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Welfare Reform and Pensions Bill

Bill 44 [1998/99]

The Bill, which is due to receive its Second Reading on Tuesday 23 February, makes a wide range of changes to social security and pensions legislation. Topics covered include stakeholder pensions, pension-sharing on divorce, benefits for widows and widowers, the Single Gateway, Jobseekers Allowance, Incapacity and Disability Benefits, as well as a range of miscellaneous changes.

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Summary of main points

The Welfare Reform and Pensions Bill:

- sets up the framework for a new type of pension, to be called a stakeholder pension
- makes various amendments to the pensions regulatory framework
- introduces provision to enable the courts to order that pensions be shared on divorce like other assets
- introduces a Widowed Parent's Allowance , equivalent to the existing Widowed Mother's allowance, which will be available to parents of either sex bereaved of their husband or wife.
- abolishes Widow's Pension for new claimants and introduces a Bereavement Allowance, payable for six months after bereavement, available to both widows and widowers.
- introduces a Bereavement Payment of £2,000 paid to both widows and widowers on bereavement. This payment is double the value of the current lump sum paid to widows.
- introduces a Single Work-Focused Gateway. It provides for regulations to be made to require most claimants of working age to attend an interview as part of the claim process. Existing claimants and future claimants who have already attended an initial interview may be called for interviews after their eligibility for benefit has been established. The penalties for failure to attend these subsequent interviews will be set by regulation. The Bill also provides for the exchange of information between organisations involved in the provision of the Single Gateway.
- reforms Incapacity Benefit by replacing the All Work Test with a Personal Capability Assessment, linking the contribution conditions with a more recent work record than at present and providing for the benefit to be reduced where there is an occupational or personal pension of more than £50 per week.
- abolishes Severe Disablement Allowance and replaces it for 16-19 year olds only with an entitlement to Incapacity Benefit.
- abolishes "life awards" for Disability Living Allowance and Attendance Allowance and extends the higher rate mobility component of Disability Living Allowance to 3 and 4 year-olds.

CONTENTS

I	Stakeholder: a new type of pension (Jo Roll)	9
	A. Introduction	9
	B. Background to the Green Paper on Pensions	9
	1. Up to the Election of 1997	9
	2. The Government's Pensions Review	12
	C. The Green Paper: <i>A new contract for welfare: Partnership in Pensions</i>, Cm 4179, December 1998	15
	1. The Green Paper's diagnosis of the problem	15
	2. The Green Paper's Package of Reforms	17
	3. The relationship of the Second State Pension to the Stakeholder Pension	18
	D. The Stakeholder Pension: What the Bill does (Clauses 1-7 and Schedule 1)	20
II	Pensions Regulation (Jo Roll)	24
III	Pensions On Divorce (Jo Roll)	26
	A. Introduction	26
	B. Background	27
	C. Current Provisions	28
	D. Pension Sharing	30
IV	Bereavement Benefits (Alex Brazier)	32
	A. The current system	32
	B. History	33
	C. Background to the Changes	34
	1. Widowers' Benefits	34
	2. The Consultation Document: Support in Bereavement	34

D.	The Bill's provisions	35
	1. Clauses 44-46: benefits for widows and widowers	35
	2. Summary of changes	35
	3. Clause 44: The Bereavement Payment	36
	4. Clause 45: New allowances for bereaved spouses	36
	5. Benefits for those widowed before the "appointed day."	36
	6. Benefits for those widowed on or after the appointed day	37
	7. Incapacity Benefit based on spouses' contributions	38
	8. Clause 46: Additional Pension	38
	9. Consequential amendments	40
E.	Financial Implications.	40
F.	Reaction to the Changes	41
V	The Single Work-Focused Gateway (Tim Jarvis)	44
A.	Background	44
B.	The Bill's Proposals	47
	1. Work-Focused Interviews	47
	2. Sanctions for failing to attend an interview	49
	3. Supply of information	51
C.	Reaction to the Proposals	53
VI	Joint-claim Jobseeker's Allowance (Tim Jarvis)	56
A.	Current situation	56
B.	Background to the changes	57
C.	The Bill's proposals	59
VII	Employment Zones (Tim Jarvis)	63
A.	Background	63
B.	The Bill's Proposals	66
VIII	Benefits for disabled people (Kim Greener)	67

A.	General	67
IX	Incapacity Benefits (Kim Greener)	69
A.	Incapacity for work	69
1.	Personal Capability Assessments	69
2.	Reactions to reform of the All Work Test	70
B.	Incapacity Benefit	70
1.	The current system	70
2.	Reform of contribution conditions	71
3.	Effects of occupational pensions and personal pensions on Incapacity Benefit	72
4.	Savings from the reforms of Incapacity Benefit	73
5.	Reactions to the proposals to reform Incapacity Benefit	73
C.	Severe Disablement Allowance	75
1.	Abolition of Severe Disablement Allowance	75
2.	Savings from the abolition of Severe Disablement Allowance	77
3.	Reactions to the abolition of Severe Disablement Allowance	77
X	Disability Benefits (Kim Greener)	79
A.	Abolition of life awards	79
B.	Mobility component for the under 5s	81
C.	Costs of extending the mobility component to the under 5s	82
D.	Reactions to the disability benefits reforms	82
XI	Miscellaneous Provisions	83
A.	National Insurance Numbers for Child Benefit Claims	83
1.	Background	83
B.	Hardship Payments	84
1.	"Splitting" of Jobseeker's Allowance hardship payment	84
C.	National Insurance Contributions	84

D. Housing Benefit	85
E. Inland Revenue information for Child Support purposes	86
1. Background	86
Appendix 1 - Pensions Today	89
Appendix 2 - Major Responses to Governments Stakeholder Pensions Consultation Document	92

I Stakeholder: a new type of pension

A. Introduction

Part I of the Welfare Reform and Pensions Bill fulfils the Government's General Election Manifesto commitment to set up the framework for a new type of pension, to be called a *stakeholder pension*. This type of pension is part of a package of pension reforms set out in the Government's Green Paper on pensions published in December 1998. The package is intended to increase public spending on pensions in real terms but would also reduce from 60% to 40% the proportion of pensioner incomes coming from the state while raising from 40% to 60% the proportion coming from private pensions.¹

The Bill currently before Parliament deals only with aspects of the package although the Government has said that the **stakeholder pension** lies at the heart of the reforms.² The Bill does **not**, for example, deal with the proposals in the package relating to the reform of state pensions, such as the abolition of the **State Earnings Related Pension Scheme (SERPS)**; these are still at the consultation stage. The **stakeholder pension** can thus be viewed as a measure in its own right as well as one that is intended eventually to form part of a larger package.

The Bill provides a framework, rather than detailed prescriptions, for the development of stakeholder pensions. This is partly because some aspects of the proposals relating specifically to the *stakeholder pension* are also still under consultation. In addition, the Government has said that it is likely that the framework will require adaptation as schemes evolve and that, in order to provide this flexibility, matters of detail will be set out later in secondary legislation.³

- *An outline of the current pension system intended to provide basic background information in relation to Part 1 of this Research Paper is provided in Appendix 1.*

B. Background to the Green Paper on Pensions

1. Up to the Election of 1997

The Labour Party's Manifesto for the General Election of 1997 contained a commitment to reforming pensions. Central to the Party's approach was the reform of second tier

¹ *A new contract for welfare: Partnership in pensions*, presented to Parliament by the Secretary of State for Social Security, page 8, Cm 4179, December 1998

² *A new contract for welfare: Partnership in pensions*, presented to Parliament by the Secretary of State for Social Security, page 5, Cm 4179, December 1998

³ *Welfare reform and Pensions Bill: Explanatory Notes* [Bill 44-EN] page 5, House of Commons, February, 1999

pensions including the creation of a framework for a new type of pension, to be called a **stakeholder** pension. Personal pensions "*appropriately regulated*" were to remain as an option; the framework for existing occupational pension was to be strengthened; SERPS was to be retained "*for those who wish to remain in it*"; and, within the structure of SERPS, the Government would seek to develop a new **citizenship pension**.⁴ On stakeholder pensions specifically, the Manifesto said:

Too many people in work, particularly those on low and modest incomes and with changing patterns of employment, cannot join good-value second pension schemes. Labour will create a new framework - stakeholder pensions - to meet this need. We will encourage new partnerships between financial service companies, employers and employees to develop these pension schemes. They will be approved to receive people's savings only if they meet high standards of value for money, flexibility and security.⁵

These proposals arose during a period in which inquiries into the need for pensions reform and debates about the way forward took a high profile. In particular, just before the General Election, the Conservative Government launched its proposals for a *Basic Pension Plus* on 5 March 1997. This was a proposal to effectively privatise the basic state pension but with a back up guarantee from the state where an individual's pension fund failed to provide as much as the basic state pension. Individuals would have been given a rebate of their National Insurance contributions which they would have paid into a fund of their own. The aim of the plan as announced by Peter Lilley, then Secretary of State for Social Security, was:

to guarantee the basic state pension; to enable future pensioners to share in economic growth; to give a massive boost to investment and ultimately to relieve taxpayers of their biggest burden.⁶

Other proposals covered a range of options, from substantially raising the value of the basic state pension, and restoring cuts that have been made to the State Earnings Related Pension Scheme,⁷ to abolition of state pensions altogether.⁸ Several of them had some points in common with the present Government's proposals although there were differences of detail. In particular they tended to favour a greater level of compulsory

⁴ Labour Party, *New Labour Because Britain Deserves Better*, General Election Manifesto, 1997

⁵ Labour Party, *New Labour Because Britain Deserves Better*, General Election Manifesto, 1997

⁶ Department of Social Security Press Release 97/044, 5 March 1997 together with *Basic Pension Plus: Summary of the Proposals* and *Basic Pension Plus: A Technical Note*, 5 March 1997

⁷ Barbara Castle and Peter Townsend, *We CAN Afford The Welfare State*, Security In Retirement For Everyone, 27-29 Amwell Street, London EC1 1UN, 1996

⁸ Eamonn Butler, Madsen Pirie and Matthew Young, *Beyond Pensions Plus: Developing The Fortune Account*, Adam Smith Institute 1997

contributions than exists now or in the present Government's proposals.⁹

The underlying concern of many proposals was the growth in the proportion of pensioners to working age people due to reach a peak in several decades time. But there were differences of view about the extent to which this meant that state pensions would no longer be affordable or the extent to which beliefs to this effect might threaten the level of income provided by state pensions. In addition to this underlying issue, there was also concern that the present system of pensions was leaving large numbers of pensioners on very low incomes and there were additional concerns about specific problems arising in specific parts of the pensions system. Added to this were also more traditional ideological differences about the role of the state and of financial markets.¹⁰

Among the proposals for reform were also those for a **stakeholder pension** advanced by Frank Field MP, later to become Minister at the Department of Social Security with responsibility for welfare reform and to resign in July 1998. He first published proposals for a form of **stakeholder pension** in 1993 and 1994¹¹ and set them out as part of a broader strategy of reforming the welfare state in 1996.¹² In November 1998, before the Government's Green Paper was published, he introduced a Ten Minute Rule Bill on **Stakeholder Pensions**, which he described as follows:

The Bill would lay the foundations to ensure that all pensioners shared in the growing long-term prosperity of our country by implementing a universal compulsory pension. All those in work would be required to become members of a stakeholder pension scheme on their 20th birthday. As each year went by, successive generations of 20-year-olds would come into the scheme. This is not a short-term measure. Pensions reform, above all else, is a long-term business and concern of the country and the House.¹³

These proposals differ in several respects from those contained in the Green Paper on pensions and described later in this Research Paper. In summary, features of Frank Field's scheme include:

- It would be a single, universal and compulsory scheme

⁹ These included *Pensions: 2000 And Beyond* Volumes 1 and 2, The Report of the Retirement Income Inquiry chaired by Sir John Anson, 1996; Consumers' Association Policy Report: *A Blueprint For Pensions*, 1997; and Office of Fair Trading: *Report of the Director General's Inquiry Into Pensions*, Volumes 1-3, 1997

¹⁰ Several of the proposals are discussed in *Welfare In Working Order*, Ed. James McCormick and Carey Oppenheim, Chapter 5 'Prospects for Pension Reform' by James McCormick, IPPR 1998

¹¹ Frank Field and Matthew Owen *Private Pensions For All: Squaring The Circle*, Fabian Society Discussion Paper No 16, 1993 and *National Pensions Savings Plan: Universalising Private Pension Provision*, Fabian Society Briefing No 1, 1994

¹² Frank Field, *How to Pay For The Future: Building A Stakeholders' Welfare*, Institute of Community Studies, 1996

¹³ HC Deb 17.11.98 c 772-3W

- It would guarantee a flat rate pension of twice the current basic state pension (about 30% of average earnings)
- The scheme would be funded but the Government would pay contributions into it for certain groups unable to do so themselves
- Once in payment the value of the stakeholder pension would be linked to earnings
- Only membership-owned suppliers would be allowed although commercial organisations would be able to sponsor such suppliers

2. The Government's Pensions Review

On 17 July 1997, the Government announced a review of pensions and sent out a consultation letter with a deadline for comments of 31 October 1997. The review had the following terms of reference:

To review the central areas of insecurity for elderly people including all aspects of the basic pension and its value and second pensions including SERPS, to build a sustainable consensus for the long-term future of pensions; and to publish the Government's proposals, for further consultation, in the first part of 1998.

The Government set out nine fundamental challenges that the review would address:

- To achieve a sustainable consensus on pensions policy.
- To agree where the responsibility for funding pensions should lie and to establish the right balance between the public and private sectors.
- To respond to demographic change.
- To respond to social and labour market change
- To ensure resources devoted to pensions are used to maximum effect.
- To get the regulation of pensions right.
- To raise awareness of pensions and improve the level of financial education so that people understand the importance of saving for retirement and make the right choice about which pension product is best for them.
- To narrow the pensions gap between men and women so as to give women more security in retirement.
- To strike the right balance between the generations.¹⁴

In November 1997, the Government issued the consultation document on **stakeholder pensions**, with a deadline for responses of 31 January 1998.¹⁵ The consultation document said that detailed proposals would be published in the first half of 1998. It contained 64 specific questions, on a range of topics, from pension age, arrangements for buying annuities, investment choice, methods for collection of contributions, transfers between arrangements and whether the stakeholder pension should be related to salary or to the size of the fund built up by an individual.

¹⁴ HC Deb 17.7.97 c 239-241W and Department of Social Security Press Notice, 17 July 1997, 97/122

¹⁵ *Stakeholder Pensions: A Consultation Document*, Department of Social Security, November 1997

The consultation document said that the target group would be those in the workforce who did not have access to good occupational schemes and for whom personal pensions were poor value, largely because of their high charges. One of the problems of the current system was that even for someone who worked throughout his or her working life, personal pension charges could eat up one quarter of the final investment fund and, for those with a shorter working life or who transferred between pensions, the charges could be "*even more crippling*." Most of those in the target group would be low paid or with intermittent earnings, and the clear majority were women.

The consultation document listed the key features that the Government envisaged for the framework:

- Economies of scale in administration and fund management through pooling savings in multi-member schemes.
- Easy accessibility, particularly through the workplace, and to provide a simple means of making regular contributions
- A potential role for new partnerships between financial service companies, retailers, employers, employees and trade unions, or other 'affinity' groups, to promote pensions.
- Effective protection of members' interests in schemes, involving members and employers effectively in decisions on the management of the scheme.
- Availability to the self-employed.
- Regulatory approval or "kite-marking" of schemes, based on a list of minimum benchmark standards which every scheme would meet, to promote confidence in the schemes.
- Freedom to contract out of SERPS into the new pensions, so that people can build on the national insurance rebate.

The Government also set up consultative groups to aid the consultation process. Tom Ross of Alexander Clay and vice president of the National Association of Pensions Funds chaired a group of pensions experts, known as the *Pensions Provision Group*, set up to determine the current levels of pension provision in the UK and likely future trends, which reported in June 1998.¹⁶ This Group had a largely descriptive role, that is to provide the facts, statistics and analysis on which debates about future options could be based.

One of the central messages of the *Pensions Provision Group* was that, on current policies, state pensions would not provide an adequate income in retirement. The value of the basic state pension was falling in relation to average earnings. The growing value of SERPS for some newly-retired employees would offset the fall in the basic state pension for some people but this improvement would start to go into reverse from 2000 when the

¹⁶ The Pension Provision Group, *We All Need Pensions: The Prospects For Pension Provision*, HMSO 1998

value of new SERPS pensions would also begin to fall in relation to average earnings. It concluded that:

This makes it even more important that people have good second tier pensions in order to have adequate incomes in retirement and to avoid the need to depend on means-tested benefits, which themselves can have adverse effects on people's incentives to save for retirement.

However, the *Pensions Provision Group* also concluded that extending non-state provision to low earners posed a number of problems: whether the low paid could afford the necessary contributions; the low level of pensions that low contributions provide; and the cost of administering small amounts of pension rights. In addition, the low paid had very little financial incentive to save for their retirement if the only effect was to reduce their entitlement to means-tested benefits in retirement. The report also warned against increasing the tax burden on funded pensions and criticised the current complexity in all type of pensions legislation.

A second group, the *Pensions Education Working Group*, set up to consider the co-ordination, targeting and efficiency of pensions education and to advise on actions needed to improve people's knowledge of pensions, also published a report in June 1998.¹⁷ It concluded that a major pensions education and awareness programme was necessary; the programme should cover a range of initiatives, including personal finance teaching at school, annual and automatic information from government and pension providers about individuals' pension prospects and entitlements; and the simplification of pensions rights wherever possible.

An outline of the Government's pensions proposals was included in the more general Green Paper on the welfare state published in March 1998.¹⁸ The Green Paper on pensions was published in December 1998¹⁹ and other consultations on specific aspects of pensions are currently taking place.²⁰

¹⁷ The Pensions Education Working Group, *Getting To Know About Pensions*, June 1998

¹⁸ *New ambitions for our country: A new contract for welfare*, Cm 3908 page 2

¹⁹ *A new contract for welfare: Partnership in Pensions*, presented to Parliament by the Secretary of State for Social Security, Cm 4179, December 1998

²⁰ These include: Department of Social Security, *Strengthening the Pensions Framework: A Consultation Document* (mainly about contracting-out), December 1998 and HM Treasury & Department of Social Security, *Helping To Deliver Stakeholder Pensions: Flexibility In Pension Investment*, February 1999

C. **The Green Paper: *A new contract for welfare: Partnership in Pensions*, Cm 4179, December 1998** ²¹

1. **The Green Paper's diagnosis of the problem**

The central problem according to the Green Paper is that unless the pensions system is reformed, many pensioners are likely to face poverty in the future. Although pensioners as a group have become more prosperous over the last 30 years - their average incomes have risen faster than the average incomes of those in work - the gap between the richest and poorest pensioners has grown and many still live in poverty. Without reform the problem is likely to get worse.

Many pensioners still have to rely on means-tested benefits. One in five are currently dependent on means-tested Income Support and, on the basis of current policies, the number is likely to rise to one in three by 2050: ²²

The basic state pension alone does not provide security in retirement. Those who earn little or nothing will never be able to add to it. Those on very low incomes can save through SERPS all their working lives, and still need income-related benefits in retirement. This means they gain nothing from their years of saving. This is because SERPS, being earnings-related, gives least to those in greatest need.²³

Like many of the proposals for reform referred to earlier at the beginning of this Research Paper, the Green Paper refers to the ageing of the population. It shows that over the first half of the next century the number of people over state pension age in the UK is forecast to increase by over a third and that by 2040 there are likely to be two people of working age for every pensioner, compared with over three now. However, the Green Paper argues that the impact on the government's ability to pay for pensions is not nearly as significant as in other industrial countries partly because private provision plays an increasing role in this country and because, since 1980, increases in the basic state pension have been linked to prices rather than earnings.

The Green Paper predicts that State spending on pensioners will increase as the number of pensioners increases but, based on current policies the share of Gross Domestic Product (GDP) supporting pensioners will fall, despite the increase in the number of pensioners. The number of pensioners is expected to rise from 10.5 million in the year 2,000 to 14.3 million in the year 2050 but spending as a percentage of GDP is expected to fall from 4.4% to 3.4%.

²¹ This section is based on the Green Paper itself and on further details provided by the Government since it was published, particularly in Parliamentary Written Answers.

²² HC Deb 13.1.99 c 21W and 12.1.99 c 152W

²³ Pensions Green Paper p 2

The ageing of the population is mentioned as an influence on what the Government considers it can afford to spend on pensions but it is not described as the main problem. The problems that the Green Paper diagnoses are more to do with the current pensions system, which is considered to be failing both those who can and cannot provide for themselves. The Green Paper outlines the following problems:

The current system fails to provide security for those people who cannot provide for themselves in retirement either because they are outside the labour market or because their earnings are low. Even where they are entitled to state provision, the basic pension is falling in relation to average earnings and SERPS, in so far as it is earnings-related, gives least help to those on the lowest incomes.

These groups include many of the people who earn below the limit for making National Insurance contributions (currently £3,300 a year) and many of those who earn above this limit but below £9,000, who are not generally in the market for private, funded pensions.²⁴ It also includes many carers and disabled people who have to give up paid employment, who usually find it impossible to make pension provision or other savings once they leave the labour market.

The current system also fails to provide the best framework for those who can work and provide for themselves. The Green Paper says that it is estimated that up to four million people with earnings between £9,000 and £20,000 a year are not contributing anything to their pensions above the compulsory minimum. This situation is considered to have arisen for several reasons, including:

- a (seemingly) downward trend in the coverage of occupational schemes
- a changing labour market that requires greater flexibility and mobility of labour
- poor coverage of the self-employed who cannot join employers schemes or SERPS and many of whom do not take out personal pensions
- changes in society, such as declining dependence of women on men and the rise in divorce rates
- shortcomings of personal pensions such as high charges, which typically cost a quarter of a member's savings even if the person remains in the scheme for life and mis-selling, which has tainted personal pensions
- problems that the stakeholder proposals are specifically designed to address include: the complexity of personal pensions; difficulties individual buyers face in getting a good deal, costs of regulation and costs of distributing and marketing pensions

²⁴ The figure of £9,000 was judged to be broadly the annual earnings level where, at current levels of compulsion, pension contributions would be sufficient to make funded pensions cost-effective. This was based on a range of information, including minimum levels used for the sale of personal pensions (HC Deb 18.01.99 c 371W)

- poor information about, and lack of trust in, the pension system, added to which the Maxwell affair and the mis-selling of personal pensions has left many people lacking confidence and trust in any type of pension arrangement

2. The Green Paper's Package of Reforms

The stakeholder pension proposals are part of a package that reflects a particular approach to pensions reform. The Government has rejected what it describes as two extreme alternatives: privatising the pension system entirely and replacing it with a funded system or attempting to build a pension system on the continental model, where the state is the pre-eminent provider. It has also rejected extra compulsion on people to save more for their retirement. The Green Paper describes the Government's approach:

The pension system should reward work. It should also reward saving. People who work and people who save should know that they will see the benefit when they retire. People who work all their lives should not have to rely on means-tested benefits when they retire.

Those who can save have a responsibility to do so. The State should ensure that they have access to secure, good value pensions. And the State should give particular support to those who cannot be expected to save.²⁵

The package of reforms includes:

- Retaining the basic state pension and continuing to increase it "*at least in line with prices*"
- Providing a minimum income guarantee available to all pensioners whose income falls below the guaranteed level. This is being introduced through income support from April 1999 and will amount to £75 for a single pensioner and £116.60 for a couple (with higher amounts for older pensioners) - reflecting an increase three times greater than would have been the case under normal income support rules. The minimum income guarantee will be increased year by year "*as resources allow*" although over the long term the aim is that it should rise "*in line with earnings*".
- Providing extra help with fuel bills
- Improving pensions education and awareness, including the provision of an annual pension statement to every adult
- Strengthening the framework for occupational pension schemes, including the possibility of allowing employers to require membership of their occupational schemes, subject to a limited right of opt-out by employees
- Replacing SERPS by a new State Second Pension designed to ensure that everyone with a lifetime of work behind them (or credits) builds up rights to a pension which lifts them above the minimum income guarantee in retirement. There appears to be no

²⁵ Pensions Green Paper p 29

direct commitment relating to the way that the State Second Pension will be increased each year once it is in payment. (SERPS payments are currently increased each year in line with prices)

- For those who can save, setting up a new framework for "*flexible, secure and value-for-money*" stakeholder pension schemes
- Increasing National Insurance rebates for those who contract out of SERPS into a stakeholder pension - once stakeholder pension schemes are established, State Second Pensions are expected to pay flat-rate pensions and thus become less attractive to moderate and higher earners.

The Government expects the pension package to have the following outcomes:

- Fewer people dependent on income support than under current policies
- Extra help for everyone earning up to £18,500
- More people securing good value, funded private pensions through a stakeholder pension scheme or through their employer's occupational scheme
- Improved understanding of pensions, enabling people to make the right choices, with the expected consequence that more will save for their retirement
- A higher proportion of state support going to those who need it most
- A higher share of national income devoted to pensions but a higher proportion from private, funded pensions

3. The relationship of the Second State Pension to the Stakeholder Pension

The Green Paper's proposals for a stakeholder pension differ from Frank Field's in several ways.²⁶ Structurally, they would split his stakeholder pension into two schemes, the State Second Pension and the stakeholder pension scheme. Both of these would cover the sort of people who are currently members of SERPS although the aim is for the moderate and higher earners among SERPS members to move into the stakeholder scheme while the lowest earners and those not working "for a good reason" would fall within the ambit of the State Second Pension.

Stakeholder pensions would be open to everyone and would thus potentially also be available to a much wider range of people than those currently in SERPS. In particular, if appropriate providers come into being, they could be available to the self-employed, who are currently excluded from SERPS. The Government has also asked for views on bringing the self-employed into the State Second Pension.²⁷

The replacement of SERPS is intended to take place in two stages, which will particularly affect the moderate and higher earners. At stage one they would have a choice between the State Second Pension and joining a funded scheme (those already in good

²⁶ See Section B 1 above

²⁷ Pensions Green Paper p 83

occupational schemes would be expected to remain in them). At stage two, when the stakeholder pension is established, which the Government expects will take about five years from its introduction, the State Second Pension would become a flat-rate scheme for those on lower earnings. The Green Paper says that the aim is for the first stakeholder pension schemes to be set up from April 2001.

The Green Paper says that the proposals have four aims:

- *To help low earners:* The new State Second Pension, worth £50 a week to someone earning £9,000 a year, will double the value of SERPS on earnings of £9,000 a year and treat contributing employees earning up to £9,000 a year as if they had earned £9,000 when their new State Second Pension is calculated.
- *To help moderate earners:* They are also expected to benefit from the doubling of the value of SERPS on the first £9,000 of earnings. At stage one the value of the new State Second Pension will be set so that they continue to gain some benefit until their earnings reach £18,500 a year.
- *To encourage more people to take out funded schemes:* National Insurance rebates for those contracting out of the State Second Pension will be increased for those who earn between £9,000 and £18,500 a year in order to reflect the higher levels of benefit foregone by those earning up to £18,500 a year. (This will apply to personal and occupational as well as to stakeholder schemes.) Those who can afford it will be allowed to contribute to a stakeholder pension, even during periods when they are out of work or in the State Second Pension.
- *To help carers and disabled people with broken work records:* Like SERPS, the State Second Pension will generally be available to those who have earnings above the lower earnings limit for making National Insurance contributions but there will be a system for crediting in people who have earnings below that level or no earnings. The Green Paper suggests that carers of elderly and disabled people as well as those with a child aged five or under should be entitled to credits, as well as disabled people although the last would have to show some attachment to the labour market through a contribution test. There is no suggestion that the unemployed will be entitled to credits.

The Green Paper contains a chart that shows the impact of the State Second Pension as it would be once individuals have experienced a full working lifetime under the new scheme.²⁸ The figures which underlie it are reproduced below. For someone earning £9,000 a year the State Second Pension and the basic retirement pension together would equal 21% of average earnings once the new scheme has fully matured.²⁹

²⁸ Pensions Green Paper p 41

²⁹ HC Deb 20.01.99

Estimated State Pension Received³⁰

Earnings (£'s per year)	Current System			Proposed System		
	Basic State Pension	SERPS	Total	Basic State Pension	State Second Pension	Total
£3,000	£29	£2	£31	£29	£43	£72
£6,000	£31	£14	£44	£31	£50	£80
£9,000	£31	£25	£55	£31	£50	£80
£12,000	£31	£38	£67	£31	£56	£86
£15,000	£31	£46	£76	£31	£61	£91
£18,000	£31	£53	£83	£31	£64	£94
£21,000	£31	£57	£87	£31	£67	£97
£24,000	£31	£59	£89	£31	£68	£98

Notes..

- 1 Assumes a full working life of 49 years from April 2002. Figures shown in constant 1998 earnings, and rounded to the nearest £1 - totals may not sum due to rounding. The State Second Pension Scheme as described on page 45 of 'A New Contract for Welfare; Partnership in Pensions', with the exception of the upper earnings band, which is assumed to be £20,000 (in 1998 earnings).
2. Although someone earning £3,000 is below the current LEL (Lower Earnings Limit), their earnings would eventually exceed the LEL, as the £3,000 is assumed to grow in real terms by 1.5% per year, and the LEL stays constant.

Details of the stakeholder proposals are summarised in the next section of this Paper. They are focused on the proposals contained in the Bill rather than the further-reaching discussion of stakeholder pensions contained in the Green Paper although points made in the Green Paper and in the Explanatory Notes are mentioned either in order to explain the Bill's provisions or in order to give an indication of the way that powers contained in the Bill may be used.

D. The Stakeholder Pension: What the Bill does (Clauses 1-7 and Schedule 1)³¹

The Bill's provisions relating to stakeholder pensions are summarised below. There have been few responses to the Bill itself but Appendix II provides a summary of the responses to the Green Paper produced by the journal, *Occupational Pensions*.

³⁰ HC Deb 26.01.99 c 232-3W

³¹ Unless otherwise stated, comments on the Bill are drawn either from the Explanatory Notes [Bill 44-EN, 10.2.99] or the Pensions Green Paper. The points in italics summarise the Bill. The comments are in standard type.

The meaning of a stakeholder pension (Clause 1): *Clause 1 says that it can be either a personal or an occupational pension³² provided that it is i) registered as a stakeholder pension and ii) that it complies with the requirements specified in the Bill, as well as with any requirements that may be prescribed in future.* This makes it possible for much of the existing legislative and regulatory apparatus that applies to occupational and personal pensions to be applied to stakeholder schemes. They will also have to comply with additional requirements.

Clause 1 specifies the following eight requirements:

1. *The scheme must be established under a trust (or under an alternative arrangement specified in regulations).* This is the way that most private sector occupational schemes are set up. Personal pensions may be set up under a trust but the trust deed does not generally provide for the trustees to control the scheme and the personal pension provider retains overall control. Existing personal pensions will therefore not be able to describe themselves as stakeholder pension schemes.

2. *The scheme must be set up according to such requirements as may be prescribed.* Examples of matters that are likely to be specified in regulations include: the scope of the trust deed (for example to ensure that trustees have the power to appoint and dismiss people), the composition of the trustee board and whether schemes should provide additional benefits.

3. *The scheme must be a money purchase one, subject to such exceptions as may be prescribed.* The Government does not envisage that stakeholder pensions will be allowed to provide benefits related to final salary, as most occupational schemes do now. Benefits will have to be related to individual contributions plus investment returns on those contributions (minus charges and expenses) and the fund will normally be used to purchase an annuity at retirement. The government envisages that benefit restrictions will follow those for personal pensions.

4. *The scheme must comply with regulations relating to charges and expenses:* The Government intends to consult further before imposing minimum standards but has said that it intends that there should be no charge for transferring out of a stakeholder pension or for changing contribution levels.

5. *The scheme must comply with existing regulations relating to the disclosure of information to scheme members as are applicable to it (under section 113 of the Pensions Act 1993 and section 109 of the Pensions Schemes (Northern Ireland) Act 1993).*

³² As currently defined in the Pension Schemes Act 1993.

6. *The scheme must allow members to make contributions either on a regular basis or as and when they can, subject to such minimum contribution levels and other restrictions as may be prescribed:* Many existing personal pensions do not provide this flexibility.

7. *The scheme must accept transfers of pension rights from other schemes unless it would prejudice its tax approved status:* Under existing legislation, members will have a right to a transfer of their rights to another scheme. This clause therefore provides an additional requirement on stakeholder schemes to accept transfers. There is currently no such requirement for occupational and personal schemes. A tax-approved scheme cannot accept a transfer from an unapproved scheme.

8. *The scheme must be Inland Revenue approved:* This will enable it to qualify for tax relief's. The Green Paper proposes a simplified tax regime for stakeholder pension, in particular contributions will be limited to a fixed sum of £3,600 a year or 100% of the member's earnings, whichever is the lower. Scheme members who stop working will be able to continue to contribute, with tax relief, up to the annual limit, for a period of up to five years.³³

The Meaning Of Registration (Clause 2): *The Occupational Pensions Regulatory Authority (OPRA) will have the duty to keep a register of stakeholder pension schemes and will have the power to deregister a scheme if it no longer complies with the conditions set out above.* OPRA was set up under the Pensions Act 1995 and is currently responsible for regulating certain aspects of occupational pensions but not personal pensions. The rest of Clause 2 covers details and implications of registration, such as:

- *Scheme trustees must support their applications for registration with a declaration that the scheme meets the required conditions. OPRA must register the scheme unless it does not comply with the conditions and is give discretionary power to impose a fee for registration.*
- *There will be sanctions for trustees who do not ensure that their schemes complies with the required conditions: OPRA can prohibit named individuals from acting as trustees and there will be civil penalties*
- *There will be criminal sanctions for anyone who, when applying for registration, knowingly or recklessly provides OPRA with false or misleading information.*
- *Regulations may be made for the register to be made available for inspection and supplied to people on such terms and conditions as may be prescribed.*

³³ Tax issues are discussed in Tax Relief and Partnership Pensions by Phil Agulnik and Julian Legrand, *Fiscal Studies*, November 1998

Duties Of Employers (Clause 3): Employers must, subject to civil penalties, provide access to stakeholder schemes and comply with four requirements, subject to exceptions that may be provided for in regulations . The four requirements are:

1. Employers must choose at least one "designated" scheme that is open to all employees and must consult the employees and any organisation representing them first.
2. Employers must supply employees with the name and address of the designated scheme(s) and such other information as may be prescribed.
3. Employers must allow reasonable access to representatives of the designated scheme(s).
4. Employers must deduct an employee's contributions from their wages and pay them to a the designated scheme if the employee so requests, subject to such exceptions as may be prescribed. Payments may be made to a qualifying person if regulations so prescribe. Regulations may prescribe that employers pay over contributions to schemes other than the designated one. The Government proposes to consult on the way that the exemption would apply in order to achieve a fair balance between flexibility for scheme members and costs to employers. It also proposes to consider the establishment of a clearing house to receive contributions.

Inspection Of Premises (Clause 4): OPRA will have powers to inspect premises and documents for the purposes of investigating whether employers have complied with the requirements placed on them and it will be an offence to obstruct their investigations.

Trustees: Protection And Duties (clause 5 and Schedule 1): Trustees will be given certain employment rights, such as right to time off to perform their duties and dismissal arising from performing their functions will constitute unfair dismissal. They will also have certain duties. Schedule 1 specifies the duties in the Pensions Act 1995 that are to be carried over to stakeholder trustees.

National Insurance Contribution Rebates (Clause 6): The Government will be able to prescribe rebates in regulations for stakeholder pensions that are different from those prescribed for money purchase and personal pensions.

II Pensions Regulation

Clauses 8-14 cover miscellaneous amendments to the pensions regulatory framework. The following section summarise the *Explanatory Notes* to the Bill on these clauses:

Monitoring of employers' payments to personal pension schemes (Clause 8): Under the Pensions Act 1995, there are rules designed to ensure that employers make payments to occupational schemes within set time limits and there are penalties for non-compliance. But there are no equivalent rules for personal pensions. This clause introduces a set of rules on the timely payment of contributions by employers into personal pension schemes.

Late payments by employers to occupational pension schemes (Clause 9): Where a person becomes bankrupt, his assets usually vest in the trustee in bankruptcy. Following recommendations of the Pensions Law Review Committee (the Goode Report, Cmd 2342), the Pensions Act 1995 introduced protection for pension rights (as opposed to the pension payments themselves) so that they do not count as an asset in bankruptcy. However, this protection only applied to occupational schemes. This clause provides statutory protection on bankruptcy for pension rights in other "approved" schemes, as defined.

Effect of insolvency on unapproved pension rights (Clause 11): Regulations made under this clause will enable the rights of a person under an unapproved pension arrangement to be protected in the same way as a person's rights under an approved pension arrangement in prescribed circumstances. These are likely to cover situations where other pension benefits that the bankrupt is likely to receive are likely to be inadequate to meet his reasonable needs and those of his dependants.

Forfeiture of rights under pension arrangements (Clause 12) : This clause provides that trustees or managers of a scheme will no longer be able to forfeit pension rights on a member's bankruptcy. In relating to a scheme that is not an approved pension arrangement, but subject to the effect of regulations made under clause 11, a bankrupt member's pension rights will thus vest in the trustee in bankruptcy.

Compensating occupational pension schemes (Clause 13): Changes to be introduced by this clause are intended to ensure that more members of pension schemes receive a greater proportion of their benefits than under the current compensation provision, should funds be lost because of theft or fraud. Currently a scheme's assets must fall below 90% of the amount of its total liabilities before a claim can be made to the Pensions Compensation Board. The maximum amount of compensation payable is that needed to restore the scheme to the 90% threshold - or 90% of the loss, whichever is less. Under this clause, a scheme will be eligible for compensation if its assets fall below a new "protection level". This is the combined value of 100% of its most urgent liabilities and

90% of its other liabilities. The most urgent liabilities include those to its members already receiving a pension and those to its members within 10 years of retirement.

Miscellaneous Amendments (Clause 14 and Schedule 2): This clause brings into force Schedule 2, which makes various minor amendments to the Pension Schemes Act 1993, the Pensions Act 1995 and the Employment Rights Act 1996.

III Pensions On Divorce

A. Introduction

The procedure used to examine the pension sharing aspects of this Bill has been described as a milestone in the modernisation of Parliament. For the first time a "departmental" select committee has been able to hold an enquiry into a draft Bill published before the its First Reading.³⁴

Parts III and IV of this Welfare Reform and Pensions Bill were originally published by the Department of Social Security in draft as *The Pension Sharing Bill* in June 1998, together with a consultation document.³⁵ The Social Security Select Committee then examined the draft Bill in detail and collected evidence from a range of individuals and organisations. The Government has responded to the Committee's Report³⁶ and the Committee is preparing another report on the pension sharing provisions of the present Bill.

In a consultation document accompanying the draft bill, the Government asked for views on making the legislation work in practice. It did not ask whether pension sharing should be implemented. Nor did it ask for views on the main elements of the policy, on the grounds that consultation by the previous Government had shown that there was broad consensus on the approach.

As the Social Security Committee explained, pensions and divorce bring together two notoriously complex areas of law. It said that the various interactions of the proposed changes with the existing tax regime, regulatory provisions and family law, in the separate jurisdictions of Northern Ireland, Scotland and England and Wales were a challenge to those drafting the proposals.

This Section of this Research Paper therefore does not attempt to replicate the work of the Social Security Committee or to summarise the Explanatory Notes on the Bill. It attempts instead to provide a brief outline of the Government's proposals in the context of current provisions, particularly for those who may not be familiar with them.

³⁴ Social Security Committee, *Pensions On Divorce*, Fifth Report of 1997/98, HC 869 of 1997/98 (which points out that Select Committees have on occasion examined draft Bills but in different circumstances from the present one).

³⁵ Department of Social Security, *Pensions Sharing On Divorce: Reforming Pensions For A Fairer Future*, Part 1: Consultation and Part 2: Draft Legislation

³⁶ Social Security Committee, *Pensions On Divorce: The Government's Response To The Committee's Fifth Report Of Session 1997/98*, HC 146 of 1998/99, January 1999

The outline that follows relates to England and Wales. The Bill also contains provisions relating to Scotland but because family law is different in Scotland (unlike pensions law, which covers Great Britain), these differ slightly from the English ones. The consultation document indicated that the Government's intention was that pension splitting should be available throughout the UK but, as a result of devolution, separate legislation would be needed to introduce pension sharing in Northern Ireland.

B. Background

The question whether it should be possible to split a person's pension rights in two as part of a divorce settlement is of long-standing. The Law Commission raised the issue in its 1969 report, *Financial Provision in Matrimonial Proceedings* and since then bodies such as the Occupational Pensions Board, the Lord Chancellor's Department, the Law Society and the Pensions Management Institute have all examined the issue.³⁷

Pressure for change has come from a range of bodies, including Fairshares, a group of divorcees who have been campaigning for pension splitting and most of the bodies concerned with pensions such as the Pensions Management Institute, the National Association of Pension Funds, the Equal Opportunities Commission, the Law Society, the Institute and Faculty of Actuaries, and the Association of Pension Lawyers, who have all made it known that they favour splitting. In addition to pressure from these bodies can be added Harry Cohen's Ten Minute Rule Bills in the 1993/94 and 1994/95 Sessions.³⁸

Pressure for reform came to a head during the passage of the Pensions Act 1995 through Parliament. The Bill did not initially include any provisions about divorce but an all-party alliance pressured the Conservative Government into reforming the existing provisions. These changes have now come into force but they do not go so far as those campaigning for change would have liked. In particular, they do not allow a *clean break* so that each partner's entitlement to the pension would be divorced from the other's and each would own a share of their own.³⁹

Further pressure was applied during the passage of the Family Law Act 1996 through Parliament. Just as the Pensions Bill had not initially contained any provisions about

³⁷ Law Commission, *Financial Provision in Matrimonial Proceedings*, Law Com No 25, 1969; Occupational Pensions Board, *Equal Status for Men and Women in Occupational Schemes*, Cmnd 6599, 1976; Law Commission, *The Financial Consequences of Divorce*, Law Com No 112, 1981; Lord Chancellor's Department, *Occupational Pension Rights on Divorce: A Consultation Paper*, 1985; Michael Meacher, *Pensions, Couples and Divorce: Consultation Paper*, Labour Party 1990; Law Society, *Maintenance and Capital Provision on Divorce*, 1991; Pensions Management Institute (PMI), *Pensions and Divorce*, 1991; *The Report of the Pension Law Review Committee*, section 4.16 on pension rights and divorce, CM 2342, September 1993; *Pensions and Divorce: Report of the independent working group on pensions and divorce appointed by the PMI in agreement with the Law Society*, 1993

³⁸ HC Deb 1 November 1994 c1333-1355 and 25 January 1995 c365-267

³⁹ See Library Research Paper 95/48.

divorce, so the Family Law Bill did not initially include any provisions about pensions. But this time the Conservative Government agreed to provisions on pension splitting, that is a *clean break*, being written into the Act. However the Government also said that it was premature to introduce splitting in practice, given the important changes to pensions and tax law that would be necessary.⁴⁰

The Government then decided to consult on the issue and commissioned several pieces of research that might help formulate policy. A Green paper on pension splitting at the end of July 1996⁴¹ and a White Paper followed in February 1997.⁴² A survey carried out for the Department of Social Security on pensions and divorce was published in 1996,⁴³ as was a report commissioned by the Department on international comparisons of the treatment of pension rights on divorce.⁴⁴ A companion research report looking also looked at a wider range of aspects affecting women's pension rights.⁴⁵

After the Labour Government came to power, Harriet Harman, then Secretary of State for Social Security, announced that it was the aim of the present Government to introduce pension splitting by the year 2000 and that a draft Bill would be published that Session.⁴⁶ This was the draft Pension Sharing Bill and Consultation Document that have formed the basis of Parts II and III of the present Bill.

C. Current Provisions

The main obstacle to the *clean break* which many of the current advocates of reform desire lies in the nature of pension rights as they have developed in this country, including the Inland Revenue rules which lay down the conditions on which tax reliefs are available. The result is that pension rights to a future pension, as opposed to a pension already in payment, cannot be split; they belong to the member of the pension scheme who is not allowed to assign his or her rights.⁴⁷ The courts therefore do not generally have the power to order a pension scheme to split the pension.

Current provisions governing financial settlements on divorce are contained in Part II of the Matrimonial Causes Act 1973. These do give the courts powers in relation to income and assets generally and enable them to make orders of various kinds, such as for maintenance payments and re-arrangement of property. The courts do also have some

⁴⁰ See, for example, Department of Social Security Press Notice, 18.6.99

⁴¹ Department of Social Security, *The Treatment of Pension Rights on Divorce*, Cm 3345

⁴² Department of Social Security, *Pension Rights on Divorce*, Cm 3564.

⁴³ Department of Social Security Research Report No 50, *Pensions and Divorce* by Gillian Prior and Julia Field, 1996

⁴⁴ Watson Wyatt Worldwide, *International Comparison of the Treatment of Pension Rights on Divorce*, Final Report, 1996; and Watson Wyatt Worldwide, *International Comparison of the Treatment of Pension Rights on Divorce*, Statistical Appendix, 1996

⁴⁵ Department of Social Security Research Report No 49, *Women and Pensions* by Gillian Prior and Julia Field, HMSO 1996

⁴⁶ HC Deb 5 June 1997 c 240-1W-

⁴⁷ This is explained in the report of the Pension Law Review Committee (the Goode Report) Cm 2342

rights in relation to pensions. For example, they can value pension rights and offset them against other assets - and since the Pensions Act 1995 there has been a specified method of valuing the assets,

The courts can also order that a proportion of the pension be paid to the partner once the pension (or associated lump sum) comes into payment. The 1995 Act gave the courts power to order that the scheme make this payment directly to the divorced spouse so that the spouse would not need to go to court to obtain the payment at a later date if it was not paid. But one problem with this provision, is that the pension still belongs to the first spouse and dies with him (her).⁴⁸ If the ex-spouse dies before he (she) reaches pension age, the pension may not come into payment at all (although the dependent spouse may be entitled to a lump sum death benefit).

Overall existing provisions allow the courts a good deal of discretion in reaching a decision about a financial settlement in a particular case. Under section 25 of the 1973 Act, the courts are required *to have regard to all the circumstances of the case* when making order for financial provision after divorce. Although powers in relation to pensions were strengthened by the Pensions Act 1995 and will be strengthened further by the present Bill, the basic discretionary framework of the 1973 Act will remain. Pension sharing will not be compulsory and it will still be open to the courts to use existing ways of sharing a couple's income and assets.

The legislation does give the courts some guidance about the factors that they must consider in relation to financial settlements between parties to the marriage. In particular, first consideration has to be given to the welfare of any child(ren) and there is then a list of factors to which they are to have *particular regard*. The list (contained in section 25 of the 1973 Act) is reproduced below:

- a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- c) the standard of living enjoyed by the family before the breakdown of the marriage;
- d) the age of each party to the marriage and the duration of the marriage;

⁴⁸ although death benefits may still be payable.

- e) any physical or mental disability of either of the parties to the marriage;
- f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

The Pensions Act 1995 amended this list by adding a section 25B, which added to the list so that the following are included:

- in the case of (a), any benefits under a pension scheme which a party to the marriage has or is likely to have
- in the case of (h), any benefits under a pension scheme which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring

and also says that accordingly, in relation to benefits under a pension scheme, (a) is to have effect as if "in the foreseeable future" were omitted.

D. Pension Sharing

The provisions on pensions *sharing* in the present Bill are contained in (Clauses 15-43 and schedules 3-6). *Sharing* is the term now used by the Government to refer to what used to be called pension *splitting*, that is where the pension assets are divided so that each ex-spouse owns his or her share of the pension. In order to achieve *sharing*, the present Bill amends both family and pensions legislation but leaves the necessary changes to tax legislation to a future Finance Bill. It also leaves details of the changes to be made by Regulations. This section outlines the Government's overall intentions. In summary, main features of Government's current proposals are:

- The Government originally said that it intended to introduce pension sharing by April 2,000. The Select Committee recommended that implementation should be delayed until April 2001. In its Response, the Government said that it was discussing the issue with the pensions industry and would announce its conclusions in due course.
- Pension sharing will only be available to legally married couples. The Select Committee raised the issue of cohabiting couples but concluded that the treatment of cohabitation in law and public policy raised fundamental issues that needed to be addressed elsewhere.

- Pension sharing will not be compulsory. Courts will retain their existing discretionary powers and, where they choose to do so can use existing methods of taking pensions into account, such as offsetting its value against other assets or ordering the pension scheme to pay part of the pension when it comes into payment to the spouse who is not the scheme member.
- The courts will be free to decide what percentage of the pension will be transferred. (the pension is to be valued by a method known as Cash Equivalent Transfer Value), which is the method currently used when people transfer their pensions out of an occupational scheme.
- Pension sharing will apply to occupational pensions, personal pensions and to SERPS but not to the basic state pension as the basic state pension already makes provision for divorce.
- In funded pension schemes, a transfer value will have to be made available to the former spouse of the member and schemes will have to decide whether to offer membership as an additional option. Unfunded private sector schemes will be able to insist on the latter option and unfunded public service schemes will only be able to offer membership.
- The administrative costs of pension sharing will be borne by the divorcing couple. Pension schemes will be allowed to charge a reasonable fee.
- The provisions will not be retrospective. The Government has said this several times and, in its Response to the Select Committee, said that it would put beyond doubt that pension sharing on divorce would only be available to those who began divorce proceedings after the legislation had been brought into force.

IV Bereavement Benefits

Part V, Chapter 1, Clauses 44-46 of the Welfare Reform and Pensions Bill introduce changes to the current provision of benefits for widows. These clauses introduce new bereavement benefits which will be payable equally to widows and widowers.

A. The current system

The National Insurance system provides three main kinds of benefit for widows under 60:

- A lump sum **Widow's Payment** of £1,000 is paid on bereavement.
- A **Widowed Mother's Allowance** (WMA) is paid to widows with dependent children or those who are pregnant. The widow receives £64.70 for herself (£66.75 from April 1999), £9.90 for the eldest eligible child and £11.30 for each other child (£11.35 from April 1999).
- A **Widow's Pension** is paid to widows without dependent children.

The Widow's Pension is paid at the full rate if the widow was at least 55 when she was widowed (or when her WMA ran out because her children ceased to be dependent). This is currently £64.70 (£66.75 from April 1999).

A reduced age-related Widow's Pension is paid if the woman was aged between 45 and 54 when she was widowed (or when her WMA ceased). The rate depends on the age on bereavement, ranging from £19.41 for those widowed at 45 to £60.17 for those widowed at 54.⁴⁹ (From April 1999, the rates will range from £20.03 for those widowed at 45 rising up to £62.08 for those widowed at age 54).

The average amount of widows' benefits, including SERPS, is £65 per week.⁵⁰

All of these benefits depend on the National Insurance record of the late husband. A record, which does not fulfil the conditions, will result in lower awards, or no award. Widow's Pension and Widowed Mother's Allowance can all be enhanced if the late husband had entitlement under the State Earnings Related Pension Scheme (SERPS). None of the benefits is means tested. However, under the "overlapping benefits" rules, certain other income replacement benefits can affect payment. All of the benefits normally have to be claimed within three months of the husband's death.

⁴⁹ The age thresholds changed with effect from 11 April 1988, so that higher ones apply to widows bereaved before that date.

⁵⁰ DSS, *A new contract for welfare: Support in bereavement*, Cm 4104, November 1998, p 7

The lump sum Widow's Payment is non-taxable. All other widows' benefits are taxable, with the exception of the child dependency additions.⁵¹

A widow over 65 does not get widows' benefits. Instead, she gets a Retirement Pension based on her own contributions, those of her late husband or some combination of the two contribution records. Widows between the ages of 60 and 65 may get either a Widow's Pension or a Retirement Pension.

Widows can also claim Incapacity Benefit on the basis of their husband's contributions. Since 4 April 1979, widowers have been able to Incapacity Benefit on the basis of their wife's contributions.

B. History⁵²

There has been benefit provision for widows since 1925. The *Widows', Orphans' and Old Age Contributory Pensions Act 1925* provided a pension for all widows whose late husbands fulfilled the contribution conditions, whether or not they had children.

Further changes were made in 1948 with the introduction of a Widow's Allowance payable to all widows for 13 weeks, a Widowed Mother's Allowance, and a Widow's Pension where the claimant was widowed over the age of 50 or was over 40 when Widowed Mother's Allowance ceased. There were a number of changes to the detail of the scheme in the post war years, but the structure remained broadly intact.

In the mid 1980s, the Conservative government decided on a number of changes to widows' benefits as part of its wider social security reforms. More help was to be given "immediately after bereavement, when financial problems were particularly acute" and help was to be concentrated on older widows.⁵³ The main changes were contained in the *Social Security Act 1986* and introduced the system that currently exists. Further information on the history of widows' benefits can be found in the Library Research Paper, *Widows' Benefits (revised edition)*.⁵⁴ The Research Paper also provides information and details about the number of recipients of Widows' Benefits, the costs of benefits and information about income distribution and work patterns among widows.

⁵¹ Section 617, *Income and Corporation Taxes Act 1988*

⁵² This section draws mainly from Ogus, Barendt and Wikely's *The Law of Social Security*, 1995, pp 277-8, Joan C. Brown, *In Search of a Policy*, 1988, pp 25-28 and Library Research Note No 338, *Widows Benefits*

⁵³ *ibid*

⁵⁴ Research Paper 98/100, 23 November 1998

C. Background to the Changes

1. Widowers' Benefits

There are no equivalent National Insurance benefits specifically for widowers, although there are some provisions for a widower whose wife died when they were both over pensionable age. The unequal treatment of widowers goes back to the introduction of widows' pensions in 1925 and was perpetuated by the Beveridge inspired National Insurance system which was introduced in 1948. There have been several moves at European Community level to eliminate aspects of unequal treatment between men and women in social security systems. Further information about European equal treatment directives and the background to the different treatment of widows and widowers can be found in the Library Research Paper, *Widows' Benefits (revised edition)*.⁵⁵

A widower named Kevin Willis has made a legal challenge to the European Court of Human Rights over the lack of rights of widowers to the social security benefits available to widows. He is backed by the Child Poverty Action Group. It is likely to be some time before the case is heard.

2. The Consultation Document: Support in Bereavement

On 18 November, Secretary of State for Social Security, Alistair Darling MP, announced the publication of a Consultation Document on bereavement benefits, *A New Contract for Welfare: Support in Bereavement*.⁵⁶ In the announcement, Mr Darling described the reasons why reform of the system was necessary:

The system also fails on four specific counts. First, it is unfair to men: 15,000 husbands bereaved each year get no help at all. That unfairness cannot continue, and it is already being challenged in the European Court of Human Rights - so doing nothing, as some urge, is not an option. Secondly, the system does not provide enough help with the immediate costs of bereavement, such as unpaid bills or funeral costs. Thirdly, money often goes to those who have the least need of it. Widows without children who have substantial incomes can get benefits for years, but a man - who may have growing children and modest means - gets nothing at all. Finally, the present system fails to support the poorest mothers on income support. Widows who have children to care for lose their benefit pound for pound, and so get no financial gain from their widows' benefit.

The reforms that I am announcing today will change all that. Our reforms will, for the first time, get help to men who lose their wives, and on an equal footing with widows. They will provide extra financial help with immediate needs, such as funeral expenses.

⁵⁵ Research Paper 98/100, 23 November 1998

⁵⁶ DSS, *A new contract for welfare : Support in Bereavement*, Cm 4104, November 1998

D. The Bill's provisions

1. Clauses 44-46: benefits for widows and widowers

The proposals in the consultation document have been carried forward into the Welfare Reform and Pensions Bill. Some elements of these reforms are due to be introduced through secondary legislation.

2. Summary of changes

The changes introduced by this part of the Bill are described in the Explanatory Notes to the Bill:

- a "Bereavement Payment" of £2,000 paid to both widows and widowers on bereavement. This doubles the value of the current lump sum paid to widows;
- a "Widowed Parent's Allowance" equivalent to Widowed Mother's Allowance, and including any Additional Pension (SERPS) - for parents who are bereaved of their husband or wife. Entitlement continues until the youngest or only dependent child in the family is aged 16 or up to age 19 if still in full-time further education. This benefit will be available to fathers already widowed when the scheme comes into force;
- widows and widowers aged 45 and over with no dependent children will receive a weekly, age-related benefit (with no SERPS component) for six months. This is to be known as a "Bereavement Allowance";
- only men and women widowed before the new provisions take effect will have entitlement to Incapacity Benefit on the basis of their late spouses' contributions.

The package of proposals includes two further measures which can be introduced by regulations using existing powers:

- £10 of a person's Widowed Parent's Allowance will be disregarded in assessing entitlement to income-related benefits (such as Income Support);
- men and women aged 55 and over at the start of the new arrangements who are widowed during the subsequent five years and whose entitlement to the Bereavement Allowance has expired, will have special access to Income Support. In other words, they will not be required to claim Jobseeker's Allowance and meet its conditions of being available for and actively seeking work. In addition, a new premium will be available in the income-related benefits to ensure that these recipients retain an income which is at least equivalent to the amount of the Bereavement Allowance.⁵⁷

⁵⁷ Explanatory Notes, p 69

The existing principle that widows' benefits cease if the widow remarries or cohabits with a member of the opposite sex is carried forward to the new system.

3. Clause 44: The Bereavement Payment

The background to the changes in bereavement benefits contained in Clauses 44 and 45 is described above.

Subsection (1) replaces the Widow's Payment with a new benefit, which will be payable to both men and women. This will be known as the "Bereavement Payment". In order to ensure equal treatment between men and women, Section 36 of the Social Security Contributions and Benefits Act 1992 (hereafter known as the Contributions and Benefits Act) which provided for the Widow's Payment will be replaced by a new section, which refers to "person" and "spouse" rather than "woman" and "husband". It enables the Bereavement Payment to be paid to men or women whose spouse dies on or after the date on which the provision comes into force ("the appointed day").

The inserted sections 36(1)-(2) set out the entitlement conditions for the Bereavement Payment. These are the same as the existing conditions for a Widow's Payment.

The inserted section 36(2) continues the principle, which prevents a widow from receiving a Widow's Payment if, at the time of her husband's death, she is living together with another man as husband and wife. As previously stated, bereavement benefits will cease if a widow or widower starts to co-habit. There is no definition of "living together as husband and wife" in legislation, but the concept and definitions of co-habitation have been well developed in social security case law.

Subsection (2) replaces Part II of Schedule 4 to the Contributions and Benefits Act, so that the amount of the Bereavement payment will be £2,000. Widow's Payment is currently worth £1,000.

4. Clause 45: New allowances for bereaved spouses

This clause introduces the two new benefits for bereaved spouses: Widowed Parent's Allowance and Bereavement Allowance. Four new sections will be inserted into the Contributions and Benefits Act. These sections, (36A, 39A, 39B and 39C), will make provision for the new benefits. All references below are to sections of the Contributions and Benefits Act.

5. Benefits for those widowed before the "appointed day."

The inserted section 36A sets out when the new benefits, and when the existing scheme, should apply. It provides that the existing arrangements will continue to apply for all people whose spouses die before "the appointed day" (the day the new benefits come into force):

- In the case of women, they will still be able to claim Widowed Mother's Allowance, Widow's Pension and Incapacity Benefit (on the basis of their husbands' contributions), under the current rules. Then, if a widow is aged 45 or over when her Widowed Mother's Allowance ends, she will still be entitled to receive Widow's Pension and/or Incapacity Benefit. Additionally, if she is under 45, she will still be entitled to receive Incapacity Benefit;
- In the case of men, they will still be entitled to Incapacity Benefit on the basis of their wives' contributions (as provided by the existing section 41), if they meet the qualifying conditions;

One important difference is that existing widowed fathers (those widowed before the appointed day) will be brought into the new system. They will be entitled to the new Widowed Parent's Allowance, if they satisfy the qualifying conditions on the appointed day.

6. Benefits for those widowed on or after the appointed day

The two new benefits, the Widows Parent's Allowance and the Bereavement Allowance will apply for all people whose spouses die on or after the appointed day. The basic conditions of entitlement are shown in the *Summary of Changes* at the beginning of this section.

The inserted section 39A provides for the Widowed Parent's Allowance. It reproduces the rules which currently apply to Widowed Mother's Allowance, but extends the new benefit to widowers.

The inserted section 39B provides for the Bereavement Allowance. Most of the entitlement conditions of Widow's Pension are retained for the Bereavement Allowance. There are however some important exceptions as the Explanatory Notes describe:

- the benefit is available for widowers who meet the conditions of entitlement;
- the benefit is only payable for a maximum period of 26 weeks beginning with the date of death;
- no additional pension (State Earnings Related Pension - SERPS) will be paid with the benefit (although see the provisions for SERPS in Retirement Pension for widows and widowers in clause 46 : Additional Pension, below).

The Explanatory Notes set out the rates at which the two new benefits are payable, (as provided for in the inserted section 39C):

- Under subsection (1), the weekly rate of Widowed Parent's Allowance will be calculated in the same way as for Widowed Mother's Allowance now. This means that

the inclusion of an additional pension (SERPS) will continue to be made on the basis of existing legislation. The 50% reduction in the value of SERPS from April 2000 (which was provided for in the Social Security Act 1986) will remain unchanged (subsection (4)).

- Subsection (2) makes provision for the weekly rate of a Bereavement Allowance. It is to be paid at a basic rate only with no additional pension.
- Subsection (5) preserves for Bereavement Allowance the rules which vary the amount of benefit according to the age of the widow when her husband dies or when her entitlement to Widowed Mother's Allowance ends. There is a 7% deduction from the full rate of benefit for each year she is aged under 55 at that date and, once determined, the amount stays fixed. The same rule applies to all surviving spouses for Bereavement Allowance.

7. Incapacity Benefit based on spouses' contributions

People widowed on or after the appointed day will not be entitled to Incapacity Benefit on the basis of their spouses' contributions. As outlined in previous sections currently widows and widowers can claim Incapacity Benefit on the basis on their spouses' contribution record. The provisions in Clause 45 mean that after the Act comes into force, neither (newly widowed) widows nor widowers will be able to use their spouses' contributions to claim Incapacity Benefit. This change was not included in the Consultation Document, *A New Contract for Welfare: Support in Bereavement*.⁵⁸ The need for the change came to light as a consequential amendment.⁵⁹ The rationale was to equalise for people aged over 45 the position regarding access to benefits based on their former spouses' contributions. As benefits for people without children are being restricted to six months, the DSS considered it right that an alternative benefits should not be available from the spouses' contribution record. The DSS estimated that this provision will affect about 2,000 people a year, of which a very small number will be widowers.⁶⁰

8. Clause 46: Additional Pension

Clause 46 provides for the rights to Retirement Pension and SERPS for widows and widowers based on their spouses' contributions. Currently, widows are able to substitute their late husband's contribution record for their own and obtain a Category B Retirement Pension. They will still be able to use their spouses' contributions to build up a Category B Retirement Pension, as will widowers.

⁵⁸ DSS, *A new contract for welfare : Support in Bereavement*, Cm 4104, November 1998

⁵⁹ Source : DSS officials

⁶⁰ Source : DSS officials

Currently some widows will also be receiving a SERPS addition, based on their husbands' contributions, added to their Widows Pension or Widows Mother's Allowance. This SERPS addition is then added to Category B Retirement Pension once the widow reaches retirement age. She is also able to combine the inherited SERPS with any she has built up herself (subject to a maximum limit).

Under the new system, there are likely to be periods when widows and widowers are not receiving any SERPS additions (when Widowed Parent's Allowance has expired or if Bereavement Allowance, which has no SERPS element, had been the only benefit in payment). In these circumstances, when SERPS is no longer in payment, the widow or widower will still be able to inherit part of the SERPS when they retire. The provisions of the Social Security Act 1986 will apply so that from April 2000 widows will only be able to inherit half the SERPS built up by their former spouse. The SERPS element will be uprated by inflation as though it had still been in payment. They will be able to add any SERPS that they themselves have built up to the inherited SERPS (again subject to a maximum limit)

The Explanatory Notes provides further information on the background to the provisions relating to pensions contained in Clause 46.

Legislation is already in place to ensure that those who are widowed, whether men or women, are able to use "substitution" provisions to help them achieve a basic Retirement Pension if their own contribution record during the period of marriage is inferior to that of their spouse. Section 48 of the Contributions and Benefits Act provides for circumstances in which a former spouse's contributions can be treated as if they were those of the pensioner, and section 52 contains additional provision for surviving spouses.

Under the existing scheme, widows who receive Widowed Mother's Allowance or Widow's Pension are paid an amount of Additional Pension with their weekly benefit, based on their husbands' contribution records. This benefit continues until they reach pensionable age. They are then entitled to a "Category B" Retirement Pension (i.e. a pension based on their husband's National Insurance contributions) paid at the same level.

The new scheme is different, in that Bereavement Allowance is to be paid for 26 weeks only, and without any Additional Pension (see clause 45). So, unless they are still receiving Bereavement Allowance or Widowed Parent's Allowance when they reach pensionable age, future widows and widowers will have a period before retirement when they are not receiving any bereavement benefit or Additional Pension.

But the intention is that, once they do reach pensionable age, and provided they have not remarried, they should have the same amount of Category B Retirement Pension as if they had been receiving a benefit with Additional Pension continuously since their date of bereavement. That is to say, their Retirement Pension should be exactly the same as if they had been claiming under the current

system. Therefore, this clause provides for the same entitlement rules, but by reference to the new bereavement benefits.

9. Consequential amendments

As a result of the changes to bereavement benefits a number of consequential amendments are required. The consequential amendments are contained in Part I of Schedule 8 which amends to the Contributions and Benefits Act, the Social Security Administration Act 1992 and the Pensions Schemes Act 1993, so that they refer correctly to the new bereavement benefits.

E. Financial Implications.

The Explanatory Notes gave details of the financial implications of the changes to bereavement benefits:

The increase in the amount of the immediate lump sum payment on being widowed from £1,000 to £2,000 and extending provision to widowers will result in additional benefit expenditure in the first year of £70 million. In the long run, there will be an increase in benefit expenditure of around £50 million a year.

The measures to introduce a Widowed Parent's Allowance (replacing Widowed Mother's Allowance and extending the provisions to men) are expected to result in additional benefit expenditure of £60 million in the first year. In the long run, benefit expenditure on this measure is expected to be in the order of £50 million per year.

The measures relating to the introduction of Bereavement Allowance for widows will result in a first year reduction in benefit spending of under £5 million and a long run reduction of around £600 million. For widowers, there will be an increase in benefit spending of £10 million in the first year and an increase in the long run of less than £25 million.

Operational expenditure for all the measures relating to Bereavement Benefits is expected to be around £3.6 million in the two years before implementation and £500,000 a year in subsequent years.

The Green Paper stated that in the first year, the new system would increase spending by around £100 million but by 2020 savings would build up to around £500 million a year.⁶¹

⁶¹ DSS, *A new contract for welfare: Support in bereavement*, Cm 4104, November 1998

F. Reaction to the Changes

A number of organisations responded to the Consultation Document published in November 1998.⁶² The following extracts are taken from those responses to the consultation process.

The introduction of benefits for widowers and equal treatment between men and women has been widely welcomed. For example the Equal Opportunities Commission stated

The EOC welcomes the proposals to extend the coverage of the new bereavement benefits equally to widowers and widows. The EOC supports the Government's commitment to modernising benefits for widows and widowers and is particularly pleased to see that one of the guiding principles for reform is that there should be equal treatment between widows and widowers.

The Carers National Association also welcomed the move towards equal treatment:

Particularly welcome, is the long overdue extension of all widow benefits to widowers. This will be welcomed by many men who have been caring for their sick and disabled wives and have found existing levels of support unjust and discriminatory

The increase in the lump sum Bereavement Payment from £1000 to £2000 has also been welcomed. The National Association of Widows /Widows Advisory Trust 'very much' welcomed the increase but added that they wished to see the payment increased annually with inflation. There have however been criticisms of elements of the new provision. Some organisations have criticised the decision that entitlement to bereavement benefits will be based solely on the National Insurance contribution record of the deceased, rather than on either party to the marriage. Cruse argued:

We think entitlement to the new bereavement benefits should be based on the NI record of either spouse, whichever would give the best rate of benefit, and, if neither spouse has a full NI record, the records of both spouses should be combined to give benefit up to the standard rate. We think this method, similar to that available to widows and widowers claiming the state retirement pension, is fairer than the criteria which currently apply to women claiming widow's benefits.

The National Council for One Parent Families pointed out that due to lower pay and interrupted work patterns women were less likely to have a full National Insurance contribution record. They were concerned that 'many men will presumably receive a lower amount of Widowed Parent's Allowance due to the incomplete NI record of their spouse' and that 'only women who have unbroken work records will have the assurance

⁶² DSS, *A new contract for welfare: Support in bereavement*, Cm 4104, November 1998

that their husband is covered if they die.' Particular criticism has been levelled at the abolition of Widow's Pension and its replacement with the Bereavement Allowance. Age Concern expressed these criticisms:

For many widows in their late 40s or 50s the non-means-tested widow's benefit acts as a foundation, which enables them to achieve a modest income when supplemented with other income such as earnings. The paper states 'only' 16% of widow's benefits recipients receive any Income Support however fails to state how many would be brought into Income Support or other means-tested benefits were they not entitled to widow's benefit. There is a danger that without a non-means-tested benefit widows will have less incentive to seek work, as they would need to earn much more in order to receive an income higher than that on means-tested benefits.

The Social Security Advisory Committee also voiced concerns:

We are also concerned about the position of the older bereaved - especially women - without dependent children under the new arrangements. The emphasis on their regaining financial independence through employment we regard as unrealistic. As with disabled people, the labour market does not easily absorb those without specific skills, especially when employment is contracting and competition for work intensifies.

Cruse expressed disappointment at this aspect of the changes:

We are disappointed at the proposal to abolish the widow's pension and not to extend it to include widowers. This will affect both widows and widowers who are newly bereaved between the ages of forty-five and retirement, and those of a similar age when they cease to be entitled to the widowed parent's benefit. We appreciate [the Government's] concern to target benefits to those most in need, and agree that widowed parents with dependent children make up the most needy group, but losing a spouse from the age of forty-five to retirement age is usually devastating and can result in financial hardship. In particular, many parents in this age group still need to continue to support their older teenage or young adult children through further or higher education or training.

The National Council for One Parent Families criticised the fact that the new system, in common with the previous system, only applies to married spouses, not unmarried partners:

However, we are in favour of the general principle that support should reflect parenting responsibilities rather than marital or other status. We think that these proposals should perhaps go further to recognise that parents with children who are not married, or who lose partners for other reasons, should also have these costs met through the social security system. There is presently an imbalance between provision for widows and for other lone parents.

The Child Poverty Action Group welcomed the concessions made to older widows and widowers as regards being required to be available for work but felt that a younger age limit should be chosen:

Given the ageist nature of the job market and the possible increase in unemployment, the proposal that a person aged 55 should not be required to be available for work is welcome. However given the difficulties that many people over 50 will face we believe it should be extended to all widows/ers over 50. By using the Single Gateway to Work but without the element of compulsion as for lone parents the widowed person could be assisted into work without causing too much unnecessary stress.

Iain Duncan Smith, shadow Secretary of State for Social Security, believed that the changes undermined the contributory principle within the social security system and that the time- limited Bereavement Allowance would result in more people being dependent on means-tested benefits.

David Rendel, Liberal Democrat spokesman on social security, was critical of aspects of the changes:

There are aspects to the changes to widows benefit about which I am concerned, as I hope all hon. Members are. Not least is the fact that the Government seem so desperate to make savings that they will penalise the recently bereaved. In particular, to limit the new bereavement allowance to just six months is far too short. Losing a spouse is about the most traumatic of all life events, and those who do so unexpectedly in middle age need a decent period of adjustment before they can be expected to stand entirely on their own feet again. It can be difficult for widows who are not working at the time of an unexpected bereavement, suddenly to have to re-enter the job market successfully, and the measures make no real allowance for that.

V The Single Work-Focused Gateway

A. Background

In its Green Paper on welfare reform published in March 1998, the Government announced its intention to develop the way benefits are delivered and increase the role of personal advisers:

Flexible personalised service

21. The New Deal programme highlights the need for a new approach to service delivery. We are looking at the scope for moving towards a single work-focused gateway into the benefit system for all those of working age, providing customers with a flexible, professional, personalised service. In particular, we want to see whether more benefit claimants can be provided with a personal adviser who would help them develop a tailor-made action plan. This might involve:

- identifying benefit needs;
- making an individual assessment of capacity for work;
- identifying barriers to labour market participation;
- offering help and advice in relation to jobsearch; and
- arranging mentoring support from older people with greater experience of the workplace.

22. Evidence from a range of Employment Service programmes and the New Deal for Lone Parents, as well as similar projects in other countries, suggests that a service provided by personal advisers is valued by claimants and staff alike.

23. However, pilots are needed before the new approach is made available more generally. These will help establish the framework within which personal advisers will work and will assess what claimants can reasonably be asked to do and how to get the best value for money from the additional resources that the New Deal would require. We will link these pilots, wherever practicable, to related welfare-to-work initiatives, most notably Employment Zones, in order to provide the most effective packages of help to individuals to improve their employability and gain work.⁶³

The Green Paper on welfare reform was followed by a document on the single work-focused gateway, published in October 1998.⁶⁴ This proposed an increase in the use of personal advisers and the development of a single point of contact for benefit claimants. These proposals would develop "a more streamlined and efficient system in which there

⁶³ DSS, *New ambitions for our country: a new contract for welfare*, Cm 3805

⁶⁴ DfEE and DSS, *A new contract for welfare: the gateway to work*, Cm 4102

is a single point of access to welfare, and in which everyone who has the potential to work is provided with the help to find it".⁶⁵

The Paper also confirmed that attendance at an interview with a personal adviser would be compulsory for the majority of benefit claimants of working age. Currently, Jobseeker's Allowance claimants are the only benefit recipients who are required to attend work-focused interviews as a condition of receipt of benefit. Jobseeker's Allowance claimants must also be available for work and actively seeking work and have additional labour market conditions attached to their receipt of benefit. The Government's proposals for other benefit claimants are limited to requiring attendance at interview and there are no further requirements in the Bill to accept a job offer or undertake training.

It is this requirement on claimants to attend work-focused interviews as part of the Single Gateway that requires primary legislation. This issue has attracted much press coverage.⁶⁶ The Government argued in its Paper on the Single Gateway that the case for change in terms of compulsion was supported by the experience of the New Deal for Lone Parents. In this programme, nine out of ten lone parents who opted to take part in an initial interview went on to participate in the programme but four out of five invited to interview chose not to attend.⁶⁷ In the Press Release on the day of the Bill's publication, Alistair Darling, Secretary of State for Social Security, put the proposal to compel people to attend interviews in the context of an individual's rights and responsibilities:

We are introducing a new contract with a single gateway to the benefit system. We will help you - but you must do something to help yourself.⁶⁸

The Prime Minister, Tony Blair, reiterated this argument in an article for the *Daily Mail*:

It means the Government provides opportunities such as the New Deal for the Young Unemployed ... Individuals, in turn, have a responsibility to accept work, train themselves for jobs, be flexible in the jobs they take and avoid dependency where they can.

It marks an end of the something for nothing welfare state. The days of an automatic right to benefit will go. It's tough, but the right thing to do.⁶⁹

The approach outlined in the Paper on the Single Gateway is to bring together the Employment Service, Benefits Agency and other welfare providers to a single point of contact. It proposed that new claimants of working age should be required to attend a personal adviser interview but that exceptions would be made for the recently bereaved,

⁶⁵ *ibid*, p 1

⁶⁶ see for example, "MPs plan revolt on benefit reforms", *Independent*, 11 February 1999 and "'Harsh' rules to benefit poor", *Guardian*, 11 February 1999

⁶⁷ *ibid*, p 3

⁶⁸ DSS Press Release, *Welfare reform bill heralds radical change to benefits culture*, 10 February 1999

⁶⁹ Tony Blair, "It really is the end of the something for nothing days", *Daily Mail*, 10 May 1999

lone parents with very young children, people with heavy caring commitments or those suffering an acute illness. In these cases people would not be expected to take part in an interview about work and priority will be given to "resolving their immediate financial needs by establishing and paying the benefit to which they are entitled and identifying welfare needs."⁷⁰ The Paper goes on to say that for these groups "it would be right to return to the question of possible work at a later stage".⁷¹

The document stated that the Single Work-Focused Gateway will be introduced in three stages:

- Phase 1 - from June 1999 the first set of pilots will be introduced in four areas: Essex South East, Warwickshire, Clyde Coast and Renfrew, Lea Roding.
- Phase 2 - the pilots will be extended to a further eight areas and this will involve two variants on the basic model:
 1. The use of call centre technology as a way of people making initial contact with the system for claimants in Somerset, Buckinghamshire, Gwent Borders and Calderdale and Kirklees.
 2. Tendering the basic model to external providers from the private and voluntary sector in Suffolk, North Nottinghamshire, Leeds and North Cheshire.
- Phase 3 - subject to the provisions in the Bill becoming law, it will become a condition of benefit that, when asked to do so, people take part in an interview with a personal adviser. The Government stated in the document that although attending an interview will be compulsory, it will "not be requiring other benefit claimants to follow a particular course of subsequent action".⁷² This approach is reiterated in the Explanatory Notes to the Bill.⁷³

The Paper also suggested that national implementation would depend on the experience in the pilot areas.⁷⁴ The Explanatory Notes confirm that "decisions on national implementation will be taken at a later date".⁷⁵ In a Press Release earlier this year, the Government confirmed the twelve pilot areas and announced the allocation of £79.5 million over three years for additional administrative costs.⁷⁶

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *ibid*, p 12

⁷³ Explanatory Notes pp 73-4

⁷⁴ Cm 4102, p 2

⁷⁵ Explanatory Notes, p 116

⁷⁶ DfEE press release, *Blunkett and Darling welcome £80 million cash boost for new welfare reform programme*, 13 January 1999

The Single Gateway Paper refers to experience in other countries which it says shows that using personal advisers to provide help with job search can be effective.⁷⁷ Similarly, the idea of combining a benefits delivery service and an employment advice service based in the same location has also been implemented abroad. Two recent reports by the Social Security Select Committee and the Employment Sub-Committee have examined the welfare delivery systems in the USA and Australia, two countries that are often cited in relation to the Labour Government's welfare reform programme.⁷⁸ These reports make reference to the UK Government's proposals and compare them with the systems operating in Australia and the USA.

B. The Bill's Proposals

The Bill would provide the legislative framework to require claimants of specified benefits to attend interviews as a condition of receiving benefit. The penalties for failing to attend an interview will be set by regulation though there is some indication of the Government's intention in the Explanatory Notes. The Bill goes further than the proposals in the Paper on the Single Gateway in that it gives the Secretary of State powers to require benefit claimants to attend interviews after eligibility for benefit has been established. The Single Gateway Paper discussed compulsion in terms of an adviser interview (singular) rather than interviews. The Bill also allows for the exchange of information between the relevant Single Gateway providers, such as local authorities and the Benefits Agency.

1. Work-Focused Interviews

Clause 47 would insert new sections 2A and 2B into the *Social Security Administration Act 1992* ("the Administration Act"). The new section 2A(1)(a) gives the Secretary of State powers to make regulations to require claimants to take part in an interview as part of the benefit claim process. New section 2A(1)(b) extends these powers to prescribe occasions when taking part in an interview would become a condition of continuing to remain entitled to benefit after initial eligibility has been assessed. This gives the Secretary of State the power to extend these provisions to existing claimants. The Explanatory Notes state that the reason for using secondary legislation to prescribe circumstances when interviews may be required is "that there needs to be flexibility to adjust the various detailed aspects of the scheme in the light of experience during the pilot exercises".⁷⁹

New section 2A(2) lists the benefits to which the Single Gateway would apply. The claimants of these benefits will be required to attend interviews:

⁷⁷ Cm 4102, p 6

⁷⁸ Social Security Select Committee, *Social Security Reforms: Lessons from the United States of America*, 18 February 1998, HC 552 1997-8 and Employment Sub-Committee, *Active Labour Market Policies and their Delivery: Lessons from Australia*, 26 January 1999, HC 173 1998-9

⁷⁹ Explanatory Notes, p 74

- Income Support
- Housing Benefit
- Council Tax Benefit
- Widows Benefits and the new Bereavement Benefits to be created by the Bill
- Incapacity Benefit
- Severe Disablement Allowance
- Invalid Care Allowance

This list mainly includes income replacement benefits and does not cover, for example, benefits that are intended to assist with the additional costs associated with being disabled, such as Disability Living Allowance. Claimants of such benefits may already be working and if they are not, and require additional financial support, they may be claiming one or more of the benefits listed above. However, Widows' Benefits and the new Bereavement Benefits have been included. These are not income replacement benefits and helping these claimants into work would not necessarily reduce their entitlement to benefit. Government policy is to encourage as many people as possible into the labour market to benefit the individual and the economy as a whole. Helping somebody maintain contact with the labour market may also reduce the risk of them later relying on benefit. If widows or widowers claiming bereavement benefits are already working, the Gateway will simply be used to process their claim.

New section 2A(3)(a) covers those claimants who may be claiming more than one of the prescribed benefits to ensure that they do not have to attend an interview for each benefit that they claim.

Regulations will also provide for determining those who may carry out the interviews (section 2A(3)(b)) and where they should take place (section 2A(3)(c)). Currently, benefits are delivered from various locations depending on which benefit is being claimed. Local authorities administer Housing Benefit and Council Tax Benefit, the Benefits Agency administers benefits such as Income Support, and Jobseeker's Allowance is jointly administered by the Employment Service and the Benefits Agency. An individual who claims, for example, Jobseeker's Allowance and Housing Benefit may have to deal with all three organisations. The Explanatory Notes describe the Government's intention under the proposed system:

An important aim of the Single Work-Focused Gateway is to give claimants a more streamlined, integrated service by providing a single point of contact for all of their benefit requirements ... An interview may be conducted by a person acting on behalf of the Secretary of State (most commonly an employee of the Benefits Agency, the Employment Service or a private/voluntary sector organisation contracted to provide services to the Secretary of State) or by an employee of a local authority. It is intended that the interview will usually be conducted at Benefits Agency, Employment Service or local authority premises,

although there will be some occasions where this is either not feasible or not appropriate. In such circumstances, the interview could be conducted at the person's home or some other suitable premises.⁸⁰

2. Sanctions for failing to attend an interview

The circumstances in which the claimant is considered to have fulfilled his or her responsibilities in terms of attending the interview will be prescribed by regulations under the proposed section 2A(3)(d). These regulations will determine how decisions are made on whether a claimant may be sanctioned for failing to meet the requirements for claiming a particular benefit. The Explanatory Notes suggest that simply turning up to the interview may not be sufficient and states that the "test of whether a claimant has taken part will be whether he has provided information in areas relevant to his employment prospects, such as educational qualifications, previous work history and vocational training".⁸¹

New section 2A(3)(e) would allow the sanction measures made under new section 2A(4) to apply unless the claimant can show that he or she has "good cause" for not attending an interview. "Good cause" will be defined by regulations made under subsection (3)(f). As the Explanatory Notes point out, "good cause" is not a new concept in social security law. For example, there are two categories of "good cause" under the JSA legislation:

1. In certain circumstances, a claimant is automatically considered to have "good cause" for failing to attend an interview.⁸² An example of a case in which an Adjudication Officer must consider a claimant has "good cause" is if the claimant is a carer or engaged in voluntary work and did not receive the 48 hours notice required for these categories of claimants.
2. There are also factors an Adjudication Officer must take into consideration when deciding "good cause" but do not provide automatic "good cause".⁸³ These include claimants having difficulty in understanding the requirements placed on them because of language difficulties.

The Explanatory Notes to the Bill give examples of factors that may be considered "good cause" for failing to attend a work-focused interview but they do not state whether these will be automatic or simply issues that must be taken into consideration. The examples provided are if the claimant has suffered from an accident or illness on the day of the proposed interview or where the claimant misunderstands the requirements placed on them because of language difficulties.⁸⁴

⁸⁰ Explanatory Notes, p 75

⁸¹ *ibid*, p 76

⁸² Regulation 30, *Jobseeker's Allowance Regulations 1996*, SI 1996/207

⁸³ Regulation 28, the *JSA Regulations 1996*, SI 1996/207

⁸⁴ Explanatory Notes, p 76

New sections 2A(4) and 2A(5) deal with the penalties for failing to take part in an interview. Attendance at an initial interview will be considered part of the claim process and therefore failure to attend this interview will result in the claim not being completed (subsection (4)(a)). No benefit can be paid until the claim process is completed. Where a claimant has an existing entitlement to benefit, regulations will prescribe the amount by which benefit will be reduced for failure to attend (subsection (4)(b)). The Explanatory Notes state that "it is the intention that there will be a small reduction in the aggregate amount of benefit in payment - and this will be refundable once an individual has taken part in a work-focused interview".⁸⁵ Press reports have suggested that the sanctions could be greater than the Explanatory Notes indicate. An article in the *Independent* on the day the Bill was published said that "Alistair Darling, the Secretary of State for Social Security, made it clear that all, rather than part, of their state benefits would be stopped".⁸⁶ This is also stated in a *Guardian* article on the same day.⁸⁷ Regulations will prescribe the amount of the reduction (subsection (5)(a)) and circumstances in which the prescribed reduction may be reduced (subsection 5(b)). According to the Explanatory Notes this latter provision is:

to cover situations where the amount of the reduction would otherwise be greater than the entitled amount of benefit. In addition, it is the intention to ensure that the claimant retains entitlement to a nominal amount of each benefit, to prevent the claim from lapsing and where appropriate, to ensure that entitlement to any "passported" benefits is retained.⁸⁸

Regulations may allow a reduction to be applied to more than one benefit if a claimant claims a number of benefits (subsection (5)(c)) but the total reduction must be no more than the amount stipulated under (5)(a). The Explanatory Notes state that "it is expected that Housing Benefit will be the last benefit to which sanctions should be applied, given its specific role in covering essential housing costs".⁸⁹ Regulations under the proposed subsection (5)(d) will allow for refunds to be paid once the claimant has attended the required interview.

The new section 2A(6) gives regulation-making powers to the Secretary of State to stipulate when a requirement to attend an interview will not apply (subsection (6)(a)). These will include pensioners in receipt of one of the benefits listed in 2A(2) such as Income Support, and recipients of Housing Benefit who are already in full-time work. This is usually defined in social security legislation as work of more than 16 hours per week.⁹⁰ The Single Gateway proposals stated that it would be inappropriate to call for

⁸⁵ *ibid*, p 77

⁸⁶ "MPs plan revolt on benefit reforms", *Independent*, 11 February 1999

⁸⁷ "Harsh rules to benefit poor", *Guardian*, 11 February 1999

⁸⁸ *ibid*

⁸⁹ *ibid*

⁹⁰ Regulation 5 *Income Support (General) Regulations 1987* SI 1987/1967

interview the recently bereaved or the terminally ill.⁹¹ This will be provided for by regulations under new section (6)(b) and (6)(c).

New section 2B contains proposed supplementary provisions relating to the new powers to be contained in section 2A. These would allow appeals to be made to the new unified appeals service in respect of decisions that "good cause" has not been shown for failure to attend (subsection (1)). These appeal rights will include those appeals in relation to decisions made by local authorities (subsection (2)).

3. Supply of information

The new subsection 2B(3) would allow information gathered from a work-focused interview to be considered as "information relating to social security" under section 3(1) of the *Social Security Act 1998* and under a future section resulting from clause 60 of the Bill. Section 3 of the *Social Security Act 1998* is intended to "ensure that information provided in respect of any one particular benefit ... can be used in respect of any other benefits ... where the information is relevant - for example notification of a change of address could be applied across all benefits in payment".⁹² The proposed new section 2B(3) of the Administration Act would extend the scope for information sharing to include that obtained from a work-focused interview. The Explanatory Notes state that "the intention is to ensure that information gathered about a client's employability can be passed on to their personal adviser".⁹³

Clauses 58 and **60** also cover the supply of information. **Clause 58** would insert a new section 16A into the Administration Act. It would give local authorities powers to collect information on claims for any prescribed benefit (subsection (1)(a)). Currently, local authorities only have the power to collect information on claims for the two benefits they administer, namely Housing Benefit and Council Tax Benefit. The extension to the supply of information provided for by this clause is intended to facilitate the role of local authorities in connection with the Single Gateway provisions but also to help meet the Government's proposals to establish the delivery of benefits as an "active modern service". The Explanatory Notes state:

The clause is also needed to enable local authorities to play a full part in the wider DSS initiative to make social security as a whole more customer-focused and better co-ordinated. The Department's aim is that, as far as possible, customers should be able to claim social security benefits, child support and war pensions, give information and make enquiries concerning their social security business through a single point of contact. This might be, for example, the Benefits Agency or the local authority.

⁹¹ Cm 4102, p 2

⁹² *Social Security Act 1998*, Notes on Sections, p 3

⁹³ Explanatory Notes, p 79

It is also intended that claims for a range of social security benefits should be able to be made on a single, integrated claim form. For example, pensioners wishing to claim Retirement Pension, Income Support, HB and CTB will be able to do so on the same form, rather than having to complete separate claims and provide the same information to both the Benefits Agency and the local authority.⁹⁴

Local authorities would have powers under the proposed legislation to obtain information on an individual's claim for benefits and advise them accordingly. It would also enable them to answer queries from claimants about benefits they have claimed from other organisations such as the Benefits Agency.

Clause 60 would provide the Secretary of State with powers to prescribe organisations which may exchange information in order to facilitate a number of Government initiatives. The New Deal programmes, the Employment Zones and the proposed Single Gateway are initiatives which involve different Government departments and private and voluntary sector providers. The provisions would cover information provided for the purposes of establishing benefit entitlement and that which is collected during the registration process about a person's work experience, skills and employability. According to the Explanatory Notes "it is intended that information which is needed to assess the benefit claim will only be passed on to the appropriate agency for processing, and that information about the client's employability will only be passed on to their personal adviser".⁹⁵

Regulations will prescribe the purposes for which information may be supplied and the extent to which such information can be exchanged (subsection (1)(b) and (c)). The organisations covered by the provision are listed in subsection (2) and include Ministers of the Crown and organisations providing services to them. The Explanatory Notes state "regulation-making powers within the clause are provided to achieve appropriate flexibility in an area where configurations of service are likely to change and evolve - for example, in the light of experience from current pilot and prototype operations or to try new ways to improve the effectiveness of existing national programmes". These regulations may apply to:

- The Single Gateway
- Employment Zones
- Personal Capability Assessments
- Joint-claim Jobseeker's Allowance (see below)

Regulations under subsection (4) may prescribe further schemes. The current intention is to prescribe the:

⁹⁴ Explanatory Notes, p 100

⁹⁵ Explanatory Notes, p 103

- New Deal for Partners of Unemployed People
- New Deal for Lone Parents
- New Deal for Disabled People.⁹⁶

Subsection (6) would enable the Government to make regulations to allow those holding social security information to make it available for the purposes of employment and training. The Explanatory Notes give the example of using benefit information to identify those eligible for the New Deal for the Partners of the Unemployed. The "relevant purposes" for which information can be exchanged under the clause are given a wide definition in subsection (7) as purposes connected with:

- (a) social security, child support or war pensions, or
- (b) employment or training (including assisting or encouraging people to enhance their employment prospects)

According to the Explanatory Notes:

The processing of information in this area will be governed by data protection law, including the Data Protection Act 1998 when commenced. Such processing must be fair and lawful, and comply with the other data protection principles such as the right of individuals to see their own records.⁹⁷

Regulations made under this clause will be scrutinised by the Social Security Advisory Committee (**Schedule 8** to the Bill).

C. Reaction to the Proposals

In an article for the *Daily Telegraph*, Iain Duncan Smith, Shadow Secretary of State for Social Security, made the following comments about the Single Gateway:

This brings us back to the issue of compulsion. Why, for example, is the Government so coy about exactly what it intends to ask lone parents to do? Having wasted £200 million on the new deal for lone parents, which has provided jobs at a cost to the taxpayer of nearly £15,000 each, lone parents will now be compelled only to go into the jobcentre for a chat. It makes no difference that Alistair Darling, the Social Security Secretary, may now compel them to have a second chat - this is not the same as being offered, and accepting, a job.⁹⁸

Later in the same article he suggested that the extra costs of interviewing claimants would be "huge" and could cost "£100 million for the lone parents alone".

⁹⁶ Explanatory Notes, p 105

⁹⁷ Explanatory Notes p 104

⁹⁸ "They talk tough, they act weak", *Daily Telegraph*, 12 February 1999

In the debate on the proposals in the Queen's Speech, David Rendel, Liberal Democrat Spokesperson on Social Security, said of the Single Gateway initiative:

We welcome the provision of a one-stop shop as part of a single gateway to benefits. The current system fails to deliver effective help to many people precisely because of the complexity of claiming different benefits with different rules from different offices. But a gateway can be one of two things. It can open up access to the land beyond, or it can be used to close off a bottleneck and to prevent access. We will welcome the gateway if it opens up access to benefits, but not if it is used merely as a mechanism for denying benefits to claimants.

While the measure has the welcome effect of narrowing the possibilities for fraud in the system, we are concerned that, by refusing benefit until an interview has taken place, many vulnerable people may be left without money at a time when it is most needed. The introduction of the element of compulsion may well undermine any good will towards the welfare-to-work schemes and discourage co-operation.⁹⁹

Reaction to the Government's proposals for the Single Gateway from pressure groups has largely concentrated on the measures to compel benefit claimants to attend interviews as a condition for claiming benefit. In an article for the *Independent* responding to an earlier piece by Alistair Darling on the Single Gateway, Martin Barnes, Director of the Child Poverty Action Group said:

The benefits regime is tough already; don't make it tougher. CPAG agrees that for those who want to and are able to work, paid employment is a route out of poverty. But work is not, and should not be made to be, an option for all - there must also be genuine security and dignity for those without paid work. The issue of the adequacy of benefits should be addressed by Alistair Darling, not ignored. Benefits can help prevent poverty even if the causes are many and complex.¹⁰⁰

In a press release responding to the Bill, Gingerbread, a pressure group representing lone parents, welcomed the fact that lone parents would have access to accurate information about work, training and work related benefits.¹⁰¹ However, they expressed concern over certain aspects of the proposals for the Single Gateway, in particular, whether the interview would be carried out by an adviser with expertise in the specific needs of lone parents, such as childcare and training needs. They also argued that for lone parents who had recently been through a separation, a compulsory interview could add to the individual's stress. On the issue of lone parents and work, they argued:

⁹⁹ HC Deb 26 November 1998 c 404

¹⁰⁰ "Right of reply: the Director of Child Poverty Action Group reacts to yesterday's article by Alistair Darling on welfare reform", *Independent*, 11 February 1999

¹⁰¹ Gingerbread Press Release, *Welfare Reform Bill*, 10 February 1999

Lone parents should be able to make a choice about whether they work or not based on the needs of their children. Parenting is important work, with a long-term benefit to society. It must be made clear that lone parents will not have to work, they will only attend an interview to receive information.¹⁰²

Organisations representing people with disabilities have also criticised aspects of the Single Gateway proposals. The Disability Consortium, an umbrella group representing the major disability organisations, said:

A single gateway to benefits is welcome. But a compulsory work-focused interview will be useless for people who have been forced to give up work because of a recent disability or ill health. These people need advice about benefits entitlement and services, rather than advice about employment. In addition too many job centres are inaccessible for disabled people and without facilities to provide information in braille or on tape. This together with untrained staff trying to assess the potential of people with a wide variety of disabilities could lead to a shambles.¹⁰³

In their response to the Single Gateway proposals, CPAG raised the issue of the training and resources available to staff arguing that "our concern about resources need to be addressed as the ability of the Employment Service and particularly the Benefits Agency to deliver an improved service is restricted by budget constraints".

¹⁰² *ibid*

¹⁰³ Disability Benefits Consortium Press Release, *Welfare cuts will deny thousands say disability organisations*, 10 February 1999

VI Joint-claim Jobseeker's Allowance

A. Current situation

Jobseeker's Allowance (JSA) was introduced in October 1996 by the *Jobseeker's Act 1995*. It replaced Unemployment Benefit and Income Support for the unemployed. There are two types of JSA:

- contribution-based JSA - this replaced Unemployment Benefit and is paid for six months to claimants who have met the required National Insurance Contribution conditions. No additional amount of contribution-based JSA is paid in respect of dependants.
- income-based JSA - this replaced Income Support for people who are unemployed. It is a means-tested benefit and there are additional allowances and premiums payable in respect of dependants. The income and capital of the family are taken into account when calculating entitlement.

The introduction of JSA introduced stricter rules for entitlement to benefits for unemployed people and extended the requirements placed on claimants. In order to qualify for JSA, claimants must, among other things:

- be available for work
- be actively seeking work
- have a current Jobseeker's Agreement with the Employment Service that sets out the steps the claimant will take to secure employment.

Claimants can be 'sanctioned' for failing to meet additional conditions, such as failing to attend a training course or failing to apply for a vacancy notified by Employment Service staff. Benefit entitlement is retained but payment is withdrawn for the period of the sanction though some claimants can claim discretionary hardship payments. The sanctions related to a training place or employment programme, such as failing to attend or refusing to accept a place, are two weeks withdrawal of benefit for the first "offence" and four weeks withdrawal if the claimant is sanctioned again within 12 months. The sanctions related to employment, such as leaving a job voluntarily or failing to apply for a notified job, are set by Adjudication Officers and may be up to 26 weeks.

Currently, married and non-married heterosexual couples who claim the couple rate of income-based JSA (or contribution-based JSA topped up with income-based JSA) can choose which partner claims. The partner who 'signs on' must meet the labour market conditions for payment of the benefit. The 'dependent' partner is not required to meet

these conditions unless he or she elects to 'sign on' as unemployed in order to receive National Insurance Credits. Of the 230,000 couples claiming income-based JSA at the couple rate, the male partner 'signs on' in around 90% of the cases.¹⁰⁴ In 1998-9, the basic personal allowance of income-based JSA paid to a couple where both are over 18 is £79.00 per week. Additional allowances and premiums may be made in certain circumstances, for example, if the couple have children.

A recent research report by the DSS examined the attitude of claimants to the current arrangements for partners of jobseekers.¹⁰⁵ This identified the following key areas of concern:

- the lack of access for partners to government help and training
- the allocation of benefit payments to one member only
- the current level of benefit levels
- the differing nature of jobseeker and non-jobseeker roles and the detrimental impact on partners and their relationships.

On the Government's proposed reforms the report concluded:

Overall, the package of reforms was favourably received. It was believed to rectify the inequalities in the existing arrangements for JSA and to extend equality of opportunity for non-working partners.¹⁰⁶

B. Background to the changes

In his report for the Government on work incentives in the tax and benefit system, Martin Taylor, then Chief Executive of Barclays Bank, argued that the current arrangements for unemployed couples do not reflect the labour market:

4.05 The implicit presumption in the benefits system is therefore that partners of unemployed people cannot or do not want to work. The existing rules seem to be left over from the days when it was assumed that all men worked and their wives did not. Today, when 47 per cent of employees are women, basing benefit policy on such a notion is, to say the least, inappropriate.¹⁰⁷

He went on to recommend that partners of the unemployed be required to meet the same labour market conditions as other claimants and raised the issue of the individualisation of benefit payments:

¹⁰⁴ DSS Jobseeker's Allowance Quarterly Statistics February 1998

¹⁰⁵ Kandy Woodfield and Helen Finch, *Unemployed couples: attitudes towards proposals affecting partners of jobseekers*, DSS Research Report 47, 1999

¹⁰⁶ *ibid*, p iii

¹⁰⁷ *The Modernisation of Britain's Tax and Benefit System, number two: work incentives*, A report by Martin Taylor, March 1998

4.16 The extension of availability requirements to both partners may strengthen the case for separate benefit payments. It would be consistent with the theme of modernisation of the welfare state if payments of Jobseeker's Allowance (JSA) were made to both members of a couple, rather than one partner as now. Such a change would emphasise that the benefits system was moving towards treating a couple as equal partners, while retaining assessment on joint household income. (A similar change was introduced in Australia.) As well as facilitating the extension of work requirements, this change might improve the income distribution within couples and, mainly by changing perception and psychology, enhance work incentives.

4.17 I think the Government should take steps to re-connect partners of the unemployed to the labour market. It is anomalous that the welfare state assumes that only one member of a couple is able to work. Requiring both partners in a couple to make themselves available for work – combined with measures to help them find work – would be a good way to tackle the problem of workless households. In particular, both partners in a childless couple should be required to make themselves available for work. Such a change would not mean that both partners had to work. But it should hasten the return to work of one partner in a couple with neither working, and remove the incentive, in cases where both have been working, for one to give up work shortly after the other has lost their job. Increasing the connection of partners of the unemployed to the labour force should (especially if supported by assistance to find work such as is offered currently to the unemployed) increase the effective labour supply, which should in turn improve aggregate employment. The number of workless households, and the numbers in poverty and welfare dependency, should also fall as a result.

In developing its New Deal provision, the Government recently announced pilot programmes to help the partners of the unemployed to find work.¹⁰⁸ The Government has allocated £60 million from the windfall tax to fund this extra provision. In announcing the programme, Andrew Smith, Minister of State at the DfEE, described the New Deal for Partners of the Unemployed in the context of the number of workless households:

Partners of unemployed people have for far too long been overlooked in employment programmes. A recent survey by the Office of National Statistics shows that over 72 per cent of women are now economically active. It is time partners of unemployed people got the help they need. The New Deal for Partners of Unemployed People will ensure that women who want to return to work are no longer excluded from the advice, support and guidance the Employment Service provides. In the last 20 years the number of households where no adults are in paid employment has doubled to over 3 million. Research has shown that children growing up in a household where no adults work tend to suffer social and economic disadvantages. We want to improve the opportunities for workless households by assisting people who want to work and improve their

¹⁰⁸ DfEE press release, *New Deal £60m jobs boost for partners of the unemployed*, 5 January 1999

employability by giving them support tailored to their individual needs. The New Deal for Partners has been designed to help those who previously faced a lifetime on benefit.¹⁰⁹

The Bill's proposals only extend the labour market conditions to certain partners of the unemployed. Couples where both partners are over the age of 24 when the legislation is introduced will not be affected. Similarly, payment of JSA will continue to be made to one partner rather than separate payments made to each partner based on a joint assessment of income.

The Explanatory Notes to the Bill estimate the operational expenditure for the new joint-claim JSA will fall from £11.5 million in the year of implementation (2000/01), to £1.5 million the year after and £0.8 million in the long run.¹¹⁰

C. The Bill's proposals

The Bill will introduce a new category of JSA called joint-claim JSA. It will initially apply to couples where at least one partner in the couple is aged between 18 and 24 and where the couple do not have children. It will eventually extend to all couples without children. Under joint-claim JSA, both partners in the couple will have to meet the labour market conditions that currently apply to single claimants and partners who sign on. Provisions in the Bill will also introduce rules to allow a partner in a couple to receive an amount of JSA if the other partner has been sanctioned.

According to the Explanatory Notes:

The intention is to give both partners the same opportunity to receive help and guidance to return to work and to go onto employment programmes including the New Deal for Young People.¹¹¹

Clause 48 gives effect to Schedule 7 to the Bill. This amends the *Jobseeker's Act 1995* to create joint-claim JSA for certain unemployed couples. The amendments require both partners of a joint-claim couple to:

- make a joint claim for JSA
- meet the normal entitlement conditions for JSA set out in Section 2 of the *Jobseeker's Allowance Act 1995*
- meet the capital and income rules for income-based JSA.

To avoid a situation where one person's receipt of benefit is dependant on the behaviour of the other partner, regulations under a new section 2C will prescribe occasions when

¹⁰⁹ *ibid*

¹¹⁰ p 116

¹¹¹ Explanatory Notes, p 79

one member of the couple can claim as though they are a single person. The Explanatory Notes describe how the system will operate if one member of the couple does not meet the conditions for entitlement:

The other joint claimant who is prepared to meet the conditions of entitlement would then be able to claim contribution-based JSA under section 2 of the Jobseeker's Act if he could satisfy the contribution-based conditions. If he could not satisfy the contribution-based conditions he would be able to claim income-based JSA on his own behalf, by virtue of subsection (2A). However, the couple's income and capital will be taken into account in determining the amount of benefit which is paid. The award of JSA would thus be at the applicable single person's rate with no additional allowance for the partner who had failed to satisfy the conditions of entitlement for joint-claim JSA.¹¹²

A joint-claim couple is defined by the Bill as a married or unmarried couple who do not have children and are "of a prescribed condition" (new subsection 1(4)(b)). According to the Explanatory Notes, the intention is that the additional condition will be related to the age of the couple:

The intention is that couples where at least one partner is born on or after the specified date will be covered by the requirement to make a joint claim. The date will be set so that, at introduction, a couple where at least one partner is aged 18-24 will be covered. The provision would therefore extend, over time, to a couple of any age, so long as they do not have children and one of them was born after the prescribed date.¹¹³

Therefore, couples where both partners are over the age of 24 when the legislation is introduced will not be affected. The introduction of the provision for those aged 18 to 24 is likely to be linked to the New Deal for the Young Unemployed. Currently, the partner who does not sign on in a couple claiming JSA is not required to take part in the New Deal for the Young Unemployed. By establishing the same age group for the new joint-claim JSA as for the New Deal, the Government will ensure that all unemployed people aged 18-24 and claiming JSA for more than six months will be required to take part. The numbers affected are likely to be relatively small initially.

Paragraph 3 inserts new sections 3A and 3B into the *Jobseeker's Allowance Act 1995* which set out the conditions that need to be met in order to receive joint-claim JSA. They effectively mirror the provisions for single claimants set out in the existing section 3 but add the requirement that at least one member of the joint-claim couple must be at least 18 years of age. The couple will choose which partner receives the payment and if they fail to agree or express no preference the money will be paid according to a decision made on

¹¹² Explanatory Notes, p 81

¹¹³ *ibid*, p 82

behalf of the Secretary of State by an official (new section 3B). Currently, the payment is made to the partner who "signs on".

Consequential amendments in paragraphs 4 to 8 adapt existing JSA provision to take into account the following factors in the new joint-claims for JSA:

- the calculation of the amount of JSA payable (paragraphs 4 and 5)
- the continuation of a Jobseeker's Agreement when a claim changes from a joint-claim to a claim on behalf of a family i.e. when the couple have children (paragraph 6)
- the application of the income and capital rules (paragraph 7)
- the application of the rules for when one partner is involved in a trade dispute (paragraph 8). According to the Explanatory Notes the intention of this paragraph is to maintain the current position whereby the partner who is not involved in the trade dispute receives 50% of the couple's applicable amount.¹¹⁴

Paragraphs 9 and 10 deal with the situation where one partner in the couple is sanctioned for failing to meet the labour market conditions for JSA discussed above. The Government intends that regulations under a new section 20A of the *Jobseeker's Allowance Act 1995* will prescribe that the partner who continues to meet the labour market conditions may be paid the amount of JSA that would normally be paid to a single claimant in his or her position. The income and capital of the other partner will still be taken into account for the means test. If the person who has been sanctioned is the nominated partner for payment of the joint-claim JSA, payment will be made to the other partner. According to the Explanatory Notes, regulations will ensure that where the length of sanction is dependent on previous sanctions, the longer stoppage will only apply where "the same partner on a joint-claim contravenes the JSA rules more than once".¹¹⁵

Paragraph 12 gives the Secretary of State regulation-making powers to prescribe circumstances where a joint-claim couple is entitled to joint-claim JSA even though one member of the couple does not meet the basic conditions for JSA. This effectively provides for exemptions to be made to the new legislation for joint-claim couples. The Explanatory Notes give the reasons for this provision:

Exemptions are necessary as there will be some people who are unable to meet the JSA conditions where, for example, because of illness or disability they do not meet the capability condition (in section 1(2)(f)). Others who have extensive caring responsibilities or are studying full-time will not be able to meet the availability condition (in section 1(2)(a)).

The intention is not to disentitle such joint-claim couples where one member of the couple cannot meet the conditions either at the onset of the joint claim or

¹¹⁴ *ibid*, p 83

¹¹⁵ *ibid*, p 84

during the claim. (Currently, the partner is treated as a dependant on the JSA claim and is not required to meet the JSA conditions.)

Regulations will specify the persons to whom the provision applies, but it is intended that the categories will include persons caring for another person, persons incapable of work and those studying full-time in certain circumstances.

Most of the groups cited in the Explanatory Notes as likely to be prescribed as exempt from the eligibility conditions would normally be able to claim Income Support as a single person rather than income-related JSA. For example, somebody with extensive caring responsibilities could claim Invalid Care Allowance which would be topped up by Income Support if they had insufficient other income and capital to support themselves. Similarly, an individual who could not meet the capability conditions for JSA is likely to be eligible to claim Income Support on the grounds of incapacity. However, it is not normally possible for single claimants to study full-time and receive income-based JSA or Income Support. There are currently exemptions for those on the New Deal for the Long-term Unemployed to study full-time in certain circumstances. If the regulations under the new paragraph are implemented as suggested by the Explanatory Notes, one member of a joint-claim couple would also be able to study full-time whilst retaining eligibility to JSA.

Transitional arrangements to be prescribed under paragraph 12 will allow existing claimant couples of JSA to continue to receive payment until the non-signing partner is required to attend an interview to establish his or her eligibility. Joint-claim couples will have a right to appeal jointly or separately to the independent appeal tribunals to be established under the *Social Security Act 1998*.

VII Employment Zones

A. Background

The Labour Party discussed the idea of using a combination of benefit and training money more flexibly in one of its *Road to the Manifesto* documents in 1996. This document proposed a "new approach which brings resources for jobs and benefits closer to the communities they exist to serve".¹¹⁶ It went on to outline how the new approach would work:

We will launch a specific pilot scheme to make flexible local use of benefit and training money. This will allow local decision-makers flexible use of resources for benefits, training and special employment measures for individual claimants. For each claimant a nominal figure - equivalent to the expected expenditure on government training schemes and benefit income for people in their circumstances - will be "given over" to case managers to be used in agreement with the individual in the best way to promote their job prospects. Money may be spent on further education or training, support services, incentives to employers, job search expenses, or whatever is in the best interests of the individual concerned. The aim must always be to assist in the most effective way possible the transition into employment.¹¹⁷

This proposal to set up pilot schemes, to be known as Employment Zones, was included in the Labour Party's manifesto for the 1997 General Election:

We favour initiatives with new combinations of available benefits to suit individual circumstances. In new and innovative 'Employment Zones', personal job accounts will combine money currently available for benefits and training, to offer the unemployed new options - leaving to work and independence.¹¹⁸

After a bidding process, five prototype Employment Zones were established in February 1998 and these will run until April 2000. They were allocated £58 million from within the existing resources of the DfEE and operate in Liverpool and Sefton, Glasgow, North-west Wales, South Teesside and Plymouth.¹¹⁹ Each successful bid was required to include plans for:

- Learning for Work – the chance to learn and gain qualifications to improve employability;

¹¹⁶ Labour Party, *Getting welfare to work: a new vision for social security*, 1996, p4

¹¹⁷ *ibid*

¹¹⁸ *New Labour: because Britain deserves better*, Labour's manifesto for the 1997 General Election, April 1997, p 19

¹¹⁹ DfEE Press Release, *£58 million boost for Employment Zones*, 10 December 1997

- Neighbourhood Match – intermediate labour market programmes to help people move through supported employment and training to sustainable employment in the open labour market;
- Business Enterprise – the chance to move from welfare into self-employment.

In a press release inviting the bids, Andrew Smith, Employment Minister, added:

... beyond these three core strands, we want to see innovative pathways into sustainable work. For example an unemployed person might be given help gaining a specific qualification or certificate, a grant or loan for equipment or training in skills that local employers need. Employment Zones will give communities the flexibility to devise local solutions which best meet local needs.¹²⁰

The prospectus for the prototype Employment Zones acknowledged that "at present, legislation does not permit such flexible pooling of money voted by Parliament for separate purposes".¹²¹ The prototype Zones were required to involve a wide range of local partners to develop creative and innovative approaches to long-term unemployment within existing legislation. Participation in the prototype Zones is voluntary and is mainly available to claimants over the age of 25 who have been unemployed for at least one year. Further details of the initiatives operating in the prototype Zones are contained in Section I of Library Research Paper 98/111, *Employment and Training Programmes for the Unemployed*.

On 2 February 1999, David Blunkett, Secretary of State at the Department for Education and Employment, announced proposals to introduce 14 Employment Zones from April 2000.¹²² In this Press Release he stated that the new Zones will be allocated £112 million over two years (2000/01-2001/02) and will aim to help 48,000 long-term unemployed people. The Explanatory Notes state that of this £112 million, £27.7 million has been made available to cover the subsistence payment that will be paid to participants.¹²³ The remaining expenditure will be met from existing departmental allocations and will include operational expenditure for the Employment Zones of £2.25 million per year. As with the proposals for joint-claim JSA and the Single Gateway, the Explanatory Notes state of the measures that "the impact on benefit expenditure of increased numbers of claimants taking up work and ceasing to claim benefit as a result of these measures cannot be estimated at this stage".¹²⁴

¹²⁰ DfEE Press Release, *Employment Zones: new help from welfare to work*, 15 September 1997

¹²¹ DfEE, Employment Service, Welsh Office, Scottish Office, *Employment Zones: Local Solutions to Individual Needs, the Employment Zones Prospectus*, p 4

¹²² DfEE Press Release, *£112m plan will cut red tape for unemployed - Blunkett*, 2 February 1999

¹²³ Explanatory Notes, p 116

¹²⁴ *ibid*

The Government's plans for the new Zones are contained in a consultation paper.¹²⁵ This states:

12. The government has decided that:

- participants should be people aged 25 and over, among whom half will have been unemployed for at least twelve months and half for at least eighteen months;
- people in these categories in areas covered by Employment Zones will be required to take part in the Employment Zone;
- all participants will be entitled to a personal job account, bringing together resources attributable to them from benefits, training and jobsearch funds among others;
- the personal job account will contain a subsistence element equivalent to the participant's net benefit entitlement;
- funds will be available to support up to six months' activity through the personal job account, preceded by up to three months' gateway period;
- participants will be advised and supported by a personal adviser;
- zones will have incentives to succeed and will be rewarded for successful employment outcomes for participants. In return they will bear the risks;
- we will aim to allow zones maximum discretion as to how they meet these objectives.

The Explanatory Notes to the Bill summarise the requirements for primary legislation to facilitate the new Zones:

- First, Employment Zones are concentrated on specific areas of high long term unemployment; yet current legislation limits the Secretary of State's powers to offer different types of service in different areas;
- Second, a key feature of Employment Zones not available in the prototypes is the "Personal Job Account". This will be an account set up for individual participants in the Zone, which will allow them to anticipate up to six months' worth of spending on training and jobsearch - with the aim of getting them back to work more quickly. It will combine funding equal to the payments that they would normally receive from JSA, with money for training and jobsearch.
- Third, legislation is required so that, when people do not participate in an Employment Zone, without good cause, their JSA payments could be withheld.¹²⁶

¹²⁵ *Employment Zones consultation paper* available from the Internet at <http://www.dfee.gov.uk/empzone.htm>

¹²⁶ Explanatory Notes, p 86

B. The Bill's Proposals

Subsection (1) of **clause 49** gives the Secretary of State powers to make regulations in connection with the participation of certain JSA claimants in special schemes in designated areas of Great Britain. This will allow different rules to operate in relation to schemes operating in different parts of the country.

Subsection (2) gives regulation-making powers to prescribe requirements that may apply to claimants of JSA in these schemes. These requirements would be in addition to the normal conditions for the receipt of JSA discussed above. Regulations under this subsection may also provide for the normal labour market conditions for claimants of JSA to be suspended while they are taking part in a local employment programme. The Explanatory Notes to subsection (2) state that "the amount of JSA payable to Employment Zone participants could be altered depending on the amount of funding they are receiving from other sources". It is likely that participants will receive an allowance which includes at least a small amount of income-based JSA to ensure they retain entitlement to passported benefits. This is how training allowances currently operate for other government programmes, such as Work Based Training for Adults. Subsection (2)(c) allows participants to receive lump sum payments during their period on the scheme and therefore allows for participants to have access to amounts from their personal job account in agreement with their personal adviser.

Subsection (3) gives the Secretary of State wide-ranging powers to make regulations to apply the provisions of the *Jobseeker's Act 1995* in the Employment Zones with or without modification.

Subsection (4) would allow for regulations to be made which would prescribe when a claimant participating in an Employment Zone may be denied benefit. According to the Explanatory Notes, the intention is to "make regulations that correspond to the existing regulations". This suggests Employment Zone participants will face the two or four week sanction periods imposed when, for example, claimants fail to attend or lose a place through misconduct on existing prescribed employment and training programmes. These sanctions are described above in the discussion of joint-claim JSA.

Subsection (5) deals with the delivery arrangements for the Employment Zones. It would enable the Secretary of State to contract out Employment Zone provision to other delivery agents. This is likely to include the private sector.¹²⁷

¹²⁷ DfEE Press Release, *£112m plan will cut red tape for unemployed - Blunkett*, 2 February 1999

VIII Benefits for disabled people

A. General

The current system of benefits for disabled people includes the following:

- Incapacity Benefit which replaced Sickness Benefit and Invalidity Benefit from April 1995 and which is contributory and non-means-tested
- Severe Disablement Allowance, a non-contributory, non-means-tested benefit for those disabled young or deemed to be 80% or more disabled
- Income Support, a means-tested benefit which includes disability premiums
- Disability Working Allowance, to be replaced by Disabled Persons Tax Credit following the implementation of the *Tax Credits Bill*¹²⁸
- Disability Living Allowance and Attendance Allowance, non-contributory and non-means-tested benefits for extra mobility and care costs

A review of the system of benefits for disabled people began in 1997 as part of the Comprehensive Spending Review. The Green Paper, *New ambitions for our country: A new contract for welfare*¹²⁹ published on 23 March 1998 outlined the problems of the existing system and identified the following as areas of concern:

- the cost of Incapacity Benefit at almost one-tenth of the social security budget¹³⁰
- the All Work Test for Incapacity Benefit which "writes off as unfit for work people who might, with some assistance, be able to return to work"¹³¹
- the receipt of "life awards" of Disability Living Allowance by those whose condition might have been expected to improve¹³²

The consultation paper *A new contract for welfare: Support for disabled people*¹³³ published on 28 October 1998 added to these:

- the "unfair and outdated" Incapacity Benefit rules which allow the benefit to be regarded as alternative support for long-term unemployment or as a way of supplementing early retirement income¹³⁴
- not enough support goes to those severely disabled people with the greatest needs, for example those disabled from childhood¹³⁵

¹²⁸ *Tax Credits Bill*, Bill 9 of 1998/99

¹²⁹ Cm 3805, DSS

¹³⁰ *ibid*, p 54

¹³¹ *ibid*

¹³² *ibid*, p55

¹³³ Cm 4103, DSS. See also HC Deb 28 October 1998 cc 340-1

¹³⁴ Cm 4103, pp19-20

The proposals contained in *A new contract for welfare: Support for disabled people*¹³⁶ form the basis of the provisions relating to incapacity for work, Incapacity Benefit and other disability benefits contained in this Bill.

¹³⁵ *ibid*, pp 9-13

¹³⁶ Cm 4103, DSS. See also HC Deb 28 October 1998 cc 340-1

IX Incapacity Benefits

A. Incapacity for work

1. Personal Capability Assessments

Clause 50 of the Bill and Part II of Schedule 8 replace the All Work Test with a Personal Capability Assessment.

The All Work Test was introduced in April 1995. It is a medical test of incapacity to work based on a system of scoring a person's inability to perform specific activities. It is generally applied after 28 weeks of incapacity where a person has been in work prior to the claim, since before this they are assessed on their capacity to perform their normal occupation in the Own Occupation Test. Where they have not had a regular occupation, they are assessed according to the All Work Test from the start of their claim.

By focussing on what a person cannot do rather than what they can do, the Government argues that the All Work Test discourages work. It therefore gave a commitment in *A new contract for welfare: Support for disabled people*¹³⁷ that, whilst not changing the way in which the test acts as a gateway to benefits based on incapacity, it would make the following reforms:

- rename the All Work Test¹³⁸
- require extra information above that needed to establish entitlement to benefit "assisting those with a long-term illness or disability to understand how they can match their skills and abilities with the range of support which is available to help them into suitable work"¹³⁹
- provide for the test processes to start in advance of the 28th week of incapacity to speed up decisions about capacity to work¹⁴⁰
- make clear in legislation that people have a responsibility to report improvements in their medical condition which may affect entitlement to benefit¹⁴¹
- provide for the test to be repeated at any time¹⁴²

The regulation-making powers in Clause 50 and Schedule 8 which provide for the Personal Capability Assessment are similar to the existing regulation-making powers which apply to the All Work Test but with the following differences:

¹³⁷ Cm 4103

¹³⁸ *ibid*, p 17

¹³⁹ *ibid*, p 4

¹⁴⁰ *ibid*, p 17

¹⁴¹ *ibid*, p 19

¹⁴² *ibid*

- the Personal Capability Assessment will focus on the activities a person is capable of doing as well as those they cannot do (clause 50(2)(a))
- the test can be carried out in advance of the 28th week (clause 50(4))
- reassessment can be carried out at any time (clause 50(5))
- information will be collected which can be used to assist or encourage a person to obtain work or enhance their prospects of obtaining it (Schedule 8 para 21(2))

The operational costs of these measures are estimated at £20 million in 2001/2 although behavioural changes which may result in increased numbers working and ceasing to claim benefit cannot be estimated.¹⁴³

2. Reactions to reform of the All Work Test

The National Association of Citizen's Advice Bureaux (NACAB) produced a report in 1997 highlighting the inadequacies of the All Work Test¹⁴⁴ and therefore supports calls to reform Incapacity Benefit.¹⁴⁵ However they do not agree that the growth in numbers of people receiving benefits as unfit for work is due to the qualification conditions being too generous, since the tightening in the testing of fitness for work introduced in 1995 did not result in the expected reduction in the numbers claiming benefit.

The Royal National Institute for Deaf People (RNID) comments:

We are disappointed that the Government's plan to reform the All Work Test only appears to amount to re-naming the test and grafting on a few extra 'employability' questions. We think the main flaw in the All Work Test is that it is a narrow assessment of functional limitation that takes no account of non-medical factors which limit a person's employment prospects. We would like to see factors such as age, experience and qualifications taken into account when assessing incapacity for work.¹⁴⁶

The Child Poverty Action Group are concerned that: "MPs may be expected to debate and vote on the Bill without knowing the detail of the new tests."¹⁴⁷

B. Incapacity Benefit

1. The current system

Incapacity Benefit is a contributory benefit paid to those who are incapable of work because of illness or disability. It is not means-tested and is paid at three basic rates:

¹⁴³ Explanatory notes to the Welfare Reform and Pensions Bill, DSS, p 117

¹⁴⁴ *An Unfit Test*, 1997

¹⁴⁵ *New ambitions for our country: A new contract for welfare. A CAB response to the Government's Green Paper*, July 1998, p 36

¹⁴⁶ *A new contract for welfare: Support for disabled people, Consultation Response*, January 1999, p 4

¹⁴⁷ *CPAG's response to 'A new contract for welfare: Support for disabled people'*, 7 January 1999

- the short-term lower rate for the first 28 weeks of incapacity
- the short-term higher rate for weeks 29-52 of incapacity
- the long-term rate after 52 weeks of incapacity

The current contribution conditions for Incapacity Benefit are that claimants:

- must have **actually paid** Class 1 (employed) or Class 2 (self-employed) contributions on earnings equivalent to 25 times the lower earnings limit in **any one** tax year; and
- must have Class 1 or Class 2 **contributions or credits** equivalent to 50 times the lower earnings limit in **both of the last two** tax years.

For severely disabled people and those disabled young who do not have a sufficient contribution record to qualify for Incapacity Benefit, Severe Disablement Allowance may be payable if they have been incapable of work for 28 weeks or more, and

- their incapacity began before age 20, or
- they are at least 80% disabled.

Severe Disablement Allowance is paid at a lower rate than Incapacity Benefit at a maximum of £52.70 per week (£54.40 from April 1999) compared with a maximum basic rate of Incapacity Benefit of £78.30 per week (£80.80 from April 1999). 70% of Severe Disablement recipients rely on Income Support to top-up their income.

2. Reform of contribution conditions

A new contract for welfare: Support for disabled people describes the present Incapacity Benefit rules as unfair and outdated.¹⁴⁸ At the end of May 1998 there were 1.6 million people receiving Incapacity Benefit, three times the number receiving equivalent benefits in 1980/81. The rise in numbers is attributed not to a significant increase in new claims, but to fewer people leaving benefit each year and an increase in the time spent on benefit.¹⁴⁹ The average time spent on benefit increased from 3 years to 5 years from 1985 to 1995.¹⁵⁰ Whilst 5% of the working population receive benefits on the grounds of unemployment, 7% receive benefits on the grounds of incapacity.¹⁵¹ Nearly half of those receiving Incapacity Benefit in 1998 were unemployed, rather than in work, when they claimed.¹⁵² The problems identified by the Government as arising from the current system are therefore:

- the numbers of people on Incapacity Benefit

¹⁴⁸ Cm 4103, p 19

¹⁴⁹ *ibid*, p 33

¹⁵⁰ *ibid*

¹⁵¹ *ibid*, p 4

¹⁵² *ibid*, p 19

- the length of time they remain on benefit
- the lack of a recent work record for those on Incapacity Benefit
- the perception that Incapacity Benefit is an alternative form of support for long-term unemployment, rather than the income-replacement benefit for those recently in work and prevented from working by incapacity as it was originally intended.

For these reasons reforms are intended to link entitlement with a recent work record by tightening the contribution conditions for Incapacity Benefit. This will be achieved by **Clause 51** of the Bill which changes the first contribution condition for Incapacity Benefit so that:

- a minimum number of paid contributions is required in **one of the last two** tax years rather than in **any** tax year.

This brings the contribution conditions in line with those for Jobseeker's Allowance, although for Incapacity Benefit the contributions can be Class 1 (employed) or Class 2 (self-employed) whilst for Jobseeker's Allowance they must be Class 1 contributions.

Clause 51(4) provides for regulation-making powers to treat the first contribution condition as having been satisfied in specified cases so that, for example, recipients of Invalid Care Allowance who may not have a recent work record are protected. It also protects those who were in receipt of Incapacity Benefit in the previous tax year and who requalify after a short break.

3. Effects of occupational pensions and personal pensions on Incapacity Benefit

In *A new contract for welfare: Support for disabled people*, the Government argues that when benefits for incapacity were introduced, fewer people had occupational or personal pensions or expected to retire early. Since those with a long-term illness or disability may now retire early with an occupational or personal pension or with payments from permanent health insurance, and may still qualify for Incapacity Benefit, it is said that for some Incapacity Benefit is seen as a supplement to income in early retirement:

This duplication of provision is not a sensible use of resources and we propose to take some account of occupational pensions in calculating Incapacity Benefit entitlement.¹⁵³

Clause 52 therefore provides for regulation-making powers to reduce Incapacity Benefit by specified amounts from pension payments, defined as payments made under a personal pension scheme, an occupational pension scheme, a public service pension scheme or from a health insurance policy. *A new contract for welfare: support for disabled people*

¹⁵³ *ibid*, p 6

indicated that for new claimants only Incapacity Benefit will be reduced by 50% of the excess income over £50 per week from such payments.¹⁵⁴ Contribution-based Jobseeker's Allowance has a similar rule where 100% of the excess income over £50 per week from such payments is taken into account.

It would be possible for a person's Incapacity Benefit to be extinguished completely by income from their occupational pension. So, for example, where a person is on the basic long-term rate of Incapacity Benefit of £64.70 per week with no other additions, their Incapacity Benefit would be extinguished if their occupational or personal pension exceeded £179.40 per week. This may be a more significant loss than for those who lose contribution-based Jobseeker's Allowance on account of their occupational or personal pensions, since contribution-based Jobseeker's Allowance is only payable for 6 months.

4. Savings from the reforms of Incapacity Benefit

These reforms are due to take effect from 2001. *A new contract for welfare: Support for disabled people* states that nobody receiving Incapacity Benefit will lose out at the point of change. It expects the numbers on Incapacity Benefit to fall by 30,000 in 2001/02, 50,000 in 2002/03, 65,000 in 2003/04 and "in the long run" by 170,000 as a result of the new contribution test, mainly amongst those who would have come onto Incapacity Benefit straight from unemployment.¹⁵⁵ The changes to contribution conditions combined with taking into account occupational and personal pensions over £50 is estimated to save £70 million in 2001/02 rising to £255 million in 2003/04 and £700 million after 2010. The operational costs are estimated at £0.55 million in 2000/01 and £3 million in 2001/02 and following years.¹⁵⁶

5. Reactions to the proposals to reform Incapacity Benefit

The Disability Benefits Consortium, representing over 500 disability organisations, states that:

The Bill will result in cuts of £750 million to Incapacity Benefits and means that thousands of people who become disabled in future will lose out. This makes a mockery of the Government's promises not to "harm the genuinely disabled".¹⁵⁷

Disability Alliance argues that the reform measures as a whole "represents an attack on the living standards of thousands of disabled people and a major shift from a social insurance based social security system to a means-tested one".¹⁵⁸ They argue that when added to the cuts made to Incapacity Benefit by the previous government, the savings

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*, p21 and HC Deb 12 November 1998 c 299W

¹⁵⁶ Explanatory notes to the Welfare Reform and Pensions Bill, DSS, p 117

¹⁵⁷ Press Release, "Welfare cuts will deny thousands say disability organisations", 10 February 1999

¹⁵⁸ Disability Alliance, *Briefing 36: Disability Benefits Consultation Paper*, undated

from these proposals are not matched by additional expenditure on other disability benefits, so that the overall effect is "an imbalance between savings and expenditure". This, they have argued, contradicts assurances given by the previous Secretary of State.¹⁵⁹

The revised contribution conditions for Incapacity Benefit which may prevent people moving from unemployment to incapacity "disregards evidence about the very high rates of unemployment amongst disabled people and about the consequences of unemployment on people's health", Disability Alliance states. They further assert that the SERPS element paid with Invalidity Benefit which was abolished with the introduction of Incapacity Benefit was done so on the grounds that many people had access to alternative sources of top-up pension and that those who did not had a responsibility to make such provision. Those who followed this advice will see their Incapacity Benefit reduced as a result.

The Disability Benefits Consortium welcomes the proposal to protect recipients of Invalid Care Allowance from the effects of the tightening of the contribution conditions for Incapacity Benefit, but also regards the following groups as being in need of protection:

- People in low paid and part-time work who have no NI contribution liability
- People who have paid contributions for a number of years but who have become unemployed and do not have recent contributions
- People who have been looking after young children or combining childcare responsibilities with part-time work
- Carers who have not claimed Invalid Care Allowance¹⁶⁰

Age Concern points out that linking Incapacity Benefit to a recent work record would:

Produce an anomalous situation whereby someone who had paid contributions for 10 years and then been unemployed for two could be excluded from benefit whilst someone who had been unemployed for 10 years and worked and paid contributions for two could be entitled to Incapacity Benefit.¹⁶¹

Age Concern also "strongly opposes" the proposal to take into account income from an occupational or personal pension on a similar basis to Disability Alliance and makes the additional point that although the changes will not affect those already receiving benefit at the time of the reforms, "they are retrospective to the extent that they provide no protection of the contributions already paid".¹⁶² They challenge the assertion that people choose to claim Incapacity Benefit as an early retirement benefit since claimants must pass the All Work Test to show they are incapable of work. In addition by taking early

¹⁵⁹ 'Alarm over reports of incapacity benefit cuts', *Guardian*, 5 October 1998

¹⁶⁰ Disability Benefits Consortium Briefing *The Welfare and Pensions Reform Bill - Incapacity Benefit restrictions*, February 1999

¹⁶¹ Age Concern Briefing *Age Concern's comments on the consultation paper 'Support for disabled people'*, January 1999

¹⁶² *ibid*

retirement on ill health grounds, a person will already have foregone future pension income. They argue that if private pensions reduce Incapacity Benefit this will act as a disincentive to save for retirement.

Scope argues that the threshold for occupational and personal pensions should increase from £50 and should include a 30% taper to encourage people to make pension provision.¹⁶³

A *Guardian* editorial on 29 October 1998 argues that taking into account income from occupational and personal pensions when calculating Incapacity Benefit:

weakens the principle that people who have paid NI get sickness benefit in return, regardless of income. But it does not kill it completely. Mr Darling has taken a chisel to the insurance principle, rather than a hammer, an approach clearly preferable to wholesale means-testing.¹⁶⁴

However, it identifies as "draconian" the tightening of the contribution conditions which it says will affect women with a broken contribution record and those who have been unemployed, perhaps after many years of work followed by redundancy: "this is a highly regressive step".¹⁶⁵

C. Severe Disablement Allowance

1. Abolition of Severe Disablement Allowance

A new contract for welfare: Support for disabled people describes two problems with the current arrangements for SDA:

- Because it is paid at a relatively low rate, about 70% of recipients rely on Income Support to top-up their income, thereby removing the benefit of their entitlement to SDA.
- Over two-thirds of new SDA awards are made to people aged over 20 who may already have adequate resources.¹⁶⁶

The Government therefore proposes to abolish Severe Disablement Allowance (**Clause 54** and Part IV of **Schedule 10**) and replace it in part with a new category of people who will have entitlement to Incapacity Benefit without having to satisfy the contribution conditions (**Clause 53**). To qualify for Incapacity Benefit on this new basis a person must:

¹⁶³ Scope Campaigns Department *Briefing on the Welfare Reform and Pensions Bill*, February 1999

¹⁶⁴ 'Real reforms', *Guardian*, 29 October 1998

¹⁶⁵ *ibid*

¹⁶⁶ Cm 4103, p 9

- be aged over 16 (as for Severe Disablement Allowance)
- be under 20 when their incapacity began (currently under 65 for Severe Disablement Allowance)
- be incapable of work for 196 days prior to the claim (as for Severe Disablement Allowance)
- satisfy residence conditions (as for Severe Disablement Allowance)
- not be receiving full-time education (as for Severe Disablement Allowance where a person is age 16-19).

The Explanatory Notes to the Bill describes the intention to specify that a person must have been ordinarily resident and present in Great Britain for at least 26 weeks in the previous year and to define 'full-time education' as education of those age 16-18 which is for more than 21 hours per week. Courses specifically connected with a student's disability will not be counted. These rules are similar to existing rules for Severe Disablement Allowance.

Transitional arrangements will protect existing entitlement to Severe Disablement Allowance (**Clause 70 (10)**) and *A new contract for welfare: Support for disabled people* indicated that:

- those aged 20 or over receiving Severe Disablement Allowance at the point of change will continue to receive it
- those applying for Incapacity Benefit under the new rules which replace Severe Disablement Allowance will transfer to the long-term rate of Incapacity Benefit after one year
- 16-19 year olds receiving Severe Disablement Allowance at the point of change will transfer to long-term Incapacity Benefit after one year¹⁶⁷

The group who will lose entitlement with these reforms are those age 20 or over who do not satisfy the contribution conditions for Incapacity Benefit and who do not satisfy the age conditions for having the contribution conditions waived. The Government estimates that about 16,000 people who would previously have been able to claim Severe Disablement Allowance will be affected although about 70% of these will qualify for Income Support. For the 30% whose other income means they do not qualify for Income Support, the average loss will be £50 per week.¹⁶⁸

¹⁶⁷ *ibid*, p 10 and p 23

¹⁶⁸ HC Deb 17 November 1998 c 497W

2. Savings from the abolition of Severe Disablement Allowance

The abolition of Severe Disablement Allowance is expected to save £10 million in 2001/02 rising to £80 million a year in the long run. Operational costs are estimated at £2 million in 2000/01 with a long-term reduction of £0.5 million each year thereafter.¹⁶⁹

In the first year the Government expects 8,000 new claims for Incapacity Benefit from those who would previously have qualified for Severe Disablement Allowance¹⁷⁰ compared to 25,000 new claims for Severe Disablement Allowance in 1997/98.¹⁷¹ In the second year almost 20,000 existing Severe Disablement Allowance age 16-19 will be transferred to long-term Incapacity Benefit.¹⁷²

3. Reactions to the abolition of Severe Disablement Allowance

Disability Alliance has responded to the proposals to replace Severe Disablement Allowance as follows:

The Government has clearly recognised the difficulties facing young people who have been disabled since birth or childhood and who have not had an opportunity to work and build up a contributory record. The proposals will mean benefit increases for the 16-19 age group and are extremely welcome, though it is not clear what will happen to this group when they reach retirement age - SDA continues beyond retirement age in lieu of a retirement pension.¹⁷³

However they make the following points:

- the fact that the increased rate of benefit will only be available to those under 20 will result in a two-tier system, with those over 20 at the time of the changes being paid less than younger disabled people
- the cut-off age at 19 is too young since many disabled people have suffered interruptions to their education and may not have completed this by age 19. Also those people over 19 and disabled whilst in higher education may never have worked and so not had an opportunity to build up National Insurance contributions
- Because of the high proportion of SDA claimants who are women (women are less likely to qualify for Incapacity Benefit because they tend to have less complete NI

¹⁶⁹ Explanatory Memorandum to the Welfare Reform and Pensions Bill, DSS p 117

¹⁷⁰ HC Deb 17 November 1998 c500W

¹⁷¹ Social Security Statistics 1998, DSS

¹⁷² HC Deb 17 November 1998 c 497W

¹⁷³ *Briefing 36, Disability Benefits Consultation Paper*, undated

records) any cut to entitlement to SDA represents a cut which is discriminatory to women¹⁷⁴

- By cutting entitlement to SDA more people are being forced on to means-tested benefits.

Disability Alliance and other disability organisations will therefore be arguing for:

- the proposed Incapacity Benefit rates to be paid to all SDA recipients
- an increase in the cut-off age to 25 for new claims¹⁷⁵
- changes to the contributory conditions for Incapacity Benefit to bring in groups who would otherwise miss out.¹⁷⁶

¹⁷⁴ See also Disability Alliance, *Briefing - the impact on women of the proposed changes to disability benefits*, February 1999

¹⁷⁵ See also Scope Campaigns Department *Briefing on the Welfare Reform and Pensions Bill*, February 1999, *Mind Welfare Reform Briefing*, February 1999

¹⁷⁶ See also Age Concern *Briefing Age Concern's comments on the consultation paper 'Support for disabled people'*, January 1999

X Disability Benefits

A. Abolition of life awards

Disability Living Allowance is available for those disabled before the age of 65 who need help with the extra costs of mobility or care. It consists of two components: the **mobility** component which is payable for those over 5 and has higher and lower rates depending on the restriction of mobility and the **care** component which has no lower age limit and is paid at three rates depending on the level of care required. Attendance Allowance is available for those over 65 who have special care needs. It is paid at two rates. Both benefits can be paid for a fixed period or for life.

In *The Future of Disability Living Allowance and Attendance Allowance* the Disability Living Allowance Advisory Board, an independent statutory body set up to advise the Secretary of State for Social Security, states that: "There is no doubt that the number of people receiving benefit is far in excess of that originally predicted" and gives one reason for this, as shown by its studies, as : "...a widespread tendency to give life awards, which overlooks the potential for improvement in the claimant's condition from currently available treatment or the possible impact of future advances in medicine and surgery"¹⁷⁷. It therefore recommends that: "Life awards should be the exception rather than the rule. The duration of all awards should always assume that there may be advances in treatment and management in the future which may reduce the claimant's disabilities"¹⁷⁸. The Social Security Select Committee in its report on Disability Living Allowance stated that:

There is a balance to be struck between indefinite and fixed term awards. We recommend that the Government should devise a formula for the duration of benefit based on a prognosis of the likely effects of the impairment.¹⁷⁹

Later in its report the Committee recommended that in reviewing Disability Living Allowance the Government should examine:

How changes of circumstances can be identified and acted upon, looking particularly at the role of life awards.¹⁸⁰

In *A new contract for welfare: Support for disabled people* the Government stated its intention to remove the term "life awards" from legislation:

¹⁷⁷ March 1998, para 2.2 (d)

¹⁷⁸ *ibid*, para 4.4

¹⁷⁹ Fourth Report of 1997-98, HC 641, para 45

¹⁸⁰ *ibid*, para 85

The term 'life awards' is misleading, since, even where a condition is expected to last a long time, its effects may vary in a way which changes the level of payment due.¹⁸¹

Clause 56 removes the term "life awards" for Disability Living Allowance. **Clause 55** changes the terminology for Attendance Allowance for the terminally ill by replacing references to awards for "the remainder of his life" with "the period for which he is terminally ill."

A new contract for welfare: Support for disabled people also states that the Government has discussed with disability groups improvements to the operation of Disability Living Allowance and Attendance Allowance:

We have discussed improved gateways onto the benefits, better management of claims and the possibility of introducing a new test of entitlement in the long run.¹⁸²

Perhaps to facilitate this, **Clause 55 (1)** brings Attendance Allowance into line with Disability Living Allowance by providing regulation making powers to prescribe the circumstances in which the qualification conditions for the benefit are met. At present these are in primary legislation, whilst those for Disability Living Allowance are in secondary legislation.

On the question of reforms to Disability Living Allowance the Social Security Select Committee said:

We recommend that the Government should consider publishing a draft Bill, following the normal process of consultation, to allow a full public debate to take place before legislation to reform DLA is introduced into Parliament.¹⁸³

The Government responded:

The Government is committed to consultation on the reform of DLA. It has set up the Disability Benefits Forum for this purpose.....If complex legislation is needed to reform DLA, then the Government will consider the merits of publishing a draft Bill to aid understanding and encourage debate.¹⁸⁴

¹⁸¹ Cm 4103, p 12

¹⁸² *ibid*

¹⁸³ HC 641, para 29

¹⁸⁴ *DSS Reply by the Government to the Fourth Report of the Select Committee on Disability Living Allowance* Cm 4007, July 1998

B. Mobility component for the under 5s

The mobility component of Disability Living Allowance replaced Mobility Allowance in 1992 and inherited its lower age limit of 5. For many years organisations campaigning for the interests of severely disabled children have argued that such children under 5 have significant mobility costs and that it is important that these are met for the child's development and socialisation.¹⁸⁵

Clause 56 (3) extends eligibility for the **higher rate mobility component only** to 3 and 4 year olds. The conditions for this are set out in section 73 of the Social Security Contributions and Benefits Act 1992 and provide that the higher rate mobility component is available where a person:

- Is suffering from physical disablement such that he is either unable to walk or virtually unable to do so, or
- Is both blind and deaf, or
- Is severely mentally impaired **and** displays severe behavioural problems **and** requires frequent attention or continual supervision throughout the day **and** prolonged or repeated attention or to be watched over at night.

The higher rate mobility component of Disability Living Allowance is £35.85 per week (£37.00 from April 1999). Entitlement to this is also a condition of receiving help from the Motability scheme.

The lower rate mobility component which is **not** being extended to 3 and 4 year olds provides for those over 5 where:

he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.¹⁸⁶

The Disability Living Allowance Advisory Board in its report *Child Mobility and Disability Living Allowance*¹⁸⁷ says:

It was the Board's view that by the age of 2½ years, the very great majority of normal children will be walking independently....At this age, in the Board's view, it is reasonably certain that all children will be able to walk unless they have a disability which affects their walking.

The report further states:

¹⁸⁵ See Disability Alliance *Too young to count*, December 1994

¹⁸⁶ Section 73 (1)(d), *Social Security Contributions and Benefits Act 1992*

¹⁸⁷ November 1998, p2

Determining when a child can walk outdoors without guidance and supervision is more difficult and is determined to a large extent by external factors.¹⁸⁸

If the higher rate mobility component is extended to 3 and 4 year olds, it is estimated that 8,000 children will benefit.¹⁸⁹ If the higher and lower rates were extended to all under 5 year olds it is estimated that 40,000 children might benefit.¹⁹⁰

C. Costs of extending the mobility component to the under 5s

The costs of extending the higher rate mobility component of Disability Living Allowance to 3 and 4 year olds is estimated at £15 million in 2001/02 and £20 million in the long term.

D. Reactions to the disability benefits reforms

In giving evidence to the Social Security Select Committee on Disability Living Allowance Lorna Reith, for the Disability Benefits Consortium, explained that "life awards" of benefit give people security and the opportunity to plan ahead.¹⁹¹

On the proposed changes to extend the higher rate mobility component of Disability Living Allowance to 3 and 4 year olds, the Disability Benefits Consortium says:

We welcome the proposal in the Government's Welfare Reform and Pensions Bill to extend the higher rate mobility component of disability living allowance (DLA) to children aged 3 and 4. However, we are disappointed that there is a cut off at age 3 and that the lower rate mobility component is not being similarly extended. We believe that there should be no age limit on access to either the lower or higher rate mobility component.¹⁹²

The Disability Benefits Consortium estimates that its proposals would cost an additional £25 million per year.

¹⁸⁸ *ibid*, p5

¹⁸⁹ Source, DSS Official, 17 February 1999

¹⁹⁰ HC Deb 27 November 1997 c665-6w

¹⁹¹ HC 641, para 42

¹⁹² *Disability Benefits Consortium Briefing: Disabled children under 5*, February 1999

XI Miscellaneous Provisions

A. National Insurance Numbers for Child Benefit Claims

Clause 57 requires all people (adults, rather than children) who are making a claim for Child Benefit, either to state their National Insurance number (NINO), providing proof that the NINO is theirs or to provide the necessary information that would enable a NINO to be allocated.

1. Background

In January 1997, the Social Security Select Committee produced a Report, *Child Benefit Fraud*.¹⁹³ This Report expressed concern that around 1 in 7 claims for Child Benefit had been processed without the claimant having provided a NINO. Even though Child Benefit claims could legally be processed without a NINO, the Committee was concerned that the absence of a NINO could allow fraudulent claims to enter the system. In July 1998 the Benefits Agency Review of Child Benefit found that fraud involving this benefit cost the taxpayer up to £200 million a year.¹⁹⁴ This figure included all forms of Child Benefit fraud. The Explanatory Notes states that approximately 95%-97% of new claimants do provide National Insurance numbers.

The Social Security Administration (Fraud) Act 1997 changed the law on the production of NINOs and benefit claims, making most benefits conditional on the production of a NINO. Child Benefit was not included in 1997 Act. The Explanatory Notes provides further details of the changes contained in the Act and also the purpose behind the Act's provisions:

Section 19 of the Social Security Administration (Fraud) Act 1997 makes entitlement to most benefits conditional on the production of a National Insurance number. However, because of the definition of "benefit" used (in section 1 (1C) of the Administration Act), the requirement does not apply to Child Benefit.

The requirement to supply a National Insurance number and supporting evidence was introduced to help secure the benefits system against abuse. In addition, national insurance numbers are essential for the efficient processing of benefit claims on the computer systems used by the DSS. For example, the use of a National Insurance number enables the Child Benefit system to relay details of a claim to the National Insurance Recording System, which stores people's contribution records. This ensures the accurate assessment of Home Responsibility Protection (HRP) which safeguards the pension entitlement of those who are unable to work due to caring responsibilities.

¹⁹³ Social Security Committee, *Child Benefit Fraud*, 15 January 1997, HC 56

¹⁹⁴ DSS Press Notice, 98/184, 7 July 1998

Clause 57 adds a new subsection (1A) to the rules for claiming Child Benefit set out in section 13 of the Social Security Administration Act 1992 and makes entitlement conditional on the production of a NINO or the production of a information that would allow one to be allocated. The Explanatory Notes provide information about the exemptions contained in the Fraud Act:

The Fraud Act allowed regulations to be made exempting certain categories of people from the requirement to supply a National Insurance number. The inserted subsection (1C) allows exceptions to be made by regulations for claims to Child Benefit: for example, for certain members of the armed forces, voluntary and charitable bodies.

Additionally regulations will be needed to ensure claims for Guardians Allowance, receipt of which is conditional on receipt of Child Benefit, are treated in a consistent manner with claims for Child Benefit. The Explanatory Notes explain:

The requirement in the Fraud Act did apply to Guardian's Allowance. However, since entitlement to Guardian's Allowance is conditional upon the receipt of Child Benefit, regulations were made to exempt it. As a consequence of this clause, it is intended that further regulations will be made to reverse this exemption.

B. Hardship Payments

1. "Splitting" of Jobseeker's Allowance hardship payment

Hardship payments may be made to certain claimants of JSA when normal payment of JSA has been suspended or stopped. This may happen where a claimant has been sanctioned or where a doubt has arisen as to whether the claimant satisfies the labour market conditions (see discussion of joint-claim JSA for more details). Hardship payments may be made where it is considered that the claimant or his family would suffer hardship because JSA is not paid.

JSA can be paid to a third party where it is considered necessary to protect the interest of the claimant or his or her dependants. Currently, hardship payments must be made to the claimant. **Clause 59** introduces **Schedule 8** which amends the *Jobseeker's Act 1995* so that hardship payments can also be made to a person other than the claimant.

C. National Insurance Contributions

Clauses 61-64 make several minor amendments relating to National Insurance contributions:

- Clause 61 restores the power to define non-weekly equivalents of the weekly earnings thresholds used to calculate Class 1 National Insurance contributions. According to

the *Explanatory Notes* to the Bill, this power was accidentally removed when the Social Security Act 1998 amended the main legislation.

- Clause 62 makes corresponding provisions for Northern Ireland
- Clause 63 ties the National Insurance Class 1B rate to the rate of 'secondary' (employer) Class 1 contributions, thus preventing the Class 1B rate from being raised independently by regulations. Both rates are currently set at 12.2%.
- Clause 64 makes corresponding provision for Northern Ireland
- Schedule 10 makes various repeals consequential on clauses 61-64. It also updates existing legislation by removing reference to the payment of National Insurance contributions by adhesive stamps, to reflect the current methods of payment available. The *Explanatory Notes* to the Bill say that these stamps ceased to be sold by the Post Office soon after April 1993. (They had been available to the self-employed people and those paying voluntary contributions.)

D. Housing Benefit

Clause 65 will enable the Government to make regulations that will establish a pilot scheme under which tenants in the social rented sector¹⁹⁵ who are 'under-occupying'¹⁹⁶ their homes, and who are in receipt of Housing Benefit (HB), will receive a financial incentive to move to smaller and cheaper accommodation. The financial incentive will involve these tenants being able to keep part of any benefit saving generated by moving to alternative accommodation. If successful, this scheme could result in the 'freeing-up' of some larger social rented properties for reletting.

The Explanatory Notes to the Bill state that: 'on completion of a move, HB claimants will be rewarded with a lump-sum payment equivalent to half the difference between their old and new weekly rent, multiplied by 156'.¹⁹⁷ It is estimated that this will amount to around half of the benefit savings expected over three years.¹⁹⁸ It is intended that claimants will not lose income-related benefits as a result of these lump-sum payments; they will be specifically disregarded as capital in the calculation of entitlement to income-related benefits.¹⁹⁹

The details of the scheme will be set out in regulations. Regulations under subsection (3)(a) will set out the circumstances in which a dwelling is to be regarded as under-occupied or not for the purposes of this scheme. Subsections (1) and (3) will define how the lump-sum payments should be calculated.

¹⁹⁵ Property owned by or managed by a local authority or a housing association.

¹⁹⁶ A person is under-occupying if they are living in accommodation that is considered large in relation to their number and needs.

¹⁹⁷ P 108

¹⁹⁸ *ibid*

¹⁹⁹ *ibid*

Subsection (4) will enable deductions to be made from any lump-sum payments due for outstanding rent arrears or recoverable overpayments of HB.

Regulations under subsection (5) will establish a right of appeal against decisions made under the scheme.

The under-occupation scheme may be applied nationally but local authorities will not be obliged to take part (subsection (7)). The Explanatory Notes state that the intention is to pilot the scheme in three local authorities; subsection (6) allows the power to be used for a limited time and in certain areas only, and for any necessary transitional arrangements to be made.²⁰⁰

Subsection (9) provides that under-occupation scheme payments should be administered under the rules and powers for HB which are set out in the *1992 Social Security Administration Act*. Specified exceptions to these provisions will be allowed. Under current rules the Department for Social Security reimburses local authorities for money they pay in benefits through a subsidy system. The subsidy rules mean that an authority may not always have the amount it pays out met in full. Subsection (8) will provide a power to prescribe a different claims and payments mechanism; the Explanatory Notes state that it is intended that local authorities will be reimbursed *in full* for any lump-sum payments made under this scheme.

Subsections (10) and (11) define some of the terms used in clause 65.

E. Inland Revenue information for Child Support purposes

Clause 66 allows the Inland Revenue, on a discretionary basis, to give information to the Child Support Agency (CSA) in respect of self-employed absent parents.

1. Background

The Explanatory Notes provides information about the background to these changes:

The CSA is required by law to assess maintenance liability when a valid application is received. To make this assessment, it needs details of the non-resident parent's earnings. This information is sometimes difficult to obtain directly from the non-resident parent, who may deliberately withhold information with a view to delaying a demand for maintenance or who may simply be unable to locate the relevant documentation. Whilst this is less significant for employed earners, where the CSA can approach the employer direct, non-resident parents who are self-employed, and who refuse to supply details of their profits, are extremely difficult to assess.

²⁰⁰ p 108

The Agency therefore needs to be in a position to build up a financial picture of a non-resident parent who does not provide details of his income, using as wide as possible a range of alternative sources of information. Tax information held by the Inland Revenue may offer the only alternative source of such information for the self-employed. However, the intention is that this will be a last resort measure, where the CSA has asked the non-resident parent for information, and issued a reminder, but there is still inadequate detail to make an assessment.

Access to this information for self-employed non-resident parents is necessary to ensure that more non-resident parents pay the maintenance they owe. Given the Revenue's confidentiality provisions, the CSA can only gain access to this information if there is a specific statutory gateway. This provision provides this gateway and allows direct access, at the Revenue's discretion, to any tax information about self-employed non-resident parents held by the Inland Revenue.

Schedule 2 to the Child Support Act 1991 already allows the Secretary of State to request the Inland Revenue to provide information for the purposes of tracing non-resident parents. This information is restricted to the current address of the non-resident parent and his current employer. The CSA has access, via the Contributions Agency, to earnings information recorded on end-of-year tax returns that employers currently submit to the Inland Revenue. There is currently no provision, however, for other tax information to be used in assessing child support liability.

The assessment of self-employed absent parents was identified by the Social Security Select Committee as one of the most serious problems facing the Child Support Agency. In its Report, *The Operation of the Child Support Act: Proposals for Change*, the Committee stated:

The self-employed cause even more severe problems as the Agency has to calculate profits without reference to the Inland Revenue and by using different criteria to do so. It is clear that some of the most acute problems have concerned the assessments of self-employed [absent parents].²⁰¹

In a subsequent Report, *The Performance and Operation of the Child Support Agency*, the Committee returned to this subject:

We remain very concerned about the assessment and enforcement concerning self-employed absent parents.....We recommend that the Government reviews with the Inland Revenue and the Child Support Agency the taxation position of self-employed absent parents so that accounting techniques and methods to determine profits and income are not allowed artificially to reduce or even extinguish child support liability. Such a review should look at whether liaison

²⁰¹ Social Security Committee, *The Operation of the Child Support Act: Proposals for Change*, 26 October 1994, HC 470 1993-94

between the Inland Revenue and the Child Support Agency is effective and whether the rules of confidentiality represent a barrier to assessment and enforcement of child support.²⁰²

Clause 66 provides for the necessary power by inserting a new paragraph 1A into Schedule 2 to the Child Support Act 1991. The Explanatory Notes describes the powers and limitations of this provision :

Sub-paragraph (1) limits the power to obtaining tax information about self-employed non-resident parents, not all non-resident parents. It allows access to information for any tax year in which the non-resident parent was or is self-employed.

Sub-paragraph (2) gives the power itself: it exempts the Revenue from its confidentiality rules when providing this particular information.

Sub-paragraph (3) ensures that the paragraph only applies to disclosures made to the CSA by, or under the authority of, the Commissioners of the Inland Revenue.

Sub-paragraph (4) prevents any tax information disclosed to the CSA under this power from being disclosed further. (For example, this overrules the power in section 3 of the Social Security Act 1998, which allows child support information to be used for the purposes of administering social security benefits.) The exception in sub-paragraph (4)(b) allows the information to be used in civil and criminal court cases brought under the Child Support Act. For example, if a non-resident parent is served a liability order, it may be possible to use information covered by this provision to satisfy the court that there is income to meet the liability.

Sub-paragraph (5) provides that the terms "self-employed" and "tax year" will have the same meaning as in the Social Security Contributions and Benefits Act 1992 (i.e. standard definitions).

²⁰² Social Security Committee, *The Performance and Operation of the Child Support Agency*, 24 January 1996, HC 50 1995-96

Appendix 1 - Pensions Today²⁰³

The pensions system inherited by the Government consists of both public and private elements. The former includes a basic state retirement pension, which is flat-rate and contributory,²⁰⁴ and an earnings-related addition to it, known as the State Earnings Related Pension Scheme (SERPS).²⁰⁵ The latter includes occupational schemes provided by employers and personal pensions offered by a range of providers, such as insurance companies, banks and building societies. Some of the more generally available benefits are also available to pensioners, in particular those whose income and capital falls below set levels, are generally entitled to Income Support.

The state system is often referred to as a *pay-as-you-go* system in that today's pensioners are paid out of today's taxes and National Insurance contributions. In contrast, many (but not all) of the private sector schemes are known as *funded* schemes because pensions are paid out of a fund that has been built up specifically for that purpose. There are various types of funded scheme. The main ones are referred to below.

In *money purchase* schemes (sometimes known as defined contribution schemes) the pension is simply related to what the accumulated fund will buy (minus any deductions eg for charges). In *salary related* schemes (sometimes known as defined benefit schemes), employers generally have to make up any shortage in the fund if contributions paid in by employees are not adequate to fund a salary-related pension. As this suggests, only occupational schemes can offer *salary-related* pensions whereas *money purchase* schemes can be either occupational or personal schemes.

The system has built up since 1908 when the first state old age pension was introduced. The basic state pension that exists today was introduced in 1948. One of its aims was to ensure that pensioners should not need to rely on means-tested benefits but it failed to achieve the desired result and concerns about the number having to retire on means-tested benefits led to major reforms in the 1970s,²⁰⁶ in particular the introduction of SERPS in 1978.²⁰⁷

With the advent of SERPS it became compulsory for most employees (but not the self-employed) to contribute to a second pension, either directly to SERPS or by contracting out of SERPS into an occupational scheme. Those who contracted out of SERPS pay

²⁰³ The information in this section is based on *A New Contract for Welfare: Partnership in Pensions*, Cm 4179, December 1998 and The Pension Provision Group, *We All Need Pensions: The Prospects For Pension Provision*, HMSO 1998. Other sources are also referred to.

²⁰⁴ Although the basic pension is flat-rate, many people have not paid enough contributions to earn the full amount.

²⁰⁵ SERPS does not cover the self-employed

²⁰⁶ *Better Pensions: Fully Protected Against Inflation: proposals for a new pensions scheme*, Cmnd 5713, September 1974

²⁰⁷ *The Social Security Pensions Act 1975*

lower contributions to the state scheme and the Government pays the difference into the employees scheme, which is, as a result, bound by rules designed to ensure that the individual receives a pension from the rebate roughly as good as the SERPS foregone

Occupational schemes had become widely established by the turn of the Century and were given impetus by the introduction of tax reliefs on pension contributions and investments in the 1920s. Membership peaked in 1967 of about 12 million (now about 10.5 million). Changes in legislation that took effect in 1988²⁰⁸ led to the development of present day personal pensions. In particular it became possible to contract out of SERPS into a personal pension whereas the earlier legislation had only enabled people to contract out of SERPS into an occupational pension.²⁰⁹

During the 1980s and 1990s, concerns about the costs of state expenditure led the Conservative Government to cut back state provision. Many of the changes that it introduced are only now being introduced or phased in. From 1980 the annual increase in the basic state pension was linked to prices; in preceding years it had been linked to the higher of prices or earnings. Changes to SERPS provided for by the Social Security Act 1986, many of them now being phased in, are expected to cut expenditure on it in half and the Pensions Act 1995 is expected to cut the cost in half again although the full impact of all these cuts will not be felt for some years.

Currently:

- Basic state pensions: 86% of men and 49% of women qualify in full for the basic state pension, that is £64.70 a week for single pensioners and £103.70 for couples. In total, about 10.5 million pensioners receive some basic state pension at a cost of about £32 billion a year.
- SERPS: The average amount paid (for those contracted in to SERPS at some point since it was introduced in 1978) is £20 a week for men and £11 a week for women. The maximum payable is £120. About 5.5 million people receive SERPS at an annual cost of £4 billion.
- Occupational pension: The average occupational pension for those retiring in 1996/97 was £120 a week but this was unevenly distributed so that many occupational pensioners only receive small amounts. About 55% of recently retired single pensioners and 79% of married pensioners received some income from an occupational pension.

²⁰⁸ *The Social Security Act 1986*

²⁰⁹ Source: *A New Contract for Welfare: Partnership in Pensions*, presented to Parliament by the Secretary of State for Social Security, Cm 4179, December 1998

- Personal pensions only became widely available in 1988 and are therefore still in their infancy as far as contributing to retirement incomes are concerned.

Appendix 2 - Major Responses to Governments Stakeholder Pensions Consultation Document

from Occupational Pensions, April 1998

Benefits	Contracted in or out SERPS	Contributions	Investment
Age Concern			
"Related to salary."* Price indexed.* Lump sums and early retirement may not be feasible for those on low incomes but phased retirement should be possible and dependants' benefits provided.	Contracted out.* Should guarantee minimum benefits "at least as good as SERPS".	Compulsory contributions to be set for employers and individuals (except very low paid).* Payment by payroll deduction and direct debit.	-
Association of British Insurers			
Money-purchase with no targeted benefits.* Price indexed.* Not payable before age 60.* No life or disability insurance, or dependants' benefits.	SPs to replace SERPS completely.* No protected rights for NI rebate.	Payment by payroll deduction, direct debit and through retailers.* Clearing house to be put out to tender by DSS.	No guaranteed underpin.* Individual unitised accounts.* "Lifestyle" or with-profits options.* Limited choice to be offered over investments.
Confederation of British Industry			
Money-purchase but with option of defined benefits.* Optional dependants' benefits.	SERPS should be abolished.	Target contribution level to be set by Government for adequate provision.* Payment by payroll deduction (where employers consent).* Clearing houses to be run by DSS.	-
Consumers' Association			
Money-purchased with risks minimised.* No price indexation or targeted benefits.* Extra benefits to be optional	SERPS should be scrapped along with additional voluntary contributions and personal pension plans, and replaced with single Personal Retirement Account.	Compulsory minimum contribution of 10% of salary (shared between employer and employee and including NI rebate) to be collected by "collections agency" (clearing house).	Mutual pooled funds.* "With profits" preferable.* Guaranteed underpin to be offered if "lifestyle" approach adopted.* Investment choice for voluntary contributions.
Institute and Faculty of Actuaries			
Money-purchase.* Price indexed (unless SP is single, national, with-profits scheme). * Payable between ages 50 and 75.* No dependants' benefits, life assurance, disability or ill-health benefits.	Contracting out of SERPS would be "very confusing" so statutory requirements must be simple or SERPS phased out.	-	Pooled fund or unitised accounts depending on model.* No guaranteed underpin (unless SP is single, national, with-profits scheme).* No choice over investments.

Benefits	Contracted in or our SERPS	Contributions	Investment
Institute of Directors			
Money-purchase.* Not payable before age 60.	SERPS should be abolished	-	All SPs to use index -tracking funds.
National Association of Pension Funds			
Money-purchase with targeted benefits.* Price indexed.* Payable between ages 50 and 75.* Life assurance and dependants' benefits optional.	SERPS should be removed for under-50s but, if it is retained, SPs to be contracted out.* No protected rights.	Minimum contribution of 10% of earnings.* Payment by payroll deduction, standing order and at banks, building societies and retailers.* Clearing house to be run by Contributions Agency or consortium of SP providers, paid for by Government or from contributions, and regulated by DSS	Individual unitised accounts.* "Lifestyle" investment approach preferable.* No guaranteed underpin.* Choice to be offered over investments.
Pensions Management Institute			
Money-purchase.* Price indexed.* No life assurance but guaranteed dependants' benefits.	If contracted out, protected rights should apply to all contributions, not just NI rebate.	Payment via banks, building societies and post offices.* Contributions to spouses/ partners' pension to be allowed.* Clearing house to be run by Contributions Agency or set up by SP providers and regulated by FSA.	Choice of with-profits or "lifestyle" approach to be offered.* Guaranteed underpin would reduce returns.* Limited member choice to be offered over investments.
Society of Pension Consultants			
Money-purchase with no targeted benefits.* Price indexed.* Life insurance and dependants benefits to be provided through "other vehicles".	If contracted out, SPs should be prevented by law from accepting members contracted out of SERPS where they cannot guarantee better benefits.* Protected rights apply to all contributions	Payment via payroll deduction, direct debit and Giro system, and regulated by OPRA.* Clearing house to be run by Contributions Agency and paid for by deductions from contributions or employer levy.	SP sponsor to choose investment approach.* No guaranteed underpin.* No member choice to be offered over investments.
TUC			
Some money-purchase and some defined-benefit schemes.* Price indexed.* payable between ages 50 and 75.* Maximum lump sum 25% of fund.* Compulsory life assurance (paid for by employer contributions), ill-health pensions and dependants' benefits.	Contracted in or out.* Protected rights for NI rebate only.	Payment via payroll deduction and direct payment.* Penalties on employers for late transfer of contributions.* clearing house to be run by Contributions Agency.	"Lifestyle" approach or investment via National Savings.* Limited member choice to be offered over investments.

Flexibility and portability	Legal status and information	Regulation	Employers' obligations
Age Concern			
No penalties for those suspending contributions through enforced career break.* Those changing jobs "should not be disadvantaged".	Schemes to be trust based.* Information by annual member statement	Regulation and monitoring by OPRA.	Compulsory contributions to employees' SPs.
Association of British Insurers			
Charges to be based on whole fund to provide economies of scale.* No charge for transfers between SPs.* No transfers from occupational or personal pensions to be allowed.	Trust-based system unnecessary, provided SPs conform to minimum standards.* Information by annual statement or on request.	Regulations and monitoring could be by FSA.	No compulsion to maintain existing occupational schemes.* Requirements to provide access to SPs for any employee.
Confederation of British Industry			
Charges to be based on whole fund to provide economies of scale and kept low during breaks from contributions.* Cash-only transfers-in.	Schemes to be trust based	-	No compulsion to provide access or contribute to employees' SPs, but should be able to offer access to SPs alongside occupational schemes
Consumers' Association			
Up-front initial charge plus annual management fee.* Personal Retirement Account to remain with individual regardless of employment status.	Schemes to be trust-based.* Information by detailed annual member statement and report and accounts	Schemes to be regulated and monitored by OPRA under Pensions Act 1995, unless run on group personal pension model, then FSA.	Contributions to SPs and occupational schemes could be alternated according to employment status in Personal Retirement Account model.
Institute and Faculty of Actuaries			
Charge as flat percentage of contributions plus percentage of whole fund.* No guarantees for transferring from one SP to another.	Schemes to be trust-based.* Information through members' booklets and annual member statements and reports.	Regulation and monitoring by OPRA under Pensions Act 1995.	No requirement on employers with "good" occupational schemes to contribute to SPs.

Flexibility and portability	Legal status and information	Regulation	Employers' obligations
Institute of Directors			
-	-	-	No opt-out from "good" occupational schemes to SPs. * No employer contribution to SPs where occupational scheme exists.
National Association of Pension Funds			
Fixed annual rate of 0.5% of fund for administration plus 0.5% for investment management, halved when contributions are suspended.* Transfers between SPs to be at flat percentage charge.* Providers to be required to allow transfers-out but not compelled to accept transfers-in from non-SPs.	Schemes to be trust based.* Information through annual member statements.	Regulation and monitoring by OPRA with DSS responsible for contributions test.	Requirement on employers to offer access to SP and contribute if they do not run occupational scheme.
Pensions Management Institute			
Charges must not penalise intermittent contributors.* No cost for transfers between SPs.* No transfers out of SPs but transfers from other schemes to be accepted.	New statutory framework needed for SPs.* Information through annual benefits statements and scheme reports.	Regulation and monitoring by FSA.	No obligation on those with "good" schemes to provide access to SPs or payroll deduction.
Society of Pension Consultants			
Only charge to be fixed annual percentage of whole fund.* No charge for transfers between SPs.* Sp providers should not be required to accept transfers in or out.	Trust-based schemes preferable.* * Information through annual benefits statements and scheme reports.	SPs to be regulated and monitored by OPRA under Pensions Act 1995.	Requirement to provide access and payroll deduction where there is no occupational scheme, but no obligation to contribute.* No restriction on winding down occupational schemes in favour of SPs.
TUC			
Charges to be no more than 10% over lifetime of fund.* Charges during suspension of contributions should not exceed growth.* No charge for transfers between SPs.* Full transfer rights in and out of other schemes.	Failing any new regulatory framework, all SPs to be trust-based.* Member information and disclosure requirements as per occupational schemes.	SPs to be "kitemarked" and monitored by OPRA and regulated under Pensions Act 1995.	Obligation to provide access and payroll deduction where no "good" occupational scheme. Requirement on employers to contribute to SP for contract staff.

Key:

FSA = Financial Services Authority

OPRA = Occupational Pensions Regulatory Authority

SP = Stakeholder pension

- = Questions not answered