

Great Britain: Welfare Reform Act 2012

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GREAT BRITAIN

WELFARE REFORM ACT 2012

Executive Summary

The Welfare Reform Act 2012 is the most substantial legislative change in the British welfare system since the 1940s. It replaces a large number of different types of benefits with a single benefit, called Universal Credit, with the aim of making the system fairer, easier to enforce, and one that encourages people to work. It will be implemented in stages over the next five years. It is anticipated that it will significantly reduce the amount of money that the government is required to spend on social benefits.

I. Introduction

The Welfare Reform Act 2012 (the Act)¹ provides for the largest change in Great Britain's² welfare system in over sixty years.³ The Act serves to implement the commitment made by the coalition government to make the benefits system and tax credits fairer and simpler.⁴ It attempts to achieve this by creating a system of incentives to get people to work, capping benefits, and making those receiving payments who are capable of working commit to work-related requirements.⁵

The Act is comprised of over 350 sections and is 187 pages long. It provides both a framework and the authority for secondary legislation to be introduced to address the specific and technical requirements necessary to implement the reform of welfare benefits. It replaces a large number of different benefits with a single benefit, Universal Credit; reviews child support maintenance; improves information sharing between government departments responsible for the administration of benefits; increases fraud protection and penalties; and caps benefits. Given the large scale of the reform, the Act provides that many of the technical aspects will be introduced

¹ Welfare Reform Act 2012, c. 5, <http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted>.

² This Act applies to England, Wales, and Scotland, which form Great Britain. Northern Ireland has its own legislative competence in this area.

³ *Welfare Reform Act*, DEPARTMENT FOR WORKS AND PENSIONS, <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/> (last visited May 1, 2012).

⁴ DEPARTMENT FOR WORK AND PENSIONS, UNIVERSAL CREDIT: WELFARE THAT WORKS, 2010, Cm. 7957, available at <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf>.

⁵ *Welfare Reform Act*, DEPARTMENT FOR WORKS AND PENSIONS, <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/> (last visited May 1, 2012).

through secondary legislation. The Act does not address any issues relating to healthcare in Great Britain, which is provided for through the National Health Service.⁶

II. Welfare: Universal Credit

To ensure that it is financially rewarding to work rather than receive benefits, the Act introduces Universal Credit, a single streamlined social security benefit. Universal Credit is a working-age benefit tailored to the claimant's circumstances. Universal Credit replaces a number of benefits, including the working tax credit, child tax credit, housing benefit, income support, income-based jobseeker's allowance, and income-based employment and support allowance.⁷ The employment and support allowance and jobseeker's allowance will continue as contributory benefits.⁸ The aim of this new credit is to transition people into work by "reducing the support a person receives at a consistent rate as their earnings increase."⁹

Universal Credit includes a standard allowance that covers basic living costs with additional provisions for responsibility for minors, housing costs, and other needs and circumstances.¹⁰ Regulations may be issued to specify amounts that can be included in Universal Credit. Additional factors that may be taken into account when calculating Universal Credit is whether the claimant has a limited capability for work and work-related activity, or whether the claimant has "regular and substantial caring responsibilities for a severely disabled person."¹¹

A. Requirements for Obtaining Universal Credit

Universal Credit requires claimants to meet certain criteria, which depend upon the individual's circumstances. The basic conditions for receiving Universal Credit are that the claimant must be at least eighteen years of age¹² but not older than the qualifying age for the state pension credit,¹³ must not be receiving education, and must accept a "claimant commitment" setting forth requirements they are expected to meet.¹⁴

⁶ For more information on the National Health Service (NHS), *see* the NHS website, <http://www.nhs.uk/Pages/HomePage.aspx> (last visited May 14, 2012).

⁷ Welfare Reform Act 2012, c. 5, Explanatory Notes, <http://www.legislation.gov.uk/ukpga/2012/5/notes/division/3>.

⁸ *Id.* ¶ 14.

⁹ *Id.*

¹⁰ Welfare Reform Act 2012, c. 5, § 10.

¹¹ *Id.* § 12.

¹² Regulations may be made to lower the age limit in certain circumstances, such as single parents that are under the age of eighteen, or those estranged from their parents. *Id.* § 4.

¹³ The state pension age is gradually increasing from sixty to sixty-five. Welfare Reform Act 2012, c. 5, Explanatory Notes, ¶ 33, <http://www.legislation.gov.uk/ukpga/2012/5/notes/division/3>.

¹⁴ Welfare Reform Act 2012, c. 5, § 4.

Claims may be made by single persons or couples, but couples' claims must be made jointly. For single people, entitlement is based upon meeting the basic and financial conditions established by the Act. Entitlement to Universal Credit is dependent upon both the claimant's capital and income. Regulations are to be issued establishing the capital thresholds for entitlement to Universal Credit.¹⁵ In the case of couples, both claimants must meet the basic conditions and they must jointly meet the financial conditions.¹⁶ The Secretary of State has the authority to issue regulations to determine when a member of a couple may make a claim as a single person, which might occur, for example, where one member does not have the lawful right to reside in the UK and thus would not be entitled to Universal Credit.¹⁷

B. Claimant Commitment and Work-Related Requirements

The Act imposes work-related requirements on claimants, as follows:

- A work-focused interview requirement, which aims to make it more likely for the claimant to obtain either paid work, more paid work, or better paid work.
- A work preparation requirement, which obliges the claimant to take certain action (to be specified by the Secretary of State) to obtain either paid work, more paid work, or better paid work. These actions may include attending a skills assessment; improving personal presentation, attending training, participating in work experience or a work placement, or developing a business plan. Individuals with limitations on their ability to work may be required to undergo a work-focused, health-related assessment, which would examine whether “the person’s capability for work may be improved by taking steps in relation to their physical or mental condition, and such other matters relating to their physical or mental condition and the likelihood of their obtaining or remaining in work or being able to do so as may be prescribed.”¹⁸
- A work search, which requires the claimant to take “all reasonable action” in addition to any action specified by the Secretary of State to obtain either paid work, more paid work, or better paid work. These actions include conducting work searches, applying for jobs, creating an online profile to seek employment, or registering with an employment agency.
- A work availability requirement, which means that the claimant must be able and willing to immediately start paid work, more paid work, or better paid work.¹⁹

Claimants must make a commitment to meet these work requirements. The commitment will include a record of the work-related and other requirements that the specific claimant must comply with, and any other information that may be imposed through secondary legislation.²⁰

¹⁵ Welfare Reform Act 2012, c. 5, § 5.

¹⁶ *Id.* § 2.

¹⁷ Welfare Reform Act 2012, c. 5, Explanatory Notes, ¶ 31, <http://www.legislation.gov.uk/ukpga/2012/5/notes/division/3>.

¹⁸ Welfare Reform Act 2012, c. 5, § 16(4–5).

¹⁹ *Id.* §§ 15–18.

III. Fraud Reduction Measures

The Act provides for a strengthened approach to the administration of social security benefits with the aim of reducing both fraud and error, combined with tougher penalties for serious offenses committed under the Act. It also includes powers that enable the Secretary of State to share data with other bodies²¹ and provides for the ability to introduce regulations to require specified individuals to provide information that is or could be relevant for potential or current claims.²²

The Act provides that Universal Credit can be reduced if a claimant fails to meet work-related requirements. Specifically, Universal Credit can be reduced if the claimant

- fails to comply with a work preparation requirement;
- fails to comply with a work search requirement to apply for a particular vacancy for paid work;
- fails to comply with a work availability requirement by not taking up an offer of paid work; or
- stops paid work or loses pay as a result of misconduct, or voluntarily with no good reason.

Regulations issued under the Act will also detail the circumstances under which a claimant will be considered to have failed to meet the requirements.²³ The explanatory notes provide a scenario where a claimant “does not engage properly with the requirement (for example by being disruptive or violent in an interview or on a training course, or where a claimant’s behaviour or appearance undermines their chances of success in a job interview) [and therefore] will not be treated as meeting that requirement.”²⁴

If a claimant fails to comply with the Act’s requirements for obtaining Universal Credit, his or her benefits may be reduced for up to three years.²⁵ The decision to reduce the amount of Universal Credit a claimant receives will be appealable; however, the imposition of work-related requirements and other determinations made in connection with the decision will not be appealable.²⁶ For claimants who face sanctions under the Act, provision may be made for a hardship payment.²⁷

²⁰ *Id.* § 14.

²¹ *Id.* pt. 5.

²² *Id.* § 99.

²³ *Id.* § 25.

²⁴ Welfare Reform Act 2012, c. 5, Explanatory Notes, ¶ 90. <http://www.legislation.gov.uk/ukpga/2012/5/notes/division/3>.

²⁵ Welfare Reform Act 2012, c. 5, § 26.

²⁶ Welfare Reform Act 2012, c. 5, Explanatory Notes, ¶ 101. <http://www.legislation.gov.uk/ukpga/2012/5/notes/division/3>.

²⁷ Welfare Reform Act 2012, c. 5, § 28.

IV. Allowances for Disabled Claimants

The current benefit for disabled people, the Disability Living Allowance, will be replaced by a Personal Independence Payment. This payment has two components: the first is a daily living component, which is payable where a claimant has a medical condition that affects his or her daily living, and the second is a mobility component, payable if the claimant has a medical condition that limits his or her mobility. Individuals will have to apply for this benefit even if they have been receiving the disability living allowance, and will be assessed to determine whether they meet the new requirements.²⁸ The aim of these reforms is to “focus support to those individuals who experience the greatest challenges to remaining independent and leading full, active and independent lives.”²⁹ The details of how this benefit will be provided, and specifics of the assessments to be conducted, will be set out in secondary legislation.

V. Housing Allowances

The Act attempts to create a new approach to housing benefits³⁰ with the aim of stabilizing the market and providing incentives for individuals to work.³¹ Claimants may receive money for their housing if they must make payments on their home, typically in the form of rent, mortgage payments, or other housing costs. When calculating Universal Credit for rent, a claimant’s household size, circumstances, and actual rent will all be taken into account when determining the amount of the award.³² Regulations must be issued under the Act to implement the specific procedures to be followed.

The Act aims to restrict housing benefit entitlements for social housing tenants whose accommodations are larger than they need. In addition, benefits will be capped for tenants who occupy social housing, are of working age, and “under-occupy” their home. Under-occupying the home means that the property has more bedrooms than the government determines the tenants need—for example a single person living in a two-bedroom house will, under the new system, receive the same housing benefit as a person living in a one-bedroom house.³³

VI. Benefit Caps

One of the most high-profile changes that the Act makes is to cap the total amount of benefits that can be claimed. The government reasoned that the continued spending on welfare was unsustainable, with the budget far exceeding that of defense, education, and health

²⁸ *Id.* § 80.

²⁹ *Personal Independence Payment*, DEPARTMENT FOR WORK AND PENSIONS, <http://www.dwp.gov.uk/policy/disability/personal-independence-payment/> (last visited May 8, 2012).

³⁰ Welfare Reform Act 2012, c. 5, § 11.

³¹ Department for Work and Pensions, Impact Assessment, *Impact Assessment for the Household Benefit Cap*, Jan. 2012, <http://www.dwp.gov.uk/docs/household-benefit-cap-wr2011-ia.pdf>.

³² Welfare Reform Act 2012, c. 5, § 11.

³³ DEPARTMENT FOR WORK AND PENSIONS, *supra* note 29.

combined.³⁴ The amount that some households receive in benefits each week in some cases exceeds the wage of individuals who are employed.³⁵ The actual amount of the cap will be introduced by regulations and will provide a figure for the total amount of welfare benefits a couple or individual may receive. The level of the cap will be referenced to the estimated average earnings of a working household. The Secretary of State will determine the best method to estimate this figure.³⁶ Figures have been released indicating that, as of April 2013, the cap on the amount of benefits that couples and single parents of working age receive will be limited to £26,000 (approximately US\$41,500) per year, or £500 (approximately US\$800) per week, and £18,500 (approximately US\$30,000) per year, or £350 (approximately US\$550) per week for single people.³⁷

There are various exemptions from the cap. It does not apply to households that receive a disability living allowance (the future personal independence payment) or an employment and support allowance, or households that include a war widow/widower. Households that are entitled to a working tax credit are also exempt from the cap, as the government aims to increase the incentive for people to work.³⁸ Support for childcare and discretionary housing payments are also not included in the assessment of total benefits received.³⁹

VII. Implementation

Universal Credit is to be gradually introduced, with the large majority of the technical details of the system being introduced through secondary legislation. It will be phased in from 2013–2017. In 2013, no new applicants to the current benefits system will be accepted, and those enrolled that have changes that need to be made will be transitioned to the new system. The second phase will include existing claimants whose circumstances have not changed, with those “whose work behaviour is most likely to benefit from Universal Credit to be prioritised.”⁴⁰ The last phase includes all remaining households and this phase-in is expected to happen by 2017. During these stages there is a provision for pilot programs for any regulations relating to Universal Credit to determine how to make the system simpler to understand or administer; aid people in obtaining, continuing, or increasing their hours of work; or study how the regulations affect the behavior of claimants or other people.⁴¹ The abolition of the existing benefits system will occur once all claimants have been transferred to Universal Credit.⁴²

³⁴ *Id.*

³⁵ *Id.*

³⁶ Welfare Reform Act 2012, c. 5, § 96.

³⁷ DEPARTMENT FOR WORK AND PENSIONS, *supra* note 29.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Policy Briefing: Welfare Reform Act 2012*, LOCAL GOVERNMENT INFORMATION UNIT, <http://www.lgiu.org.uk/wp-content/uploads/2012/03/Welfare-Reform-Act-20121.pdf> (last visited May 8, 2012).

⁴¹ Welfare Reform Act 2012, c. 5, § 41.

⁴² *Id.* § 33.

The Act does provide for interim measures during the transition to Universal Credit for those claiming a jobseeker’s allowance, an employment and support allowance, and income support. These interim measures introduce, among other items, a “claimant commitment,” which is a “record of the requirements claimants are expected to meet in order to receive benefit [sic] and the consequences should they fail to do so.”⁴³

It also appears that the implementation of the work-related requirements will be contracted out to providers in the private and voluntary sector, as the Act specifically provides for these sectors to exercise the functions of the Secretary of State in this area.⁴⁴

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⁴³ Welfare Reform Act 2012, c. 5, Explanatory Notes, ¶ 13, <http://www.legislation.gov.uk/ukpga/2012/5/notes/division/3>.

⁴⁴ Welfare Reform Act 2012, c. 5, § 29.