

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Commentary

Part VI: General

This part of the Act contains a number of general provisions, which will determine, for example, how powers to make regulations are used, and how the different measures will be brought into force.

It also introduces a power to incur expenditure on proposed new services (section 82).

Section 81: Contributions and pensions administration

Section 81 introduces Schedule 11, which principally makes a number of amendments in the light of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and related legislation.

That Act transferred responsibility for National Insurance contributions and other (mainly related) matters from the DSS to the Inland Revenue and the Treasury, from 1 April 1999. The clause and Schedule were added to this Bill during Commons Committee stage (Hansard: Standing Committee D col. 1031), after the Social Security Contributions (Transfer of Functions, etc.) Bill had received Royal Assent. Further measures were added to the Schedule at Lords Committee (Hansard: vol. 604, col. 941).

The provisions in Schedule 11 consist mainly of:

- consequential amendments not made by the Social Security Contributions (Transfer of Functions, etc.) Act and its Northern Ireland equivalent; and

- minor adjustments in the allocation of functions between the Departments.

Where appropriate, the Schedule includes broadly parallel changes to the Northern Ireland legislation.

Most of the Schedule is purely technical, but there are three points that call for specific mention:

Paragraphs 7 and 8 make clear that the Inland Revenue can pass information held mainly in relation to contracting out of SERPS to the Benefits Agency for social security and other purposes; and, conversely, that the Agency can pass information about social security and other matters (in particular, SERPS information), to the Revenue for, principally, contracting-out purposes. This is not a new practice. In the past, specific powers were not needed for that transfer because the DSS could share information within the Department. Provision is now needed because the contracting-out functions have been transferred to the Revenue. The amendments also mean that the information can be required to be supplied.

Paragraph 22 further amends section 170 of the Pension Schemes Act 1993, which confers power to make regulations concerning, among other things, contracting-out matters. This

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amendment slightly extends that power so that it covers first instance decisions. *Paragraph 21* makes a similar change for the equivalent Northern Ireland legislation.

Paragraph 30 repeals section 3(3)(c) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999. That subsection was not commenced so that section 27 of the Inland Revenue Regulation Act 1890 (officers may conduct proceedings before justices) would apply to contributions as to tax, and is now superfluous. *Paragraph 5* makes a related amendment to remove an overlap with section 116(5A).

Section 82: Authorisation of certain expenditure

This section enables the Secretary of State to incur expenditure on preparing for legislative changes within his responsibilities, provided that he has the consent of the Treasury and the approval of the House of Commons.

Under a 1932 Public Accounts Committee concordat, any functions of a Government Department that continue beyond a given year – particularly where there are financial liabilities – should normally be defined by specific statute, rather than rely solely on the authority of the annual Appropriation Act.

The section enables the Secretary of State to seek specific Parliamentary approval to incur expenditure to prepare for future changes in the functions within his responsibilities (i.e. social security benefits, child support, war pensions), without the need for further primary legislation.

For example, a new benefit, or major changes to existing provisions, requires a significant amount of preparatory work: such as developing and testing new computer systems, and preparing manuals for use by staff. Often such work has significant lead-in time. This power will enable the Secretary of State to obtain the approval of the House of Commons to commence such work, and so avoid the risk of a delay in implementation.

Commentary

Subsection (1) gives the power to incur expenditure. *Subsections (2) to (7)* clarify and limit the way the power would work.

Subsection (2) requires the Secretary of State to obtain the approval of both the Treasury and the House of Commons before the power is exercised in any specific instance.

A report detailing the purpose and amount of expenditure must be laid before the House of Commons. (This procedure is modelled on the provisions of section 88B of the Local Government Finance Act 1988 – inserted by the Local Government Finance Act 1992, Schedule 10, paragraph 18).

Subsection (3) limits the Secretary of State's right to incur expenditure to two years, starting from the date the report is approved by the Commons.

Subsection (4) ensures that other powers to incur expenditure, either for development work or under other specific legislative authority, are not affected by this new power.

Subsections (5) and (6) provide for adjustments between the Consolidated Fund and the National Insurance Fund (which pays for National Insurance benefits and their administration).

Section 83: Regulations and orders

Section 83 sets out how the regulation-making powers arising from this Act may be used.

Subsections (2) and (3) provides for regulations to be subject to the negative resolution procedure. This means that the regulations will be laid before Parliament after being made, but only debated if a Member or Peer seeks such a debate.

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Subsections (4) to (6) follow other social security legislation, in making clear that regulations may make different provision within the classes to which the specific regulation-making power relates, and may make incidental or transitional provisions.

Subsection (8) ensures that regulations made under section 60 (employment zones) and section 79 (housing under-occupation scheme) may make different provision in different parts of the country.

Subsection (9) provides for regulations under section 60 and section 72 (information sharing) to apply in specified areas only.

Subsections (10) and (11) give the Treasury a joint role in making regulations under the pension sharing provisions in Part IV of the Act.

Section 84 Consequential amendments etc.

Subsection (1) gives effect to Schedule 12, Part I of which makes consequential amendments in connection with the pension sharing provisions in Parts III and IV of the Act.

Subsection (2) provides regulation-making powers to enable the Secretary of State to amend or revoke any instrument made under an Act as he thinks necessary or expedient as a consequence of the coming into force of any provisions specified in subsection (4).

Subsection (3) provides a power to enable the Secretary of State to make by regulations the kind of provision that can be included in a commencement order.

For fuller details on the pension sharing measures, see the commentary on Parts III and IV.

Section 85: Transitional provisions

This section gives the power to make any necessary transitional arrangements for the provisions in the Act.

Subsections (1) and (2) relate to the pensions measures in Parts I and II; *subsection (6)* relates to Part V (welfare). These are standard formulations, used elsewhere in social security legislation;

Subsections (3) to (5) provide specific transitional provisions for the pension sharing measures in Parts III and IV. They are intended to ensure that pension sharing orders cannot be introduced with retrospective effect, but can only be made in proceedings begun on or after the day on which pension sharing provisions in this Act are brought into force.

In England and Wales they prevent a pension sharing order being made where proceedings for divorce or nullity started before the day (commencement day) on which section 19 is brought into force.

In Scotland no pension sharing order or agreement under the Family Law (Scotland Act) 1985 may be made in any divorce (or action for declarator of nullity) brought before the day on which section 20 of the Act comes into force or under section 31(7B) of that Act if the marriage was dissolved by a decree granted in proceedings so begun.

Section 87: Corresponding provision for Northern Ireland

This section enables Northern Ireland provisions corresponding to measures in the Act to be made by Order in Council. It was added to the Bill at Lords Report (13 October 1999; Hansard vol. 605, col. 474).

Section 88: Repeals

This section gives effect to Schedule 13, which repeals some existing legislation as a consequence of the measures in the Act. For further details:

Part I of Schedule 13 (pensions: miscellaneous): see commentary on Parts I and II of the Act;

Parts II and III of Schedule 13 (pension sharing on divorce): see commentary on Parts III and IV of the Act;

Part IV (abolition of Severe Disablement Allowance): see section 65;

Part V (joint claims for Jobseeker's Allowance): see section 59 and Schedule 7;

Parts VI and VII (National Insurance contributions): see commentary after sections 77 and 78.

Section 89: Commencement

The Act introduces a large number of measures, which will not all come into force on the same day. This section provides a power to bring various provisions into force by order, on different days for different purposes, and specifies which provisions came into effect on Royal Assent.

Section 90: Extent

This section sets out the territorial application of the provisions in the Act. Most apply throughout Great Britain. Some, on pensions and National Insurance contributions, are UK-wide. In some parts of the Act that deal with interactions with family and civil law (for example, the provisions for pension sharing on divorce), sections may apply to England and Wales only, or Scotland only.

Section 91: Short title, general interpretation and Scottish devolution

The only provision calling for specific mention here is subsection (4), which relates to Scottish devolution.

Social security is a matter wholly reserved to the Westminster Parliament. Some of the provisions in this Act, however, impinge on matters devolved to the Scottish Parliament. In particular, the provisions in relation to valuing pension arrangement benefits for calculating matrimonial property, fall within the responsibility of Scottish Ministers.

This technical amendment designates these provisions in the Act as "pre-commencement enactments" for the purpose of the Scotland Act 1998. This enables functions within the competence of Scottish Ministers to be exercised by them and allows them to commence the provisions which fall outside the social security reservation.

This provision was added to the Bill at Lords Report (13 October 1999; Hansard vol. 605, col. 504).