



## **Welfare Reform Bill (Claimants dependent on drugs, etc) Public Bill Committee stage DrugScope Briefing and amendments**

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DrugScope is the UK's leading independent centre of expertise on drugs and the national membership organisation for the drugs field.

DrugScope's objectives are:

- To provide a national voice for the drug sector
- To inform policy development drawing on the experience and expertise of our members
- To support drug services and promote good practice
- To improve public understanding of drugs and drug policy.

All DrugScope's policy work is shaped by our core values and beliefs.

DrugScope believes in drug policy that:

- minimises drug-related harms
- promotes health, well-being, inclusion and integration
- recognises and protects individual rights
- recognises and respects diversity.

DrugScope is committed to:

- promoting rational drug policy debate that is informed by evidence
  - involving our membership in all our policy work
  - ensuring our policy interventions are informed by front-line experience
  - speaking independently, and free from any sectoral interests
  - highlighting the unique contribution of the voluntary and community sector.
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## DrugScope's position - An overview

DrugScope is grateful to the Public Bill Committee on the Welfare Reform Bill for the opportunity to provide oral evidence on 10 February. A transcript of our evidence is available at:  
<http://www.publications.parliament.uk/pa/cm200809/cmpublic/welfare/090210/am/90210s05.htm>

### **What does the Bill propose for claimants who have or may have drug problems?**

The Welfare Reform Bill proposes a new regime for welfare claimants who have (or are believed to have) drug problems. Initially, the focus will be on people who are dependent on heroin and/or crack cocaine.

The Bill introduces new powers to enable the Secretary of State for Work and Pensions to require claimants to answer questions about drug use, attend a 'substance-related assessment' and undergo one or more drug tests.

The new powers can be used where the Secretary of State has 'reasonable grounds' for suspecting that a claimant has a drug dependency or a propensity to misuse drugs and that this is a factor affecting their 'prospects of obtaining or sustaining employment'. There is no requirement for the Secretary of State to have 'reasonable grounds' before requiring someone to attend for an interview to answer questions about drug use or whether they are undergoing drug treatment.

Claimants with drug problems, or someone who Jobcentre Plus decides has drug problems, can be required to attend drug treatment as part of a 'rehabilitation plan'. During this period they will receive a 'treatment allowance' and requirements such as the actively to seek work requirement may be suspended.

The Bill introduces a benefit sanction regime for claimants who fail to attend an interview to discuss their drug use, a substance-related assessment, submit to a drug test or fail to agree or comply with a rehabilitation plan. Under these circumstances their benefit payments can be reduced or stopped for a period of up to 26 weeks.

Why we support the commitment to provide more support for problem drug users

- People with drug problems are one of the most excluded and marginalised groups in our society;

- The Drug Treatment Outcome Research Study estimates that 80 per cent of problem drug users (i.e. people misusing heroin and/or crack cocaine) are unemployed;
- Participation in training, education, work and other meaningful activity not only promotes social inclusion, but will tend to improve drug treatment outcomes.

Why we oppose the new sanction provisions

- The Bill introduces a new principle and new powers into the social security system: it empowers, for example, the Secretary of State to require benefit claimants to undergo therapeutic treatment as a condition of receiving welfare benefit.
- There is no evidence that introducing compulsion and mandatory requirements as opposed to voluntary and tailored support will improve treatment effectiveness and the number of claimants entering effective treatment.

### **DrugScope's response**

DrugScope welcomes the policy focus on social inclusion for people with drug problems. The welfare system can have an important role in supporting people in and who have been in drug treatment. But we favour an approach that encourages and supports voluntary participation and we have concerns about the fairness and workability of some of the key proposals in the Bill. Specific concerns about the Bill include the following:

- Under these proposals JobCentre Plus staff will seek to identify claimants who they suspect of having drug problems. There will be requirements to answer questions about drug use and treatment, undergo an assessment and a power to require someone to undergo a drug test. It is unclear how JobCentre staff will identify people who have drug problems and whether the JobCentre environment is equipped to facilitate and manage open disclosure of drug problems.
- There are a lack of safeguards in the Bill to balance the very significant expansion in the powers of the Secretary of State. We have concerns that this Bill introduces unprecedented and wide ranging powers with a lack of adequate safeguards. For example, as currently drafted a benefit claimant with a relevant drug problem could be required by the Secretary of State to attend and abide by the rules of a residential drug service. This may effectively determine the form and type of treatment (e.g., detoxification) that a claimant is required to undergo.
- As currently worded the Bill gives the Secretary of State/Jobcentre Plus the power to impose a requirement to undergo a rehabilitation plan and attend drug treatment even where a claimant denies or will not admit that they are a problematic drug user.
- It is important that expectations of the treatment system are realistic. Research has established that recovery journeys out of long term drug dependency can take many years. Often drug users have complex needs, including mental health problems and homelessness.

- Drug users may be compelled into unsuitable or inappropriate services - for example, it is important that someone cannot be required to attend a service that they do not feel is appropriate given their age, gender, ethnicity, culture, religion, sexuality and/or disability status.
- We do not believe that the need for the Secretary of State to receive confidential information from the police force, probation or other people who may be prescribed is demonstrated, and would question its lawfulness. There should be a general presumption against sharing information about criminal records, or that has the potential to incriminate someone, unless this will bring substantial benefits.
- Drug testing should not be introduced into the benefit system. It is an invasive procedure. A drug test can only reveal that a particular substance is present in somebody's body at a particular time. This means, for example, that test results can be identical for someone with serious crack cocaine dependency and for a first time user of powder cocaine.
- We are concerned that the extension of sanctions will deepen poverty and exclusion, could increase crime, will put extra pressure on families supporting people with drug problems, will impact on the quality of therapeutic relationships in drug services if drug workers are involved in 'policing' the system and will create pressures on drug services as clients enter treatment under threat of sanction.
- The Government has so far not provided information on the impact an increase in the number of people accessing services will have on the drug treatment system. Central government funding - the Pooled Treatment Budget - has been frozen for three years. There has been a significant expansion in drug treatment capacity but the funding per person in treatment has been falling in real terms.

We believe that building better links between JobCentres and local drug treatment services and incentivising voluntary disclosure will get more benefit claimants into productive therapeutic relationships than medical examinations, drug tests and sanctions. This kind of approach would have better outcomes for entry into training, education, work and other meaningful activity. This would build on the successful Progress2Work programme which was set up by the Government in 2001.

We recognise, however, that the Government is likely to proceed to introduce the investigative and sanctioning powers contained in the Bill, so many of our amendments seek to ensure that they are balanced by fair and robust safeguards.



## DrugScope proposed amendments to Clause 9

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### 1. Statement of purpose

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#### **Current provision - Clause 9(1), p 14, lines 18-22**

'9 (1) Part 1 of Schedule 3 makes provision for or in connection with imposing requirements on claimants for a jobseeker's allowance in cases where -  
(a) they are dependent on, or have a propensity to misuse, any drug, and  
(b) any such dependency or propensity is a factor affecting their prospects of obtaining or remaining in work'.

#### **Proposed amendment - Clause 9(1), p. 14, lines 18-19**

**delete** 'or in connection with imposing requirements on', **to read** 'Part 1 of Schedule 3 makes provision for claimants for a jobseeker's allowance'.

#### **Purpose of amendment**

To describe the purpose of the regime set out in Schedule 3 as broader than simply the imposition of requirements. (We would welcome similar amendments to the language that is used in Schedule 3 - for example, the paragraph on rehabilitation planning is entitled 'Requirement to comply with a rehabilitation plan' - page 72, line 18.)

#### **Reason for amendment**

The Government has stated that the primary purpose of the Schedule 3 provisions in the Welfare Reform Bill is to provide support for people with drug problems and to help them to access drug treatment, training or work. The language in which the Bill is drafted puts a disproportionate emphasis on the imposition of - and the duty to 'submit to' and 'comply with' - 'requirements'.

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### 2. Restricting application to people with drug dependency

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#### **Current provision - Clause 9(1), p 14, lines 18-22**

'9 (1) Part 1 of Schedule 3 makes provision for or in connection with imposing requirements on claimants for a jobseeker's allowance in cases where -  
(a) they are dependent on, or have a propensity to misuse, any drug, and

(b) any such dependency or propensity is a factor affecting their prospects of obtaining or remaining in work'.

**Proposed amendment - Clause 9(1), p. 14, line 20**

**Delete** ',or have a propensity to misuse', **to read** '(a) they are dependent on any drug, and'.

**line 21 delete** 'or propensity'

**Purpose of amendment**

To restrict the application of the provisions set out in Schedule 3 to people with a drug dependency.

**Reason for amendment**

The term 'propensity to misuse' lacks a precise meaning and is amenable to wide interpretation. It could, for example, be argued that the use of any illegal drug is a form of 'misuse'. Because 'propensity to misuse' can be given a wide interpretation this sets too low a threshold for the powers that the Secretary of State/Jobcentre Plus can exercise. For many people who could be described as having a 'propensity to misuse' drugs, specialised drug treatment may not be appropriate nor available.

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### **3. Restricting application to people who would benefit from drug treatment**

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**Current provision - Clause 9(1), p 14, lines 18-22**

'9 (1) Part 1 of Schedule 3 makes provision for or in connection with imposing requirements on claimants for a jobseeker's allowance in cases where -  
(a) they are dependent on, or have a propensity to misuse, any drug, and  
(b) any such dependency or propensity is a factor affecting their prospects of obtaining or remaining in work'.

**Proposed amendment - Clause 9(1), p. 14, line 22**

**At end of 9(1) insert** 'and (c) the person's dependency or propensity is such as requires and may be susceptible to treatment'.

**Purpose of amendment**

To ensure that benefit claimants are only subject to the investigative powers provided for in Schedule 3 (including drug testing) if there are reasonable grounds for believing that they could benefit from available drug treatment and qualify for the support available within Schedule A1 paragraph 6.

**Reason for amendment**

A benefit claimant can only be subject to a rehabilitation plan if 'the person's dependency or propensity is such as requires and may be susceptible to treatment' (para 6 (2)(a) page 72, line 29-30). But this requirement is not necessary before a claimant is subject to the investigative procedures set out in Schedule A1 paras 1 to 3 (page 69, line 9 to page 71, line 16).

No provision is made in the Bill for people who are identified as having drug problems that are not susceptible to treatment.

It is unfair and administratively inefficient to investigate claimants who may be using drugs but for whom no support will be available.

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#### **4. Drug use should be a 'significant' barrier to work**

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##### **Current provision - Clause 9(1), p 14, lines 18-22**

'9 (1) Part 1 of Schedule 3 makes provision for or in connection with imposing requirements on claimants for a jobseeker's allowance in cases where -  
(a) they are dependent on, or have a propensity to misuse, any drug, and  
(b) any such dependency or propensity is a factor affecting their prospects of obtaining or remaining in work'.

##### **Proposed amendment - Clause 9(1), line 21**

**Before** 'factor affecting' **insert** 'significant' **to read** 'any such dependency or propensity is a significant factor affecting their prospects of obtaining or remaining in work'.

##### **Purpose of amendment**

To restrict the application of Schedule 3 to claimants whose drug use is sufficiently serious to constitute a significant barrier to their prospects of work.

##### **Reason for amendment**

There will be benefit claimants whose drug use might be said to be affecting their prospects of obtaining or remaining in work to some degree, but who would not benefit from available drug treatment or rehabilitation planning. Even occasional or one off use of a controlled drug could be said to affect these prospects - for example, smoking cannabis or drinking heavily the night before a job interview. This will not, however, indicate that someone is suitable for the rehabilitative regime that is provided for in Schedule A1, para 6. The fact that someone is a 'problematic drug user' can be a barrier to finding work and employment because of the reluctance of employer's to employ people with a history of drug use - the drug use of itself may not mean that someone is unable to participate in work or training.

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#### **5. Including a definition of drug dependency**

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##### **Current provision - Clause 9(1), p 14, lines 18-22**

'9 (1) Part 1 of Schedule 3 makes provision for or in connection with imposing requirements on claimants for a jobseeker's allowance in cases where -  
(a) they are dependent on, or have a propensity to misuse, any drug, and  
(b) any such dependency or propensity is a factor affecting their prospects of obtaining or remaining in work'.

**Proposed amendment - Clause 9, to move new sub-clause to provide a definition of 'dependency'**

Add sub-clause - For the purposes of Schedule 3 a person may be described as dependent on any drug only if the person -

- a) is a current user of that drug,
- b) the person would experience physical or psychological withdrawal without that drug, and
- c) the person is unable to achieve voluntary, sustained control over their use of that drug.

**Purpose of amendment**

To include a definition of drug dependency on the face of the Bill.

**Reason for amendment**

The term 'drug dependency' is not currently defined in the Bill, nor is there a commitment to provide a definition in regulations. How this term is defined will be critically important for the application and implementation of the new powers. Given one of the primary purposes of the legislation is to improve links between JobCentre Plus, training and employment services and drug treatment systems it is important that the benefits system is operating with a definition of drug dependency that is congruent with clinical understandings of the term and the way it is applied by drug treatment specialists.

# DrugScope proposed amendments to Schedule 3

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## 1. Safeguards to ensure interviews about drug use are conducted appropriately

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### Proposed amendment - After Schedule A1 1(4) page 69 line 28 insert new sub-paragraph

- (5) Regulations under this paragraph may make provision -
- (a) for ensuring that the requirements are fair and reasonable,
  - (b) for ensuring that such interviews are conducted at such time and place as is appropriate for the disclosure of drug dependence,
  - (c) for the support that will be available to a person at the point of disclosure of a drug problem, and
  - (d) detailing the qualifications and competencies of persons who will be able to impose a requirement to answer questions and to conduct interviews.

### Purpose of amendment

To ensure that interviews about drug use under Schedule A1 para 1 are conducted as fairly, humanely and effectively as possible.

### Reason for amendment

It is unreasonable to expect people to disclose a drug problem in an inappropriate and unsupportive environment. People with drug problems are often fearful of statutory agencies and may feel shame about their drug use and its consequences. Such disclosure requires a level of trust between agency and worker - and people may only feel able to disclose to an interviewer of their own ethnicity, religion, gender, etc. It would be unfair to impose a benefit sanction on someone for failing to disclose a drug problem in an inappropriate or unsupportive environment. It is important to ensure that such interviews are conducted by staff with the skill and experience to handle disclosure sensitively, and that appropriate support is available.

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## 2. Only investigating people if there are reasonable grounds for suspicion

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### Current provision - Schedule A1 2 (3), page 70, lines 1- 9

'2(3) Regulations under this paragraph must include provision for the requirement mentioned in sub-paragraph (1) to be imposed on a person only if the Secretary of State has reasonable grounds for suspecting that -

- (a) the person may be dependent on, or have a propensity to misuse, drugs, and
- (b) any such dependency or propensity may be a factor affecting the person's prospects of obtaining or remaining in work'.

## **Proposed amendment - Schedule A1 2 (3), page 70, lines 2**

**Delete** 'requirement mentioned in sub-paragraph (1)' and **insert** in its place 'requirements mentioned in paragraph 1 and sub-paragraph (1)'.

### **Purpose of amendment**

To ensure that claimants can only be required to answer questions about their drug use where there are reasonable grounds for believing they have a drug problem.

### **Reason for amendment**

As drafted, the Secretary of State must have reasonable grounds for believing that somebody has a drug problem that is affecting their prospects of work in order to require them to take part in a substance related assessment. There is no provision that any reasons need be supplied for requiring someone to attend for an interview to answer questions to help to determine if they have a drug problem that is affecting their ability to work. This gives Jobcentre Plus extremely wide powers to require any claimant to attend and answer questions of a sensitive, potentially incriminating and (as regards undergoing drug treatment) confidential nature. It is unclear what grounds or criteria will apply to trigger the requirement to answer questions about drug use and/or treatment.

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## **3. Safeguards for substance related assessments**

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### **Current provision - Schedule A1 2(4), page 70, lines 10-16**

'(4) Regulations under this paragraph may, in particular, make provision -  
(a) for notifying a person of a requirement to take part in a substance-related assessment;  
(b) for the determination, and notification, of the time and place of any substance-related assessment in which a person is required to take part.'

### **Proposed amendment -**

#### **After Schedule A1 2(4)(b), page 70, line 16 insert**

(c) for issuing the person required to attend for a substance-related assessment with written reasons for the referral, and  
(d) for issuing the person taking part in a substance related assessment with a written report of the assessment findings and the reasons for them.

### **Purpose of amendment**

To require the Secretary of State to provide reasons for referring someone for a substance-related assessment, which could potentially be challenged. To require the Secretary of State to provide someone with a written statement of the findings of the assessment, which could potentially be challenged.

### **Reason for amendment**

The investigative powers introduced by Schedule A1 paragraphs 1 to 3 allow a large degree of discretion to JobCentre Plus staff to identify claimants who they suspect have drug problems. It is not clear how such judgements will be made or what will constitute 'reasonable grounds' for a suspicion that somebody has a drug problem

that is affecting their prospects of work (Schedule A1 2(3), page 70 line 3). Requiring the Secretary of State to provide written reasons for requiring a claimant to take part in a substance-related assessment provides a safeguard against inappropriate use of the new powers established by Schedule A1, para 2. Similarly, no provision is made in the Bill for informing the claimant about, and explaining, the outcome of the assessment and the reasons for it.

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#### **4. Limiting inferences that can be drawn from a refusal to answer questions**

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##### **Current provision - Schedule A1 2(4), page 70, lines 10-16**

'(4) Regulations under this paragraph may, in particular, make provision -  
(a) for notifying a person of a requirement to take part in a substance-related assessment;  
(b) for the determination, and notification, of the time and place of any substance-related assessment in which a person is required to take part.'

##### **Proposed amendment -**

##### **After Schedule A1 2(4)(b), page 70, line 16 insert new sub-paragraph**

'(5) Declining to answer one or more questions under the arrangements set out in paragraph 1 is not in and of itself sufficient grounds for imposing a requirement to take part in a substance-related assessment'.

##### **Purpose of amendment**

To limit the inferences that can be drawn if somebody declines to answer questions about use of drugs, and to ensure the Welfare Reform Bill is consistent with Article 8 of the ECHR - right to respect for privacy and family life.

##### **Reason for amendment**

The Bill provides no indication of what questions a person could be asked for the purposes of ascertaining whether they have a dependency on or a propensity to misuse any drug. Could they be asked if they have ever used drugs or about spent convictions for minor drug offences? Could they be asked about drug use within their family or among friends? Could they be asked more general questions about their attitudes to drugs or drug use? Could they be asked for the reasons that their weight has declined or why they are in a state of agitation, for example? Also someone may decline to answer questions, for example, if they are concerned about, or frightened by, the process, or if it is not sensitive to cultural and other diversity issues. There are a number of reasons for declining to answer questions about drug use in a JobCentre other than to conceal a drug problem.

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## 5. Removal of drug testing provisions

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### **Proposed amendment - Delete Schedule A1 paragraph 3**

#### **Purpose of the amendment**

To remove from the Bill the power for the Secretary of State for Work and Pensions to require somebody to take part in one or more drug tests for the purposes of ascertaining whether there is or has been a drug in the person's body.

#### **Reason for amendment**

Drug testing is an invasive process and it cannot reliably determine if somebody is dependent on drugs or has a propensity to misuse drugs.

Drug testing is not entirely reliable - for example, somebody using over-the-counter pain killers containing codeine could test positive for opiates and users of the United States version of a Vicks Nasal Inhaler have been known to test positive for amphetamines or methamphetamines. While 'false positives' may be comparatively rare, their negative impact on individuals can be substantial.

Drug testing can only reveal if a drug or its metabolites are present in a person's body at a particular time - it can provide no information about levels or frequency of use, nor can it determine whether the person tested is dependent on drugs. Drug testing is not able to distinguish between a person with a long-term dependency on crack cocaine and a person who has used powdered cocaine for the first time.

Although Ministers have stated that the powers in the Bill will focus on identifying heroin and/or crack cocaine users ('problematic drug users'), the power to drug test can apply to *all* illegal drugs. Aside from the significant practical considerations described above, there are important moral, ethical and civil liberties considerations in introducing drug testing to the social security system. The legal basis for the state to exercise the power to require a drug test will be to confirm *a suspicion* that a citizen is using illegal drugs and cannot, as mentioned, establish whether someone is dependent on drugs, whether their drug use is a factor in gaining work or employment or whether the person will benefit from drug treatment.

Submitting claimants of welfare benefits to intrusive drug tests is not a good basis for developing trust and building positive therapeutic relationships. Presumably, treatment providers would know that a client's drug use had only been revealed when they were required to attend a drug test or incur a benefit sanction. This will affect the relationship with the treatment service.

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## 6. Prohibition of drug tests using hair samples

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### **Current provision - Schedule A1, paragraph 3, sub-paragraph (7), page 71, lines 5-9**

'(7) In sub-paragraph (6) "permissible sample", in relation to any drug, means -  
(a) a sample of urine, or  
(b) such sample (other than an intimate sample) as may be prescribed in relation to that drug'.

### **Proposed amendment - 3(7)(b), page 71, line 8**

After 'an intimate sample' **insert** 'or a hair sample from any part of the body' **to read** 'such sample (other than an intimate sample or hair sample from any part of the body) as may be prescribed in relation to that drug'.

### **Purpose of the amendment**

To exclude the use of drug tests on hair completely.

### **Reason for amendment**

A hair test is particularly unsuitable for determining whether a person has a current drug dependency or a propensity to misuse drugs, and could potentially reveal personal information pertaining to a significant period of time. Hair testing can detect whether or not someone has used drugs over a period of as long as 18 months. This period may be disproportionately long for afro-caribbean and other dark haired ethnic groups.

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## 7. Right to appeal against decisions and judgements (and not only sanctions)

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### **Proposed amendment - Schedule A1 paragraph 4, page 71, line 17 insert a new sub-paragraph:**

(1) Regulations may make provision for establishing procedures for appealing the conclusion or outcome of an interview, assessment or test within paragraph 1 to 3 including -  
(a) the basis on which an appeal can be made;  
(b) the grounds on which an appeal will be decided;  
(c) the procedures for processing an appeal, and  
(d) the status and composition of the tribunal that will consider appeals.

### **Purpose of the amendment**

To introduce an entitlement to appeal against the conclusion or outcome of an interview, substance related assessment or drug test.

### **Reason for amendment**

The impact assessment for the Bill explains that there are existing procedures that will be available to a person to appeal against **the imposition of a sanction**. No independent provision appears to have been made for a person to **appeal a decision or judgement arrived at in the investigative processes** introduced by paragraphs 1 to 3. For example, if someone takes part in a substance-related assessment and it is concluded that they have a drug dependency, they cannot challenge this conclusion. People should not be subjected to investigative processes that can result in important judgements and decisions that may be detrimental to them in the absence of proper safeguards, including a right to appeal.

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## **8. Disclosure of information from investigative processes**

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### **Proposed amendment - after Schedule A1 paragraph 4(3), page 71, line 38 insert new sub-paragraph**

(4) No information disclosed by a person in compliance with a requirement imposed by regulations under paragraphs 1 to 3 may be adduced in civil proceedings or in any other circumstances disclosed to third parties without the person's consent, or in circumstances where it is lawful to do so, where this may be detrimental to the person's interests.

### **Purpose of the amendment**

To ensure that no information disclosed by or about a person as a result of the investigative processes in paragraphs 1 to 3 can be used to the person's detriment. (Except in exceptional circumstances where the law permits and/or requires breach of confidentiality, such as risk of serious harm to a child.)

### **Reason for amendment**

While the Bill provides that information that is disclosed in this process cannot be used in criminal proceedings, there is nothing in the Bill as it stands that would prevent this information from being used in civil proceedings (say in the family courts) or in other ways detrimental to the person's interest. It is unreasonable to expect people to disclose information that they know could be detrimental to their interests if communicated to others without clear reassurances that it will not be used against them and about confidentiality. The fact that a requirement to undergo a rehabilitation plan can be *imposed* and the person treated as receiving a 'treatment allowance' - and therefore categorised by Jobcentre Plus as a problem drug user - increases concerns about confidentiality.

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## 9. Removing the information sharing arrangements

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**Proposed amendment - delete Schedule A1, paragraph 5 (page 71, line 39 to page 72, line 17)**

### **Purpose of the amendment**

To remove the powers for the Secretary of State to receive confidential information from the police force, probation service and 'such other person as may be prescribed and to supply it to others.

### **Reason for amendment**

There is a general presumption against sharing information about criminal records or which has the potential to incriminate someone, unless this will bring significant benefits.

As currently drafted, the information sharing provisions give the Secretary of State for Welfare and Pensions new and wide powers to acquire personal information about any benefit claimant from other bodies and agencies and to supply this information to others. Effectively, the Secretary of State could receive information about anyone who had been asked questions about drug use within Schedule A1, paragraph 1. At the least, it is unclear under what circumstances, according to what criteria and on what basis, it would be determined that information provided by the claimant needed to be checked.

Paragraph 5(1) places no limit on what information could be requested and supplied. For example, could the police provide information that someone had been convicted of or arrested for acquisitive crime such as shoplifting and could this be used as a basis to make inferences about drug use? Could they provide information about police investigations that had not resulted in arrest?

We would also question the legality of these provisions. Under data protection laws, data can be retained only for the purposes it was secured. While it is permissible to share this information for the purposes of exposing a fraud or prevention of a crime, this does not appear to apply in this case. JobCentre Plus staff will be able to request this information without providing evidence or grounds for a suspicion that someone has supplied false information. On a matter of law, someone who fails to disclose drug use at interview under these arrangements will not be guilty of a crime, nor of fraud, as these are civil arrangements.

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## 10. Protection from coerced treatment

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### **Proposed amendment - after Schedule A1, paragraph 6(5), page 73, line 5, insert new sub-paragraph**

(6) For the purposes of sub-paragraph 5 a person may not be required to attend for either residential or non-residential treatment institution if -

(a) this would amount to a requirement to comply with a particular form of treatment, or

(b) this would amount to a requirement to comply with a particular belief system, philosophy or religion.

A person may not be required to submit to any form of treatment or treatment regime without their informed consent.

### **Purpose of the amendment**

To ensure that a person cannot in effect be required to comply with a particular form of treatment (for example, to take methadone or to participate in a 12 step programme) or with a belief system supporting a treatment facility.

### **Reason for amendment**

Schedule 3 of the Welfare Reform Bill introduces a significant new power into our welfare system by empowering the Secretary of State for Work and Pensions to require a person to undergo what is essentially medical treatment as a condition of receiving benefit. It is a general principle of British law that a person with the capacity to make decisions about medical treatment should not be subject to compulsion, and, where this is permitted, these powers are subject to safeguards (for example, within mental health and mental capacity legislation).

It appears, for example, that a benefit claimant could be required to leave their home and attend a residential drug treatment services ('treatment as a resident at a specified institution or place'), which may require compliance with a set of rules that operate within that residential service.

The Bill explicitly does not permit or empower the Secretary of State to require a person to submit to a particular medical or psycho-therapeutic process. In practice, however, it is not possible to separate out a requirement to attend a treatment service from a requirement to submit to a particular kind of treatment. What, for example, if someone is required to attend a residential treatment service that only provides detoxification or is based on a particular treatment philosophy or approach.

There are also concerns about the competence of the Secretary of State for Work and Pensions to make decisions about the appropriate medical (and other therapeutic) interventions for persons with a range of drug problems.

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## 11. Provision to use 'contingency management' in rehabilitation

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### **Proposed amendment - after Schedule A1, paragraph 6(6)(i), page 73, line 29 insert:**

'(j) about other provisions that may be made to provide positive incentives through contingency management techniques, to support a person to comply with their rehabilitation plan, reward success and build self-esteem, improve the experience of treatment, address other barriers to work, and improve the prospect of obtaining and remaining in work'.

### **Purpose of the amendment**

To ensure that regulations on the design and content of rehabilitation plans consider the benefits of positive incentives.

### **Reason for amendment**

There is a growing evidence base that providing positive incentives can improve treatment engagement, while building self-esteem by rewarding success - an approach known as 'contingency management'. NICE guidelines on opioid detoxification (CG52) and psycho-social interventions (CG51) recommend the use of contingency management to increase compliance with treatment and to improve physical health care. The UK Clinical Guidelines on Drug Misuse and Dependence state that 'there is a strong evidence base for contingency management'. For the purposes of moving people from welfare into work, the 'rewards' for compliance could be directly linked to supporting effective treatment and improving employability - for example, permitting claimants to "sign on" at the drug treatment service rather than at JobCentre Plus, financial support to take up volunteering opportunities or vouchers to purchase clothes for job interviews.

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## 12. Removal of sanctioning powers

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### **Proposed amendment - delete Schedule A1, paragraph 7, page 73, line 45 to page 74, line 36**

### **Purpose of the amendment**

To remove the power to impose benefit sanctions for failure to comply with requirements imposed on claimants under Schedule A1 paragraphs 1, 2, 3 and 6.

### **Reason for amendment**

Benefit sanctions will tend to deepen poverty and social exclusion, damage the quality of therapeutic relations with drug services and will not, in our view, be effective in increasing the numbers of problem drug users in training, education and employment.

Ministers have given public reassurances that they do not envisage sanctioning powers to be used widely. But given the powers introduced under this Bill - and what

we know about the behaviour of problem drug users and the nature of drug problems - it is easy to envisage the use of benefit sanctions becoming fairly widespread.

Given the current single person's rate for Jobseekers Allowance is £47.95 for 16 to 24 year olds and £60.50 for people aged 25 and over, any reduction beyond this minimum will tend to create significant hardship, and will tend to entrench drug problems. There is a particular concern that families and carers - including some who will be on low incomes themselves - will be left to provide financial support where sanctions are applied.

There is an alternative approach to the use of sanctions, which could deliver better outcomes for individuals, families, communities and tax payers. With the introduction of drug co-ordinators into JobCentre Plus and efforts to integrate the welfare and drug treatment systems better, there is an opportunity to improve encouragement of voluntary disclosure. In addition, access to individualised help and support and space to address drug problems under the 'treatment allowance' provisions would be a significant incentive to disclosure. This could build on the Progress2Work programme which has not been fully evaluated to our knowledge, but which we understand has worked effectively to help many people who have had drug problems back into training and employment.

Such an approach would not identify all (or even a majority) of claimants with drug problems not already in contact with services, but those who did come forward would be motivated to engage with drug services. On balance, we believe that incentivising voluntary disclosure will get more benefit claimants into productive relationships with drug treatment services, and on into training or employment, than benefit sanctions.

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### **13. Limit on use of sanctions**

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#### **Current provision, Schedule A1, paragraph 7(4), page 74 lines 22-28**

'(4) Regulations under paragraph 1,2,3 and 6 may make provision for an income based jobseekers allowance to be payable in prescribed circumstances even though other provision made by the regulations prevents payment of it.

This sub-paragraph does not apply in the case of a joint-claim jobseeker's allowance (corresponding provision for which is made by section 20B(4))'

#### **Proposed amendment - line 25 after 'payment of it.' insert**

'An income based jobseeker's allowance will be payable in these circumstances if, in the opinion of a suitably qualified person, there is good reason to believe that enforcement of a benefit sanction would worsen or prolong the person's drug problem'.

#### **Purpose of the amendment**

To prevent a person being subject to a benefit sanction where there is good reason to believe that this would make their drug problem worse.

### **Reason for amendment**

The Government has stated that the over-riding purpose of the new regime for drug users detailed in Schedule 3 is to address people's drug problems and help them to move into work. To apply sanctions in circumstances where this would entrench a drug problems, and reinforce barriers to training, education and employment is therefore directly contrary to the Bill's purpose. The Explanatory Notes accompanying the Bill explain that paragraph 7(4) creates 'regulation-making powers' which allow for income-based Jobseekers Allowance to be payable at a prescribed rate even though the sanctions might have otherwise prevented hardship. Given the current single person's rate for Jobseekers Allowance is £47.95 for 16 to 24 year olds and £60.50 for people aged 25 and over, we feel that any reduction beyond this minimum will tend to create hardship, and entrench substance misuse among people with drug problems.

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### **14. Information to be included in Secretary of States report to parliament**

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**Proposed amendment - after Schedule 3 paragraph 5(3), page 75, line 22 insert new sub-paragraph:**

'(4) The Secretary of States report to parliament must include information on

- (a) the numbers or people subject to investigation and assessment
- (b) the numbers of people identified as dependent on drugs through investigation and assessment
- (c) the number of complaints about and successful appeals against decisions reached through this process
- (d) the numbers of people subject to sanctions for failing to comply with the processes for investigation and assessment
- (e) the numbers of people required to comply with a rehabilitation plan
- (f) the forms of treatment they have been required to comply with
- (g) the number of complaints about and successful appeals against the conditions set out in rehabilitation plans
- (h) the numbers of people subject to sanctions for failing to comply with a rehabilitation plan
- (i) the number of people who receive full job-seekers allowance despite being subject to sanctions in circumstances such as hardship
- (j) the number of people who were not sanctioned because a suitably qualified person believed it would worsen or prolong their drug problem
- (k) the impact of any sanctions imposed, and particularly their impact on children and families
- (l) treatment outcomes for persons required to comply with rehabilitation plans
- (m) training and employment outcomes for persons required to comply with rehabilitation plans.'

### **Purpose of the amendment**

To ensure that the review of the regime for problem drug users is informed by a sufficiently broad and robust evidence-base.

**Reason for amendment**

The Bill requires the Secretary of State to report to Parliament on the initial operation of the drug provisions within six months of a review period that will last for 24 months beginning from the date when the relevant regulations come into force. At this point, the Secretary of State will either place an order providing for the drug provisions to continue to have effect or to repeal them.

The Bill does not place any requirements on the Secretary of State about the content of the report or about what kinds of evidence will be collected. Nor is there any explicit provision for this to be set out in Regulations.

There is growing concern about the quality of evidence that is collected when some Government initiatives are piloted, and the failure always to evaluate their effectiveness in terms of the most important outcomes. In this instance, for example, there should be a clear requirement to collect and provide information on the numbers of benefit claimants moved into treatment through this regime, treatment outcomes and training and employment outcomes. In the absence of good quality information of this kind, Parliament will not be in a position to assess the impact of the new regime for drug users.