Social Security Bill 1997/98
[Bill 42 of 1997/98]

Research Paper 97/93

17 July 1997

The Social Security Bill introduces changes to simplify decision making and appeals. There are also national insuPrance contribution measures to close loopholes and align rules with tax provisions. There are also a number of miscellaneous changes, including a power to reduce child benefit for lone parents and the restriction of the backdating of benefit.

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Summary

The Social Security Bill was laid on 9 July 1997. Part I aims to simplify decision making and appeals in social security child support and vaccine damage payments. Many of these provisions are based on proposals made by the previous Government. Provisions in Part II are intended to close loopholes which allow people to avoid payment of national insurance contributions and to bring more alignment between rules on national insurance contributions and tax. Part III makes a number of changes to benefit rules. The main ones covered by this paper are the power to reduce child benefit for lone parents and the restriction of the backdating of benefit. The child benefit changes were originally proposed by the previous Government. The restricting of backdating goes rather further than changes introduced recently by the previous Government in regulations.

The debate on Second Reading is scheduled for 22 July 1997.

I Administration, decisions and appeals

A. The administration of social security

The Department of Social Security consists of a small headquarters and five Next Steps Agencies.[1] Together with local authorities, who administer housing benefit and council tax benefit, the Agencies deliver nearly £93 billion of benefits.[2] They are:

- The **Benefits Agency**, which assess and delivers most benefits
- The **Contributions Agency**, which collects National Insurance contributions
- The **Child Support Agency**, which organises child support and maintenance
- The **Information Technology Services Agency** which provides or organises the IT services needed to deliver social security
- The **War Pensions Agency**, which delivers benefits and welfare services to war pensioners

By far the largest of these is the Benefits Agency, where nearly 80% of the DSS's 94 000 staff work.[3] Altogether, 97% of the Department's staff work in the Agencies.

B. The costs of administration

Administration costs totalled nearly £4 billion in 1996-97, accounting for just over 4% of all social security spending.[4] In a speech last year, the then Secretary of State for Social Security, Peter Lilley, pointed out that while this was not a large proportion, it was larger than the entire budget for the DTI.[5]

Administration costs as a percentage of benefit expenditure vary considerably from benefit to benefit, ranging from 36.7% for the social fund, where cases involve a detailed personal assessment which may or may not result in an award, to 1.1% for retirement pensions.[6]

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1 For details of the Next Steps programme see Library Paper 97/4

2 1996-97 estimated out-turn. Source: *Social Security Departmental Report 1997-98 to 1999-2000,* Cm 3613, March 1997, Fig 3

3 Full-time equivalents. Source: *Departmental Report,* p 37

4 Includes Housing and Council Tax Benefits costs. Source: *Departmental Report* p.8

5 *Welfare State of the Art The Future of Social Security Delivery,* Speech given by Peter Lilley to Senior Managers of the DSS and its Agencies, 28 February 1996 p.1

6 1995-96 figures. Source: *Social Security Departmental Report: The Government's Expenditure Plans 1996-97 to 1998-99* pp 16-17

C. The quality of decision making

Currently, the Central Adjudication Services (headed by the Chief Adjudication Officer) is an independent body which provides advice and guidance to adjudication officers (AOs) within the Benefits Agency and the Employment Service. The CAO also monitors standards of adjudication, through examination of a sample of adjudication decisions. The CAO comments on those cases where he considers the AO's adjudication was factually or legally incorrect or where he considers the AO had insufficient evidence to base a decision on. While the CAO's role is to comment on the accuracy of adjudication rather than the accuracy of benefit payments, he has in the last two years distinguished those cases where the accuracy of payment is uncertain.

The table below shows the rate of comments made by the CAO for a range of benefits over the past five years, distinguishing in 1995/96 and 1996/97 those cases where payment may have been incorrect.

Table 1

Chief Adjudication Officer's Assessment of Adjudication Decisions

comments raised as a proportion of decisions examined

						Comments involving possible payment errors	
	1992/93	1993/94	1994/95	1995/96	1996/97	1995/96	1996/97
Attendance allowance	..	22%	15%	26%	22%	18%	13%
Child benefit	10%	12%	4%	2%	5%	2%	2%
Disability living allowance	30%	29%	31%	40%	31%	22%	20%
Disability working allowance	12%	13%	18%	22%	69%	18%	68%
Family credit	26%	27%	30%	26%	37%	23%	35%
Income support (new and repeat claims)	56%	48%	38%	41%	45%	38%	40%
Income support (review decisions)	33%	32%	23%	36%	34%	32%	32%
Invalid care allowance	..	15%	12%	14%	9%	4%	4%
Retirement pension/widow's benefit	6%	5%	10%	9%	2%	2%	0%
Contributory disability and maternity benefits	..	..	34%	27%	22%	7%	3%
Social fund (funeral payments)	..	55%	74%	74%	79%	64%	69%
Social fund (maternity payments)	..	8%	16%	6%	12%	4%	6%
Unemployment benefit	41%	39%	35%	32%	27%	25%	22%

Source: Annual report of the Chief Adjudication Officer 1995/96, 1996/97

There has been little consistent reduction in comment rates over this period. While the proportion of decisions on some contributory benefits and on child benefit attracting comment has fallen, there has been little improvement on means tested benefits. Last year 69% of

disability working allowance decisions attracted comment[7], as did more than one in three decisions on family credit and income support and over ¾ of decisions on funeral payments from the social fund. Moreover, a high proportion of these comments were on cases where payment may have been incorrect; in around one in three family credit and income support cases and in over two in three disability working allowance and funeral payments cases payment was either incorrect or doubtful.

The largest proportion of comments on the accuracy of decisions is on the grounds of insufficient evidence. In particular, the CAO has drawn attention to incomplete and inconsistent information on income for income support claims and on a failure to investigate fully the reasonableness of claims for funeral payments[8].

D. The change programme

1. Context

The previous Government launched a number of initiatives to try to control the rising costs of social security. In July 1993, Peter Lilley published a paper which he hoped would initiate a debate on social security expenditure[9]. This was followed by a number of changes to benefit entitlement rules designed to curb costs, for example the introduction of Incapacity Benefit in April 1995 and Jobseeker's Allowance in October 1996. In January 1995, Mr Lilley initiated a fundamental review of running costs expenditure, which aimed to "bring forward proposals which could deliver a step change reduction in Departmental running costs in the long term".[10]

More generally, there have also been moves in recent years to control the running costs of Government departments. In the 1994 Budget, the then Chancellor, Kenneth Clarke, announced a freeze in cash terms in central Government running costs for the four years to 1997-98, which would represent a real reduction of 10%.[11] In the following Budget he announced a further cash cut of 5% on top of the previous cuts over the three years to 1998/99, which in real terms represented a cut of 12%.[12] A letter from Peter Lilley to the then Chief Secretary to the Treasury, William Waldgrave, leaked to the press during the pre-Budget negotiations reportedly said that the proposed settlement filled him with "despair" and that the impact on operations would be "devastating".[13] Later Mr Lilley reportedly said that this had related only to the first year cuts the Treasury had sought, and that the scale of change demanded had been achieved in the private

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7 The CAO attributes this to a failure to adapt to the residence and presence test introduced in February 1996.

8 *Annual Report of the Chief Adjudication Officer 1996-97* pp 15, 30

9 *The Growth of Social Security*, DSS, 1993

10 *Departmental Report* p. 73

11 HC Deb 29.11.94 c. 1086

12 HC Deb 28.11.95 c. 1059. See also "Waldegrave cuts Whitehall by 12% and targets Quangos", Treasury Press Release 163/95, 29 November 1995

13 See "Civil Service cuts to bring down taxes", *Independent*, 15.11.95

sector.[14] According to press reports, Mr Lilley was given special dispensation to avoid the full impact of the cuts, partly because the Department's work on fraud would require more officers.[15]

2. The Announcement

On 8 February 1996, Mr Lilley announced on the "Today" programme that Departmental efficiency gains of 25% would be sought over the next three years. Further details were given in a speech to DSS senior managers on 28 February where Mr Lilley set out the need for productivity increases of 25% over the next three years to absorb inflationary increases and increasing workloads:[16]

> NEED FOR A STEP CHANGE
>
> Significant further running cost savings cannot be achieved just by more pruning or working harder. But in recent years, many large organisations have shown that step changes in efficiency in a very short space of time are possible. Some businesses have improved productivity by 20, 30 even up to 50 per cent. From my experience in both business and this Department I am convinced we have people at least as bright, managers at least as experienced and staff at least as committed as any in the private sector. So I am convinced that a large step change should also be possible for this Department. I set up a Change Management Team spanning all the agencies and HQ. They have discussed ideas for change with staff at all levels. And we consulted businessmen who have successfully implemented similar changes in their organisations. As a result we concluded that we should aim to absorb both inflationary increases in pay and costs and increasing workloads over the next three years. That means aiming to increase productivity by 25 per cent. That is a daunting task. Nonetheless I am convinced that it is feasible. Indeed, following leaked correspondence between the shadow front bench team we know that this is now a bipartisan view!

The proposals have often been referred to in the press as planned cuts in administrative costs of 25%. It is important to emphasise that they are planned productivity gains. Planned expenditure on departmental administration for 1998-99 actually rose from £3,105 million to £3,238 million between the publication of the 1996 and 1997 Expenditure White Papers, although the 1997 plans showed that this amount would be frozen for 1999-2000.[17]

The reference to correspondence between the Labour front bench team was to reports of a leaked letter from Andrew Smith, the then shadow Chief Secretary to the Treasury. This reportedly suggested that the running costs savings proposed by the Government were "perfectly feasible given the opportunity for efficiency gains and the scale of investment already undertaken".[18] Earlier in the month, the then shadow Social Security Secretary, Chris Smith had reportedly said

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14 "Benefits pushed to breaking point", *Independent*, 9.2.96

15 *Ibid*

16 Op Cit - see under Costs of Administration for footnote number

17 Source: *Public Expenditure Statistical Analyses 1996-97*, Treasury CM 3201, March 1996, Table 3.7 and *Public Expenditure Statistical Analyses*, Treasury CM 3601, March 1997, Table 5.7

18 See "Labour 'hypocrisy' attacked in welfare spending row", *Times*, 21.2.96

that the benefit system would be "pushed past breaking point" if the changes went ahead.[19] The *Times* reported a joint statement from Andrew Smith and Chris Smith issued on 20 February that "sensible savings in administration and fraud are highly desirable but the Government's particular proposals are open to serious question, both in terms of timescale and the effect on frontline services".[20]

E. The Green Paper - context and aims

On July 1996, the Conservative Government published a Green Paper, *Improving decision making and appeals in social security* (Cm 3328). In the Foreword, Peter Lilley explained the context of the consultation:

> Earlier this year, I announced my proposals for a radical reform of the way in which the Department carries out its business. My aim is to modernise Social Security administration. I want to see improved accuracy and security built into all our procedures from the start. If we get things right first time, we will improve efficiency as well as quality and reduce abuse of the system. This involves simplifying rules, changing traditional practices and making best use of new technology. It also means providing incentives for those who use our services to help us to get things right. A key factor is the legal framework for decisions and appeals.
>
> I believe that it is possible to improve significantly the administration of our decisions and appeals arrangements. This consultation document outlines proposals for streamlining these processes so as to provide a better, more responsive service to the public whilst reducing our administration costs. These proposals also maintain the important principles (which I am determined to uphold) that decisions should be taken in accordance with the facts and the law and that there should be a right of appeal to an independent body when decisions are disputed.

The aims of the new approach to decision making and appeals are set out as follows:

> To improve the processes for decisions and appeals; to produce a less complex, more accurate and cost-effective system for making and changing decisions; and to preserve customers' rights to an independent review of decisions, in appropriate cases.

The consultation period lasted until October 1996. An analysis of responses carried out by the Social Policy Research Unit at York University for the DSS was published on 23 June 1997.(referred to hereafter as the SPRU analysis).[21] This summarised the general response as follows:

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19 "Benefits pushed to breaking point", *Independent*, 9.2.96

20 See Footnote 18

21 *Consultation on Improving Decision Making and Appeals in Social Security: Analysis of Responses*, Roy Sainsbury, Social Policy Research Unit, DSS, 1997.

General response to the Green Paper (Chapter Two)

The overall aims of improving decision making and appeals were widely welcomed, The decision making and appeal arrangements were acknowledged by many respondents as being complicated and difficult to understand. Variable standards of first-tier decision making were frequently recognised and confirmed.

There was general support for the aims of reforming decision making and appeals. There was less support and some opposition to the range of proposed measures to achieve them.

The case for change was challenged in over 50 submissions. It was felt by some respondents, for example, that there was a lack of evidence for many of the problems identified in the Green Paper, and for the link made between problems and the actions and behaviour of claimants.

The Green Paper was also criticised for:

- concentrating on administrative savings and not on the interests of claimants;
- not connecting reform of social security administration with reform of benefit rules and regulations;
- not identifying training and resources as contributing to standards of decision making; and
- not discussing the resource implications of the proposals.

Summaries of responses from this document on particular issues will be covered below.

No White Paper has been published to explain what changes are going to be taken in response to the consultation. However, the present Government is going ahead with most of the propsals, although with some modifications in the light of the consultation. Proposals to include supplementary allowances for war pensions and discretionary social fund decisions in the new appeals process have been dropped.[22]

F. Changes introduced in regulations

1. Appeals

[22] Source: DSS

The *Social Security (Adjudication) and Child Support Amendment (No. 2) Regulations*[23] were laid on 27 September 1996 and came into effect on 21 October 1996. They were debated in Standing Committee on 7 November 1996.[24] The main changes were:

- Applications for appeals must normally be made on an approved form, and must give details of the decision appealed against, and a summary of the arguments.[25]
- The tribunal will decide the appeal on paper instead of at a hearing unless the claimant asks for an oral hearing, or the chairman orders it.[26]
- A full statement of the reasons for the decision will only be given if the claimant requests it within 21 days.[27]

There was criticism of the way in which the Regulations were laid during a Parliamentary Recess although this was rejected by the then Government[28]. There were also concerns that appellants would be disadvantaged by the changes - for example, if they failed to ask for an oral hearing, as success rates where appellants attend their appeals (particularly where they are represented) are considerably higher than if they do not.[29]

2. Claims for benefit -onus of proof

The Green Paper sought views on practical ways of reinforcing claimants' responsibility to provide supporting information with their claims. It stated that the then Government was "considering bringing forward regulations so that a claim would not be accepted until a certain level of evidence was supplied with it".[30] Regulations were indeed brought in (following consultation with the Social Security Advisory Committee, the independent body with a statutory duty to advise the Government on Social Security matters) to tighten up claims procedures for Income Support and Jobseeker's Allowance.[31] Before the changes, these allowed claims to be made either on an application form or in another manner. They also allowed the first date of contact, or the date the application form or letter arrived in the benefit office to be treated as the date of claim. The new regulations mean that, from 6 October 1997, a claim for one of these benefits will normally have to be on a form approved by the Secretary of State and will have to include required information. In addition, the date of claim

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23 SI 1996/2450

24 Sixth Standing Committee on Delegated Legislation, 7 November 1996

25 Regulation 4. The chairman of the tribunal has discretion to hear an appeal not on an approved form.

26 Regulations 10,12 and 13

27 Regulations 11, 12 and 13

28 *Ibid*, cc 3 and 25

29 "Social security tribunals: new procedures" Tony Lynes, *Legal Action*, June 1997, pp 24 - 25.

30 Green Paper, para. 4.8

31 Social Security (Miscellaneous Amendments)(No. 2) Regulations SI 1997/793

will only be the date when the claimant first contacted the office if he or she submits a properly completed claim form within one month.

G. Decisions about benefits - the Bill's provisions

1. Status of decision makers

The law sets out a number of different types of decision maker at the first tier, including Adjudication Officers (AOs), Social Fund Officers (SFOs), Child Support Officers (CSOs) and the Secretary of State (through officials acting on his or her behalf).

Most benefit claims are decided by AOs, who are legally independent from ministers and departmental managers when making decisions even though they are employed and managed by the Departmental agencies. This is because the way in which they decide claims is set out in legislation. The Secretary of State cannot instruct them on how to decide a claim and cannot overturn their decisions. The independent Chief Adjudication Officer (CAO) advises AOs on the interpretation of the law, and reports annually to the Secretary of State on adjudication standards as discussed on page 7.

Some issues (for example, those concerning administrative questions such as methods of payment) are decided by the Secretary of State. There is generally no right of appeal against these decisions - the only recourse would be a review or judicial review.

The Green Paper proposed that in future, the law should not prescribe the status of the decision-maker for different types of decisions. Instead all decisions would be taken by the Secretary of State. It stressed that this "would not diminish existing appeal rights, which should properly relate to the nature of the decision being taken, not to the legal status of the person taking it."[32] Furthermore, it proposed that Chief Executives of Agencies would be responsible for monitoring and reporting on adjudication standards, rather than the CAO.[33]
The SPRU analysis of responses reported that almost half the submissions contained an expression of support for the idea of a single status decision maker, with respondents expecting this to be less confusing for claimants. Opposition to the proposal was on two grounds: first that there was no convincing case for change, and secondly, that there would be an unacceptable loss of independence for first-tier decision makers if the Secretary of State took on the role.[34]

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32 Green Paper, para 4..9

33 Green Paper, para 4..4

34 SPRU, p.xii

Clause 1 of the Bill would transfer the functions of adjudication officers, social fund officers and child support officers to the Secretary of State. **Schedule 7** would repeal Part II of the *Social Security Administration Act 1992*, which sets out the existing adjudication and appeals system. Part II currently contains provisions for adjudication officers. The role of the Chief Adjudication Officer, who gives guidance on adjudication and monitors and reports on standards, is also abolished by the repeal of Part II.

Clause 2 makes it clear that any decision which should be made by the Secretary of State may be made not only by one of her officers acting under authority, but also by a computer operated by one of these officers. This is a new provision. Currently simpler benefit cases are in effect decided by a computer, but an adjudication officer has to sign the schedule so that a "decision" has formally been made. Clause 2 would remove the need for this.

Clause 9 sets out the powers of the Secretary of State to decide claims on various benefits - basically all benefits other than housing benefit and council tax benefit, which will continue to be administered by local authorities.

2. Revising and superseding decisions

At present, people who wish to challenge a decision can ask for a review or an appeal. A review means that the adjudication officer looks at the decision again. An appeal means that an independent tribunal looks at the decision. The Benefits Agency can also initiate a review of a decision. Reviews can take place because a decision was incorrect, or because a person's circumstances have changed. The precise grounds for reviewing decisions are set out in legislation, and there are different review mechanisms for different benefits. For Disability Living Allowance (DLA), an internal review is a compulsory tier of the appeals process.

The Green Paper proposed a system of informal reviews to enable people to challenge decisions about entitlement. The intention was that "the scope for correcting decisions...would be wider than the current review mechanism, where decisions can be changed only on more limited grounds, for example, ignorance or mistake as to fact or law."[35]

The SPRU analysis of responses reported many expressions of support for the broad aim of providing informal reviews. However, advice agencies were concerned that unrepresented claimants could be disadvantaged, and suggested that they should be advised to seek assistance and should have the right to representation. Opinion was split as to whether the DLA model of compulsory reviews before appeals should be followed.[36] Following the consultation, the present Government is proceeding with the new informal procedures. These are to be administrative matters rather than being governed by legislation.

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35 Green Paper, para. 4..21

36 SPRU, p 10

However, the Bill does introduce two new terms as part of the replacement of the old review mechanism. **Clause 10** provides for the Secretary of State to ***revise*** decisions while **clause 11** provides for her to ***supersede*** them. *Revising* is to be used where the original decision is found to be incorrect, while *superseding* is to be used where there has been a change of circumstances. The difference lies basically in when the decision takes effect, and therefore what backdating is permitted. Where a decision is revised, the new decision takes effect from the date of the original decision, so that any new benefit can be backdated to then. Where it is superseded, changes only take effect from the date of the new decision, so no further backdating could occur.

Clause 10 specifies that unheard appeals against decisions which are revised would lapse unless regulations provide otherwise.

The new terms are introduced for child support decisions in **clauses 40 and 41.** Regulations to provide for superseding decisions on vaccine damage payments are provided for in **clause 45.**

3. Suspending benefit

Clause 23 allows regulations to be made to permit benefit to be withheld temporarily where claimants have not provided the necessary information. **Clause 24** will allow regulations to enable the Secretary of State to suspend benefit if people refuse to submit to a medical examination in prescribed circumstances.

H. Appeals

1. The present system

If a claimant is dissatisfied with a decision of an Adjudication Officer, then he or she can appeal to a tribunal. There are various types of tribunal depending on the type of decision involved. They include Social Security Appeal Tribunals (SSATs), Medical Appeal Tribunals (MATs), Disability Appeal Tribunals (DATs) and Child Support Tribunals (CSATs). As a result of the Health and Social Services Adjudications Act 1983 (HASSASSA), these Tribunals are made up of legally qualified chairperson and two other members. In the case of MATs, the other two members are consultants. For DATs, one is a doctor and one is drawn from a panel of people experienced in disability matters.

Appeals can be made against tribunal decisions to the Social Security Commissioners, but only on a point of law. Normally after a successful appeal the case will be sent back to a differently constituted appeal tribunal with directions about how to reconsider the case, although the Commissioner can decide cases where all the information is available.

2. Appeal procedures - consultation

The Green Paper proposed new mechanisms to ensure that cases should only proceed to appeal if they cannot otherwise be resolved. These were that: [37]

- areas not in dispute should be identified and agreed before the appeal;
- the area(s) in dispute should be identified and agreed before the hearing
- wherever possible cases should be settled as early as possible to the satisfaction of the parties;
- only those cases which cannot be settled between the appellant and the Agency should proceed to appeal
- the appeal body should have power to hold back or "stay" cases where there is no point in proceeding because an issue of law is undecided before a higher court.

The paper also proposed changes to ensure that the appeal is "properly focused". These included powers for the appeal body to dispose of cases quickly if the grounds for the appeal had no merit or if the decision would not have any material effect.

There were also proposed changes to the handling of appeals. In particular, the document suggested that the number and composition of the "body" hearing the case should not be prescribed in legislation. However, it should be decided according to clear criteria, and "legal expertise should be reserved for appropriate appeals with some - such as straightforward disputes on non-medical facts - being considered by non-legal but appropriately qualified and trained decision makers".[38] There should be sifting of cases by the appeals body to establish how each case should be treated.

The document also proposed changes to the appeals system to be brought in by regulation. These included "paper appeals" where the appellant did not request an oral hearing, a shortening of the notice period from ten to five days and producing short decisions, often on the day of the hearing, rather than the full detailed ruling quoting all the relevant law. The regulations in question are now in place and are discussed on page 12 above.

The SPRU analysis reported some support for the aim of enabling the tribunal to operate more efficiently. However, there was concern that unrepresented claimants who might not understand the relevance of key facts or issues to their case could be disadvantaged. Settling cases "was generally rejected as inappropriate where the decision in dispute is derived from

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37 Green Paper, para. 5.3

38 Green Paper para 5.5

public rather than private law and based on legal entitlement" because of the imbalance of power between claimants and the Benefits Agency and because people might be persuaded to "settle" for less than their entitlement.[39] The report summarised comments on the Green Paper's proposal that "simple" cases should be sifted out and disposed of quickly as follows:

> Opinion on the proposal to allow the appeal body to dispose of cases quickly where there was no possibility of the decision being changed was divided equally for and against. Some respondents recognised the disproportionate time and resources that had to be expended on cases where there was clearly no chance of the claimant succeeding. Others argued that some apparently 'hopeless' cases could be found to have some merit on investigation by an inquisitorial tribunal. It was also argued that cases in which issues of fact were relevant could never be considered 'hopeless'.

The report gave the following summary of comments on the flexible arrangements for handling appeals:

> Balance of opinion among those who responded to the general proposal for the introduction of more flexible appeal arrangements was roughly two to one against. The advantages of greater flexibility were considered to be opportunities for gains in processing times and in the use of valuable tribunal resources. Some respondents argued that, in general, the way in which appeals were handled under the present arrangements (which are largely derived from legislative provisions) served the purposes of safeguarding claimants against subjective decisions about their cases, and of engendering public confidence in the appeals system.
>
> There was a distinction between respondents who accepted that there were such things as straightforward cases that did not need the full expertise of existing tribunals to be dealt with effectively and acceptably, and those who contested the possibility of defining and identifying straightforward cases.
>
> There was some comment that the proposal to sift cases was in contradiction of the commitment not to remove current, well-established appeal rights' (p.23 of the Green Paper). There was general endorsement for an appeal body having the right kind and appropriate level of expertise, though some respondents thought that the existing provision of legal and medical expertise to tribunals worked satisfactorily.
>
> There was considerable support for the current composition of tribunals which is laid down in legislation. Several respondents argued the importance of clarity for claimants in knowing how their case would be handled, and that complaints and appeals might emerge if claimants felt that the arrangements made for their case were in any way different or inferior to other cases.
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> Support for the use of single decision makers was generally restricted to 'simple' cases, generally with the proviso that the decision maker was legally qualified. Objections to single decision makers included the concern that personal preconceptions or prejudices about certain groups of claimant or about individual appellants would go unchecked; and that opportunities for ensuring the requisite expertise in the appeal body were reduced. In general, the decision making processes of the three-person tribunal were considered superior to decision making by a single person.
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> There was little support for the proposal to reserve legal expertise for appropriate cases, and allow some decisions to be taken by non-legal but qualified and trained decision makers. A return to non-legal decision makers (the position before the implementation of the 1983 HASSASSA Act) was seen

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39 SPRU, page xiv

> as an undesirable and retrograde step. Legally-qualified decision makers had the advantage of training and experience in judicial methods, of considering and weighing evidence, establishing facts, identifying the relevant law to be applied in the case, and making a decision based fully and only on the facts and the law.

3. Appeal procedures -the bill's provisions

The present structure of the various appeals tribunals is set out in Part II of the *Social Security Administration Act 1992*. This would therefore be removed by the repeal of Part II in Schedule 7.

Clause 4 transfers the functions of the various existing appeal tribunals to new unified social security tribunals. The President of these appeal tribunals is to be appointed by the Lord Chancellor (**Clause 5)**, as is currently the case for the President of the Independent Tribunal Service. **Clause 6** requires the Lord Chancellor to constitute a panel, of such persons as he thinks fit, to act as members of appeal tribunals. The persons on this panel replace the legally qualified chairmen, appointed by the Lord Chancellor, and the members, appointed by the President of the Tribunal Service, of the existing appeal tribunals.

Clause 8 details how appeal tribunals should be constituted. Instead of the current system of three person appeals, a tribunal will be able to consist of one, two or three members. The clause sets out arrangements for majority voting and for the appointment of experts to assist the panel in appropriate cases. **Clause 17** and **Schedule 5** set out the regulation making powers for appeals procedures, and allow for tribunals of three Commissioners for dealing with particularly difficult questions of law.

4. Appeal rights for various types of decisions

Currently it is possible to appeal against decisions taken by an adjudication officer whereas this is generally not possible where decisions are taken by the Secretary of State. However, there are special procedures to allow a form of appeal with certain types of these decisions, including whether or not a person counts as an "employed earner" for contributions under Section 17 of the *Social Security Administration Act 1992*.

The Green Paper stated that appeal rights "should properly relate to the nature of the decision being taken, not to the legal status of the person taking it."[40]

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40 Green Paper, para 4.9

Clause 13 and **Schedules 2 and 3** set out some of the types of decision against which claimants can appeal. Others will be specified in regulations. Under Schedule 3, some contribution decisions which are currently matters for the Secretary of State and are subject to the procedure outlined above will now be appealable in the normal way. The intention is to avoid situations where a person's entitlement to a contributory benefit is the subject of an appeal, but the tribunal cannot examine the crucial question of his or her contribution status.

5. The focus of appeals

The Green Paper proposed that the appeal should be "properly focussed". One way in which this should be done was to ensure that "only the areas in dispute should be the substance of an appeal, so that the appeal body need not reconsider the whole decision."[41] The SPRU analysis reported opposition to this:

> It is clear from the analysis of responses to both consultative documents that this proposal has been interpreted as a reduction in the scope of existing social security tribunals. The balance of opinion among the 70 respondents who addressed this proposal" was generally against by a factor of over three to one. There was some recognition of the difficulties that tribunals face when new evidence or changes in circumstances are brought to their attention and the necessity of making what are, in effect, first-tier decisions. There are particular difficulties when the new information requires a tribunal to make a decision which on a routine claim is normally made by a doctor.
>
> However, respondents from representative organisations generally took the view that there is little or nothing in this proposal that will benefit claimants. The comment was made that restricting tribunals to hearing only disputed issues on an initial claim represents a change in the underlying philosophy of the inquisitorial tribunal to ensure that a claimant's case was fully investigated and a correct, final and up-to-date entitlement awarded at the end of the process. It was argued that under the Green Paper proposals the tribunal hearing would move towards an adversarial process around defined and limited issues. Several respondents valued the ability of the tribunal to help the claimant identify issues which were relevant to their case but which had not been identified earlier in the appeal process.
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> As mentioned above, the wording of the Green Paper and Summary proposals was interpreted across the board as meaning that the role of the appeal body would be limited only to the issues in dispute. There was a frequently expressed concern that such restrictions on the tribunal would prevent it identifying and remedying some obviously incorrect aspect of decision because it had not been identified and agreed earlier as an issue in dispute.

Paragraph 7 of Clause 13 provides that in deciding any appeal under the clause, "an appeal tribunal need not consider any issue that is not raised by the appeal." Thus the tribunal would be able to consider other issues at its discretion.

6. Tribunals correcting their own mistakes

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41 Green Paper, para 5.4

One of the problems identified by the Green Paper was that "except in very limited circumstances, tribunals cannot set aside and correct their own decisions. This increases the number of appeals to the Commissioners which are often about procedural matters and are supported by the AO/CSO but nevertheless have to go through the whole long and expensive process."[42] According to the SPRU analysis, there was a large degree of support for this in principle from those who responded to the point. However some support was conditional on the retention of normal rights of appeal to the Commissioners and there was some concern that the development of case law would be restricted.[43]

Clause 14 allows cases to be re-heard by appeal tribunals without the need for an appeal to the Commissioner. This will be permitted if the chair of the tribunal considers that the tribunal has made an error of law. Alternatively, it will be allowed where each of the parties in the case considers that such an error has been made. **Clause 15** contains a new provision to allow the Commissioner to send a case back to the tribunal without a hearing where the parties agree that the tribunal decision was wrong.

7 Cases of error - test cases

Clause 27 re-enacts provisions currently contained in Sections 68 and 69 of *the Social Security Administration Act 1992*, but with some changes. These sections contain what has become known in welfare rights circles as the "anti-test case" rule. This was originally introduced by the Social Security Act 1990 to prevent claimants from benefiting from the results of test cases in some circumstances. The rule covers situations where a Commissioner or court has decided in a separate (i.e. a test) case that an "adjudicating authority" has made a mistake about the law. Basically it says that for claims relating to periods before a decision in a test case was given, the old interpretation of the law should apply, even though this has been found to be wrong. When deciding such claims, adjudication officers have to treat them as if the original decision had "been found by the commissioner or court in question *not to have been erroneous in point of law*" (my emphasis).[44]

Clause 27 simplifies the provision, and applies it to the new "revising" and "superseding" procedures outlined on pages 14-15 above. It also contains a clarification in paragraph 4 that "relevant determinations" also include determinations by a commissioner or court that a regulation was *ultra vires* (ie that it went beyond the powers set down in the primary legislation).

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42 Green Paper, para 3.11

43 SPRU, para 6.7

44 Section 68(2) and 69(2), Social Security Administration Act 1992

II Backdating

There are social security rules which allow a person to receive backdated payments of benefit when they make a late claim. Until April 1997, the rules were complex, but most benefits could be backdated for up to 12 months where good cause existed for a late claim. What constituted "good cause" was established in case law rather than legislation.

From 7 April 1997[45] new regulations were introduced to align the rules and to limit backdating for most benefits.[46] In general the rules for claims are now as follows

- *For non-income-related benefits*- three months normal backdating and no "good cause" provisions; and
- *For the income related benefits*, no normal backdating and three months under "good cause" provisions.

Disability living allowance and attendance allowance contiue to have a no backdating rule.

There are exceptions to these standard rules for particular groups, including refugees, claimants moving to in-work benefits and widows.

The regulations also changed the backdating rules following a review of a person's benefit entitlement. Since April, normal backdating following a review can only be given for one month. Previous limits ranged 12 months to no backdating.

A summary of the old and new rules is provided in the tables in the appendices. It should be noted that backdating rules for housing benefit and council tax benefit were not affected by the changes. They can be backdated for up to 12 months where there is good cause for a late claim or following a review.

The regulations were sent to the Social Security Advisory Committee for consultation. It recommended that the backdating rules should not be changed. The rules and the limited list of exceptions, it argued, gave "insufficient regard to the reasons why claims are submitted late and/or without the necessary substantiating evidence".[47] The Committee made a number of secondary

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45 Not all of the provisions came into effect on that date. For example, the new backdating rules for pensions take effect from August 1997.

46 *The Social Security (Miscellaneous Amendments) (No. 2) Regulations* SI 1997/793

47 Social Security Advisory Committee *The Social Security (Miscellaneous Amendments) (No. 2) Regulations 1997*, Cm 3586, para 79.

recommendations in the event of the main recommendation not being accepted. The previous Government rejected the main recommendation and proceeded with the change, although it did accept two of the secondary recommendations.

The new regulations were estimated to save £116m in 1997/98, £123m in 1998/99 and £127m in 1999/2000.[48]

Clause 70 goes further than the changes introduced by the previous Government. Section 1(2) of the *Social Security Administration Act 1992* sets a general limit of 12 months for backdating claims for most benefits. Clause 70 would amend this section so that entitlement for a past period shall be restricted to up to one month for late claims unless regulations provide otherwise. The clause is expected to generate savings of around £57 million annually.[49]

The change was announced in a press release at the time of the Budget. Secretary of State Harriet Harman commented as follows:[50]

> I am committed to keeping my spending within the ceiling for social security expenditure already announced. I am also committed to modernising the social security system. The following measure will ensure that overall spending is contained and represent a step forward in modernising the system.
>
> The time limit of three months for claiming social security benefits will be reduced to one month, in line with the current backdating rules where there is a change of circumstances. These limits will apply to Housing Benefit and Council Tax Benefit.
>
> The intention is that the new provisions will come into force from June 1998, except for Housing Benefit and Council Tax Benefit which is subject to necessary legislation and has a planned date of introduction from October 1998.

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48 *Ibid*, p. 34.

49 Explanatory and Financial Memorandum to the Bill, p xii.

50 "Harriet Harman sets out changes within departmental spending plans", DSS Press Release 97/100, 2.7.97.

III Lone Parents

A. The number of lone parents

A number of sources of data are used to produce estimates of the number of lone parent families. Because partnership formations and dissolutions are not registered in the way that, say, marriages and divorces are, none can be regarded as entirely accurate. Equally, each source will produce slightly different estimates, reflecting varying problems of definition and coverage. Official estimates by the Office for National Statistics are derived from a combination of sources (the Census plus official surveys, such as the *Family Expenditure Survey*, the *General Household Survey (GHS)* and the *Labour Force Survey*, and DSS administrative data), with an element of judgement used to collate the different estimates into one "best" estimate.

The latest official "best" estimate suggested that in 1992 there were around 1.4 million lone parent families in Great Britain (21% of all families with dependent children) containing around 2.3 million dependent children (19% of all children). The number of lone parent families was estimated to have increased from 0.6 million in 1971[51], 0.9 million in 1981 and 1 million in 1986[52].

More recent figures suggest that the number of lone parent families has increased to somewhere between 1.5 million[53] and 1.7 million[54]. Table 1 shows estimates derived from the GHS for 1995/96 by sex and, for lone mothers, marital status. GHS figures suggest that there are now around 1.54 million lone parents and that the historical growth in lone parent numbers was reversed slightly between 1994/5 and 1995/96.

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51 The year in which the *Finer Report* adopted the current definition of a lone parent family - see page XXX.

52 Haskey, J. "Estimated numbers of one parent families and their prevalence in Great Britain in 1991" OPCS *Population Trends 78* Winter 1994 pp 5-19

53 ONS *Family Spending: A report on the 1995-96 Family Expenditure Survey* (proportions applied to Child Benefit statistics)

54 DSS *Departmental Report 1997 (*Cm 3613*)* (number claiming one or more lone parent benefit).

Table 2

Lone Parents and Dependent Children by Sex and Marital Status

Great Britain 1995/96

Sex/marital status	Number of families ('000s)	% of all families[(a)]	Number of dependent children ('000s)	% of all dependent children
Lone mothers	1,400	20%	2,380	19%
single	560	8%	780	6%
widowed	70	1%	110	1%
divorced	490	7%	880	7%
separated	350	5%	630	5%
Lone fathers	140	2%	210	2%
All lone parents	1,540	22%	2,620	21%

a) Families with dependent children.

Sources: DSS *Quarterly Child Benefit and One Parent Benefit Statistics*
ONS *Living in Britain: Report on the 1995 General Household Survey*

B. Lone parents and benefit receipt

Obviously, given their entitlement to child benefit, very nearly all lone parents receive at least one social security benefit. Of more interest is the fact that over 80% receive at least one means tested benefit[55]. Table 2 shows, for those benefits where lone parent claimants are identifiable, estimates of the number of lone parent claimants, amounts of benefit received and total expenditure in 1995/96. In total, the DSS estimate that expenditure on benefits paid to lone parents[56] totalled around £9.5 billion in 1995/96 and around £9.9 billion in 1996/97[57].

55 DSS *Family Resources Survey 1994/95*; *HC Deb 10 December 1996 c113*

56 Those benefits shown in Table 2 plus child benefit, maternity payments and payments from the social fund.

57 *HC Deb 16 October 1996 c1022w*

Table 3
Lone Parents and Benefits
Great Britain, 1995/96

	Number of claimants (thousands)[a]	Average weekly benefit	Estimated expenditure (£ millions)
Income support[b]	1,060	£76.50	4,201
Family credit	283	£54.40	776
One parent benefit	1,002	£6.30	312
Housing benefit[b]	899	£51.70	2,418
Council tax benefit[b]	956	£7.00	381

a) At a point in the year.
b) Claimants with a lone parent premium

Sources: *Income Support/Family Credit Quarterly Statistical Enquiries*
HB and CTB Summary Statistics 1996
DSS Departmental Report 1997
HC Deb 16 October 1996 c1033w

As should be clear from Table 2, by no means all lone parents claim one parent benefit ("child benefit increase" from April 1997). In 1996/97, it is estimated that only just over 1 million lone parents (less than two in every three) claimed one parent benefit. A few thousand lone parents are disqualified from one parent benefit by receipt of child's special allowance or industrial death benefit, but most do not claim simply because their income support would be reduced by the amount of any one parent benefit received. Even among those who do claim one parent benefit, it is only of value to the 600,000 who do not also claim income support.[58]

Between 1988 and 1995 around 150,000 new awards of one parent benefit were made each year[59]. Information on the reasons for new awards is poor; in over 40% of cases the reason is not known. Of those new awards where the reason for award is known around 20% are the result of births and around 15% the result of divorce or separation.[60]

58 DSS *Departmental Report 1997* table 7

59 *HC Deb* 18 December 1996 *c769W*

60 DSS *Quarterly Child Benefit and One Parent Benefit Statistics October to December 1996* table OPB102A

C. The debate about extra costs for lone parents

There are a number of special provisions for lone parents in the social security system. Until recently, these included One Parent Benefit which was paid on top of child benefit, and a lone parent premium, paid in addition to the family premium with income support, housing benefit and council tax benefit. The structure has been changed recently (see below) but the amounts of child benefit and family premium are still higher for lone parents. Whether this extra provision is appropriate given lone parents extra needs, or whether it represents unjustifiable preferential treatment is a matter of some controversy. The following notes are intended to give some examples of contributions to the debate since special benefits were first introduced for lone parents.

The original intention behind introducing some higher benefit levels for lone parents was not, of course, to put them at an advantage relative to couples with children but to compensate them for extra costs. The Finer report[61] which had been commissioned in 1969 to examine the problems of one parent families, attempted to show that a one parent family could not be treated as if it was a two parent family with the adult subtracted, as the supplementary benefit system did at the time of the investigation. Lone parents had extra needs, the report argued. Many of the expenses of running a home did not change because there was one adult less, and lone parents faced extra costs including lack of time to shop around for less expensive goods, and buying in help with household tasks such as house decoration and maintenance. In fact, the main recommendations of the Finer committee - including a guaranteed maintenance allowance - were never implemented. However, there were several changes introduced at around this time as a result of the increased awareness of the extra needs of lone parents. During the Committee's investigation, family income supplement (the precursor of family credit) was introduced treating the head of a one parent family equally with a married man. Child benefit increase - now called one parent benefit - was introduced in 1977.

Joan Brown[62] argues that the main impact of the Finer report has been to increase political awareness of the extra needs of one parent families, although these have only been addressed in an ad hoc and piecemeal way. She maintains that the policy is a muddled one, but the implication of her argument is that the lack of clarity about extra needs has left lone parents badly served by the benefit system. Brown concludes :[63]

> There is a good rationale for designing a benefit structure for one parent families which takes account of the now quite well established fact that the removal of one adult from the household does not reduce all normal costs proportionately and may add costs which are specifically related to one parenthood.

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61 *Report of the Finer Committee on One Parent Families*, Cmnd 5629, 1974

62 Joan C. Brown, *In Search of a Policy*, National Council for One Parent Families, undated, pp. 66-7 and p 129.

63 *Ibid*, pp 149-150.

Patricia Morgan argues that despite claims that the tax and benefit systems discriminate against lone parents "the one parent receives more at every level of earnings than the married couple with children."[64] This situation results partly from reforms of the benefit system, which, she argues, have often been in response to pressure from the lone parent lobby. Morgan asserts that "The evidence suggests that, far from facing extra costs, lone parents, at any given level of income, enjoy a somewhat higher standard of living than two parent families."[65]

The Family Budget Unit at York University conducted a research project to construct budget standards for six model households, including a lone parent family. The budgets were prepared using expert advice, behavioural information, official recommended standards (for example on nutrition and housing), budget standards from other countries and the researchers' judgements. A "modest but adequate" budget and a "low cost" budget was prepared. This found that the main component of the extra costs of lone parents arises from childminding and babysitting expenses:[66]

> Broadly speaking, there are two polar extremes - a number of studies find that the extra costs of lone parenthood are quite substantial, between 15 and 25 percent of the costs of a couple without children. The FBU results fall into this group. The other studies find that extra costs are less than 10 percent of the costs of a couple without children. When childminding and babysitting costs are deducted, the FBU estimate is in this range.

The Family Budget Unit also compared the budget standards with benefit levels. Using January 1993 prices, it put a low cost budget (excluding rent) for two adults and two children under 11 at £141.40. This compared to £105.00 benefit entitlement. The low cost budget for a lone parent with two children under 11 was £110.41 compared to £85.60 benefit entitlement. In cash terms the shortfall £36.40 for the couple and £24.81 for the lone parent. However, proportionately, the difference is much smaller - income support meets 77% of the budget for the lone parent and 74% for the couple.[67]

Recent research by the Policy Studies Institute analysed data from several existing surveys looking at indicators of living standards. It looked at the extra cost of having a child as expressed by extra income which people with children needed to have in order to bring them to the same standard of living as people without children. In particular the analysis of two surveys showed that there was "no evidence in favour of the proposition that adding a partner to a single person household adds to its costs. If anything, the opposite. Two really can live for the price of one!"[68] It went on to conclude:[69]

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64 Patricia Morgan *Farewell to the Family?*, IEA, 1995, p 3

65 *Ibid*; p 22

66 Peter Whiteford and Leslie Hicks ,"The costs of lone parents", in *Budget Standards for the United Kingdom,* 1993, p 220

67 Jonathan Bradshaw ,*Household budgets and living standards,* September 1993, p 28.

68 Richard Berthand & Reuben Ford, *Variations in the living standards of different types of households*, 1997, p 24

69 *Ibid*; p 25

> One of the outcomes of this analysis is that the needs of 'lone parents appear to be at least as great as, or more than, those of couples with children. When the lone parents premium was introduced for income support in the mid- I980s, the government explained that this was designed to meet the additional needs of lone parents (DHSS 1985); one of the current authors argued that (for non-working lone parents) there was no evidence that such additional needs existed (Berthoud 1986). In the mid-1990s, the government has announced that it will phase out the lone parents premium, because (they now say) there is no evidence of additional need. It is ironic that some evidence in favour of the policy has been discovered (by the research team who originally argued that there was none), just as the premium is about to be abolished.

D Recent changes to benefits for lone parents

In his November 1995 benefit uprating statement, the then Secretary of State for Social Security, Peter Lilley, announced his intention freeze the lone parent premium and one parent benefit in April 1996, and to restructure benefits for them to allow the gap to narrow over time. [70] At the same time, he announced an increase in the maximum childcare disregard, which allows childcare costs to be disregarded from earnings when family credit and other in-work benefits are calculated. This was increased from £40 to £60 from April 1996. He also set out a range of measures to help lone parents back into work, including a pilot scheme to provide individual help with job search and assistance with training for work from April 1997.

The Regulations to bring about the restructuring were put in draft form for consultation to the Social Security Advisory Committee. The Committee reported differences of opinion among those who wrote to them and among its own members about the relative needs of one parent and two parent families. It recommended that there should be a "further extensive look at the tax and benefit provision for one and two parent families before any action is taken to narrow any cash provision gap between them." It was also concerned that once the restructuring had taken place, future changes would only be debated as part of the annual Uprating Statement, and it called for proposals for such changes to be properly scrutinised and debated. [71] The previous Government rejected both of these recommendations, on the grounds that Uprating Statements and Orders receive close scrutiny by Parliament and others, and that "the interface between tax and benefits provision for families is considered in detail every year in preparation for the Budget."[72]

As a result of the regulations, from April 1997 one parent benefit was consolidated into a lone parent rate of child benefit and the lone parent premium was consolidated into the family premium.[73] However, the previous Government also took steps to "narrow the gap" between lone parents and couples through the way benefits were uprated. The overall rate of premium

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70 *HC Deb 29 November 1995 c 1213*

71 *The Draft Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996,* Report by the Social Security Advisory Committee, Cm 3296, June 1996, p.9.

72 *Ibid*, p2.

73 *The Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations* SI 1996/1803

which lone parents received was frozen at the previous year's level - £15.75 for income support - while the general family premium was uprated by the normal ROSSI index (2.6%). A similar principle applied to the new rate of child benefit for lone parents, which was frozen at the 1996/97 rate for the combined child benefit and one parent benefit, while the general rate of child benefit was uprated in line with the RPI. This is discussed in more detail on page 31 below.

E. Proposed changes to benefits for lone parents

In November 1996, Peter Lilley announced his intention to begin the process of narrowing the gap between one parent and two parent families by removing any extra family premium or child benefit for lone parents making a new claim:

> My overall strategy is a move towards an even-handed treatment of one and two-parent families. Research shows that the only substantial extra expense lone parents have over couples is the cost of childcare. I have already introduced, and last year enhanced, help with childcare costs through Family Credit and other benefits for those in work. In November last year I announced my intention to begin the process of narrowing the gap between benefits for one and two-parent families.
>
> From April 1998, new awards to lone parents of family premium or Child Benefit will be paid at the same level as couples. I intend to protect existing lone parents who will retain higher benefit rates in cash terms.

Draft regulations to effect this change were put before the Social Security Advisory Committee, who conducted a consultation exercise on them.[74] The regulations have yet to be laid, and as yet no SSAC report has been published. However, in a Press Release issued on the day of the summer Budget, the Secretary of State for Social Security, Harriet Harman, announced that the cuts planned by the previous Government would go ahead:[75]

> "Withdrawal of entitlement to Lone Parent Family Premium in Income Support for new claimants will take effect in April 1998. Withdrawal of the lone parent rate of Child Benefit is subject to necessary legislation, and is now expected to come into effect from June 1998."

Ms Harman announced an increase in the maximum childcare disregard with in-work benefits from £60 - £100 per week from April 1998. The upper age limit will be increased from 11 to the September after the child's 12th birthday. A separate press release announced a "new deal for lone parents", with a range of employment measures for lone parents to be introduced on a pilot basis from July and nationally from October 1998.[76]

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74 *The Social Security (Lone Parents) (Amendment) Regulations 1997,* SSAC Press Release, 10 January 1997

75 *Harriet Harman sets out changes within Departmental spending plans,* DSS Press Release 97/100, 2 July 1997

76 *Harriet Harman announces new deal for lone parents,* DSS Press Release 97/099, 2 July 1997

F. Provisions for benefits for lone parents in the Bill

Clause 68 would allow regulations to revoke any provisions allowing a higher rate of child benefit for lone parents or to reduce that rate. Such regulations would not have to be referred to the Social Security Advisory Committee providing they were laid within three months of Royal Assent.

G. Savings from Clause 68

From April this year one parent benefit was consolidated into a lone parent rate of child benefit. Whereas couples with children receive £11.05 in respect of their eldest or only child, lone parents receive £17.10. The value of the additional lone parent element, £6.05, is less than the rate of one parent benefit payable before April 1997, £6.30. This reflects the fact that in merging the two benefits the overall rate of child/one parent benefit payable to lone parents was frozen at £17.10; in effect the increase in the basic rate of child benefit was simply deducted from the additional amount payable to lone parents. So long as the overall rate of lone parent child benefit remains frozen, the value of the additional portion will be eroded each year (by an amount equal to the increase in the basic rate of child benefit). With inflation at 2.75% per year (and with child benefit continuing to be increased in line with inflation) the lone parent addition would completely disappear by around the year 2013.

The effects of restricting new lone parent claimants to the couples' rate of child benefit will, therefore, decline each year. The number of people who will be affected is subject to uncertainties about future rates of entry to lone parenthood and the prevalence of income support receipt among new lone parents. The DSS has estimated that in a full year the proposals will affect some 150,000 lone parents[77]. This represents, broadly, the annual number of people who, based on past experience, would be expected to claim child benefit as a lone parent. Annual savings are expected to peak at around £45 million per year declining, as the value of the lone parent addition declines, to nil by around 2013.[78]

IV National Insurance Contributions

The DSS has stated the aims of the Bill in respect of National Insurance are to:

- improve full and prompt compliance and collection of National Insurance contributions;
- replace criminal penalties for most National Insurance non-payment with new financial penalties, mirroring the successful penalty regimes introduced by Inland Revenue and Customs and Excise to combat tax evasion;

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77 *HC Deb 18 December 1996 c758w*

78 Explanatory and Financial Memorandum to the Bill

- cut red tape by further aligning contribution rules with tax, allowing employers to settle National Insurance liability on minor and irregular payments to employees in a single lump sum, as they can for tax.[79]

Clause 48 - Directors' contributions

Company directors have special status for national insurance. Pre-1975 legislation did not bring office-holders within its definition of employed earners. Company directors who were not under contracts of service were therefore, until April 1975, regarded as self-employed earners for the purposes of national insurance. Form April 1975, however, all company directors who derive at least part of their remuneration from their office were (and continue to be) categorised as *employed earners.*

Such categorisation means that all company directors are liable for Class 1 contributions on their earnings in accordance with the normal rules. However, they were alone among employed earners in being in a position to exploit those rules by carefully contrived arrangements of salaries, bonuses and pay intervals. Attempts in 1980 by the DSS to render many such arrangements ineffective by a strict application of a court ruling on the meaning of 'payment' in relation to the voting of remuneration were largely unsuccessful. Pressured by the Public Accounts Committee in 1981[80] to bring to an end the avoidance by company directors of an estimated £8 million per year, the Secretary of State introduced regulations which changed the basis on which the Class 1 liability of a director would thereafter arise.[81] NI contributions for company directors are now assessed on the basis of an annual earnings period, irrespective of when the earnings are actually paid.
In January 1996 the DSS announced proposals which, if implemented, would have eased the administration procedures necessary to operate the special basis for directors.[82] The special rules were seen as unnecessary in the majority of cases, as most directors are not in a position to manipulate their pay periods. However, following a consultation exercise, Ministers decided not to proceed with any major change.[83]

One aspect that came out of the consultation exercise was the wish to pay directors' contributions on a more frequent basis than annually. Currently this is permitted but only on an administrative basis. **Clause 48** puts this on a statutory footing, allowing directors' contributions to be made on account. It also allows regulations to be made to treat such payments as if they were contributions to remove any ambiguity about their status.

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79 DSS Background Note to the Queen's Speech 14 May 1997

80 HC 369 of 1981/2

81 *Social Security (Contributions) Regulations* SI 1979/591, as amended by *Social Security (Contributions) Amendment Regulations* SI 1983/53

82 HC Deb 31 Jan 96 c823-4W

83 *Reducing burdens on business: proposed changes for directors' national insurance contributions*

Clause 49 - Non-cash remuneration

This is an anti-avoidance measure aimed at stopping arrangements seen as deliberately contrived to minimise NI liability. Under the present rules, it is possible to enter into contract to give up certain rights in return for benefits. Such a device is more commonly found among the highly paid and apparently used to avoid NI liability on non-cash benefits. Benefits in cash would have a NI liability. **Clause 49** brings such non-cash benefits within the scope of NI liability, closing the 'loophole'. To prevent pre-emptive arrangements being made it will apply to any made from 10 July 1997 (the date of publication of the Bill).[84]

This provision is expected to yield £20 million to £30 million additional revenue for the National Insurance Fund.[85]

Clause 50 - Secondary contributions on Class 1A contributions

Class 1A contributions were introduced in 1991 "to fill an important gap in the national insurance contributions system, as a result of which employers do not pay contributions to the National Insurance Fund if they pay their employees in cars rather than cash."[86]

One way in which secondary Class 1A liability has been avoided is where cars have been provided to people who have no other remuneration. **Clause 50** makes it clear that a Class 1A liability exists and should be paid in these cases.

Clause 51 - New Class 1B contributions

Under the previous Government's deregulation initiative, the then Secretary of State for Social Security, Peter Lilley, set up a working group to review how employees' earnings are defined for national insurance and tax purposes. The main objective was to find changes to the definitions of income (for tax) and earnings (for national insurance contributions) which would cut employers' costs and made it easier for them to meet their obligations in the administration of income tax and NICs.[87]

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84 subject to the Bill getting Royal Assent

85 Financial Memorandum to the Bill

86 HC Deb 9 May 1991 c849

87 DSS *Deregulation Review: Report of the Tax/NICs working group* 1993

The Deregulation Task Force recommended the two systems of NICs/PAYE should be harmonised and replaced by a unified simple tax-based system.[88] The Government rejected the idea of wholesale unification but accepted the principle of closer alignment between the rules for income tax and National Insurance contributions.[89] Part of this was the proposal that annual voluntary settlements for NICs would be introduced so that employers who volunteered to pay their employees' tax on some expense payments and benefits in kind could do so in a lump sum. This way they would not have to reach a separate settlement for each individual employee.

The Inland Revenue introduced a statutory scheme to replace annual voluntary settlements from October 1996.[90] Under this framework employers can settle the income tax liability on certain benefits in kind and for expenses in a single payment. The statutory scheme is called PAYE Settlement Agreements (PSAs).

PSAs are not intended to provide a general alternative to the obligation on an employer to operate PAYE or to make a return after the end of the year. This means they cannot apply to cash payments of wages or bonuses or to major benefits provided regularly such as a sole-use company car, accommodation or low-cost loans. PSAs can include expenses payments and benefits which are:

- minor; or
- irregular; or
- provided in circumstances where it is impracticable to apply PAYE or to apportion the value to particular employees.

There is no definitive list of what can and cannot be included in a PSA. Each case is judged on whether the items can be considered under the above categories. However, examples of the sorts of items that might be included in a PSA are: the cost of an office Christmas party; Christmas hampers provided for employees; provision of a works' bus; and reimbursement of late night taxi fares

The Bill's proposals have been the subject of a consultation paper[91] and **Clause 51** introduces a new class of NI contribution payable in circumstances where a PSA has been agreed. This further aligns the NICs and Income Tax rules and is line with the philosophy of making the tax

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88 *Deregulation Task Forces Proposals for Reform* January 1994 para 350

89 *Business Deregulation Task Forces Proposals for Reform* Update Nov 1995 para 350

90 Section 206A of the *Income and Corporation Taxes Act 1988* (introduced by S. 110 of the Finance Act 1996)

91 DSS *Proposed Changes to Align NICs with Inland Revenue Treatment of Tax under PAYE*, 1996, DEP 3/2743

base for NI as comprehensive as possible - such a move minimises distortions between different kinds of remuneration and allows any given amount of tax to be raised with lower rates.

The measure is expected to yield £10 million per year.[92]

Clause 52 - Employed earners' contributions made in error

Liability to NI contributions is highly dependent on the categorisation of the individual concerned. There are very different contribution regimes for employees and the self-employed, for example. Where a person pays contributions as an employed earner and it is later found that they should have paid them as, say a self-employed one, it is possible for them to receive a refund of any overpayment of contributions in earlier years. This could cover up to 6 years at present. **Clause 52** will effectively limit any such backdating to two years subject to any prescribed exceptions.

Clauses 53 - 55 - New penalty regime

This is another measure that allies the National Insurance and tax systems. The aim is to increase compliance and give an alternative to the current sanctions available via criminal proceedings. **Clause 53** allows for the imposition of penalties where a person fails to provide any required information or provides incorrect information. Regulations will determine the rates, time limits, enforcement and other powers of the Secretary of State in this regard.

These changes mirror those that have been introduced in the tax system. In 1985, the Conservative Government introduced substantial reforms to the structure of the penalty system for value added tax (VAT) and, to a lesser extent, income tax, based on the recommendations of the Keith Committee on the Enforcement Powers of the Revenue Departments.[93] The Committee argued for the introduction of a civil element into the then-exclusively criminal VAT offence code, as well as a number of changes to the Inland Revenue scheme of civil penalties (for example, to decrease the amount of discretion open to tax officers in applying penalties for negligence). At that time HM Customs & Excise could only impose penalties in cases involving VAT returns and payments where it could prove fraud to the criminal standard. As a result large VAT understatements arising through demonstrable lack of reasonable care - but short of fraud provable to that standard - went unpenalised. The Committee considered "that in matters of culpability short of fraud, the certainty of objective tests is to be preferred to nice calculation of mental state."[94] A raft of changes in the powers of both tax authorities was introduced following the publication of the Keith Report. In

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92 Financial Memorandum to the Bill

93 Cmnd 8822, March 1983

94 vol.2 para. 18.4.12

relation to civil penalties and VAT, the most important of these were the introduction in 1985 of civil penalties for evasion, regulatory offences and failure to register and in 1986 of default surcharge for late submission on payment of VAT.

Clauses 54 & 55 follow on from this penalty regime. They enable regulations to determine circumstances when contributions might be paid direct to the Secretary of State, rather than by the Inland Revenue as her agent. They also enable regulations to be made to impose interest and penalties if these requirements are not met. Any interest or penalties levied by the Secretary of State are separate from those imposed by the Inland Revenue.

The provisions of these three clauses could initially produce additional revenue of up to £5-10 million a year. However, this figure will reduce over time as compliance improves. There will be a start-up cost of around £1.3 million in the first year with subsequent administrative savings of around £4.3 million per year.[95]

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95 Financial Memorandum to the Bill

Appendices

Backdating rules before and after the Social Security (Miscellaneous Amendments) (No. 2) Regulations SI 1997/973

Appendix 1 - Previous time limits for backdating

Benefit		*Maximum backdating*					
		Claims				*Reviews*	
		Admin	*Normal*	*Good cause*	*Official Error*	*Normal*	*Good cause*
Income Support		1 month	Nil	12 months	Indefinite	12 months	-
Family Credit	No previous award	1 month	Nil	12 months	Indefinite	12 months	52 weeks
	Previous award	1 month†	14 days	12 months			
Disability working allowance	No previous award	1 month	Nil	12 months	Indefinite	12 months	52 weeks
	Previous award	1 month†	14 days	12 months	Indefinite	3 months	12 months
Housing Benefit/ Council Tax Benefit		-	Nil	12 months	-	12 months	-
Retirement Pension		-	12 months	-	Indefinite	3 months	12 months
Widow's Benefit		-	12 months	-	Indefinite	3 months	12 months
Maternity Allowance		-	12 months	-	Indefinite	Nil	12 months
Invalid Care Allowance		-	12 months	-	Indefinite	3 months	12 months
Unemployment Benefit		1 month	Nil	12 months	Indefinite	Nil	12 months
Incapacity Benefit		-	1 month	12 months	Indefinite	2 weeks	12 months
Severe Disablement Allowance		-	1 month	12 months	Indefinite	2 weeks	12 months
Disability Living Allowance/ AA	No previous award	Nil*	Nil	Nil	Indefinite	3 months	12 months
	Previous award within 6 months	To end of Prev. award	Nil	Nil			
Child Benefit		-	6 months	Nil	Indefinite	12 months	-
Guardians Allowance		-	6 months	Nil	Indefinite	3 months	12 months
Dependency Increases		-	6 months	Nil		Rules same as personal benefit	
Industrial Injuries Disablement Benefit		-	3 months	Indefinite	Indefinite	Nil	Indefinite
Reduced Earnings Allowance		-	3 months	12 months	Indefinite	Nil	12 months

† 1 month admin in addition to 14 days normal
* But with 6 weeks allowed for return of the claim form

Appendix 2 - Time limits for backdating after the regulations

Benefit		*Maximum backdating*					
		Claims				*Reviews*	
		Admin	*Normal*	*Good cause*	*Official Error*	*Normal*	*Good cause*
Income Support		1 month	Nil	3 months	Indefinite	1 month	Nil
Family Credit	No previous award	1 month	Nil	3 months	Indefinite	1 month	Nil
	Previous award	1 month	14 days	3 months			
Disability working allowance	No previous award	1 month	Nil	3 months	Indefinite	1 month	Nil
	Previous award	1 month	14 days	3 months	Indefinite	1 month	Nil
Housing Benefit/ Council Tax Benefit		-	Nil	12 months	-	12 months	-
Retirement Pension		-	3 months	Nil	Indefinite	1 month	Nil
Widow's Benefit		-	3 months	Nil	Indefinite	1 month	Nil
Maternity Allowance		-	3 months	Nil	Indefinite	1 month	Nil
Invalid Care Allowance		-	3 months	Nil	Indefinite	1 month	Nil
Jobseeker's Allowance		1 month	Nil	3 months	Indefinite	1 month	Nil
Incapacity Benefit		-	3 months	Nil	Indefinite	1 month	Nil
Severe Disablement Allowance		-	3 months	Nil	Indefinite	1 month	Nil
Disability Living Allowance/ AA	No previous award	Nil*	Nil	Nil	Indefinite	1 month	Nil
	Previous award within 6 months	Nil	Nil	Nil			
Child Benefit/ One Parent Benefit		-	3 months	Nil	Indefinite	1 month	Nil
Guardians Allowance		-	3 months	Nil	Indefinite	1 month	Nil
Dependency Increases		-	3 months	Nil		Rules same as personal benefit	
Industrial Injuries Disablement Benefit		-	3 months	Nil	Indefinite	1 month	Nil
Reduced Earnings Allowance		-	3 months	Nil	Indefinite	1 month	Nil

* But with 6 weeks allowed for return of the claim form.

Social Security

Recent Research Papers:

97/13	Social Security (Recovery of Benefits) Bill [Bill 75 of 1996/7]	30.01.97
97/3	Cold Weather Payments (Wind Chill Factor) Bill [Bill 20 of 1996/7]	13.01.97
96/111	Disability living allowance mobility component and hospital in-patients	29.11.96
96/107	The Social Security Administration (Fraud) Bill [Bill 15 of 1996/97]	20.11.96
96/9	Social security changes for asylum seekers and other persons from abroad	19.01.96