



BRIEFING PAPER

Number 7571, 25 April 2016

Welfare reform and disabled people

By Steven Kennedy, Chris Murphy and Wendy Wilson



Inside:

1. Benefits and tax credits for disabled people
2. Employment and Support Allowance
3. Personal Independence Payment
4. Contracted-out health and disability assessments
5. Future of Attendance Allowance
6. Universal Credit
7. Benefit Levels
8. Benefit Cap
9. Under-occupancy deduction from Housing Benefit
10. Government policy following the March 2016 Budget

Contents

Summary	3
1. Benefits and tax credits for disabled people	4
2. Employment and Support Allowance	6
2.1 Work Capability Assessment (WCA)	6
2.2 Time-limiting contributory ESA in the WRAG	8
2.3 Abolition of the Work Related Activity Component	8
2.4 Measures to mitigate the impact of these changes and the forthcoming White Paper	10
2.5 Conditionality and Sanctions	11
3. Personal Independence Payment	13
3.1 Disability benefits reform	13
3.2 PIP eligibility Criteria	15
3.3 Proposed 'aids and appliances' changes	15
3.4 Assessments and Reassessments	16
4. Contracted-out health and disability assessments	18
5. Future of Attendance Allowance	20
6. Universal Credit	21
7. Benefit Levels	23
8. Benefit Cap	25
9. Under-occupancy deduction from Housing Benefit	27
10. Government policy following the March 2016 Budget	34

Contributing Authors:

Steven Kennedy, Sections 1-7, 10
 Chris Murphy, Section 2
 Wendy Wilson, Sections 8-9

Summary

The 2010 Government embarked on a major programme of welfare reforms, some of which will not be implemented fully for a number of years. Major elements include the introduction of Universal Credit, which is replacing means-tested benefits and tax credits for working age families, and Personal Independence Payment (PIP), which is replacing Disability Living Allowance for people of working age.

There have also been significant changes to incapacity benefits, including the continued rollout of Employment and Support Allowance (ESA), and changes to the structure of ESA and "conditionality" for ESA claimants. Other measures not exclusively affecting people with disabilities but which may impact on families with disabled people, include changes to benefits uprating policy and capping of the total amount of benefits the household can receive.

The current Government announced further welfare measures which will affect disabled people including a four year freeze for most working-age benefits, reductions in the Benefit Cap, changes to tax credits and to Universal Credit, and abolishing the "Work-Related Activity Component" for new ESA claims from 2017.

Following the resignation of Iain Duncan Smith as Secretary of State for Work and Pensions on 18 March, and the appointment of Stephen Crabb as his successor, the Government announced that it would not be proceeding with controversial further changes to PIP, would not be seeking alternative offsetting savings, and had no further plans to make welfare savings beyond the savings already legislated for by Parliament.

Mr Crabb also said that he wanted to 'start a new conversation with disabled people, their representatives, healthcare professionals and employers' to shape future policy and to 'take time to reflect on how best we support and help transform people's lives.'

The Library briefing provides an overview of the benefits changes introduced since 2010 affecting disabled people and their families, looks at the impact of the changes, and summarises responses from disability organisations and others.

1. Benefits and tax credits for disabled people

The benefits and tax credits systems provide support for disabled people and their families in various ways:¹

- In 2015/16, just over 2.5 million adults in Great Britain received incapacity benefits (principally Employment and Support Allowance) totalling £14.7 billion.
- Extra-costs disability benefits (Disability Living allowance, Personal Independence Payment and Attendance Allowance) were received by 5.0 million people, at a total cost of £21.1 billion.
- 733,000 people received Carer's Allowance for caring full-time for a person receiving a qualifying disability benefit, at a total cost of £2.5 billion.
- Further support is provided via the disability and carer premiums payable with means-tested benefits such as Housing Benefit.
- Other schemes include the Industrial Injuries Scheme (paying benefits totalling £905 million to 313,000 claimants); and the Armed Forces Compensation Scheme which, alongside its predecessor the War Pensions Scheme, provides support for disabled veterans.
- In the tax credits system, additional help for disabled children is provided by the Child Tax Credit disabled child elements, and for disabled adults, the disabled worker element in Working Tax Credit.

Families with disabled people are more likely to be in receipt of state benefits compared with families with no disabled people. In 2013/14, 83% of families in the UK with at least one disabled adult and no disabled children were in receipt of state support, and 38% claimed an income-related benefit.² 95% of families with a disabled child (and no disabled adult) received state support, and 37% received an income-related benefit. For families with no disabled adult or disabled child, the percentages were 46% and 12% respectively.³

The 2010 Government embarked on a major programme of welfare reforms, some of which will not be implemented fully for a number of years.⁴ Major elements include the introduction of Universal Credit, which is replacing means-tested benefits and tax credits for working age families, and Personal Independence Payment, which is replacing Disability Living Allowance, again for people of working age.

There have also been significant changes to incapacity benefits, including the continued rollout of Employment and Support Allowance (ESA), and changes to the structure of ESA and "conditionality" for ESA claimants. Other measures not exclusively affecting people with disabilities but which may impact on families with disabled people, include changes to benefits uprating policy and capping of the total amount of benefits the household can receive.

The current Government announced further welfare measures which will affect disabled people including a four year freeze for most working-age benefits, reductions in the

¹ All figures from the DWP, [Benefit Expenditure and Caseload Tables](#), Summer Budget 2015.

² Disability defined as in the *Equality Act 2010*. A person is considered to have a disability if they have a long-standing illness, disability or impairment which causes substantial difficulty with day-to-day activities.

³ DWP, [Family Resources Survey 2013/14](#), Table 4e.

⁴ The National Association of Welfare Rights Advisers (NAWRA) has compiled a [Welfare Reform Changes Chart](#) (October 2014) which covers policy measures introduced since 2011 and future changes planned up to 2018. The chart includes details of each change and provides analysis and an assessment of the likely impact.

5 Welfare reform and disabled people

Benefit Cap, changes to tax credits and to Universal Credit, and abolishing the “Work-Related Activity Component” for new ESA claims from 2017.

2. Employment and Support Allowance

Employment and Support Allowance (ESA) is an income replacement benefit for people with a health condition or disability which means that they are unable to work. ESA is intended to cover day to day living costs. It can be distinguished from disability benefits such as Disability Living Allowance and Personal Independence Payment which help with the extra costs of disability and are payable whether in or out of work.

Employment and Support Allowance replaced incapacity benefits for people making new claims from October 2008. There are two forms: contributory ESA, for those with sufficient National Insurance contributions; and income-related ESA, which is means-tested. Income-related ESA will be replaced by Universal Credit, although contributory ESA will remain as a separate benefit.

To be eligible for ESA, a person must undergo a Work Capability Assessment (WCA). Claimants are assessed during the first 13 weeks of their claim (or longer if necessary) to determine whether they have a ‘limited capability for work’, and also whether they are capable of engaging in ‘work-related activity’. This second part of the assessment determines whether the person is placed in the Support Group or the Work-Related Activity Group (WRAG). Claimants in the WRAG may be expected to take part in work focused interviews and undertake work-related activity which could include taking part in the Work Programme. Failure to do so could result in a benefit sanction.⁵

ESA did not initially affect people receiving existing “legacy” incapacity benefits (Incapacity Benefit, Severe Disability Allowance or Income Support for incapacity for work), but from later 2010 around 1.5 million incapacity benefit claimants began to be reassessed for ESA. The incapacity benefit reassessment programme was too have been completed by spring 2014, but problems with the DWP’s Medical Services contractor – Atos Healthcare – led to delays and backlogs.⁶ In March 2014 DWP announced the “early exit” of Atos from the DWP contract. A new Medical Services contractor – Maximus – took over from Atos on 1 March 2015 and pledged to undertake one million WCAs in the first year, to help clear the backlog.

The main issues and concerns raised in relation to ESA are:

- The Work Capability Assessment
- Time-limiting of contributory ESA for some claimants
- The abolition of the ESA Work-Related Activity Component (measures in the *Welfare Reform and Work Act*)
- ESA “conditionality” and sanctions

Each are considered in turn below.

2.1 Work Capability Assessment (WCA)

The WCA is based on the principle that a health condition or disability should not automatically be regarded as a barrier to work and work itself can have benefits. It has been controversial from the outset.

Welfare rights and disability organisations have voiced concerns about aspects of the test and about the way it has been applied. There has been particular concern about how the

⁵ For further information on ESA and benefit rules see Commons Library briefing, [Employment and Support Allowance: An Introduction](#), 7181.

⁶ See Commons Library briefing SN06855, [Incapacity benefit reassessments](#)

7 Welfare reform and disabled people

test takes account of mental health problems and fluctuating conditions, and about the conduct of medical examinations undertaken by Atos (who have been subsequently replaced by Maximus) Health Care Professionals (HCPs) on behalf of the DWP.

The decision on entitlement to ESA is made by DWP Decision Makers, who should take into account all the available evidence and do not have to follow the HCP's recommendation.⁷

Changes have been made to the WCA following internal reviews, and the Government has also accepted most of the recommendations made by the five annual independent reviews (the first three by Professor Malcolm Harrington, and the last two by Dr Paul Litchfield). However, despite changes made to the WCA since its introduction, it still attracts strong criticism. Problems highlighted by disability and welfare rights organisations include, amongst other things:

- The number of claimants with serious health conditions or disabilities who are found 'fit for work' or placed in the wrong ESA group, due to deficiencies with the WCA descriptors or in the assessment process.
- The lack of information about outcomes for individuals following fit for work determinations, and concerns about the risk of poverty and destitution as a result of incorrect decisions.
- The relatively high success rate for appeals against ESA decisions.⁸
- Difficulties experienced by claimants seeking to challenge fit for work decisions, including the fact that ESA is not payable pending a 'Mandatory Reconsideration' of the decision by the DWP, meaning that the only option in the meantime is to claim Jobseeker's Allowance, potentially exposing the individual to inappropriate conditionality.
- The impact of assessments, frequent reassessments, and poor decision making on the physical and mental health of claimants.

In its July 2014 report on [*Employment and Support Allowance and Work Capability Assessments*](#), the Work and Pensions Committee concluded:

- ESA was not working as well as it should, particularly in terms of achieving the intended employment objectives for claimants.
- Outcome groups were too simplistic, with the WRAG becoming a catch-all group for those who failed to meet the conditions for the Support Group, but were not seen as fit for work.
- The focus on returning to work within a relatively short period of time was not appropriate for many of these claimants.
- The WCA failed to provide an accurate assessment of a claimant's individual health-related employment barriers, or their distance from the labour market.⁹

The Committee recommended a fundamental redesign of the ESA process, including a reassessment of the application and effectiveness of the WCA descriptors to make them more responsive, particularly for claimants with progressive and fluctuating conditions,

⁷ Further information is available from the Commons Library briefing, [*The Work Capability Assessment for Employment and Support Allowance*](#), 5850.

⁸ To date, 36% of all fit for work decisions have been appealed against, and on appeals relating to claims made between October and December 2014, 52% of initial fit for work decisions were overturned (DWP, [*ESA: outcomes of Work Capability Assessments: claims made to Jun 2015 and appeals to Dec 2015*](#), 10 March 2016).

⁹ [*HC 302 2014-15*](#).

and those with mental, cognitive and behavioural difficulties. It also recommended that DWP should reintroduce an assessment of health-related employment barriers into the redesigned ESA process.

In its response to the Committee, the Coalition Government said that while it recognised that there was scope for improvements to the WCA and accompanying processes, in light of the reviews already taken and changes already agreed, it did not agree that the WCA was a, 'flawed mechanism,' for assessing a person's functional capacity.¹⁰

However, in a speech given on 24 August 2015, the then Secretary of State for Work and Pensions, Iain Duncan Smith, signalled possible future reforms to both ESA and the Work Capability Assessment, suggesting that the WCA should be reformed to focus, 'on what a claimant can do and the support they'll need - and not just on what they can't do.'¹¹ As yet, the Government has not put forward any specific proposals.

2.2 Time-limiting contributory ESA in the WRAG

As a result of measures in the *Welfare Reform Act 2012*, since April 2012 receipt of contributory ESA for claimants in the Work-Related Activity Group has been limited to 12 months. All recipients of contributory ESA in the WRAG, including incapacity benefit claimants moved to ESA on reassessment, are affected by the time limit. Savings of almost £1.8 billion a year are expected by 2019-20.¹²

The previous Government argued that ESA for people in the WRAG was never intended to be a long-term benefit and that the change brought ESA closer into line with contribution-based Jobseeker's Allowance, which is payable for six months only. It also pointed out that means-tested support would still be available for those affected. Of the 700,000 ESA claimants who would be affected by the time limit, around 60% were expected to have some entitlement to income-related ESA, but around 280,000 would lose ESA completely because, for example, they have other income or savings, or partner in work.

The time limit is highly controversial. Welfare rights and disability organisations have argued that it undermines the contributory principle and will increase poverty and financial distress for people with long-term conditions. During consideration of the *Welfare Reform Bill 2010-12*, the Opposition did not reject time-limiting on principle but argued that the choice of twelve months was arbitrary. Government defeats in the Lords on time-limiting were overturned by the Commons, although some concessions were announced regarding people with cancer.

More information is available from the Library briefing, [*Time limiting of contributory Employment and Support Allowance from 30 April 2012*](#).

2.3 Abolition of the Work Related Activity Component

The *Welfare Reform and Work Act 2016* includes provisions which would abolish the Work Related Activity Component – the £29.05 a week addition payable to ESA claimants in the Work-Related Activity Group – for new ESA claims from April 2017. It also abolishes

¹⁰ [*Government Response to the House of Commons Work and Pensions Select Committee's Report on Employment and Support Allowance and Work Capability Assessment. First Report of Session 2014-15*](#), Cm 8967, November 2014.

¹¹ Iain Duncan Smith, [*A Speech on Work, Health and Disability*](#), 24 August 2015.

¹² OBR, [*Policy Measures Database*](#), 7 April 2015.

9 Welfare reform and disabled people

the corresponding Limited Capability for Work element in Universal Credit, with expected savings of £640 million per year by 2020-21.

Further details may be found in the Commons Library Briefing paper, [Welfare Reform and Work Bill \[Bill 51 of 2015-16\]](#), section 7.

The Government states that this measure will, alongside additional funding for programmes to help people with disabilities return to and remain in work, 'ensure the right incentives and support are in place for those closer to the labour market to help them make this transition when they are ready.'¹³

Others however, are concerned about the impact on disabled people and their families, and question the assumption that it will help disabled people return to work. Disability organisations are strongly against these changes.

On 8 December 2015 a report on the proposed ESA changes recommended that the Government should not proceed with the removal of the Work-Related Activity Component.¹⁴ The review received submissions from over 30 organisations and almost 200 disabled people, and considered evidence from two roundtable sessions, relevant legislation and publications and a survey of claimants by the Disability Benefits Consortium. Key findings include:

- Removal of the WRAC would have a detrimental effect on claimants' finances, social inclusion and health.
- It could also have a severe knock-on effect on other public services, including the NHS, social services, raising the question as to whether the expected savings would actually be achieved.
- There was no relevant research setting out a convincing case that the WRAC acts as a financial disincentive to work.
- There is concern that ESA claimants could be incentivised to go into work when many are too ill to work.
- Removal of the component could move people further away from the labour market rather than nearer.

The House of Lords considered the changes at the Lords Report Stage on 27 January 2016, with amendments made by Crossbench, Labour and Liberal Democrat Members to retain the WRAG and Universal Credit Limited Capability for Work element.

Lord Low of Dalston concluded;

This cut is estimated to save £640 million a year by 2020-21 but, as we have seen, this is at the cost of considerable further hardship for disabled people who are already poor and, by definition, unable to work. Furthermore, no assessment has been made of the additional costs to the NHS and social care services as a result of these changes, as well as other DWP benefits. Clauses 13 and 14 are all about making savings for the Treasury and have nothing to do with the interests of disabled people. They should be resisted.¹⁵

Responding for the Government, the Minister for Welfare Reform, Lord Freud, mentioned additional funding being made available to help claimants return to work and reiterated

¹³ HM Treasury, [Summer Budget 2015](#), HC 264 2015-16, para 41.

¹⁴ Lord Low of Dalston, Baroness Meacher and Baroness Grey-Thompson, [Halving the Gap? A Review into the Government's proposed reduction to Employment and Support Allowance and its impact on halving the disability employment gap](#), 2015. Note this is not an official report by a Parliamentary committee, but the report of a review carried out by three members of the House of Lords and supported by several charities.

¹⁵ HL Deb 27 January 2016 c1302

the Government's view that, in some cases, the component acts as a financial incentive to remain on benefit. Lord Freud concluded;

Clauses 13 and 14, together with the additional practical support announced in the Budget, provide the right support and incentives to help people with limited capability for work move closer to the labour market and, when ready, into work. I therefore urge the noble Lord to withdraw his amendment.¹⁶

The amendments were agreed by the House of Lords, but were rejected by the Commons on 23 February 2016. The Lords then agreed an amendment in lieu requiring the Government to lay before Parliament an analysis of the impact of the changes before introducing them. The Commons rejected this and the Lords backed down on 7 March 2016.

Alongside the changes to the WRAG, the 2015 Budget included an announcement to provide "new funding for additional support to help claimants return to work"¹⁷.

2.4 Measures to mitigate the impact of these changes and the forthcoming White Paper

In response to concerns raised in the House of Lords, the Department for Work and Pensions announced various measures to mitigate the impact of the abolition of the WRAG and to help people with health conditions and disabilities get into work. In a "Dear Colleague" letter of 26 February to Members of the House of Lords, Lord Freud set out what the Government was doing to address the various concerns expressed by Lords in relation to the ESA provisions. He elaborated on these at ping pong on 29 February.

In summary, the Government has announced;

- £60 million per year rising to £100 million per year for practical employment support, including an additional £15 million in 2017-18 directed at the local jobcentre flexible support fund and specifically for those with limited capability to work
- Guidance for jobcentres to ensure this £15 million is targeted at those with limited capability for work, providing training courses on gaining practical skills, access to mental health support, community projects or motivational courses
- Training for jobcentre staff to ensure that they are aware that they may need to talk to claimants with deteriorating conditions about requesting a reassessment
- Removing the 52 week limit for permitted work for those in the WRAG. Claimants can currently work up to 16 hours and earn up to £107.50 per week under the permitted work rules, and keep their benefit. After undertaking permitted work for 52 weeks, claimants in the WRAG have to stop work altogether, reduce their earnings to £20 per week, or lose their benefit; this 52 week limit will be removed.
- Investing £43 million over the next three years in trialling ways to provide specialist support for people with common mental health conditions

The Government has also announced a forthcoming White Paper on improvements to back to work support for people with health conditions and disabilities. A task force has been set up, which includes representatives from disability charities and organisations, to advise on the use of the £60 (rising to £100) million per year support and to 'distil and agree its advice on key principles and priority areas to address'. The Minister for Disabled People, Justin Tomlinson, explained that this paper will "be looking at a number of issues, including ways to engage with employers as part of our commitment to halve the

¹⁶ HL Deb 27 January 2016 cc1317-8

¹⁷ HC Deb 8 July 2015 c333

11 Welfare reform and disabled people

disability employment gap, integration across health and employment, and further localised tailored support”¹⁸

The former Secretary of State for Work and Pensions, Iain Duncan Smith, announced that the paper would be published “well before the summer break”¹⁹. With regards to the potential for the new Secretary of State, Stephen Crabb, to delay the White Paper, Lord Freud responded that;

I have known Stephen Crabb for a time. He was a Whip for the department and then he was in Wales, where he dealt with welfare issues. I have high hopes for him in pursing the reform agenda. He is up for it and he will be pretty effective at it. I look forward to providing him with all the support that I possibly can in this agenda. Clearly, in getting this reform going, the conversation has to be balanced with the speed. He is conscious of that and will look to get something going at the fastest possible speed, commensurate with making sure that we get it right and get the views of quite a complicated set of constituencies.²⁰

Mr Crabb himself stated;

We made a manifesto commitment to halve the gap between the proportion of disabled people in work compared with the rest of the labour market. As I have outlined, we have made good progress in supporting disabled people into work, but to go further will require us to work in a way we have not done before and to think beyond the artificial boundaries of organisations, sectors and Government Departments to an approach that is truly collaborative. That is why today I want to start a new conversation with disabled people, their representatives, healthcare professionals and employers. I want the welfare system to work better with the health and social care systems. Together we can do so much better for disabled people.

This is a hugely complex but hugely important area of policy to get right. Disabled people themselves can provide the best insight into how support works best for them. I am determined, therefore, that all views will be listened to in the right way in the weeks and months ahead, and I will be personally involved in these discussions. The events of recent days demonstrate that we need to take time to reflect on how best we support and help transform people’s lives.²¹

2.5 Conditionality and Sanctions

ESA claimants in the Support Group are not required to undertake any activities to continue to receive benefit. ESA claimants in the Work-Related Activity Group (WRAG) may be expected to take part in Work-Focused Interviews and undertake work-related activity by advisers in the DWP, or as part of the Work Programme.

‘Work-related activity’ is activity that makes it more likely that the person will get a job or remain in work. This could include a wide range of activities such as skills training, jobs search support, drawing up a CV, work placements, or work experience. Any requirement must be reasonable taking into account the person’s circumstances. A person cannot be required to apply for a job, undertake work, or submit to medical treatment. All work-related activity to be undertaken must be recorded in writing in an action plan.

ESA claimants who fail to attend and participate in Work-focused Interviews, or to undertake work-related activity when required to do so, without good cause, may face a

¹⁸ [HC debate, 14 March 2016 c635](#)

¹⁹ Ibid c633

²⁰ HL Deb 21 March 2016 cc2136-7

²¹ [HC Deb 21 March 2016 c1269](#)

benefit sanction (a reduction in the amount of benefit payable). The sanction amount is 100% of the ESA personal allowance (currently £73.10 a week).

Between December 2012 (when the current sanctions regime was introduced) and September 2015, 73,711 sanctions were imposed on ESA claimants.²² The Government points out that safeguards are in place to ensure that ESA claimants are not sanctioned inappropriately and to minimise adverse effects on vulnerable groups. However, a [report by the Work and Pensions Committee](#) from session 2014-15 suggested systems may not always work effectively.²³ It noted concerns that the stringency of the ESA regime was not currently balanced by effective support for claimants in the Work Programme, and that there was limited evidence that financial sanctions were effective in moving claimants who were some way from the labour market closer to work.

The [Government's response](#), published on 22 October 2015, accepted in principle the Committee's recommendation of a review of ESA sanctioning in relation to the Work Programme.²⁴ The then Secretary of State wrote a follow-up response to the Committee in December 2015, stating that that officials are "undertaking a number of visits to Work Programme providers to ensure compliance with our policies and processes, and to promote good practice"²⁵.

²² Total for all adverse sanction decisions made. DWP, [Jobseeker's Allowance and Employment and Support Allowance sanctions: decisions made to September 2015](#), 17 February 2016.

²³ Work and Pensions Committee, [Benefit sanctions policy beyond the Oakley Review](#), 5th Report of Session 2014-15, HC 814, 24 March 2015.

²⁴ [HC 557, 2015-16](#).

²⁵ [Letter from The Rt Hon Iain Duncan Smith to Frank Field regarding Government commitments from the "Benefit sanctions policy beyond the Oakley Review" report](#).

3. Personal Independence Payment

3.1 Disability benefits reform

Disability Living Allowance (DLA) is a non-means-tested, non-taxable benefit introduced in 1992 to help with the extra costs of disability. It has a care component and a mobility component. The mobility component – for help with walking difficulties – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels.

Attendance Allowance (AA) is available for people with care needs which emerge after they have reached the age of 65. AA has no mobility component, but the disability tests are the same as for the middle and higher rate care components of DLA.

The *Welfare Reform Act 2012* provides the legislative framework for Personal Independence Payment (PIP), which is replacing Disability Living Allowance for people of working age. Like DLA, PIP is non-means-tested and is intended to help with the extra costs arising from ill health or disability. It has two components: a mobility component, based on an individual's ability to get around, and a daily living component, based on ability to carry out other key activities necessary to be able to participate in daily life. Each component has two rates.²⁶

Personal Independence Payment

PIP is a non-means tested, non-taxable benefit payable whether in or out of work to help with the extra cost arising from ill health or disability. PIP replaces DLA for people of working age (16 to 64). People aged 65 or over on 8 April 2013 continue to get DLA.

PIP consists of two components, both payable at two rates, 'standard' or 'enhanced':

- A mobility component based on an individual's ability to get around.
- A daily living component based on an individual's ability to carry out key activities necessary to participate in daily life.

	<i>Weekly rates April 2015</i>	<i>Standard</i>	<i>Enhanced</i>
<i>Mobility</i>	£21.80	£57.45	
<i>Daily Living</i>	£55.10	£82.30	

There is no automatic entitlement for particular conditions (although existing DLA rules for people with terminal illness are carried over to the new benefit). Instead entitlement is determined by a, 'new, fairer, objective assessment of individual need,' to ensure support is, 'targeted on those individuals whose health condition or impairment has the greatest impact on their day-to-day lives.'

Advice from an 'independent healthcare professional' is integral to the assessment process: in most cases this involves a face to face meeting with the claimant.

All PIP awards are subject to periodic review.

PIP was introduced for all new claims from April 2013, but for most existing DLA claimants the reassessment process did not begin until July 2015. Reassessment is gradually being extended to further postcode areas so that by late 2017 all remaining working age DLA

²⁶ For further information see Commons Library briefing, *Draft Social Security (Personal Independence Payment) Regulations 2013*, 6538.

claimants will have been invited to claim PIP.²⁷ At the end of January 2016 692,000 PIP claims were in payment in Great Britain,²⁸ but by 2020-21 this is expected to rise to 2.5 million.²⁹

The 2010 Government believed that Personal Independence Payment would have certain advantages over Disability Living Allowance:³⁰

- Target support more closely on those most in need.
- Be more responsive as claimants' circumstances change.
- Based on a fairer, more transparent and consistent assessment.
- Easier for claimants, DWP staff and disability organisations to understand.

However, from the outset the 2010 Government also made it clear that a key aim for the new benefit was the need to make savings and reduce the working age caseload for disability benefits. PIP was originally expected to reduce working-age DLA caseloads and expenditure by 20 per cent, giving savings of around £1.5 billion a year by 2016-17.

Revised estimates published by DWP in December 2012 suggested that, by 2018, around 607,000 fewer people would receive PIP than would have got DLA – a 28% reduction in the caseload.

In responses to the 2010 Government's consultation on DLA reform, disability organisations voiced concern about the cut in expenditure, which many felt overshadowed other positive aspects of the Government's proposals and would exacerbate the link between poverty and disability. The 20% savings target was criticised as arbitrary and punitive, particularly in the wider context of public service and benefit changes which disproportionately impacted disabled people. There was also concern that focusing help on those with the greatest need would exclude many disabled people on the lowest rates of DLA who might not be able to access support elsewhere. Others questioned whether the savings would in fact be made, given the likely knock-on effect in terms of increased demand on the NHS and social care.³¹

In its report *Implementation of the Right of Disabled People to Independent Living*, the Joint Committee on Human Rights commented:

Significantly fewer people will receive PIP in comparison with those currently receiving DLA. DLA was conceived as a means to enable disabled people to meet the extra costs associated with overcoming barriers to independent living. We fear the introduction of PIP will restrict the ability of disabled people to overcome these barriers and enjoy the right to independent living.³²

However, in its March 2016 *Economic and fiscal outlook* report, the Office for Budget Responsibility estimates that savings from PIP will be considerably lower than originally expected. In December 2012, the OBR estimated savings from the introduction of PIP of £3.0 billion by 2017-18, but based on the latest data on reassessment outcomes it now estimates that savings will be almost 90% lower at

²⁷ See DWP, *Timetable for PIP replacing DLA*, updated 26 August 2015.

²⁸ Starting from June 2016, PIP will be introduced in Northern Ireland – see NI Department for Social Development, *Welfare Changes - Personal Independence Payment Information*, 21 March 2016

²⁹ DWP, *Personal Independence Payment: Official Statistics to January 2016*, March 2016; DWP, *Benefit expenditure and caseload tables 2016*, 7 April 2016

³⁰ National Audit Office, *Personal Independence Payment: early progress*, 2014 para 1.5. See also Commons Library briefing, *Disability Living Allowance reform_5869*

³¹ Commons Library briefing, *Draft Social Security (Personal Independence Payment) Regulations 2013*, 6538, pp16-19.

³² HL 257/HC 1074 Session 2010-12, para 146.

£0.4 billion. This implies savings of around 5% rather than the original 20% savings sought by the Government.³³

3.2 PIP eligibility Criteria

The 2010 Government said that the assessment for PIP was designed to provide, 'a more holistic assessment of the impact of a health condition on an individual's ability to participate in everyday life.' It covers sensory impairments, developmental needs, cognitive impairments and mental conditions, as well as physical disabilities.³⁴

Disability organisations expressed concern however that in certain respects the PIP criteria were more restrictive than those for DLA and that the assessment did not acknowledge some support needs. For example, in its submission to the DWP consultation on the PIP assessment criteria and thresholds, Disability Rights UK said that the criteria did not adequately acknowledge:³⁵

- Help needed by some people to move around indoors, e.g. when using stairs or getting in and out of bed.
- The need for general supervision to keep people safe, e.g. where individuals may be in danger of injuring themselves or at risk of self-harm.
- People who need assistance at night time.

There is particular concern about the criteria for the enhanced mobility component. In the final draft of the PIP regulations, individuals qualified for the enhanced rate mobility component if they could only move short distances of no more than 20 metres, rather than 50 metres as in previous drafts of the PIP assessment criteria. This rule could result in significant numbers of people currently benefiting from the higher rate DLA mobility component failing to qualify for the enhanced rate mobility component in PIP.³⁶ For those using the Motability scheme, this would result in their adapted vehicle being withdrawn.³⁷

The Government has said that it is too early to say how many DLA claimants currently in receipt of the higher rate mobility component will fail to qualify for the enhanced rate PIP mobility component. DWP originally estimated that, once PIP was fully introduced, 428,000 fewer people would qualify for the enhanced rate mobility component that would have qualified for the higher rate DLA mobility component.

Further information on the impact of PIP on those receiving mobility support is given in a Library briefing on the [Motability scheme](#). This also gives details of the Transitional Support Package (TSP) for those no longer eligible for the scheme as a result of reassessment for PIP.

3.3 Proposed 'aids and appliances' changes

The PIP assessment looks at the extent to which the individual is capable of undertaking various day to day activities. For some of the activities, a person can score points to help meet the threshold for PIP if they can only undertake that activity by using an 'aid or

³³ OBR, [Economic and fiscal outlook](#), Cm 9212, March 2016, para 4.116

³⁴ DWP, [Personal Independence Payment: initial draft of assessment criteria](#), May 2011.

³⁵ Disability Rights UK, [PIP assessment criteria and thresholds consultation: our response](#).

³⁶ Commons Library briefing, [Draft Social Security \(Personal Independence Payment\) Regulations 2013](#), 6538, section 4.

³⁷ Just Fair Coalition, [Implementation of the International Covenant on Economic, Social and Cultural Rights in the United Kingdom: Submission to the Committee on Economic, Social and Cultural Rights](#), 2015, pp165-167.

appliance.' This could include things such as artificial limbs, colostomy bags, walking sticks; and non-specialist aids such as electric tin openers and long-handled sponges.

In December 2015 the Government launched a consultation on possible further changes to PIP.³⁸ It highlighted that a significant proportion of PIP awards were on the basis of use of aids and appliances, many of which people might be expected to have already, or could be obtained free of charge or at a one-off cost. It also argued that case law had expanded the scope of aids and appliances to include items which might not be reliable indicators of extra costs. The Government believed these developments were inconsistent with the original policy intent of focusing support on claimants with the greatest needs. It suggested a number of options for limiting payments to reflect actual costs incurred and for tightening the PIP eligibility criteria.

Disability organisations were strongly against the proposals, which they believed would reduce disabled people's financial resilience and ability to live independently. They also questioned the evidence base for the changes and the Government's reasoning concerning the role of the PIP assessment and consideration of the use of aids and appliances. They also criticised the short timescale for consultation responses.³⁹

On 11 March 2016 the Government announced that, in the light of the consultation, the number points awarded in the PIP assessment would be halved for aids and appliances in relation to the 'dressing and undressing' and 'managing toilet needs' activities.⁴⁰ As a result, 290,000 claimants would no longer receive the daily living component, and a further 80,000 would receive the standard rather than enhanced daily living component.⁴¹ Budget 2016 estimated additional savings of £1.3 billion a year by 2019-20.⁴²

Following the resignation of Iain Duncan Smith as Secretary of State for Social Security on 18 March and the appointment of Stephen Crabb as his successor, the Government announced that it would not be proceeding with the PIP changes, would not be seeking alternative offsetting savings, and was not seeking further savings from the welfare budget.⁴³

3.4 Assessments and Reassessments

The Department for Work and Pensions is responsible for handling claims for PIP and making decisions on entitlement to benefit.

Contracted assessment providers are however a key element in the claims process. Atos Healthcare holds the contracts for undertaking assessments in Northern England and Scotland, and London and Southern England. Capita Business Services Ltd holds the contracts covering Wales and Central England, and Northern Ireland.⁴⁴

The PIP application form and any accompanying evidence submitted by the claimant are forwarded to the assessment provider, who decides

³⁸ DWP, [Consultation on aids and appliances and the daily living component of Personal Independence Payment \(PIP\)](#), 10 December 2015

³⁹ See for example [DWP Consultation on aids and appliances and the daily living component of Personal Independence Payment \(PIP\) – Disability Benefits Consortium response](#), January 2016; DWP, [Government response to the consultation on aids and appliances and the daily living component of Personal Independence Payment](#), Cm 9194, March 2016, section 3

⁴⁰ [Personal Independence Payment: Written statement HCWS611](#)

⁴¹ Office for Budget Responsibility, [Economic and Fiscal Outlook](#), March 2016, para 4.112

⁴² HM Treasury, [Budget 2016](#), HC 901 2016-17, 16 March 2016, para 2.76

⁴³ [HC Deb 21 March 2016 cc1268-9](#)

⁴⁴ These are separate from the DWP Medical Services contract now held by Maximus.

whether a face to face consultation is necessary. The Government's initial expectation was that around a quarter of PIP claims could be decided on the basis of the completed form and evidence submitted, without the person having to attend a face to face assessment.⁴⁵

A key feature of PIP is that all awards are subject to periodic review. Some organisations argue that people with profound life-long disabilities or progressive conditions should not have to face regular reassessment. There is also concern that regular reassessment could cause anxiety and affect physical or mental health of vulnerable claimants.

The 2010 Government did not agree to exemptions from reassessment for people with particular disabilities, but said that decisions on the frequency of reassessments would take into account of the nature of the person's disability and the likelihood of a change in their circumstances. It also said that, for some individuals, a face-to-face consultation would not be necessary for their award to be reassessed.⁴⁶

In a 2014 report, the National Audit Office said that, 'poor early operational performance', had led to, 'long uncertain delays,' for PIP claimants.⁴⁷ The DWP had, it concluded, failed to allow sufficient time to test the new system and unexpected delays in the assessment process had led to a large backlog of claims.⁴⁸ By January 2016, the average clearance time for new PIP claims under the normal rules had fallen to 13 weeks, and to 6 working days under the special rules for terminally ill people.⁴⁹

In August 2015, Citizens Advice reported that Personal Independence Payments had overtaken Employment Support Allowance as the most common problem people came to Citizens Advice for help with.⁵⁰

⁴⁵ HC 916 2012-13, Q14.

⁴⁶ [HC Deb 4 February 2013 cc98-9w](#).

⁴⁷ National Audit Office, [*Personal Independence Payment: early progress*](#), 2014.

⁴⁸ Commons Library briefing, [*Introduction of Personal Independence Payment*](#), 6861.

⁴⁹ DWP, [*Personal Independence Payment: Official Statistics to January 2016*](#), 16 March 2016.

⁵⁰ Citizens Advice, [*PIP failures are risking people's ability to live independently, says Citizens Advice*](#), 16 August 2015.

4. Contracted-out health and disability assessments

The Department for Work and Pensions uses third-party contractors to provide health and disability assessments to inform decisions about benefits. The Centre for Health and Disability Assessments (CDHA), a wholly-owned subsidiary of Maximus, has since 1 March 2015 held the main medical services contract under which assessments are carried out for various benefits including Employment and Support Allowance (ESA). Personal Independence Payment assessments are carried out under separate contracts. Atos Healthcare holds the contracts for undertaking PIP assessments in Northern England and Scotland, and London and Southern England. Capita Business Services Ltd holds the contracts covering Wales and Central England, and Northern Ireland. The total value of the contracts is estimated at £1.6 billion over the period 2015 to 2018.⁵¹

In January 2016 a National Audit Office report on contracted-out health and disability assessments found that, while the DWP had strengthened its oversight and management of assessment providers, it had not yet achieved value for money and providers were still struggling to meet expected performance standards. CDHA was not on track to complete the expected number of assessments for the first year and had missed assessment report quality targets since the start of its contract, while both Atos and Capita had failed to meet PIP assessment report quality targets.⁵²

In a follow-up report published on 31 March, the House of Commons Public Accounts Committee said that while it was encouraged to see that DWP and its contractors had reduced backlogs and delays and were slowly improving the quality of assessments contractors' performance still did not meet claimants', the Department's and taxpayers' expectations.⁵³

Drawing upon the NAO's report and further evidence submitted by organisations including MIND, Citizens Advice and the Disability Benefits Consortium, PAC found-

- Unacceptable local and regional variations in the performance of the Department's contractors.
- Claimants were still not receiving an acceptable level of service from contractors, with particular concerns for people with fluctuating and mental health conditions.
- Too many assessments did not meet the standard required.
- The unit cost of assessments had increased, but there had been no noticeable benefit for claimants or taxpayers.

⁵¹ NAO, [Contracted-out health and disability assessments](#), HC 609 2016-17, 8 January 2016, p4

⁵² Ibid.

⁵³ PAC, [Contracted out health and disability assessments](#), HC 727 2016-17, 31 March 2016

19 Welfare reform and disabled people

- DWP appeared to have repeatedly misjudged what contractors could deliver and the uncertainties underlying what could be achieved.
- There was a real risk to value for money if there was not a competitive market for health and disability assessments.

The Committee recommended that-

- By autumn 2016, DWP should publish quarterly, national and regional data on contractor performance.
- DWP and its contractor make the process easier for claimants and ensure they have 'well-trained, knowledgeable assessors who are sensitive to the complex issues that claimants are dealing with, particularly those with mental health conditions.'
- DWP and contractors develop a more complete and effective regime for monitoring and improving the quality of assessments, including ensuring contractors meet the required standards for reports.
- To demonstrate value for money from increasing costs, the DWP must demonstrate improvements in performance and outcomes.
- DWP must 'challenge the underlying assumptions' in contractors' bids and set out consistent principles for identifying and handling the uncertainty of critical assumptions during procurement and the contracts themselves.
- DWP should explore different commercial approaches, particularly those used in markets where competition has been limited, to ensure it is well-placed to deliver value for money if market interest falls.

5. Future of Attendance Allowance

[Attendance Allowance](#) is a non-means-tested benefit for older people with care needs. It has two weekly rates, depending on the help needed:

- £55.10 for people who need help in the day or at night
- £82.30 for people who need help both in the day and at night

In its [consultation on the provisional Local Government Finance Settlement](#) for 2016-17, published on 17 December 2015, the Government announced that it would consider 'giving more responsibility to councils in England, and to Wales, to support older people with care needs – including people who, under the current system, would be supported through Attendance Allowance.' The paper stated:

As part of these reforms, the main local government grant will be phased out and additional responsibilities devolved to local authorities, empowering them to drive local economic growth and support their local community. For example, the government will consider transferring responsibility for funding the administration of housing benefit for pensioners and Transport for London's capital projects to local government, and will also consult on options to transfer responsibility for funding public health. The Government will also consider giving more responsibility to councils in England, and to Wales, to support older people with care needs – including people who, under the current system, would be supported through Attendance Allowance. This will protect existing claimants, so there will be no cash losers, and new responsibilities will be matched by the transfer of equivalent spending power. The Government is planning to consult in the New Year on this proposal, including on the right model of devolution and the level of flexibility that councils would need in order to effectively deliver this additional responsibility.

These changes will need legislation, and the Government will be seeking the earliest possible legislative opportunity. In the meantime, the Government will be developing the parameters of the scheme and the operational delivery details.⁵⁴

The Government now states that the consultation will be launched 'later this year.' In a parliamentary written answer on 14 March the Minister for Disabled People, Justin Tomlinson, said:

Later this year, the Government will consult on giving more responsibility to support older people with care needs to Local Authorities in England and to Wales, including people who, under the current system, would be supported through Attendance Allowance. Work is progressing across government towards this consultation; as part of this process the Government will engage with a wide variety of stakeholders, including claimants and their representatives, to understand the implications of change across a number of issues.⁵⁵

⁵⁴ Paragraphs 1.4-1.5, p7

⁵⁵ PQ 30462 [on Attendance Allowance: Rural Areas], 14 March 2016

6. Universal Credit

Universal Credit (UC) is replacing tax credits and means-tested benefits (including income-related ESA and Housing Benefit) for working age families. UC is not expected to be fully introduced until 2021, and claimants of income-related ESA are expected to be one of the final groups to be migrated to UC.

UC rationalises support for disabled people by replacing the existing disability premiums and additions in means tested-tested benefits and tax credit with additions payable at two rates only. People with severe disabilities will benefit from the changes, but disability organisations are concerned that some groups of disabled people will get less than they do under the present system. There is particular concern that some families with disabled children will get significantly less than they currently do through tax credits.

A 2012 report by a coalition of disability and welfare rights organisations highlighted the possible negative impact of UC on three groups in particular:⁵⁶

- Around 100,000 disabled children could lose up to £28 a week.
- An estimated 230,000 severely disabled adults who do not have another adult to assist them could receive between £28 and £58 a week less than they do now because under UC there will be no equivalent of the Severe Disability Premium currently payable with means-tested benefits.
- Up to 116,000 disabled people in work could lose around £40 a week because under UC there is no additional support for disabled workers who are found 'fit for work' by the Work Capability Assessment.

Concerns about the impact of UC on disabled people were also voiced by the Work and Pensions Committee.⁵⁷ In its response, the Government emphasised that there would be transitional protection so that no-one whose circumstances remained the same would lose out in cash terms as a result of the move to UC.⁵⁸

Part 6 of Commons Briefing, [*Draft Universal Credit Regulations 2013*](#), looks in more detail at the implications of UC people with disabilities.

As noted above, the *Welfare Reform and Work Bill 2015-16* includes provisions which abolish the ESA Work-Related Activity Component for new claims from April 2017. The corresponding 'limited capability for work' element in Universal Credit is also abolished. This means that for adults, only those in the Support Group will receive additional support for disability with their UC award.

⁵⁶ Citizens Advice, [*Holes in the safety net: the impact of universal credit on disabled people*](#), October 2012.

⁵⁷ Work and Pensions Committee, [*Universal Credit implementation: meeting the needs of vulnerable claimants*](#), 3rd Report of Session 2012-13, HC 576, chapter 4.

⁵⁸ [*Cm 8537*](#), February 2013, paras 59-67.

Under the 'Permitted Work Rules', ESA claimants can engage in paid work in certain circumstances without it affecting their benefit.⁵⁹ These provisions, which replaced the previous 'therapeutic work' rules, are primarily intended to be a, 'stepping stone to coming off benefit,' and for most people permitted work cannot be undertaken indefinitely.⁶⁰

There is no equivalent of the Permitted Work Rules in Universal Credit, but the previous Government pointed out that UC provided work incentives for people with disabilities or health conditions, 'through a generous work allowance, topped up by universal credit's flat taper rate.'⁶¹ However, from April 2016 the UC work allowances will be reduced for most groups:

- For UC claimants with a Limited Capability for Work whose award does not include an amount for housing costs, the work allowance will reduce from £647 a month to £397.
- For UC claimants with Limited Capability for Work whose award does include an amount for housing costs, the work allowance will remain £192 a month.

Finally, families with disabled children may be affected by the current Government's decision to limit the child element in Universal Credit (and in tax credits) to two children for new claims and births after April 2017. For third or subsequent children born after that date with a disability, an additional amount in respect of this will still be paid.⁶²

⁵⁹ Disability Rights UK Factsheet F35, [Permitted Work](#), 2015.

⁶⁰ [HC Deb 11 January 2011 c252w](#) [question on Incapacity Benefit: Unpaid Work].

⁶¹ [HC Deb 18 November 2013 c690w](#); there will however be transitional protection for those doing permitted work at the point of migration to UC, so that they do not lose out in cash terms ([HC Deb 24 June 2013 cc29-30w](#)).

⁶² See section 6 of Commons Library Briefing, [Welfare Reform and Work Bill 2015-16](#).

7. Benefit Levels

There were two significant developments regarding benefits uprating under the 2010 Government. Since 2011, the default measure of price inflation used for uprating benefits and tax credits has been the Consumer Prices Index (CPI). Prior to this it was:

- the Retail Price Index for pensions and non-means tested benefits.
- the Rossi index (RPI less certain housing costs) for means tested benefits.

As CPI tends to rise more slowly than either the RPI or Rossi, the long-term savings are expected to be substantial. The Office for Budget Responsibility forecasts savings from switching to CPI of £5.2 billion a year by 2019/20.⁶³

Secondly, the [*Welfare Benefits Up-rating Act 2013*](#) limited increases in most working-age benefits to one per cent a year for three years from 2013/14. Extra costs disability benefits, Carer's Allowance, the disability elements of tax credits and the disability and carer's premiums payable with means-tested benefits, continued to rise in line with the CPI, but families with disabled people might still be affected by the uprating change since increases in the main rates of income replacement benefits, the main tax credit elements, and the standard allowance for single persons and couples in Universal Credit, were limited to 1% also. The Work-Related Activity Component of ESA, together with the 'limited capability for work' element and the lower rate addition for disabled children in Universal Credit, were also limited to 1% increases.

The decision to limit increases in benefits to below inflation was historically unprecedented, resulting in permanent real terms reductions in benefits and tax credits rates, although lower than expected inflation has limited the impact. Further information on this uprating policy is given in Commons Library briefing, [*Welfare Benefits Uprating Bill*](#).

The *Welfare Reform and Work Bill 2015-16* goes further, freezing the rate of most working age benefits for four years. Savings are forecast of £4 billion a year by 2020/21. The Institute for Fiscal Studies estimates that the cumulative effect of this fixed uprating and four year freeze will be a real terms cut of 8% between 2012 and 2019.⁶⁴

The actual impact on the living standards of those in receipt of benefits or tax credits could be greater if, as studies suggest, the inflation experience of poorer households differs from that of other groups in the population.⁶⁵

While extra-costs disability benefits such as DLA, disability elements in tax credits, disability and carer premiums payable with means-tested benefits, and the ESA Support Component will continue to rise in line

⁶³ OBR, [*Policy Measures Database*](#), 7 April 2015.

⁶⁴ IFS, [*Benefit changes and distributional analysis*](#), July 2015.

⁶⁵ Commons Library Briefing, [*Welfare Benefits Uprating Bill*](#), section 5.1; ONS, [*Variation in the inflation experience of UK households: 2003-2014*](#), 2014; Adams and Levell, [*Measuring poverty when inflation varies across households*](#), Joseph Rowntree Foundation, 2014.

with the CPI, many families with disabled people will still be affected by the four year freeze since the main rates of income replacement benefits, the main tax credit elements and the ESA Work-Related Activity Component (or the Universal Credit equivalent) will be frozen.

Real terms reductions in benefit levels are occurring in the absence of any official empirical study of the adequacy of existing benefits and the extent to which households dependent on out-of-work benefits, including those with disabled people, can meet minimum needs.⁶⁶

⁶⁶ Commons Library Briefing, [Welfare Benefits Uprating Bill](#), section 2.

8. Benefit Cap

In 2013, the Coalition Government introduced a cap on the total amount of household benefits a person could receive. This was set at £500 per week for a family and £350 for a single person (or £26,000 and £18,200 annually). Claimants in receipt of certain disability related benefits are exempt from the cap:

- Disability Living Allowance or Personal Independence Payment
- Attendance Allowance
- Industrial Injuries Benefits
- Armed Forces Compensation Scheme
- Armed Forces Independence Payment
- Employment and Support Allowance (if in receipt of the support component)

In addition, when calculating the maximum amount of welfare benefit entitlement, an authority must ignore any Housing Benefit paid in respect of certain kinds of supported accommodation.

Whilst most disabled claimants are exempt from the cap as a result of receiving one of the benefits listed above, issues have arisen in relation to non-exempt carers. In a case considered by the High Court in 2015, it was held that the Government's failure to exempt those caring for severely disabled adult family members from the Benefit Cap was unlawful because it amounted to indirect discrimination against disabled people and was incompatible with ECHR article 14.⁶⁷

The Department for Work and Pensions said that it would consider the judgement and explain its position in due course.

During the passage of the *Welfare Reform and Work Bill 2015-16* through Parliament, two amendments were moved to exempt people in receipt of carer's allowance or disability benefits from the cap. In response to the first amendment, which was withdrawn, Lord Freud made reference to the High Court decision saying the Government were considering it closely and he would be able to report back to the House at a later date. When the second amendment was moved, Lord Freud announced that the Government intended to exempt all recipients of carer's allowance from the benefit cap. The Government amendment to give effect to this commitment was brought forward at the Third Reading of the Bill in the House of Lords. Lord Freud said:

My Lords, I will first speak to Amendments 1 and 2, which seek to pave the way for the introduction of an exemption from the benefit cap for all households where a member receives carer's allowance or guardian's allowance. We will bring forward regulations to give effect to these exemptions later this year. The exemption will mean that households where someone receives carer's allowance or guardian's allowance will be exempt from the cap. For carer's allowance, this means that the claimant's

⁶⁷ [Hurley v Secretary of State for Work and Pensions](#) [2015] EWHC 3382 (Admin).

household will be exempt from the effect of the cap regardless of whether the cared-for person is part of that household or not.

Providing an exemption from the cap where a member of the household receives carer's allowance fits within the wider government strategy to do more to support and invest in carers. Both carers and carers' organisations have welcomed this change, with Carers UK, one of many organisations that work tirelessly to support the needs of carers, describing it as "fantastic news."⁶⁸

Until the relevant regulations have been brought into force, there is no change in the application of the cap to carers.

The *Welfare Reform and Work Act 2016*, includes measures to reduce the benefit cap to £20,000 per year (£385 a week) outside London, and £23,000 per year (£442 a week) in London. It is expected that the new thresholds will be phased in from autumn 2016.

More information on the benefit cap is available in the House of Commons Library briefing, [The Benefit Cap](#), SN06294.

⁶⁸ HL Deb 9 February 2016 c2121

9. Under-occupancy deduction from Housing Benefit

As of April 2013, tenants living in social rented housing deemed too large for their needs became subject to a weekly deduction from their Housing Benefit.⁶⁹

This measure, known by proponents as ‘the removal of the spare room subsidy’ and the ‘bedroom tax’ by those opposed to the policy, has proved controversial, particularly in relation to the lack of a general exemption for disabled claimants. The following exemptions *do* apply in relation to disability:

- Disabled tenants who require an additional bedroom for a non-resident carer who provides overnight care do not have any reduction in Housing Benefit.
- Since 4 December 2013, an additional bedroom has been allowed for an overnight carer in calculation of eligibility to Housing Benefit for any joint tenant, or their partner, in the property.
- Also as of 4 December 2013, disabled children who are deemed unable to share a bedroom by reason of their disability are allowed their own room.

It was clear that the under-occupancy deduction would impact a higher proportion of disabled claimants from the Department for Work and Pensions’ own [Equality Impact Assessment](#): this suggested that two thirds of all Housing Benefit claimants affected by the measure would have a disability recognised under the *Disability Discrimination Act*.⁷⁰

The Department for Work and Pensions (DWP) have not published any information on the number of disabled people subject to the deduction, but the latest data suggests that at least 47% of Housing Benefit claimants affected by the under-occupancy charge have a disability.⁷¹

In its scrutiny of the *Welfare Reform Bill 2011-12*, the Joint Committee on Human Rights highlighted some potential discriminatory outcomes of the under-occupation deduction in relation to disabled occupants of social housing:

The proportion of disabled claimants affected by the measure is higher than for non-disabled claimants. The National Housing Federation estimates that about 108,000 tenants in social rented properties adapted specifically for their needs are likely to be affected by the introduction of the size criteria to restrict housing benefit. If such tenants were forced to move into properties unsuited to their needs this might risk breaching their Article 8

⁶⁹ The deduction is 14% of the eligible rent in respect of one spare bedroom, and 25% deduction for two or more spare bedrooms. A similar deduction for under-occupation has existed in the private rented sector since 1989.

⁷⁰ DWP, [Housing Benefit: Size Criteria for People Renting in the Social Rented Sector – Equality Impact Assessment](#), 2012, sections 42-7.

⁷¹ House of Commons Library calculations based on data provided by [DWP Stat-Xplore](#). In August 2015, of the 449,159 claimants subject to the deduction in their Housing Benefit, 211,624 were in receipt of income-related Employment and Support Allowance.

rights to respect for private or family life as well as being potentially discriminatory.

The Government has indicated that it is prepared to look at exemptions for individuals who are disabled, where their homes have been subject to extensive adaptations. However, this would not address the disruption to patterns of caring and support networks which can be vital.

We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions.⁷²

In 2013, the UN Special Rapporteur on adequate housing, Raquel Rolnik, undertook an official visit to the UK to examine the realisation of the right to adequate housing in accordance with existing international human rights standards. Her final report, presented to the 25th session of the UN Human Rights Council, was published on 30 December 2013. In her report, Rolnik recommended the immediate suspension of the under-occupation deduction, saying:

The Special Rapporteur regrets that some policies and practices which have resulted in the progressive realisation of the right to adequate housing are being eroded, and that the structural shape of the housing sector has changed to the detriment of the most vulnerable. She expresses her concern that recent measures are contributing also to an increased vulnerability of those who, until a few years ago, were protected.

[...]

In particular, the removal of the spare-room subsidy should be suspended immediately and be fully re-evaluated in light of the evidence of its negative impacts on the right to adequate housing and general well-being of many vulnerable individuals and households.⁷³

The Government described her findings as 'partisan' and 'misleading'.⁷⁴

In December 2015 the DWP published its own *Evaluation of Removal of the Spare Room Subsidy: final report*. This report acknowledged that disabled people had experienced particular difficulties in downsizing:

These [difficulties] related to finding a property that meets their needs as well as in packing and transporting belongings.⁷⁵

⁷² Human Rights Joint Committee, *Legislative Scrutiny: Welfare Reform Bill*, 21st report of Session 2010-12, paras 1.64-6.

⁷³ UN General Assembly, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Raquel Rolnik, 30 December 2013.

⁷⁴ Inside Housing, '[UN housing expert's report calling to end bedroom tax slammed](#)', 4 February 2014.

⁷⁵ DWP, *Evaluation of Removal of the Spare Room Subsidy: final report*, 2015, p72.

Legal Challenges

There have been a number of legal challenges in relation to the under-occupancy deduction from Housing Benefit. Some of the key cases relating to disability issues are outlined below.

Disabled adults sharing a bedroom

Over the course of three days in May 2013, the High Court heard ten cases challenging the deduction which included cases where disabled adults argued they were unable to share a bedroom. The *Guardian* reported:

The cases lodged by disabled adults include one relating to Charlotte Carmichael and her husband Jayson. She sleeps on a hospital mattress to ease bed sores caused by her spina bifida, while he uses a single bed in their smaller second room. But from April the new regulations would mean that they are under-occupying their specially adapted flat in Southport, Merseyside.⁷⁶

The Equality and Human Rights Commission intervened in these cases as an independent expert third party to advise the court on issues of discrimination law and human rights. They also advised on the UK's obligations under the Convention.

The court ruled that the under-occupation deduction was lawful, and this ruling was later upheld by the Court of Appeal.⁷⁷ Permission has been granted for appeal to the Supreme Court.⁷⁸ The [case](#) was heard in early March and a decision is awaited.

Spare rooms and the storage of disability related equipment

Some tribunal decisions have considered whether a room used to store equipment related to an occupant's disability should be disregarded for the purpose of the under-occupation deduction.

In one such case, a housing association tenant who was blind successfully argued that the room had never been used as a bedroom and was in fact used to store equipment related to his disability. Prior to the tenant moving in, the property had been adapted to take account of his need for a room to use for reading and other equipment, thus the court found that it had never been the landlord's intention that the room be used as a bedroom and finding the term bedroom was not defined in law, applied the ordinary English meaning.⁷⁹

However, in a case in Middlesbrough, the tribunal did not accept that a spare bedroom should be discounted on the basis that it is used to store disability related equipment, instead finding, 'all aids could reasonably be stored elsewhere.'⁸⁰ Likewise, several tribunal cases heard in Scotland

⁷⁶ *Guardian*, '[Children's rights cited in legal challenge launched against the "bedroom tax"](#)', 5 March 2013.

⁷⁷ [MA & Ors v Secretary of State](#), [2013] EWHC 2213 QB; [2014] EWCA Civ 13.

⁷⁸ *Guardian*, '[Disabled tenants to challenge bedroom tax in supreme court](#)', 10 January 2015.

⁷⁹ *Guardian*, '[Bedroom tax defeat for Westminster council in landmark case](#)', 26 September 2013.

⁸⁰ First-Tier Tribunal Decision Notice SC227/13/03378.

have agreed that disability related equipment did not have to be stored in a spare bedroom.⁸¹

In another case concerning a tenant who needed an additional bedroom for storage and as a dressing room due to her disability, the Glasgow First-Tier Tribunal had found discrimination in the application of the deduction under Article 14 of ECHR. However, this was overturned by the Upper Tribunal following the decision in *MA & Ors.*⁸²

Disabled children sharing a room

Although the Government introduced an exemption for disabled children deemed unable to share a bedroom as a result of disability, this is restricted to children who are eligible for the middle or higher rate care component of Disability Living Allowance (DLA).⁸³ The [Social Security Advisory Committee](#) (SSAC) considered the regulations implementing this exemption. In a report, the SSAC expressed concerns over the potential to exclude cases where a child has a disability and a genuine need for an additional bedroom, but does not receive the qualifying level of DLA.⁸⁴ The committee recommended that:

- The exemption be extended to include children on the lower rate care component of DLA.
- The legislation be amended to include an ‘exemptions process’ for those who did not automatically apply but were able to satisfy a local authority that it would be inappropriate for the disabled child to share a bedroom.

The Government rejected the SSAC’s recommendations, saying they were, ‘looking to cover a discrete group of severely disabled children, and not to open up a broader exemption for children with disabilities.’ Using the middle and higher rate of the DLA care component was, they argued, ‘a clear and consistent test of severe disability.’⁸⁵ The Government accepted that there may be rare circumstances where disabled children may not qualify for the relevant DLA award but could not share a bedroom, but pointed to the use of Discretionary Housing Payments as appropriate mitigation:

In the circumstances, and given analysis of the data available we are confident that the chosen gateway, based on entitlement to the middle or highest rate of the DLA care component is a sensible and reasonable one.⁸⁶

The proposal on introducing an ‘exemptions process’ was similarly rejected on the basis that it would act to effectively remove the existing exemption rules:

The Department also believes that were the allocation of an additional room to be on the basis of a Local Authority decision,

⁸¹ First-Tier Tribunal Decision Notices [SC108/13/01445](#) and [SC108/13/01362](#).

⁸² *Nearly Legal, ‘Bedroom Tax: Upper Tribunal on Article 14’*, 6 October 2015.

⁸³ This exemption followed the Court of Appeal’s decision in *Burnip v Birmingham City Council* [2012] EWCA Civ 629; see also DWP [HB Bulletin U2/2013](#).

⁸⁴ SSAC and DWP, [Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2013](#), 2013.

⁸⁵ *Ibid.* Government response, pp8-9.

⁸⁶ *Ibid.*

decision makers would be unlikely to have sufficient medical expertise to be able to confidently arrive at a diagnosis of disability... This could lead to unintentional inequalities. It would also be particularly difficult to operate in Universal Credit.⁸⁷

Discretionary Housing Payments

Where an individual is eligible for Housing Benefit, but experiences a shortfall between the rent due and the benefit payable, they may apply to the local authority for a Discretionary Housing Payment (DHP).

There is no obligation on authorities to pay DHPs and although the DWP has issued [guidance for local authorities](#) (updated in February 2016), the method of allocation and the decision making process lies with the individual authority.

Increasing the level of funding for DHPs is one of the ways the Government has sought to mitigate the impact of Housing Benefit reforms. The Coalition Government made available additional funding of £25m in DHPs for disabled people who live in significantly adapted accommodation and are affected by the under-occupation deduction; this funding continued as part of DHP allocations in 2015/16. The Minister for Work and Pensions in the Coalition Government explained:

Trying to define in legislation that this or that type of adaptation was or was not exempt was very complex. Rather than having a blanket exemption simply for a ramp or a stair rail, we have allocated money to local authorities, which broadly matches what we think would be the cost of protecting people in the circumstances that the hon. Gentleman has described – for example, a wheelchair user who has had significant adaptations made.⁸⁸

However, questions have been raised around whether this funding is reaching claimants for whom it is intended. Particular concern has arisen in relation to local authorities taking disability benefits into account when assessing applications for DHPs. The initial DWP guidance gave authorities the option of disregarding these benefits, but the final decision rests with the authority.⁸⁹ This issue was highlighted in independent research carried out on behalf of the DWP:

A key concern raised by landlords and local agencies is that disabled people in adapted homes have not always been awarded DHP because disability benefits, which are intended to help with some of the extra costs of having a long-term disability or health condition, can cause them to fail means tests based on their income. Local agencies are also concerned about some groups who fail to apply for DHP, or fail to adequately evidence their application, especially those with mental health difficulties. More than half (56 per cent) of RSRS-claimants surveyed who have not applied for DHP said they were not aware of it. The claimants who were unaware of DHP were similarly likely to other claimants to

⁸⁷ *Ibid.* p9.

⁸⁸ [First Delegated Legislation Committee](#) 16 October 2012 c7.

⁸⁹ DWP, Discretionary Housing Payments guidance manual, April 2014, para 3.9.

report having difficulties paying rent and similarly likely to be in arrears.⁹⁰

Despite this, the research found that a, 'large majority of local authorities reported that they always carried out a means test, and most of these included [Disability Living Allowance] where they deemed it appropriate to do so.'⁹¹

The Work and Pensions Select Committee urged the Government to issue revised guidance to local authorities to disregard disability benefits in means tests for DHPs.⁹² This position was strengthened by a High Court ruling. In *R (on the application of Hardy) v Sandwell Metropolitan Borough Council*, the court held that the council's policy of always taking account of Disability Living Allowance when assessing DHP awards was based on a misunderstanding of the DHP guidance and constituted a failure to exercise discretion fettering any future exercise of that discretion. Furthermore, the policy was found to be discriminatory towards disabled people contravening the council's duty under the *Equality Act 2010*.⁹³

Evidence has also been heard from Carers UK and Homeless Link of a reluctance amongst some local authorities to grant DHPs to claimants who do not have an 'exit strategy' such as moving house or entering work.⁹⁴ Others have suggested that authorities are using DHPs as a long term solution for households who cannot move, such as those in adapted accommodation, and the need for those claimants to make repeat applications represents a source of anxiety.⁹⁵

The Government has suggested they want to give confidence to authorities to make long-term awards where appropriate.⁹⁶ However, the Work and Pensions Committee declared this, 'not strong or explicit enough', and recommended new guidance making clear the Government's support for long-term awards avoiding the need for repeat applications for certain categories of claimant. The Committee also called for the impact of these long-term awards to be taken into account when deciding on DHP funding beyond 2014/15, favouring a three year funding period to aid effective planning.⁹⁷ The Government's response has not yet been published, but the updated DHP guidance

⁹⁰ DWP, *Removal of the Spare Room Subsidy: Interim Evaluation Report*, July 2014, p15.

⁹¹ *Ibid.*, p42.

⁹² Work and Pensions Committee, *Support for Housing Costs in the Reformed Welfare System*, 4th report of Session 2013-14, HC720, para. 141.

⁹³ [2015] EWHC 890 (Admin). This decision had implications for other councils who had similar policies (estimated to be three quarters of all councils). The DHP guidance was updated in August 2015 advising councils to take account of the Hardy decision.

⁹⁴ Work and Pensions Committee, *Support for Housing Costs in the Reformed Welfare System*, 4th report of Session 2013-14, HC720, para. 142.

⁹⁵ *Ibid.*

⁹⁶ HB Circular S1/2014.

⁹⁷ Work and Pensions Committee, *Support for Housing Costs in the Reformed Welfare System*, 4th report of Session 2013-14, HC720, para. 145.

33 Welfare reform and disabled people

does contain specific reference to long-term or indefinite awards being made in certain circumstances.⁹⁸

Concerns over the impact of cuts to Housing Benefit on people with disabilities and the variable response to DHP applications have been raised in several research studies. A 2014 report published by the Joseph Rowntree Foundation noted:

Councils are making full use of Discretionary Housing Payments (DHPs) to help tenants adjust to this change. However, practice varies. There are concerns about whether DHP provisions are appropriate for disabled tenants living in adapted homes.⁹⁹

Similarly, the London Assembly Housing Committee called for greater clarity on the future funding of DHPs, and questioned whether they are an appropriate form of assistance for claimants with long term needs.¹⁰⁰

⁹⁸ DWP, *Discretionary Housing Payments guidance manual*, August 2015, para. 5.3. The previous Minister for Work and Pensions, Mark Harper, explained the delay in response was, 'due to a failure to secure agreement across the Government... I am afraid harmony has not broken out and until it does, the Government will not be able to respond to the Committee.' [HC Deb 3 March 2015 c878].

⁹⁹ Joseph Rowntree Foundation, *Housing Benefit Size Criteria: impacts for social sector tenants and options for reform*, 2014.

¹⁰⁰ London Assembly Housing Committee, *Assessing the Consequences of Welfare Reform*, 2014, para 2.45.

10. Government policy following the March 2016 Budget

Following the resignation of Iain Duncan Smith as Secretary of State for Work and Pensions on 18 March¹⁰¹, and the appointment of Stephen Crabb as his successor, the Government announced that it would not be proceeding with the PIP changes, would not be seeking alternative offsetting savings; and had no further plans to make welfare savings beyond the savings already legislated for by Parliament, which it would now focus on implementing.

In his statement on welfare to the House on 21 March, Mr Crabb said:

Before Christmas, the Government held a consultation on how part of the PIP assessment worked in relation to aids and appliances. As the Prime Minister indicated on Friday, I can tell the House that we will not be going ahead with the changes to PIP that had been put forward. I am absolutely clear that a compassionate and fair welfare system should not just be about numbers; behind every statistic there is a human being, and perhaps sometimes in government we forget that. So I can also confirm that after discussing this over the weekend with my right hon. Friends the Prime Minister and the Chancellor, we have no further plans to make welfare savings beyond the very substantial savings legislated for by Parliament two weeks ago, which we will now focus on implementing.¹⁰²

Mr Crabb added however that, against the backdrop of the need to control the public finances and welfare expenditure, he wanted to 'build on the progress we have made in supporting disabled people.' He continued:

We made a manifesto commitment to halve the gap between the proportion of disabled people in work compared with the rest of the labour market. As I have outlined, we have made good progress in supporting disabled people into work, but to go further will require us to work in a way we have not done before and to think beyond the artificial boundaries of organisations, sectors and Government Departments to an approach that is truly collaborative. That is why today I want to start a new conversation with disabled people, their representatives, healthcare professionals and employers. I want the welfare system to work better with the health and social care systems. Together we can do so much better for disabled people.

This is a hugely complex but hugely important area of policy to get right. Disabled people themselves can provide the best insight into how support works best for them. I am determined, therefore, that all views will be listened to in the right way in the weeks and months ahead, and I will be personally involved in these discussions. The events of recent days demonstrate that we

¹⁰¹ See '[Iain Duncan Smith quits over planned disability benefit changes](#),' *BBC News*, 18 March 2016; '[PIP cuts: The disability benefit cuts that sparked a Tory civil war](#),' *Independent*, 21 March 2016

¹⁰² HC Deb 21 March 2016 c1268

35 Welfare reform and disabled people

need to take time to reflect on how best we support and help transform people's lives. That is the welfare system I believe in, and I commend this statement to the House.¹⁰³

In response to the Government's announcement, the Chief Executive of Disability Rights UK, Liz Sayce, welcomed the decision not to go ahead with the PIP changes and the announcement that the Government had no plans to introduce further welfare cuts. She added:

It's time now to have a wider conversation about how to support disabled people to have the same opportunities as others. The cumulative effects of a range of cuts have done the opposite for many disabled people.

We need practical, sensible and effective policies which help disabled people to be able to work if they can, enjoy family life and be part of the communities they live in - the same kinds of things that most people aspire to, disabled or not.¹⁰⁴

¹⁰³ Ibid. c1269

¹⁰⁴ [DR UK responds to Govt announcement about the PIP u-turn](#), 21 March 2016

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).