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LIBERTY

**Liberty and the Royal College of  
Psychiatrists Joint Committee Stage  
Briefing and Amendments on the  
Welfare Reform Bill in the House of  
Lords**

**June 2009**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **About the Royal College of Psychiatrists**

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

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## **Introduction**

1. For 75 years Liberty has been active in defending civil liberties and promoting human rights in England and Wales. The Royal College of Psychiatrists, the professional and educational body of doctors specialising in psychiatry in the UK, has been working to promote mental health care within the UK. Our two organisations have been brought together to produce this joint briefing because of the dangerous proposal in this Bill to restrict or suspend a job-seeker's welfare benefits if the person is dependent on, or has "*a propensity to misuse*" drugs – a proposal which has serious human rights implications and may well impact adversely on people seeking help for drug addictions. The provisions in clause 9 and Schedule 3 raise major privacy concerns as they give intrusive powers to question and test all claimants about their drug and alcohol habits. It also gives the power to make secondary legislation to require information sharing about a person's intimate details. This may result in some people withdrawing from the system to ensure that their dependency is not revealed. Our main suggested amendment proposes removing these provisions entirely. If this is not accepted, as a bare minimum we have proposed alternative amendments seeking to alleviate some of the worst excesses of this proposal.

### **Amendment – clause 9 and Schedule 3**

Page 14, line 17, leave out Clause 9.

Page 69, line 21, leave out Schedule 3.

### **Effect**

2. This will remove clause 9 and Schedule 3 from the Bill.

### **Briefing**

3. Clause 9 and Schedule 3 sets out the power under which regulations can be made to impose requirements on any person seeking jobseeker's allowance or claiming an employment or support allowance (which applies to those who are not working because of illness or disability). The regulations can provide that a claimant

be required to attend an interview to answer questions to determine whether he or she is dependent on or has a propensity to misuse any drug and if so, whether this may be a factor in affecting his or her prospects of obtaining or remaining in work. It is unclear whether all claimants will be required to attend such an interview or only some, and if so, what criteria the Department of Work and Pensions (DWP) will use to decide who to ask such questions of. A 'drug' means a 'controlled drug' under the *Misuse of Drugs Act 1971*. This includes well over 100 drugs, and includes some prescription medicines such as morphine, pethidine and methadone. The regulations could also extend the provisions to include alcohol. Most astonishingly, regulations can be made that authorises the supply of information held by the police, the probation service or "*such other person as may be prescribed*" to the Secretary of State or persons providing services to the Secretary of State, in order to check the accuracy of any information provided. The regulations may also set out the circumstances in which such information "*may be supplied by the recipient to others*" and the person supplied with the information may be authorised to use it to amend or supplement any other information they hold.

4. If the Secretary of State has reasonable grounds to suspect a person is dependent on, or has a propensity to misuse drugs, and this is affecting their work prospects, she may require the person to take part in an assessment carried out by a qualified person to determine this. If a person fails (without good cause) to take part in this assessment procedure, he or she may be required to take part in a test to help determine the question. The test involves providing a sample of urine or a non-intimate sample as may be prescribed by the regulations (i.e. a mouth swab). A person seeking such a benefit must comply with any of these requirements even if to do so would be evidence that the person has committed an offence (although this can't be used as evidence against them in any criminal proceeding). A failure to comply with any requirement (unless they have good cause not to) leads to the person's job seeker allowance being refused for up to 26 weeks or a reduction in the amount of an employment and support allowance (the precise details are to be set out in regulations, but this can include completely cutting the allowance).

5. If the Secretary of State is satisfied that a person is dependent on or has a propensity to misuse drugs which is affecting their work and they may be susceptible to treatment a person may be required to submit to treatment (either as a resident or non-resident); take part in specified interviews; and take such other steps as may be specified. A person is not required to submit to treatment without their consent but if

they do not comply, or if they breach a rehabilitation plan, their allowance can be cut as described above.

6. Our organisations have a number of concerns with these proposed measures. These proposals will seriously interfere with the right to privacy under article 8 of the *Human Rights Act 1998* (HRA).<sup>1</sup> Requiring all those on job-seeker's, employment and support allowances to answer questions about their drug and alcohol use; to require them to undergo tests; and to allow the police, probation services and any other prescribed person to provide information about the person's drug use to anyone, quite clearly engages the right to privacy. Such interference can only be justified if it is necessary and proportionate. The government, in its explanatory notes, has simply stated that they "*will put safeguards in place so that it will not affect a person's private life and therefore does not contravene Article 8*".<sup>2</sup> This is completely unacceptable. Legislation should not be passed on the promise by the executive that safeguards will be inserted once the legislation is enacted. The government also claims that even if there was an interference with privacy it could be justified on the ground that it is necessary to safeguard the "*economic well-being of the country*" (which is one of the listed exceptions in article 8). Is the government seriously arguing that stripping dependent drug users or alcoholics of their benefits is necessary to safeguard the economic well-being of the UK? Surely there are other more pressing measures that should be adopted to ensure the future of the UK's economy. This argument does not stand up to the slightest bit of scrutiny.

7. We are particularly concerned by the provision enabling the Secretary of State and DWP employees to have access to police and probation records and the unlimited general power to prescribe any other person from whom information can be obtained to check up on the answers a person has given in relation to their drug or alcohol use. No limitation is imposed on this so this could become a routine procedure, without the need for any suspicion of drug use. Indeed, the government's consultation paper on welfare reform<sup>3</sup> said that JobCentre Plus should be informed about any Drug Rehabilitation Requirements entered into as part of community sentences and information about ex-prisoners should be shared with them. A person

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<sup>1</sup> Article 8 of the *European Convention of Human Rights* as incorporated by the HRA. These provisions may also lead to a breach of article 14 of the HRA (the non discrimination provisions), in that it discriminates against those dependant on drug and alcohol.

<sup>2</sup> Explanatory Notes at paragraph 418.

<sup>3</sup> *No-one written off: Reforming welfare to reform responsibility*, 2008, available at: <http://www.dwp.gov.uk/welfarereform/noonewrittenoff/noonewrittenoff-complete.pdf>

providing such information will be doing so pursuant to this new legislation and as such the data protection principles provided for in the *Data Protection Act 1998*<sup>4</sup> will not apply. Such information is highly personal and it is worrying, given this government's history of data loss, that such information may be provided to an unspecified number of people. We are also concerned that the regulations may require drug counsellors to provide information about their clients to the DWP. This would fundamentally alter the confidential nature of the relationship between counsellors and clients and may breach patient confidentiality.

8. At a more practical level, these measures will discourage many problem drug users from applying for benefits and may mean a number of people will withdraw from the system to ensure that their dependency does not become public. Many people dependent on drugs hide the problem from their friends and family and, indeed, do not even admit their addiction to themselves. Imposing what, in effect, amounts to forced treatment also shows a failure to understand the fundamental nature of addiction and the method by which it is treated. These provisions are likely to act as a further barrier to employment; may increase the risk of social exclusion; and risks increasing crime rates and entrenching the cycle of dependency. These provisions should be rejected and removed from the Bill.

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<sup>4</sup> See section 35 which provides that personal data is exempt from the non-disclosure provisions where the disclosure is required by or under any enactment.

## **Alternative amendments**

- A** Clause 9, page 14, line 20, leave out ‘, or have a propensity to misuse, any drug’ and insert ‘any drug, other than a drug prescribed to them by a medical practitioner’.
- A** Clause 9, page 14, line 21, leave out ‘or propensity’.
- A** Schedule 3, page 69, line 32, leave out ‘, or have a propensity to misuse, any drug’ and insert ‘any drug, other than a drug prescribed to them by a medical practitioner’.
- A** Schedule 3, page 70, line 1, leave out ‘or propensity’.
- A** Schedule 3, page 70, line 16, leave out ‘, or have a propensity to misuse, any drug’ and insert ‘any drug, other than a drug prescribed to the person by a medical practitioner’.
- A** Schedule 3, page 70, line 18, leave out ‘or propensity’.
- A** Schedule 3, page 70, line 37, leave out ‘, or has a propensity to misuse, any drug’ and insert ‘any drug, other than a drug prescribed to the person by a medical practitioner’.
- A** Schedule 3, page 70, line 39, leave out ‘or propensity’.
- A** Schedule 3, page 71, line 5, leave out ‘, or have a propensity to misuse,’ and insert ‘any drug, other than a drug prescribed to the person by a medical practitioner’.
- A** Schedule 3, page 71, line 7, leave out ‘or propensity’.
- B** Schedule 3, page 71, line 20, leave out paragraph 3.
- C** Schedule 3, page 72, line 18, leave out paragraph 4.
- D** Schedule 3, page 72, line 39, leave out paragraph 5.
- E** Schedule 3, page 73, line 20, leave out ‘imposing on a person a requirement to comply’ and insert ‘providing a person’.
- E** Schedule 3, page 73, line 22, leave out ‘the requirement mentioned in subparagraph (1) to be imposed on’ and insert ‘a rehabilitation plan to be given to’.
- A** Schedule 3, page 73, line 27, leave out ‘, or has a propensity to misuse,’ and insert ‘any drug, other than a drug prescribed to the person by a medical practitioner’.
- A** Schedule 3, page 73, line 29, leave out ‘or propensity’.

- A** Schedule 3, page 73, line 31, leave out 'or propensity'.
- E** Schedule 3, page 73, line 37, leave out 'requirements' and insert 'proposals'.
- E** Schedule 3, page 73, line 38, leave out 'requirements' and insert 'proposals'.
- F** Schedule 3, page 73, line 39, leave out 'or, if the case is exceptional, 104 weeks'.
- E** Schedule 3, page 73, line 41, leave out 'must'.
- E** Schedule 3, page 73, line 43, leave out 'must'.
- E** Schedule 3, page 73, line 45, leave out 'must'.
- A** Schedule 3, page 73, line 47, leave out ', or propensity to misuse,'.
- E** Schedule 3, page 74, line 1, leave out 'required' and insert 'proposed'.
- E** Schedule 3, page 74, line 8, leave out 'is required' and insert 'has agreed'.
- E** Schedule 3, page 74, line 12, leave out 'is required' and insert 'has agreed'.
- G** Schedule 3, page 74, line 15, leave out 'of a prescribed description'.
- E** Schedule 3, page 74, line 26, leave out 'is required' and insert 'has agreed'.
- E** Schedule 3, page 74, line 32, leave out 'is required' and insert 'has agreed'.
- E** Schedule 3, page 74, line 36, leave out 'are required' and insert 'have agreed'.
- H** Schedule 3, page 74, line 40, leave out 'unless the person would (apart from the regulations) be required to meet the jobseeking conditions at that time'.
- I** Schedule 3, page 74, line 46, leave out '1, 2, 3 or 6' and insert '1 or 2'.
- J** Schedule 3, page 75, line 6, leave out 'are, or are not, to' and insert 'may'.
- J** Schedule 3, page 75, line 9, leave out ', or is not,'.
- K** Schedule 3, page 75, line 15, leave out 'of at least one week but not more than 26' and insert 'not more than 4'.
- K** Schedule 3, page 75, line 20, leave out 'of at least one week but not more

than 26' and insert 'not more than 4'.

**I** Schedule 3, page 75, line 22, leave out '1, 2, 3 or 6' and insert '1 or 2'.

**L** Schedule 3, page 75, line 44, leave out paragraph 9.

**I** Schedule 3, page 76, line 15, leave out '2, 3' and insert '2'.

**M** Schedule 3, page 76, line 17, leave out '24' and insert '12'.

**M** Schedule 3, page 76, line 22, leave out '6' and insert '3'.

## **Effect**

### *Amendment A*

9. This amendment amends the broad application of the requirements on jobseekers so that it will not apply where a person has a 'propensity to misuse' drugs, rather than be dependent upon them. These amendments will also amend the Bill so that dependence on a drug prescribed to the person by a medical practitioner is not covered, as there are some drugs listed in the *Misuse of Drugs Act 1971* (which the definition of 'drugs' comes from) that are prescription drugs (such as methadone etc).

### *Amendment B*

10. This will leave out paragraph 3 from the Schedule which would require a person to be drug-tested.

### *Amendment C*

11. This will leave out paragraph 4 from the Schedule which would require a person to comply with a requirement to answer questions, undergo drug testing etc, even if to do so would constitute evidence of a criminal offence. While the Schedule states that no evidence may be given in criminal proceedings relating to any answer given or anything else done under this, this does not stop a criminal investigation being commenced as a result of the answers given or the results of the test.

*Amendment D*

12. This will leave out paragraph 5 from the Schedule which would allow Regulations to authorise the supply of information from the police, probation service or any other prescribed person to check the accuracy of a person's answers as to whether a person is dependent on drugs.

*Amendment E*

13. These amendments are intended to change the requirement to comply with a rehabilitation plan to one where a person has freely consented to that plan.

*Amendment F*

14. This will amend paragraph 6(4) of Schedule 3 to ensure that the period for a rehabilitation plan cannot be extended to 104 weeks. Currently this clause would allow a rehabilitation plan to be prescribed for a period that does not "*exceed 52 weeks or, if the case is exceptional, 104 weeks*". 52 weeks, or almost one year, is more than enough and 104 weeks is excessive.

*Amendment G*

15. This will amend paragraph 6(6)(c) to ensure that a person is not required to submit to treatment without the person's consent – taking out the phrase "*of a prescribed description*", in order to cover all types of treatment.

*Amendment H*

16. This will remove words from paragraph 6(8) of Schedule 3 to ensure that the subparagraph provides that Regulations made in respect of a rehabilitation plan cannot impose a requirement on a person at any time.

*Amendment I*

17. These are consequential amendments to renumber as a result of previous amendments made.

#### *Amendment J*

18. This will amend paragraph 7(1)(b) and (c) to ensure that matters cannot be prescribed in the Regulations to set out what cannot be taken into account in determining whether a person has a good cause for failing to comply with a requirement imposed by the Regulations. Defences of this kind should not be excluded by the Regulations but left to be decided on a case-by-case basis.

#### *Amendment K*

19. This will reduce the period of time by which a person's jobseeker allowance can not be paid, down from 26 weeks to 4 weeks. A penalty of non-payment of welfare benefits of potentially more than 6 months could seriously affect a person's ability to support themselves and any dependant family members.

#### *Amendment L*

20. This will remove paragraph 9 from Schedule 3 to ensure that the provisions in Part 1 of Schedule 3 will not be able to be extended to alcohol.

#### *Amendment M*

21. This amends the time by which the Secretary of State must review the operation of any Regulations made under this Schedule, from 24 months to 12 months. It also amends the time by which the Secretary of State must lay the report before Parliament, from 6 months to 3 months. This is to ensure the review and the report process is carried out much quicker in order to ensure some accountability over these substantial amendments.

#### **Briefing**

22. The provisions in clause 9 and Schedule 3 are so intrusive, invasive, unnecessary and counter-productive, and most likely in breach of the *Human Rights Act 1998*, that we do not believe they should remain in this Bill at all. However, if this position is not adopted, at the very least the amendments set out above should be adopted to ensure the worst excesses of this scheme are tempered. At the very least this scheme should not force a person to undergo drug testing. Nor should it

force a person to comply with a rehabilitation plan, as it is clear that to do so is of no use in terms of helping a person addicted to drugs, given consent to such treatment is essential. It should certainly not allow potentially sensitive and confidential health records, and criminal records, to be shared with JobCentres in order to check up on the accuracy of a person's statements (particularly where this may impact on a person's willingness to seek drug counselling etc). It should also not apply when a person has merely a 'propensity to misuse drugs' as this could cover a wide range of people. Nor, indeed, should it be extended to alcohol, which is a perfectly legal substance and used by the majority of the population – often in ways that may, at times, be a factor affecting a person's work. It should not be a requirement to provide such information even if to do so might constitute a criminal offence, because even if the information cannot be used in evidence in court it can be used to begin an investigation and therefore arguably contravenes the right against self-incrimination. Further, a sanction whereby a person's welfare benefits can be cut off for up to 6 months is excessive and should, at the very least, be reduced. We reiterate that these provisions should be removed in their entirety as they are completely unacceptable for the reasons set out above. If not, the bare minimum should be the alternative amendments proposed here.

23. If the alternative amendments are accepted the same amendments will need to be made to Part 2 of Schedule 3.