel. The Department has used that argument in the past.

**Ms Corderoy:** It has been confirmed to us that, if recipients are not in a care home or hospital and receive domestic care in their own home or in rented accommodation, they will continue to receive payment of anything they are entitled to.

**The Chairperson:** That has completed Part 4. We will now move on to Part 5.

There was an argument or a suggestion from the stakeholders about adding to the list of potential exemptions. We will take your views on carer's allowance, widow's and bereavement benefits and contributory-based ESA.

**Mr Pollock:** In respect of benefits, 620 households, which equates to less than 1% of claimants, were affected. People in receipt of working tax credits were exempted from the cap in the analysis. Therefore, that rules out the majority of in-work households. Some clarification is provided on what is included in the benefit cap: for example, bereavement benefit, care allowance, child benefit, and child tax. There will be a full list of everything that contributes to the benefit cap, and some commentary will be provided on the actual amounts there: for example, £350 for a single person with no children or if the children for whom you have responsibility do not live with you. There is clarification on when the benefit cap will not apply. That will be the case, for example, if you qualify for working tax credits or get any of the following benefits: DLA, which will be PIP from April next year; attendance allowance or industrial injury; ESA if paid with a support component; and war widows or war widowers pensions.

There are quite a few comments from the various stakeholders. The Law Centre said that the clauses paved the way for the benefit cap and that regulations will set out how the cap will be calculated under universal credit. There is not terribly much more that I can say about that at present.

**The Chairperson:** OK, thank you. We move on to clause 96.

**Mr Pollock:** Clause 96 is supplementary to clause 95. Citizens Advice is concerned that the decision to apply the benefit cap relates to a particular award of benefit and may not be appealed should the cap be applied incorrectly. If the cap has been applied incorrectly, the claimant can challenge the decision. Therefore, any errors in the application of the cap can be corrected. The only aspect that cannot be appealed is the right to apply the benefit cap, which will be applied to all benefit claimants unless they fall into the categories listed under the exemptions in clause 95. The exempt categories are quite extensive, and they are listed in our formal response.

**Mr Brady:** I assume that, where that cap has been applied incorrectly, those affected will be sent an assessment sheet detailing that. That is really how most people find out whether their benefit is correct or not.

**Mr Pollock:** I would imagine so, particularly stating how much the various components are.

**Mr Brady:** It is really the only way that people can find out. If one of those was exempted, that would be discoverable when going through the assessment sheet.

**The Chairperson:** OK, we are happy enough to move on.

**Ms Corderoy:** Clause 97 deals with claims and awards. There is a question about the context of default payments made by a secondary earner. I know that Martina answered that this morning. However, I suppose that we could say our bit, which is that a move to single monthly household payments will be a significant change for some, and an alternative payment arrangement may be needed. The Department has powers to split payments between members of a couple in joint claim cases. The regulations will provide that the Department may, in any particular case where it considers that it is in the interest of the claimant, their partner or any child in respect of whom universal credit is payable, arrange that universal credit payable in respect of joint claimants be split between the couple in such proportion as the Department sees fit.

**The Chairperson:** OK.

**Ms Corderoy:** Clause 98 deals with powers to require information relating to claims and awards. The Committee wanted to clarify whether the Department was clear about which Departments, agencies and service providers the clause might cover. As far as I understand, this is really for the verification of claims. The regulations are not finalised, but we have a list of those whom we think it likely to cover.

**Mr M Byrne:** The clause deals with possible information requests from HMRC, landlords, childcare providers, and so on. It is just to substantiate information that has come forward already. However, until we see what is in the regulations, we cannot be definite about how exactly that clause will be applied.

**The Chairperson:** Fair enough. Thank you.

**Ms Corderoy:** Clause 99 relates to payments to joint claimants, and it was covered well enough this morning, too.

Paragraph 76 in the Committee's paper relates to clause 100, which concerns payments on account. There was a question about whether the clause relates to legislation that will bring about the social fund's replacement. The answer is that it does not. The replacement social fund will be a Government amendment. As I said, colleagues from the agency who deal with that discretionary support will be here to speak to the Committee on Thursday.

Clause 101 relates to the power to require consideration of revision before appeal. This is the mandatory reconsideration. The point of the clause is that too many disputes that could have been

resolved earlier use the appeals service and so put additional pressure on it. In addition, as Committee members said this morning, it is stressful for appellants and costly to the Department. The reconsideration process is proposed to enable the earlier resolution of more disputes. It will allow a claimant's decision to appeal to be informed by whether reconsideration had provided them with clear justification and a clear explanation for the original decision. It will also enable new information or evidence, which may not have been available when the original decision was made, to be taken into account within the reconsideration. If that information were provided earlier, the dispute could be resolved earlier than would be the case when going through the whole appeals process.

There is a suggested amendment in the Committee paper that relates to a claimant being left without income. We think that, in practice, it is relatively unlikely that someone would be left in that situation.

The final suggested amendment concerns the application of a time limit. There are, as you know, operational time limits and targets that have to be met internally, and probably the most appropriate place for that would be in the guidance. We would not necessarily place time limits on the Department at this point.

**Mr M Byrne:** There are time limits in place within which an appeal has to be made. I think that the current time limits will remain in the new system.

**Mr Brady:** I just want some clarification: are you talking about a time limit for the Department to process an appeal or a time limit within which a claimant must appeal, which is 28 days?

**Mr M Byrne:** Yes, or a month.

**Mr Brady:** Is that also applied to the Department to ensure that an appeal is dealt with in a timely fashion?

**Mr M Byrne:** From when the appeal is lodged to when it is heard by the appeals tribunal?

**Mr Brady:** Yes.

**Mr M Byrne:** There is no time limit on that.

**Mr Brady:** That is what I want to confirm or clarify. The suggested amendment states:

*"A time limit should be applied to the Department "*

— not to the claimant —

*"to ensure an appeal is dealt with in a timely fashion."*

It also refers to the fact:

*"The Department of Work and Pensions and HMRC are both considering a 42 day time period in Britain."*

There is no way that I experienced appeals being dealt with within 42 days: what happens is that, if the Department can deal with an appeal within a reasonable time, that is fine; if they cannot, it goes to the back of the box. That is a fact.

**Mr M Byrne:** It is up to the president of the appeals service, I suppose, as to how appeals are managed after they get into that system.

**Mr Brady:** I just wanted to clarify that.

**Mr M Byrne:** I am not aware of any current plans to introduce a time limit for that.

**Mr Brady:** All I am saying is that it is not feasible.

**Mr M Byrne:** No. Well, maybe that is why it will not be introduced.



**Mr Brady:** That is OK. I just wanted to clarify that.

**The Chairperson:** OK. Thank you for that.

**Ms Corderoy:** Under clause 102, there is a query about the security of electronic communications.

Amendments being made by this clause have nothing to do with the electronic sharing of information between Departments and HMRC. The amendments are designed to enable the Department to include provision for electronic communication in relation to claims to benefits and in relation to notification regarding changes of circumstances in regulations. That is rather than our having to make a separate Order under the Electronic Communications Act 2000. The clause will simply allow provision to be made under social security legislation rather than having to use electronic communications legislation. It will be a more effective approach to introducing something new or making changes, for example, if you wanted to make provisions for additional benefits regarding electronic communication in the benefit system.

Clause 103 concerns the recovery of benefit payments, and the Committee paper advises:

*"Members should note that this will also include the recovery of overpayment where the claimant was not at fault and is unaware that an overpayment has been made."*

There will be guidance on that, particularly on whether the claimant is eligible for a hardship payment.

**Mr Brady:** Essentially, you are saying that an infallibility will be visited upon the Department. It will always be right, regardless of who made the mistake. That has always been a bone of contention. A person who does not know that an overpayment has been made will, through no fault of their own, still be penalised.

**Ms Corderoy:** The Department has to take responsibility for its mistakes. At the same time, if the Department makes a mistake, that money does not belong to the person to whom it has been paid.

**Mr Brady:** The person may have a different opinion because, essentially, they will be penalised through money being deducted from their weekly benefit, which will put them below the subsistence level. That is more than grossly unfair. If a person makes a false statement, or something similar, they would expect there to be recovery eventually. However, you are saying that it does not matter who makes the mistake; the individual is responsible.

**Ms Corderoy:** It is definitely worth putting on the record that an individual's personal financial circumstances will be taken into consideration when the money is being reclaimed.

**Mr Brady:** The general point is that the recovery would still be made from their benefit, even though it was not their fault.

**Mr M Byrne:** There is guidance in place on the circumstances in which the Department will or will not pursue recovery. All the circumstances of a case will have to be taken into account. The overpayment of a claimant, without their realising it, is not a regular occurrence.

**Mr Brady:** With respect, the figures for customer error and departmental error are now higher than those for customer fraud. The Department makes mistakes more often than customers commit fraud, allegedly.

**Mr M Byrne:** In pursuing recovery, the Department will have to take into account all the circumstances of a case, including the amount overpaid.

**Mr Brady:** I just want to finish on this point: irrespective of what the Department takes into account, clause 103 still gives it the right to recover overpayment, regardless of who made the mistake.

**Mr M Byrne:** Yes, it does.

**The Chairperson:** That was a simple question and a simple answer.

**Mr Durkan:** Maurice, will you give an example of the sort of circumstances that might lead to the Department not seeking to recover an overpayment? Would it be very unusual for it not to do so?

**Mr M Byrne:** It would be unusual for a claimant not to realise that they had been overpaid. They would normally see that an extra amount was coming into their account every week, month or whatever.

**Mr Durkan:** In circumstances in which there is a single household payment, one member of the household might not know how much of that is theirs. Should, for example, their partner die, how do they know what should be left?

**Mr M Byrne:** The payment may increase for no apparent reason or someone may receive a second payment for no apparent reason.

**Mr Durkan:** Yes, but what happens if the payment does not decrease when it should or by as much as it should?

**Mr M Byrne:** If the person expects their payment to decrease but it does not, should they not query that, too? All those circumstances need to be looked at.

**The Chairperson:** I think that Mark's question is whether you have in mind any circumstances in which the Department may decide, having taken into account everything in the round, not to seek recovery of the money. Do you have an example of that?

**Mr M Byrne:** A health condition might be a major consideration. You have to take into account a claimant's health, state of mind and whether they are capable of realising that they should not have got the money.

**The Chairperson:** Would those types of circumstances be written into guidelines or regulations?

**Mr M Byrne:** As far as I am aware, they are in the guidance.

**Mr Brady:** You gave the example of money going into an account. However, there is an assumption by claimants, rightly or wrongly, that the Department actually knows what it is doing when it pays people. That might sound a bit simplistic, but, in my experience, people consider the Department to be, for the most part, competent.

**Mr M Byrne:** If claimants are told that they are getting x pounds a week, month, fortnight or whatever, and, all of a sudden, get more —

**The Chairperson:** We are now clear that clause 103 provides for the recovery of benefits overpaid to people by way of a Department error. Exclusions and exemptions to that will be drafted in guidelines. That is what we are being told. Are we happy enough that we understand?

**Ms Corderoy:** There are no comments on clause 104.

Clause 105 concerns the application of the Limitation Order and puts beyond doubt that the Department can recover overpayments by means other than court action. However, it also secures that time limits do not apply to that. One stakeholder suggested that time limits should apply to prevent unnecessary hardship to claimants. The Department has a duty to protect public funds and recover overpayments on social fund loans. Therefore, it is right that it should be able to do so over an extended period. Without that, there could be higher repayment rates to enable the debt to be recovered sooner, which could put undue financial pressure on those repaying a debt. We think it appropriate that there should be no time limit on that.

**The Chairperson:** OK.

**Ms Corderoy:** Clauses 106 to 115 relate to fraud policy. Colleagues from the agency are due to come before the Committee on Thursday.

**The Chairperson:** Sorry, I missed that point.

**Mr Pollock:** Clauses 106 to 115 are to do with fraud. We can omit the detail of those, as Conrad McConnell from the fraud policy unit will talk to them on Thursday.

Clauses 116 to 120 are on information sharing. There is quite a bit of concern that the right people get the right information to facilitate the delivery of benefits.

These clause relate to the information-sharing gateways needed to deliver benefits, in particular passported benefits, under the Welfare Reform Bill. Stakeholders relayed the same sort of concerns that we had about collecting personal information, ensuring compliance with the Data Protection Act 1998 and ensuring that the gateways are regularised to facilitate the delivery of mainstream benefits and passported benefits, which include the likes of free school meals and school uniforms. There is nothing really else to say.

"Welfare services" are covered in clause 117, and that is a fairly broad term to try to encompass many of the passported benefits. In many situations, it will be for the relevant Department or organisation to say that they need access to the computerised information system that holds the social security information for such and such a purpose, whether that is to deliver a rates scheme, for school uniforms, free school meals or whatever. In that sense, we hope that we have captured all the needs at this point. We have certainly been round the Departments and their satellite bodies to try to ensure that everybody knows that some of the legal gateways for information sharing will close when the Bill is enacted and that others need to be opened to ensure the continued delivery of service. We will bring forward regulations on information sharing, probably as soon as the Bill achieves Royal Assent.

**The Chairperson:** Is that OK, Fra?

**Mr F McCann:** I would like clarification on clauses 116 and 117. At an evidence session, the Northern Ireland Federation of Housing Associations (NIFHA) mentioned that housing associations were not included in the groups that can be given information. Do you review who fits into that category?

**Mr Pollock:** It depends on why they need the information, Fra. Anyone who requires access to your information or my information has to specify what information they need and what purposes they need it for, and then access is granted or not granted. Currently, housing associations are not included, because they are a further step removed.

**Mr F McCann:** I take it that, if they made an application, there would not be any real opposition, given the wide range of housing and care that they provide.

**Mr Pollock:** As I said, it depends on why they need the information. The information that we are talking about is personal information held on the benefits system.

**The Chairperson:** OK, Michael. Thank you for that. Would there be any point in talking to NIFHA about that, as it made the point? I accept entirely the very strong data protection argument, but it might be useful to ask NIFHA specifically why it thinks that it needs to be included. We could then go back and say that we accept its argument for being a qualifying person, or not, as the case may be.

**Mr Pollock:** We will take a wee look at that to see what we can come up with.

**The Chairperson:** We are happy with that action, so you can fast forward to clause 121.

**Ms Corderoy:** Clauses 121 to 125 relate to child maintenance provisions. The Committee has commented on supporting maintenance and whether it may wish to consider the clause in the context of its response to the consultation. I do not know whether you want us to say anything about that, or do you want me to address some of the queries raised by stakeholders?

**The Chairperson:** There was a specific query, if I remember rightly, about the process.

**Ms Corderoy:** The gateway process.

**The Chairperson:** Some people were asking if it could lead to something additional. I think that you might have responded to that point at our previous meeting. I am trying to remind myself of it.

**Mr Douglas:** Sorry, but we have been notified that we need to go to the Chamber for a vote.

**The Chairperson:** Is there no buzzer in here?

**Ms Brown:** We will hear it in here.

**The Chairperson:** Thank you, Sammy, for bringing that to our attention. We are on clause 121. If there is a vote, it will take about 10 minutes. Members, we could complete this in a very short time, so we will work away until called to vote. If we run down to the Chamber and run back up again, we could complete this process, and it would be a job well done.

Sorry, Jane, go ahead.

**Ms Corderoy:** The Committee raised four specific queries at the previous meeting. Two related to payment in kind and the maximum amount allowed to be taken from the non-resident parent, and I can cover those now. I will begin with a clarification of whether payment in kind can be included in the regulations. Regulations will not be made under clause 123. It merely provides for a calculation to indicate how much maintenance a person might expect to pay or receive, based on the circumstances at that time. Maintenance calculations will be based on the gross income figures supplied by HMRC and will, therefore, not reflect payment in kind. The clause allows parents to apply to the Department for a calculation of what child maintenance would be under statutory rules — *[Inaudible due to mobile phone interference.]* We have a list of what payment in kind covers, and we can send that to you. The second query was about the maximum amount allowed to be taken from a non-resident parent. I think that we already supplied that information to the Committee.

The other two queries were to do with company directors and cases in which a non-resident parent lives in another jurisdiction. We did quite a lot of work on that, but our response was issued to the Committee only today. As you will not yet have received that, I can cover those issues now if you want me to.

**The Chairperson:** If you can, although, as Michael Copeland raised that —

**Ms Corderoy:** It is quite complicated.

**Mr M Byrne:** Maybe, if Michael is not here, we can leave it.

**Ms Corderoy:** OK, we can send that in writing.

The answer to the cross-border query is a good one: the European Council regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations provides for the reciprocal enforcement of maintenance between EU member states. So existing EU legislation covers that. There is a procedure — I cannot remember its name — by which the central authorities share information between one another to allow that to be resolved in cross-border cases.

As you know, we have received your response to the public consultation as well as several others. We will do as we did with PIP, which is that we will make representations to DWP on the particular issues raised here.

**Mr Pollock:** Clauses 127 to 130, Chair, are the final few clauses. There is nothing in your pro forma about clause 127, which concerns the use of job centres by the sex industry; clause 128, which is the reduced fee for dog licences; or clause 129.

The only comments relate to clause 130 and the concern expressed by Citizens Advice and the Law Centre about a replacement for the rates element of housing benefit. Things are moving on in that respect. The Executive have agreed to preserve any shortfall in the existing entitlements for up to two years out of public expenditure. That was discussed by the Executive subcommittee on welfare reform and agreed around the Executive table. The Department of Finance and Personnel and our Department are working closely on that. We are conscious of the issue and will share any details that emerge with the Committee as soon as possible.

**The Chairperson:** OK, thank you.

**Mr Pollock:** That is our lot, then.

**The Chairperson:** That completes the examination today. Thank you very much for your attendance, responses and explanations and for the work that you put in to help us with ours. With the exception of the section on fraud, we have gone through the whole process, which means that the Committee's schedule is firmly on track.

**Mr Durkan:** I certainly found today extremely useful and helpful, particularly your outlining of various costings. Would it be possible for the Committee to have sight of the outline business case for universal credit, which contains, one would presume, all the costings?

**Mr Pollock:** The business case for universal credit is with the agency.

**Ms M Campbell:** I think that you or the Committee Clerk has written to the agency to ask for that outline business case, and it will reply shortly. I will send an e-mail to remind it.

**The Chairperson:** We are always one step ahead, even if we do not realise it. Well done to the Committee Clerk. On the basis that members have nothing further to say, that ends today's meeting.