These notes refer to the Welfare Reform and Pensions Act 1999 (c.30) which received Royal Assent on 11 November 1999

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Commentary

Section 66: Attendance Allowance

Regulation-making powers

Currently, the rules that specify the conditions of entitlement and the circumstances in which a person qualifies for Attendance Allowance (AA), are set out in primary legislation, in the Contributions and Benefits Act (sections 64(2) and 64(3)). The present lack of regulation-making powers in AA means, for example, that when proposed changes apply to both AA and Disability Living Allowance (DLA), which are very closely related benefits, it is not possible to introduce the changes simultaneously through regulations.

Subsection (1) introduces a regulation-making power for AA similar to the power to make regulations for DLA.

It inserts a *new section 64(4)* into the Contributions and Benefits Act, to create a power to prescribe circumstances in which the AA night attendance or day attendance conditions are, or are not, to be taken as met.

It is intended that the regulations would be used when the conditions of entitlement to AA needed to be amended or clarified: for example, if a judicial decision departed significantly from the policy intention.

Attendance Allowance for the terminally ill

AA can be awarded, and special rules applied, in respect of people who are terminally ill. Section 66 (1) of the Contributions and Benefits Act refers to entitlement "for the remainder of his life". This can give the mistaken impression that entitlement under the special rules for people who are terminally ill can never be changed, even if their prognosis improves. The definition of "terminally ill" is in section 66(2)(a), and this Act does not seek to change it.

Subsection (2) amends sections 66(1)(a) and (b) of the Act to make it clear that entitlement to AA under the special rules for terminally ill people only applies during the period in which a person is classed as "terminally ill". Section 67 of this Act makes a similar amendment to awards of DLA "for life".

Section 67: Disability Living Allowance

Awards made "for life"

Section 71(3) of the Contributions and Benefits Act permits awards of Disability Living Allowance (DLA) to be made "for life". Life awards are made where it seem likely that a person's entitlement to benefit will continue indefinitely.

This has led to misconceptions: many people with a life award believe that the benefit will continue even if they are no longer entitled to it. However, these life awards, like all other awards, can be reviewed and altered when there are grounds for doing so, under the powers in sections 30 and 35 of the Administration Act.

Subsections (1) and *(2)* remove the reference to awards for life in section 71(3) of the Act, and make it clear that DLA may be awarded either for fixed periods or for indefinite periods, subject to review—but that entitlement only applies while the person satisfies the conditions of entitlement. Section 66 of this Act makes similar provision for awards of Attendance Allowance for the terminally ill.

Entitlement to the higher-rate mobility component of DLA

The rules for entitlement to the higher rate mobility component of DLA are in section 73 of the Contributions and Benefits Act. Currently, under section 73(1), children must reach the age of 5 before they can become eligible.

Subsection (3) extends eligibility to the higher rate mobility component to severely disabled 3 and 4 year-olds, in recognition that they can encounter serious mobility problems.

The rules governing eligibility to the lower rate mobility component will not be affected, and this will continue to be available to children on reaching the age of 5.

The subsection inserts a *new section 73(1A)* in the Contributions and Benefits Act, to provide for children aged 3 and over to qualify for the higher rate mobility component if they satisfy the eligibility requirements, and to draw a distinction on grounds of age between eligibility to the higher and lower rates of the mobility component.

Subsection (4) ensures that the extended eligibility does not affect awards made before the date when subsection (3) comes into force.

Sections 68-72: Miscellaneous Provisions

Section 68: Certain overpayments of benefit not to be recoverable

This section provides that certain overpayments of benefits made before 1 June 1999 cannot be recovered from the recipient.

As a condition of receiving benefits, claimants are expected to tell the Benefits Agency about any relevant facts, or later changes in their circumstances, that might affect their benefit entitlement. If they do not, and it is later judged that they have received more benefit than they should have as a result, they are liable to repay the full amount of overpaid benefit. In most cases, it is clear what changes of circumstances need to be reported (for example, getting a higher level of income while receiving an income-related benefit).

However, with disability and incapacity related benefits, there are certain cases where disabled people cannot reasonably be expected to know how their benefit entitlement relates to their physical or mental condition or its effects — or that there is something they have to tell the Agency about. But when their benefit is reviewed, it may be discovered that they have, in fact, been overpaid. Examples of where this might happen are where the purchase of equipment has reduced the level of help needed from another

person, or where rehabilitation following a disabling accident has gradually lowered the level of need and increased the capacity for work.

The section ensures that no overpayments of this kind arising from benefit reviews carried out up to 1 June 1999 can be recovered. The proposal to make these overpayments non-recoverable was announced in the answer to a Parliamentary Question on 26 February 1999, and was also discussed with organisations representing disabled people.

The provision will not apply to any overpayment in connection with which a person has been convicted of an offence, or in respect of which a person has agreed to pay a penalty as an alternative to prosecution.

Regulations have already been made, under existing powers, to deal with this kind of case from 1 June 1999. Where it is judged that claimants could not reasonably have known that their benefit entitlement could be affected, the regulations will provide that the relevant date for the change in entitlement to benefit was the date of the review -. Therefore no overpayment will arise.

Commentary

Currently, the rules for recovering overpayments of benefit are set out in Part III of the Social Security Administration Act 1992. They specify that money can be recovered when the overpayment arises because people:

have failed to declare a relevant change in their circumstances, or

have misrepresented a material fact. (Misrepresentation for this purpose can be wholly innocent.)

Section 68 provides that, despite the current provisions in that Act, certain overpayments relating to the effects of disability, or to a decision on incapacity for work, will not be recoverable.

Subsection (1) contains the general rule that overpayments covered by this section will not be recoverable.

Subsection (2) indicates that the section applies to reviews of qualifying benefits relating to a change in a person's condition at some point in the past; that the review decision was given before 1 June 1999; and that the overpayment is not one excluded by subsection (6) (see below).

Subsections (3) and *(4)* indicate that the section applies only to disability and incapacity related benefits – and only where benefit entitlement has changed because of a change in the disabled person's care or mobility needs (for Disability Living Allowance or Attendance Allowance) or capacity for work.

So, for example, the power will not apply to overpayments that arise in situations unconnected with the application of the care and mobility tests or the All Work Test, such as entering hospital or leaving the country.

Subsection (5) gives the meaning of "review", "the relevant person" and "the original decision" for the purposes of the section.

Subsection (6) excludes from the scope of the section any overpayment where a person has been convicted of an offence in connection with the overpayment or, in accordance with section 115A of the Administration Act, has agreed to pay a penalty as an alternative to prosecution.

Subsection (7) states that the section does not apply to any overpaid amount recovered from a person before 26 February 1999, the date of the announcement that certain overpayments would not be recovered.

Section 69: Child Benefit: claimant to state national insurance number

This section requires all people claiming Child Benefit either to state their national insurance number, giving proof that it is theirs, or to provide information that would enable their national insurance number to be found or a number to be allocated for them.

This applies to the adult claimant (usually a parent), rather than the child on whose behalf Child Benefit is claimed (children under 16 would not normally have national insurance numbers).

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(4) of the Administration Act), the requirement does not apply to Child Benefit.

Section 69 ensures that the requirement will apply to Child Benefit, by adding *new subsections (1A)* to *(1C)* to the rules for claiming Child Benefit set out in section 13 of the Administration 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 voluntary and charitable bodies.

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 section, it is intended that further regulations will be made to remove this exemption.

Background

Although a national insurance number is currently not legally required for a claim to Child Benefit, it is requested. In practice, approximately 95%-97% of new claimants do provide national insurance numbers.

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 contributions 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.

Section 70: Welfare benefits: miscellaneous amendments

This section introduces Schedule 8, which contains the minor and consequential amendments that need to be made as a result of Part V of the Act. These amendments include:

Part V: "splitting" of Jobseeker's Allowance hardship payments

Paragraph 29 (*sub-paragraphs (5) and (7)*) of Schedule 8 amends the Jobseekers Act, to enable all or part of any hardship payment of JSA to be paid to a person other than the claimant. An officer acting on behalf of the Secretary of State will identify the circumstances in which a hardship payment should be paid to another person, whether all or part of the benefit is involved, and the person to whom the payment is to be made.

Regulation 34 of the Social Security (Claims and Payments) Regulations 1987 allows certain benefit payments to be paid, wholly or in part, to a third party where this is considered necessary in order to protect the interests of the claimant, child or dependent. An example of where this might happen is where the claimant is totally unable to manage

his financial affairs and would therefore not use his benefit payment to meet his family's immediate needs. Whereas standard income-based Jobseeker's Allowance (JSA) can already be "split" in this way, the current wording of the Jobseekers Act means that hardship payments of JSA made under section 20(4) or paragraph 10(2) of Schedule 1 can only be made to the claimant.

Background

Hardship payments of JSA, and the circumstances in which they may be made, are described in Part IX of the Jobseeker's Allowance Regulations 1996. Hardship payments are only made where the claimant, their partner, or a member of their family would suffer hardship because JSA is not paid. Two of the situations in which the Jobseekers Act provides for hardship payment to be made are:

> Section 20(4) provides that hardship payments may be made to claimants even when sanctions have been applied, under section 19, and their JSA has been withheld. For example, this might be because the claimant failed to attend a prescribed training programme, or lost a job through misconduct.
>
> Paragraph 10(2) of Schedule 1 to the Jobseekers Act provides that hardship payments may be made where a claimant's JSA payments have been suspended, where a question arises as to whether the claimant satisfies any of the labour market conditions of entitlement.

Section 71: Sharing of functions as regards certain claims and information

Background

This section provides powers which are intended to enable closer working between central and local government in order to make the delivery of social security benefits more customer-focused and better co-ordinated. In particular, the section provides new functions for local authorities, enabling them to collect and record information, and give advice, in respect of benefits which are administered by central government.

The Department's aim is an integrated service which allows clients, as far as possible, to claim social security benefits, child support and war pensions, give information and make enquiries through a single point of contact.

Local authorities are responsible for the administration of Housing Benefit (HB) and Council Tax Benefit (CTB) and, under current legislation, they may only collect information relevant to those particular benefits. It is intended that regulations will be made under this section to enable local authorities to play a full part in integrated working initiatives, in particular, the ONE service (see sections 57, 58 and 72), by allowing them to handle a wider range of social security functions. The section will also enable other partners in integrated working arrangements, such as the Benefits Agency and Employment Service, to provide a similar service in relation to claims for HB and CTB.

It is also intended that clients will be able to claim a range of social security benefits using a single, integrated, claim form. For example, the Department's longer-term plans for improving and streamlining service to pensioners envisage that people wanting 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.

This section does not make any changes to current responsibilities for determining claims. Local authorities will remain responsible for HB and CTB, and claims or information they collect relating to war pensions, child support, or benefits administered by the Benefits Agency will be passed to the relevant Agency for processing.

Schedule 12 provides for local authorities to be paid for the extra work arising from this section (and the provisions for work-focused interviews in sections 57 and 58). See the commentary after this section for more details.

Commentary

The section inserts a new section 7A into the Administration Act.

Subsection (1)(a) confers power to make regulations enabling claims for HB and CTB to be made to a body other than a local authority, which will be specified in the regulations.

In the case of pilots of the ONE service, for example, the specified bodies will be the local Benefits Agency or Employment Service, or offices run by private or voluntary sector providers on their behalf.

Regulations under *subsection (1)(b)* will provide for the mirror image of arrangements under subsection (1)(a) by enabling claims for prescribed social security benefits and war pensions, and applications for child support, to be made to local authorities.

Subsection (2)(a) enables regulations to be made that allow claims made under the provisions of subsection (1), and information provided in connection with those claims whether supplied by the claimant or by a third party (such as the claimant's partner), to be forwarded to the appropriate administering authority.

Subsection (2)(b) provides for the making of regulations enabling the receipt, collection and forwarding of information about social security matters from people who are making claims, or have made claims, for HB, CTB or any prescribed benefits, or from a third party in connection with such claims.

These regulations will enable a claimant, or partner, to carry out routine social security transactions, such as reporting a change of personal circumstances, at a single point of contact. For example, a person would be able to report changes affecting his HB claim to the Benefits Agency, which would then forward the details and any supporting evidence to the local authority.

Regulations under *subsection (2)(c)* will provide for the recording and holding of information and evidence relating to social security matters.

The regulations will enable an office to hold information which relates to benefits for which it has no administrative responsibilities. This situation would arise, for example, where a single claim form is used for a mixture of centrally and locally administered benefits, such as an integrated claim for Income Support and Housing Benefit. The form may be stored by the Benefits Agency, even though the Agency has no administrative responsibility for the Housing Benefit claim.

Subsection (2)(d) provides for the making of regulations enabling advice and information to be given to claimants on a range of social security matters.

It is proposed that regulations made under this provision will allow local authorities greater access to information held on Benefits Agency systems than is currently the case, in order to deal with claimants' enquiries concerning social security benefits administered by the Agency.

Subsection (3) clarifies that subsections (2)(b) (obtaining, receipt and forwarding of information) and (2)(d) (the giving of advice and information about social security matters) apply whether or not the original claim was made under the provisions of subsection (1).

It also clarifies that those paragraphs apply both to people making initial claims to Housing Benefit, Council Tax Benefit or any prescribed benefits, and to those to whom an award has already been made.

Schedule 12 *Part II*

Currently, local authorities only have functions in respect of Housing Benefit (HB) and Council Tax Benefit (CTB). They are paid subsidy for administering these benefits under section 140B(4A) of the Administration Act.

Paragraph 80 of Schedule 12 amends the Administration Act to enable local authorities to be paid for the extra work arising from sections 57, 58 and 71, through an extension of the normal subsidy mechanisms.

Sections 57 and 58 provide for local authorities to undertake work-focused interviews; section 71 enables them to perform functions relating to claims and information for a wider range of social security benefits.

Section 72: *Disclosure and use of information*

Background

This section is intended to facilitate cross-Government working in a number of social security and employment-related areas in order to deliver the ONE service and Employment Zones; and to ensure that information can be used to best effect in operating the New Deal for Lone Parents, the New Deal for Disabled People, the New Deal for Partners of Unemployed People and the new Personal Capability Assessment.

The ONE service

An important focus of this section is to facilitate the introduction of the ONE service (see also section 57). ONE will be administered by staff from the Employment Service, the Benefits Agency and local authorities, as well as private or voluntary organisations. In this last case, staff will be contracted to carry out parts of the ONE process.

This section does two main things to facilitate the process:

> First, it will allow staff from any organisation administering ONE to use and disclose information relating to a person's claim for any benefit involved.
>
> Second, it will allow staff who are administering ONE to use and disclose information about a claimant's employability.
>
> For example, it will enable information which is collected at the "registration and orientation" stage of the service – such as information about the client's previous work experience, skills and educational attainment – to be passed on to the client's personal adviser, who will conduct the interview and may be from a different organisation.

The use and disclosure of information under this section will be limited to persons who are prescribed in regulations.

It is intended that information which is needed to assess the benefit claim will be passed on to the appropriate agency for processing, and that information about the client's employability will be passed on to their personal adviser.

In the course of the work-focused interview, the personal adviser may identify a source of help or support that is available to the client, and which would improve his capacity to become more independent.

For example, the client might benefit from help with literacy skills. However, since any action other than participation in the interview will be voluntary, any passing of information beyond this stage will be voluntary too. So if the personal adviser makes a suggestion which the client wishes to take up, he would ask the client to sign a disclaimer, allowing the personal adviser to pass a specific piece of information to that specific specialist provider. There is no provision in this Act for this to take place, since it will happen on a purely voluntary basis.

Employment Zones

The Act also provides for the introduction of Employment Zones (see section 60). This section enables information obtained for Jobseeker's Allowance purposes to be passed on to the Employment Zone provider, which may be an organisation in the public, private or voluntary sector.

The Employment Zone provider will need to know the amount of JSA to which the claimant is entitled, so that they can pay him or her an equivalent amount (minus the nominal amount of JSA which would still be in payment by the DSS). Information will also need to flow from the Employment Zone provider to the Employment Service and Benefits Agency (BA), for example to inform BA when a participant has obtained work so that their nominal JSA payments can be terminated; or when the circumstances of the participant have changed in a way which may require their level of benefit to be increased (such as the birth of a child).

New Deal for Partners of Unemployed People, New Deal for Lone Parents and New Deal for Disabled People

In addition, this section is designed to ensure that information can be used to best effect in operating the New Deal for Lone Parents, the New Deal for Disabled People and the New Deal for Partners of Unemployed People.

> In the case of the New Deal for Partners of Unemployed People, partners of long-term JSA claimants are invited by the Employment Service to receive specialist advice and support, to help them into work if they wish. The Employment Service may contact the partner direct.
>
> For the New Deal for Lone Parents and the New Deal for Disabled People, information provided in connection with a person's benefit claim may, where appropriate, be passed on by the Benefits Agency to the Employment Service, so that lone parents and disabled people who claim benefits can be contacted and offered advice on jobsearch, training and childcare.
>
> Schemes under the New Deal for Lone Parents and the New Deal for Disabled People need information to be disclosed to and used by private or voluntary sector organisations where they administer these schemes. Both the New Deal for Lone Parents and the New Deal for Disabled People operate on a voluntary basis.

Personal Capability Assessment

This section also ensures that information collected during the new Personal Capability Assessment which relates to a person's work-related capabilities (including information that also relates to the question of whether they are technically incapable of work for benefit purposes) can be made available to personal advisers. The information may also be used more generally, for the purpose of enhancing a person's employment prospects and rehabilitation. The provisions for the Personal Capability Assessment are contained in section 61 and Part II of Schedule 8 (see earlier commentary).

Data Protection

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.

Commentary

Subsection (1) provides a power to make regulations specifying how, to whom, when and for what purposes social security information can be provided by those people mentioned in *subsection (2)* (Ministers of the Crown and persons providing services to them, local authorities, and persons providing services to, or exercising functions of,

local authorities). It limits the use which can be made of such information to "relevant purposes", as defined in *subsection (6).*

The section as a whole enables regulations to provide for information-sharing relating to a number of social security and employment-related initiatives. Those powers give flexibility in an area where configurations of services and help are likely to change and evolve – for example, in the light of experience from current pilot and prototype operations. *Subsection (1)* restricts the use of these regulations to the provisions listed in *subsection (3)*, or to any scheme or arrangements defined under *subsection (4)*.

Subsection (4) enables regulations under *subsection (1)* to designate schemes or arrangements which are concerned with the employment or training prospects of a claimant or his partner.

It is currently intended to designate the following schemes:

the New Deal for Partners of Unemployed People;

the New Deal for Lone Parents; and

the New Deal for Disabled People.

However, this subsection enables new schemes to be designated as they are developed.

Subsection (5) ensures that regulations made under *subsection (1)* may enable disclosed information to be used to supplement or amend information already held by another person.

It also enables the recipient in turn to disclose this information to others, or use it for another purpose, insofar as they were permitted to disclose or use the information which they already held. This provision echoes section 122B(4) of the Administration Act 1992.

Subsection (6) defines the purposes for which information supplied under this section can be used.

These are purposes connected with social security, child support or war pensions; or purposes connected with employment or training. It also defines "*social security information*" for the purposes of this section, as information relating to social security, child support or war pensions. This is consistent with the definition in section 3 of the Social Security Act 1998.

Subsection (7) further defines "purposes connected with employment or training" to make it clear that such purposes can include assisting and encouraging people to enhance their employment prospects.

Chapter II: National Insurance Contributions

Sections 73 & 74 (and Schedules 9 and 10): New threshold for primary Class 1 contributions

These sections provide for a number of changes to National Insurance contributions (NICs) that were announced in the Budgets of 1998 and 1999. They were added to the Bill during Commons Committee stage (Hansard: Standing Committee D col. 981).

Background

In the 1998 Budget, the Chancellor announced a package of reforms to the structure of NICs. Most of these changes were introduced in the Social Security Act 1998, and came into effect in April 1999. As a result:

the point above which *employers* start to pay NICs, the employer earnings threshold, is set at the same level as the single person's tax allowance (£83 a week in 1999/2000) rather than the Lower Earnings Limit (LEL: £66 a week in 1999/2000);

employees no longer have to pay any contributions on the portion of earnings up to and including the LEL (i.e. abolition of the 2% employee "entry fee");

employers do not pay any contributions on the portion of earnings below the employer earnings threshold;

the complex structure of four employer rates of contributions has been replaced by a single rate of 12.2% (or the alternative contracted-out rate); and

Class 1B contributions were introduced – paid by employers who enter into a PAYE Settlement Agreement with the Inland Revenue for tax.

The Chancellor also announced in 1998 that, as part of future reforms, he would raise the point at which employees start to pay NICs to the new threshold for employers and the single person's tax allowance, and would do so as soon as measures were in place to protect people against the benefit losses that would otherwise result. These additional measures were confirmed in the 1999 Budget, and are contained in this Act. The changes are:

Raising in two stages the starting point at which employees begin to pay National Insurance contributions to the level of the single person's tax allowance. Stage 1, to be introduced in April 2000, is for employees to become liable to pay contributions on earnings above a threshold of £76 a week. The second stage, from April 2001, is that the threshold will be fully aligned with the single person's tax allowance (projected to be around £87 a week). Combined with the increased starting point for employers' NICs (mentioned above), this will mean no tax or NICs on earnings of less than £87 a week;

National Insurance contributions build entitlement to contributory benefits. Simply raising the point at which employees begin to pay NICs would stop people with earnings below the new threshold from building up entitlement to contributory benefits. So the Chancellor announced that benefit rights for earnings between the LEL and the new threshold would be protected;

To provide for the Upper Earnings Limit (UEL) for employee contributions to be set as a multiple of the new threshold in order to allow it to be raised to £535 a week in 2000 and £575 in 2001, in line with the Chancellor's Budget statement.

These changes are all provided for in Schedule 9 (with some consequential amendments in Part II of Schedule 12).

Schedule 9

The new provisions involve a re-working of the National Insurance contributions legislation, which is already heavily amended by the Social Security Act 1998 and the Social Security Contributions (Transfer of Functions, etc.) Act 1999. So for clarity, Schedule 9 restates sections 5, 6, 8 and 9 of the Contributions and Benefits Act completely. It also deals with the consequences for contracted-out pension schemes and for the NICs revenue allocated to the NHS.

Section 74 and Schedule 10 make corresponding provision for Northern Ireland. Because they are parallel provisions, they are not referred to in the commentary below.