LOCAL GOVERNMENT INFORMATION UNIT

POLICY BRIEFING

Welfare Reform Act 2012

Summary

- The Welfare Reform Act puts into law one of the government's flagship bills, which ministers claim marks the biggest overhaul of the benefits system since the 1940s.
- This briefing explains the key components of the Act, including the merging of several benefits into Universal Credit, significant changes to Housing Benefit and Employment Support Allowance, a transformation of disability benefits, and new responsibilities for local authorities.
- The briefing's comment section considers the many challenges the Act presents to local authorities, as well as highlighting some of the concerns that were raised during the bill's troubled passage into law – aspects of it were defeated by the Lords on seven occasions.

Overview

The Welfare Reform Act 2012 puts into law many of the proposals set out in the 2010 white paper *Universal Credit: Welfare that Works*. It aims to bring about a simplification of the benefit system in order to improve incentives to work. It also works towards the government's aim of cutting the welfare bill by £18bn by 2015.

Its central change is the introduction of Universal Credit, a single benefit to be paid both in and out of work on a monthly basis. Universal Credit replaces Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Housing Benefit, Child Tax Credit, and Working Tax Credit. To receive Universal Credit an individual or couple will have to sign a new claimant commitment, which sets out the expectations and requirements placed upon the claimant, as well as outlining the sanctions should they fail to fulfil them.

Alongside merging several benefits Universal Credit encompasses a number of other significant changes. The Act empowers the government to place a cap on the total benefits an individual or couple can receive, which is expected to be introduced in 2013. Changes are also made to Housing Benefit: social-sector houses will now have a size criteria applied, with any working-age household deemed to be under-occupying their home to have part of their Housing Benefit removed. Most working-age claimants will also no longer be able to have their Housing Benefit paid directly to their landlord.

The Disability Living Allowance (DLA) is to be replaced for all working-age people by Personal Independence Payment . There will be no automatic transfer from one benefit to the other, so people currently receiving DLA will have to make a fresh claim for the new benefit, and will be re-assessed in line with its new assessment criteria. The details of these criteria are currently being consulted upon.

There are also important changes to contribution-based Employment Support Allowance. The amount of time claimants in the work-related activity group or assessment phase can claim it will be limited to 365 days. The 'Youth' provision enabling disabled young people to qualify for the benefit without paying National Insurance contributions is abolished by the Act.

Finally, the Act abolishes the Social Fund, to be replaced with a non-ring fenced grant which will be paid to local authorities in England. Local authorities will then decide how to distribute this money, which replaces such last-resort lifelines as Crisis Loans, in line with local circumstances. Similarly, the Act replaces centralised support for Council Tax Benefit with a localised support mechanism, with funding coming from un-ringfenced grants paid directly to local authorities. Local authorities will be responsible for developing their own schemes for this provision.

Briefing in full

Background

The Welfare Reform Act 2012 received royal assent on the 8th of March 2012, finally passing through the House of Lords at the beginning of March after suffering seven defeats by peers. The Act puts into law what has been one of the government's flagship bills, which ministers have claimed marks the biggest overhaul of the benefits system since the 1940s.

It puts into law many of the proposals, as well as the broad vision, contained in the 2010 welfare reform white paper *Universal Credit: Welfare that Works*. As with that document the Act is primarily concerned with replacing a number of benefits with Universal Credit. It also develops on a number of changes existent in a nascent form in that white paper, relating to Housing Benefit, Council Tax Benefit, disability benefits, and Employment and Support Allowance.

Universal Credit

At the centre of the Act is the introduction of a new benefit – Universal Credit. This is intended to provide both in and out of work support and so smooth the transition into work; it also aims to eliminate situations in which the loss of benefits as earnings rise creates a financial disincentive to work. Universal Credit will replace Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Housing Benefit, Child Tax Credit, and Working Tax Credit.

To be eligible for Universal Credit you must reside in Great Britain, be 18 years old but under the qualifying age for pension credit, not be receiving education, and have accepted a claimant commitment. You must also satisfy financial conditions dependent on both a claimant's income and their capital: if either is above a certain limit, likely to be £16,000, an individual will not be eligible.

Universal Credit will be paid via a single monthly payment, a change for most recipients who will be used to working on a basis of fortnightly payments.

As in existing benefits, the amount of Universal Credit will depend on a claimant's level of income and other family circumstances. The total will be calculated with reference to four elements:

- A standard allowance to cover basic living costs
- Support for those with children
- Support for housing costs
- Support for what the Act terms "other particular needs and circumstances".

From a combination of each of these elements a maximum payment will be calculated, which will then be reduced according to the earned and unearned income of the claimant. The amount of benefits lost as a result of earned income is calculated through two mechanisms, a taper and a disregard.

Tapers and Disregards

A taper is the rate at which benefit is reduced as earnings increase. Currently different tapers apply to different benefits. Universal Credit simplifies this system by introducing a single taper for the new benefit. This should broadly ensure that there is never a situation in which someone is better off out of employment than accepting an offer of work. It is also intended to create a more flexible labour market: rigid hours rules under the Tax Credits system could lead to the withdrawal of benefits acting as a financial disincentive to work part-time other than 16 or 24 hours.

The exact taper rate for Universal Credit will be announced closer to its introduction in 2013, but it is likely to be around 65%: for every £1 earned, 65p of benefits will be taken away, leaving the claimant 35p better off.

A disregard is the amount of earnings that can be made before benefits begin to be withdrawn –before the taper is applied. Alongside the taper it therefore plays a key role in determining the financial incentive to return to work. The precise level of earnings disregard will vary between groups of claimants, with higher disregards for people with disabilities and for lone parents, relatively lower disregards for couples, and no disregard for a single person without children. These disregards will be reduced to reflect the amount of support being provided for rent and mortgage interest support.

The Claimant Commitment and changes to conditionality

In order to claim Universal Credit an individual or couple will have to accept a 'claimant commitment', replacing previous documents such as the jobseeker's agreement. The claimant commitment will set out the expectations and requirements placed upon the claimant, as well as outlining the sanctions should they fail to fulfil them. The requirements include:

- A work search requirement – the DWP states that under Universal Credit "we believe a claimant in the 'all work related requirements' group should be spending as much time as possible looking for work – until claimants find employment this should be their job". Exceptions exist for if you have done everything that could be reasonably expected, for volunteers, if you are temporarily ill, or for a specific emergency or crisis.
- A work availability requirement – claimants expected to be able to take up work immediately, with exceptions in the case of volunteers, those needing to arrange childcare, those signed off sick, and those with a contract of employment.
- A work preparation requirement
- A work-focused interview requirement.

The level of requirement will depend on the claimant's particular circumstances but can be:

- No work-related requirement
- Work focused interview requirement only
- Work focused interview and work preparation requirements
- All work-related requirements.

The Welfare Reform Act 2007 is amended to include, under the banner of work-related activity, "work experience or a work placement". This is the controversial measure for what was described in the 2010 white paper as "mandatory work activity": unpaid work placements of up to four weeks, to which Jobcentre Plus Advisers will be able to refer recipients.

The commitment will also set out the sanctions for failing to fulfil a work-related requirement, including failure to participate in mandatory work activity. Hardship payments will be available in some circumstances.

The Act sets out the government's intention to define in regulations a new, higher conditionality threshold: claimants earning above this threshold will be placed into the "no work related requirements group"; those earning below this threshold could face full work-related conditionality. The maximum threshold for a single claimant is likely to be at the level of earnings made through full-time work at the National Minimum Wage. This threshold is likely to be flexible with age or caring/parenting responsibilities.

Childcare

Under the current system, the childcare element of Working Tax Credit provides parents with
support covering up to 70% of eligible childcare costs up to a maximum of £175 for one child and £300 for two or more children. Childcare costs are also currently disregarded for the purposes of calculating entitlement to Housing Benefit and Council Tax Benefit, resulting in some households receiving help for up to 95.5% of their childcare costs.

Support for childcare will be absorbed into Universal Credit, while retaining much of this structure. Childcare payment limits will be calculated monthly rather than weekly, in line with the functioning of other aspects of Universal Credit. Parents will be able to recover childcare costs of 70% of up to £760 for one child or £1300 for two or more children per month. Disregards for Housing Benefit and council tax benefit will be retained. The movement to the Universal Credit structure will also annul the Tax Credit requirement to work at least 16 hours before qualifying for support.

Income Support will no longer be available to lone parents with children aged five and six.

Transferring people to Universal Credit

Universal Credit will be rolled out in three phases from October 2013 until the end of 2017:

- Phase 1 – October 2013 – April 2014: All new claims to current benefits and credits will be phased out; new claims to Housing Benefits and Tax Credits

will be the last to end in April 2014. In this time existing claimants whose circumstances change will also be moved to Universal Credit.
- Phase 2 – April 2014 – end 2015: Claimants whose circumstances have not changed will begin to be migrated during this time, with those whose work behaviour is most likely to benefit from Universal Credit to be prioritised.
- Phase 3 – end 2015 – end 2017: All remaining households transferred to Universal Credit.

Changes to Housing Benefit under Universal Credit

Size Criteria

The Welfare Act gives empowers the government to impose the size eligibility criteria currently applying in the private rented sector on the social housing sector. Any working-age household deemed to be under-occupying their home will lose part of their Housing Benefit from April 2013.

Housing Benefit will be restricted by the size criteria to allow for one bedroom for each person or couple living as part of the household, with the following exceptions:

- Children under 16 of the same gender will be expected to share
- Children under 10 will be expected to share regardless of gender
- Disabled tenant or partner requiring a non-resident overnight carer will be allowed an extra room.

The National Housing Federation gives a number of examples of those who could be adversely affected by the change, including:

- Foster carers due to the fact that foster children do count as part of the household for benefit purposes
- Families with disabled children
- Disabled people including people living in adapted properties
- Separated parents who share the care of their children and who may have been allocated an extra bedroom to assist this; rules state that there must be a designated 'main carer', who receives the extra benefit.

The level of the cut will be a fixed percentage of the housing-benefit eligible rent, initially set at 14% for one extra bedroom and 25% for two or more extra bedrooms.

More details of the scheme will be set out in regulations, which are expected to be published in May 2012.

Direct Payments

Following measures contained in the Act most working-age claimants will no longer be able to choose to have the Housing Benefit component of Universal Credit paid directly to their landlord, instead receiving it personally as part of their monthly payment. The idea behind this is to ease the transition into work by replicating the workings of a monthly salary. For some people, described as 'vulnerable' – a denominator yet to be defined – it is accepted that direct payment is not appropriate, and there will be a mechanism within Universal Credit to facilitate the payment of the benefit directly to the landlord.

Benefit Cap

The Act empowers the government to put a cap on the total benefits an individual or couple is entitled to. This cap is expected to be introduced in 2013, and will be set a working household's average net earnings – currently expected to be £26,000 a year for lone parents and couples with children and around £18,000 for single people without children. These limits will be set in regulations. One-off payments, childcare, and Council Tax Benefit will not be encompassed by the cap, and households will be exempt if a member is claiming DLA, Personal Independence Payment, Attendance Allowance, Working Tax Credit or the support component of Employment Support Allowance. The government has also allowed for a nine month grace period, meaning that those who have been in work for the previous 12 months and lose their job through "no fault of their own" will not be affected by the cap.

A DWP impact assessment estimates that 54% of those affected live in Greater London, which points to the overwhelming likelihood that it is Housing Benefit that will cause claimants to go over the cap. Accordingly, while the cap will be administered through the new Universal Credit system once it is in place, prior to its introduction the cap will be administered by Local Authorities through Housing Benefit payments.

Changes to contribution-based employment and support allowance (ESA)

The Act includes two changes to contribution-based employment and support allowance that will take effect from April 2012:

- The amount of time that people can receive contribution-based ESA will be limited to 365 days for those claimants in the Work Related Activity Group or in the assessment phase. This limit does not include any time spent in the

Support Group, or any time spent in the assessment phase if they moved from the assessment phase into the Support Group at the start of their claim.

- Under existing ESA 'Youth' provisions, young people with a disability which has prevented them from working and accruing the necessary National Insurance contributions in order to be eligible for the benefit in the usual way can qualify for contribution-based ESA without paying National Insurance contributions. The Act abolishes these 'Youth' provisions, so from April 2012 all new claims under ESA 'Youth' will be subject to the same National Insurance contributory conditions as all other claimants. If they qualify for contribution-based ESA, and are therefore placed in the Work Related Activity Group, a one-year time-limit will also apply.

In June 2011 the ESA Work-Related Activity Regulations introduced a new requirement for some recipients of ESA to undertake work-related activity. The Act establishes that this can include work experience or a work placement, according to plans devised by Jobcentre Plus advisers. ESA recipients in the support group or who are lone parents with a child under 5 or carers will not be required to undertake work-related activity.

Tougher penalties for benefit fraud

The Act aims to take a tougher approach to benefit fraud and error by introducing a range of harsher penalties for serious offences. These include:

- A minimum administrative payment of £350 or 50% of the overpayment, whichever is higher, from May 2012
- A new £50 civil penalty for claimant error that results in an overpayment as a result of negligence or failure, from October 2012
- An extended loss of benefit of up to three years for offences which result in a conviction.

Replacement of the discretionary Social Fund with local welfare payments

The Act repeals sections of the 1992 Social Security Contributions and Benefits Act (SSCBA) which provided for payments from the discretionary Social Fund.

Consequently the Act abolishes Community Care Grants and Crisis Loans and replaces them with a non-ring fenced grant which will be paid to local authorities in England. Under existing powers in the Local Government Act 2000 local authorities will then be expected to provide assistance and emergency provision for the vulnerable which is tailored to local circumstances. This could involve payment in kind for example through second-hand furniture or white goods, or in cash. Budgeting Loans will become a nationally-administered advance-of-benefit facility available in certain circumstances.

Other elements of the Social Fund that lend themselves to automated delivery, such as cold weather payments and Sure Start Maternity grants, will be incorporated into Universal Credit and paid automatically when the qualifying criteria are met.

Replacement of centralised support for council tax benefit with localised schemes

The Act will replace the current system of central government support for council tax benefit with a localised support mechanism. Funding for council tax benefit will come from un-ring fenced grants paid directly to local authorities in proportion to their share of council tax. These grants will encompass a 10% saving on the current Council Tax Benefit bill.

Local authorities will be responsible for developing their own schemes for the provision of Council Tax Benefit, and they will be expected to consult with the public and precepting authorities on the schemes prior to their adoption no later than 31st January 2013. When designing these schemes councils' responsibilities to vulnerable groups will have to be taken into account, for example including the government's intention to maintain the current level of pensioner council tax support. Councils will be able to revise schemes between years but not within the year because of claimants' need for certainty and reliability.

In order to aid the transition considering the short timeframe in which to design and put in place localised schemes for the delivery of Council Tax Benefit, the government offers councils the chance to adopt a default scheme. The government proposes that this should retain the criteria and allowances currently in place. Of course, this option will make it difficult to manage the 10% reduction in funding.

Replacement of Disability Living Allowance with Personal Independence Payment

The Act includes proposals for Personal Independence Payments, which will replace Disability Living Allowance (DLA) for all working-age people (those aged 16-64 on the day Personal Independence Payment is introduced) in April 2013. The Act outlines the framework for the new benefit, while consultation responses will contribute to the design of the benefit which will be established in secondary legislation.

The Personal Independence Payment will consist of two components: a Daily Living component and a Mobility component. Each of these components will have two rates, a standard rate and an enhanced rate:

1. Daily living component standard rate – will apply if the person's ability to carry out daily living activities is limited by their physical or mental condition and they meet the required period condition
2. Daily living component enhanced rate – will apply if the person's ability to carry out daily living activities is severely limited by their physical or mental condition and they meet the required period condition
3. Mobility component standard rate – will apply if the person is of or over the prescribed age, their ability to carry out mobility activities is limited by the their physical or mental condition, and they meet the required period condition
4. Mobility component enhanced rate – will apply if the person is of or over the prescribed age, their ability to carry out mobility activities is severely limited by their physical or mental condition, and they meet the required period condition.

Awards will consist of one or both of these components. The amount for each rate is yet to be decided. The limited or severely limited conditions upon which the award rests must be satisfied three months prior to the claim (a reduction from an intended six month wait to become eligible which the government had originally intended, given as a concession to widespread opposition.)

Everyone of working age receiving DLA will be asked by letter between 2013 and March 2016 if they would like to claim for Personal Independence Payment. There will be no automatic transfer from one benefit to the other; those receiving DLA will have to make a fresh claim for Personal Independence Payment, and be re-assessed in line with its new entitlement criteria. The details of this criteria are currently being consulted upon. There will be an exception in the case of terminally ill people, who will not have to go through a face to face consultation.

The DWP states that "there are no current plans to replace Disability Living Allowance with Personal Independence Payment for children under 16 and people over the age of 65 who are already receiving Disability Living Allowance".

To participate in the consultation on new entitlement criteria, go to www.dwp.gov.uk/pip.

Comment

The Welfare Reform Act 2012 has been highly controversial. While the broad thrust of Universal Credit has been welcomed – simplifying a complicated benefits system and easing the transition into work – many of the specifics of the new benefit, particularly in relation to Housing Benefit, have received a lot of criticism. It is worth noting the concerns that have been raised by numerous organisations about some of the proposed changes.

The proposal to impose a benefit cap has been criticised in particular for its failure to take account of household size. It is calculated on the basis of the average wage of in-work households, criticised as a "crude measure" by the Citizens Advice Bureau for failing to take into account household size, household circumstances, or variations in housing cost. It has been suggested that child benefit should not be included in the cap, which effectively denies the benefit to children in families who have already reached the £500 limit. Moreover, the cap could force the migration of families to cheaper locations – concerns about creating a Paris-style 'doughnut' in London, with a jammy rich centre surrounded by poor ghettos, are an example of this. There is also concern that the cap could cause overcrowding in cheaper but smaller properties.

Another concern about changes to Housing Benefit involves the imposition of size criteria on social housing tenants. This has been criticised for discriminating against disabled people, particularly those with fluctuating conditions who need overnight care during periods when their condition deteriorates. Moreover, a large proportion of people affected by the size criteria are disabled and if they were to wish to move a smaller property as a consequence this could require fresh adaptations; the average cost of a Disabled Facilities grant is currently £6,500.

Furthermore, even the DWP has admitted in their impact assessment that there could be a "mismatch" resulting in "insufficient properties to enable tenants to move to accommodation of an appropriate size even if tenants wished to move and landlords were able to facilitate this movement."

The National Housing Federation has raised a number of concerns about removing the choice for tenants to have their benefit paid directly to their landlord. These include increased levels of arrears and debt for tenants, and increased costs for landlords in arrears recovery, legal costs, and bad debt. Six small-scale demonstration projects have been announced across England to protect landlords' finances and to help with the clarification of those who count as "vulnerable" and will therefore be exempt from the requirement.

The changes to Employment Support Allowance have also been criticised. The removal of the 'youth provision', it has been suggested, threatens to undermine the ability of some young people with disabilities to live independently. They would left eligible only for income-based ESA, which is lost if one becomes part of a couple in which the other earns. Consequently this individual would be left with no independent income at all.

Alongside these criticisms of specific aspects of the Act, there are also a number of challenges it presents for local authorities as it is implemented.

The changes to council tax benefit will have to be navigated by councils within a very short timescale, during which they are meant to design and implement local schemes including the IT systems to support them. Adopting the default scheme suggested by the government may be a tempting option for many hard-pressed councils but doing so will make it difficult to manage the funding reduction. Overall, implementing a locally-tailored scheme without exceeding the grant and while continuing to protect the most vulnerable will inevitably lead to the burden of the cuts being shouldered by a relatively small set of people.

Alongside dealing with changes to council tax benefit councils will have to organise the delivery of local welfare payments in place of the centrally-administered Social Fund. This relates to some of the most struggling people within communities, and so the imperative for effective handling places some pressure on councils, who must deter people from turning to high-cost lenders and loan sharks.

The imposition of size criteria poses a further set of challenges to councils. They must work out how to deal with the situation in which there is an insufficient supply of suitable properties to accommodate those deemed to be under-occupying. If the reforms do result in the movement of benefit claimants – especially likely when the impact of the size criteria is combined with that of the benefit cap – then there may be a large number of people moving from areas with a higher cost of living to areas with a lower cost. Ensuring continuity of education, care, and other support will place great pressure on effective communication between councils.

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