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

Part I

The first Part of Schedule 9 restates sections 5, 6, 8 and 9 of the Contributions and Benefits Act, and inserts a new section 6A. References below are to sections of the Act.

Section 5 sets the limits and thresholds for National Insurance contributions and is largely restated. The main change is in subsection (1).

Subsection (1)(a) adds to the existing lower and upper earnings limits a new "primary threshold". This is to be the point at which employees begin to pay NICs and will be increased over two years to the level of the single person's tax allowance.

The employer earnings threshold introduced in 1998 as the starting point for employers' NICs – and currently at the weekly equivalent of the single person's tax allowance – is renamed the "secondary threshold" in *subsection (1)(b)*.

The section provides that these limits and thresholds are to be set each year by regulations, subject to specified conditions:

First, through *subsection (2)* the LEL will continue to be tied to the level of the basic state pension;

Second, the UEL is currently set as a multiple of the LEL. It is not possible to raise the UEL to the level the Chancellor has announced whilst keeping to this formula. So *subsection (3)(a)* is modified to require the UEL to be calculated as a multiple of the new primary threshold.

Subsections (4) and *(5)* rationalise the existing provisions for defining non-weekly equivalents of the limits and thresholds for those paid otherwise than weekly.

Section 6 establishes when liability arises for Class 1 NICs. The only subsantial change is to *subsection (1)(a)*. This makes the starting point for primary (employee) contributions the new primary threshold, rather than the LEL. *Subsection (1)(b)* is updated to reflect the renamed secondary threshold.

Section 6A is completely new. It provides that contributions are to be treated as having been paid on earnings which are not less than the LEL and not more than the primary threshold. This enables such earnings to be protected for the purposes of building entitlement to contributory benefits.

Subsection (2) ensures that people earning at or over the LEL do not lose access to contributory benefits and pensions because of the increase in the level of earnings at which employees start to pay NICs.

It has the result that earnings from the LEL up to and including the primary threshold will be treated for benefit purposes (defined in *subsection (3)*) in exactly the same way as earnings on which contributions have actually been paid – i.e. by treating them as notionally paid. The section also ensures that the change to the structure of employee contributions does not reduce the earnings used for calculating entitlement to SERPS (the "earnings factor").

Subsection (4) provides a regulation-making power to enable provisions of the Act to be applied with modifications in relation to people who fall within the scope of the section.

This will make it possible to ensure that benefit rights of such people are not enhanced as a result of the "notional payment".

For instance, liability for Class 1 NICs at present depends on satisfying conditions relating to residence and presence in Great Britain. The regulations would be used to make sure that the same conditions apply before someone could take advantage of the new deeming provision in section 6A.

Sections 8 and 9 contain the rules for calculating the amount of NICs payable. Section 8 deals with primary (employee) Class 1 contributions; section 9 relates to secondary (employer) NICs. Both sections are modified in line with the changes above.

As now, *section 8(1)(a)* provides for the amount of primary Class 1 contribution to be the "primary percentage" (currently 10%) of the earnings between the starting point for NICs liability and the UEL. The change is that the starting point is now the primary threshold rather than the LEL.

Section 9(1) makes the starting point for secondary NICs the renamed secondary threshold.

Part II

The second Part of Schedule 9 amends the Pension Schemes Act 1993, to deal with the effect of the NICs changes on contracted-out pensions. Paragraph 6 amends the rules for salary related schemes; paragraph 7 applies to money purchase schemes.

In the same way that benefit entitlement is protected from the rise in the starting point for NICs, so is entitlement to NI rebates. Current provisions set the employee and employer rebates by reference to percentages of earnings in excess of the LEL. The new provisions will enable the rebate to continue to be calculated by reference to earnings between the LEL and the UEL. But with the introduction of a higher starting point for payment of primary NICs, namely the primary threshold, there will be a narrower range of earnings over which the NICs liability will arise.

This raises the possibility that the amount employers can recover in rebates may be higher than their total NICs liability. However, paragraphs 6 and 7 make arrangements for the Revenue to pay any outstanding balance to the employer and recover any overpayments from him (*new sections 41(1D) and (1E)* and *42A(2C) and (2D)*).

Part III

Paragraph 9 of Schedule 9 amends section 162 of the Social Security Administration Act 1992. This ensures that the proportion of contribution revenue allocated to the National Health Service remains broadly unchanged when the starting point for employee contributions is increased to the primary threshold.

Sections 75 and 76: Earnings of workers supplied by service companies etc.

Background

Section 75 provides for a new power to counter the risk of avoidance of National Insurance contributions where an individual (the worker) provides personal services through an intermediary. It is intended that the provisions in this Act will be matched by tax legislation that will, in specified circumstances, require the intermediary to operate Pay As You Earn (PAYE) on the payments made to, or in respect of, the worker. The Chancellor of the Exchequer announced in his Budget that these measures would take effect from 6 April 2000. Consequently, the regulations to be made under Section 75 will come into force from that date. Equivalent provisions for Northern Ireland are contained in Section 76.

Section 75 concerns the situation where the worker is engaged by a business (the client) through a third party (such as a service company). In the absence of such a third party, the relationship between a client and a worker would determine the employment status for the purposes of both tax and National Insurance. Liability would then be assessed according to whether the person was employed or self-employed. However, where a worker is engaged through one or more third parties, it is possible to escape any direct contractual relationship between client and worker. This provides scope for the avoidance of tax and National Insurance contributions (NICs).

The powers in section 75 are intended to deal with the situation where the relationship between a client and a worker would be one of employer and employee, but for the intermediary. They provide for a specified amount of the payments made in respect of the worker to be treated as earnings paid to an employee – and therefore liable for NICs. Regulations under the section will ensure that specified amounts will be regarded as paid to the worker for the purposes of primary Class 1 NICs and the intermediary will be liable for the corresponding secondary Class 1 NICs. The regulations will identify how the amount to be treated as earnings paid to the worker will be calculated.

In order to minimise the administrative burden, the Chancellor announced that certain details of the new rules would only be finalised after discussion with representative bodies. An outline of the proposed new rules was circulated to those who had expressed an interest in this measure and there have been a number of discussions with business representatives on the original proposals.

In the light of this consultation, the Paymaster General announced various changes to the proposal on 23 September 1999. The main changes were:

- to make the intermediary rather than the client responsible for operating the new rules and deducting and accounting for NICs where required;
- to ensure that the conventional test used to distinguish between employment and self-employment for individuals not using intermediaries would also apply in cases covered by the new legislation; and
- to allow a deduction for certain expenses in determining the amount of money which is to be treated as earnings subject to Class 1 contributions in cases where the new rules apply.

These new proposals are reflected in the section.

Section 75 will enable NICs regulations to take effect at the same time as the proposed new tax rules without the need for retrospection. It sets out the general powers on the face of the Act and allows for the technical detail to be contained in regulations. This approach is consistent with current social security legislation.

For example, section 4(6) of the Social Security Contributions and Benefits Act 1992 enables regulations to be made for the purpose of treating as earnings certain forms of employee shares (conditional and convertible shares) and the Social Security

(Contributions) Regulations 1979 (S.I. 1979/591) ("the Contributions Regulations") provide all the consequential technical detail. Regulation 18 of the Contributions Regulations provides the basis on which the amount of earnings comprised in a payment of conditional or convertible shares is to be ascertained and regulation 19 provides when such shares are to be disregarded from earnings. This section takes the same approach, which also has the advantage that it provides the flexibility to enable changes to be made more easily should the parallel tax provisions or business practice change in the future.

Commentary

Subsection (1) sets out the circumstances in which the regulation-making power is to operate. Regulations will set out which arrangements involving a worker hired through an intermediary will be caught by the provision.

The normal range of tests to decide a worker's status, which have developed through the courts and the principles of common law, will be used to determine whether the relationship between the client and the worker should be subject to the new rules.

Subsection (1) also enables regulations to specify (i) what payments and benefits are to be treated as earnings paid to the worker in respect of employed earner's employment for the purposes of the Contributions and Benefits Act, and (ii) the extent to which they are to be so treated.

It is intended that regulations will provide that, in addition to payments that are earnings by virtue of section 3 of the Contributions and Benefits Act, payments treated as earnings by virtue of section 4 of that Act (for instance, conditional and convertible shares) will be treated as earnings under this provision.

It is intended that the regulations will prescribe how to calculate the amount to be treated as earnings. This follows the existing practice whereby regulations made under section 3(2) of the Contributions and Benefits Act provide for the calculation of the amount of earnings comprised in specified payments (see regulation 18 of the Contributions Regulations); and regulations made under section 3(3) of that Act specify what payments that are to be exempt from that calculation (see regulation 19 of the Contributions Regulations).

Subsection (2) defines the meaning of an "intermediary" for the purposes of the provision. It is intended that regulations should provide for the intermediary to be either the company that employs the worker or a partnership in which he is a partner.

Subsection (3) then provides specific, but non-exhaustive, illustrations of what the regulations made under the section may provide.

> *Subsection (3)(a)* enables regulations to specify that a worker is to be treated as employed in employed earner's employment for the purposes of the Contributions and Benefits Act in respect of his "attributable earnings".
>
> > "*Attributable earnings*" are a specified amount of the "relevant payments and benefits" made or provided in connection with the services the worker performs for the client. They will be a minimum amount, which must be treated as salary paid to the worker by the intermediary within the tax year and subject to Class 1 NICs.
>
> *Subsection (3)(b)* enables the intermediary (whether or not he fulfils the prescribed conditions about residence and presence in Great Britain) to be treated as *the* secondary contributor in respect of the worker's attributable earnings.
>
> *Subsection (3)(c)(i)* enables regulations to specify what deductions are to be made in calculating the amounts on the payments that are treated as earnings paid to the worker in respect of the *services* provided to the client. Regulations would allow for the deduction of certain allowable expenses currently exempt for the purposes of other parts of the Act.

An example of this is found in regulation 18(4)(b) of the Contributions Regulations, where identifiable payments towards expenses incurred by an employee in carrying out his employment are exempted from NICs.

Subsection (3)(c)(ii) enables regulations to specify how the amount of earnings that the worker is to be treated as having been paid is to be calculated or estimated. It will be for the intermediary to *calculate* the earnings caught by the provision and what deductions can be made.

Subsection (3) (d) enables *regulations* to set out how the worker's "attributable earnings" may be aggregated with any other earnings he has, in order to calculate the full year's NICs liability correctly.

Subsection (3)(e) provides for regulations to determine the date by which contributions payable under *the* provision have to be paid and accounted for.

Subsection (3)(f) enables regulations to specify how relevant payments and benefits are to be apportioned. It is intended to specify in regulations how an aggregate payment in respect of two or more workers is to be apportioned (including apportionment in cases where one or more of that number would be regarded as in employed earner's employment with the client other than by virtue of the regulations). In circumstances where, at the time of payment, it is not possible for the intermediary to identify the amount attributable to each worker/ individual, it is proposed that the regulations will provide for apportionment on a just and reasonable basis, and for contributions to be calculated on the "apportioned" earnings.

This is consistent with the approach found in regulation 18 of the Contributions Regulations. Regulation 18 already includes an apportionment calculation following section 48 of the Social Security Act 1998 (which amended section 3 of the Contributions and Benefits Act by inserting a new subsection (2A)). Paragraph (21) and (24) of regulation 18 of the Contributions Regulations, which were made under the power in the new subsection (2A), specify the basis of apportionment in respect of payments to two or more employed earners in the form of a contribution to an unapproved retirement benefit scheme and a non-cash voucher (paragraphs (21) and (24) respectively).

Subsection (3)(g) will enable the worker's employment with an intermediary or otherwise to be disregarded *for* NIC purposes.

Subsection (3)(h) enables regulations to be made to ensure that a relevant payment or benefit is not subject to a double National Insurance liability. This may be necessary in cases where an amount to be treated as earnings by virtue of the new rules would otherwise be liable to NICs under other provisions.

Subsection (3)(i) enables regulations to specify the extent to which two or more connected persons should be treated as a single person for the purposes of the regulations.

This is necessary, for example, to deal with cases where a worker is engaged to work for the client via a connected party (such as an associate company), within the meaning of section 839 of the Income and Corporation Taxes Act 1988, and no contract exists between the intermediary and the associate for the worker's services. It is intended that regulations will determine whether the client and the associate are to be treated as single persons and consequently, whether the new rules should apply to them. Regulations may specify persons of any other specified description as being single persons for the purposes of the provision.

Subsection (3)(j) will *ensure* that the new rules are still applicable where the contract is not made by the client but someone "connected" to him.

Subsection (3)(k) allows for *regulations* to modify or exclude the application of the new rules.

Subsection (4) enables the regulations to set out what expenses may be deducted by the intermediary when calculating a worker's attributable earnings. The Government

has proposed that 5 per cent of the intermediary's receipts from relevant engagements should be deducted, to cover general expenses. In addition, any employer's pension contributions to an approved scheme in respect of the worker and any secondary Class 1 contributions paid by the employer will be deductible.

Subsection (5) enables regulations to specify that terms and conditions of a contract or arrangement may be disregarded for the purposes of applying the new rules. It is intended to use regulations to ensure that the substance of the relationship will determine whether the worker should be treated as being in employed earner's employment for the purposes of the Contributions and Benefits Act.

Subsection (7) ensures that the reference in subsection (1)(a) above to a worker being under an obligation to perform services is carried through.

Subsection (8) provides that any regulations made under the provision by the Treasury will require the concurrence of the Secretary of State for Social Security. This reflects the interaction between contributions and contributory benefits. The latter are the responsibility of the Secretary of State.

The regulations implementing this measure will come into force on 6 April 2000 and will parallel the tax clauses due to be introduced in the Finance Bill 2000. However, in order to ensure the simplest possible systems for business to operate, it is necessary to keep the tax and NIC rules in line with each other.

Subsection (9) therefore gives a power to enable this section to be adapted by order if the parallel tax provisions change.

There are a number of precedents for a use of this type of power. One example of the modification of primary legislation by order is found in section 10 of the Contributions and Benefits Act. Section 10 provides for a Class 1A contribution to be paid annually by an employer in respect of the provision of a car or fuel to an employee. The Class 1A charge applies where, for any tax year, an income tax benefit is chargeable under Schedule E by virtue of sections 157 and 158 Income and Corporation Taxes Act 1988 (ICTA) in respect of the provision of the car and/or fuel. Section 10 includes a modification power at subsection (7) to enable the Secretary of State to make regulations modifying section 10 where it is necessary or expedient to do so in consequence of any alteration to section 157 and 158 ICTA.

The annual Finance Bill means that changes to the tax legislation could occur annually, subject to Parliamentary approval. There is no equivalent annual legislation available to make changes to primary legislation covering National Insurance contributions. So, without this subsection, it would be difficult to amend the Contributions and Benefits Act to mirror the changes to the Finance Act.

Sections 77 and 78: National Insurance Class 1B contributions

Section 77 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%.

It amends section 10A of the Contributions and Benefits Act which deals with Class 1B contributions, replacing subsection (6) (which provides that the percentage rate is to be 12.2%, but enables it to be altered under section 143A of the Administration Act) with a provision to tie it to the rate of the secondary contribution, as specified in section 9(2) of the Contributions and Benefits Act.

Background

Measures introduced in the Social Security Act 1998 provide that, from 6 April 1999, employers can settle the National Insurance liability on a Pay As You Earn Settlement

Agreement (PSA) for tax purposes. This introduced a new class of National Insurance contributions known as Class 1B.

The percentage rate of Class 1B NICs was initially set at the same level as the rate of secondary (employer) contributions, but was capable of being varied independently of the secondary Class 1 rate.

This section ties the rate of Class 1B directly to the rate of secondary (employer) contributions, thus taking away the ability for it to be varied independently of that rate.

Section 78 makes corresponding provision for Northern Ireland.

Schedule 13Parts VI and VII: Repeals : National Insurance contributions

Parts VI and VII contain repeals which are consequential on sections 73, 74, 77 and 78. The repeal of paragraphs 8(2) and (3) of Schedule 1 to the Contributions and Benefits Act updates the legislation by removing reference to the payment of National Insurance contributions by adhesive stamps, to reflect the current methods of payment available.

Background

Before April 1993, flat rate National Insurance contributions payable by the self-employed (Class 2) or paid on a voluntary basis (Class 3) could be made by affixing a stamp of appropriate value to a contribution card in respect of each contribution week. Since then, it has been possible to:

make a payment of the amount of contributions specified in a written notice issued within 14 days of the end of the quarter in question; or

pay by direct debit.

Adhesive stamps ceased to be sold by the Post Office soon afterwards, and could not therefore be used as a method of paying National Insurance contributions. The references in paragraph 8(2) and (3) of Schedule 1 are therefore redundant.

Parts VI and VII of Schedule 13 also include repeals consequential on section 81 and Schedule 11.

Chapter III: Other Welfare Provisions

Section 79: measures to reduce under-occupation by housing benefit claimants

This section will allow tenants living in the social rented sector (typically, property owned or managed by a local authority or a housing association), who are in receipt of Housing Benefit (HB), to keep part of any benefit saving generated by moving to cheaper and smaller accommodation.

The scheme to be made under this section will encourage tenants who are "under-occupying" accommodation in the public or social rented sector (that is, living in accommodation that is considered large in relation to their number and needs) to move to smaller and cheaper accommodation. On completion of the 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. Since HB usually meets 100% of rental costs in the social rented sector, this is roughly half of the benefit savings expected over three years. It is intended that the lump sum will be disregarded as capital in the calculation of entitlement to income-related benefits, such as Income Support or the Working Families Tax Credit.

Regulations under *subsections (1)* and *(3)* would define exactly how the sum paid to claimants should be calculated, and in what circumstances a dwelling would be regarded as "under-occupied" (for example, a 3-bedroom house could be regarded as exceeding the requirements of a couple).

Subsection (4) gives power to make deductions from the lump-sum payment for any arrears of rent owed by the tenant, or for any overpayment of HB which is recoverable from the claimant.

Other debts to the local authority or to the DSS (e.g. the Social Fund) are not to be deducted; deductions are to be strictly limited to the two items mentioned.

Subsection (5) provides a right of appeal against decisions made under the scheme.

The details of the appeal – for example, the appeal body, the determinations that may be appealed against and the appeals procedure – will be set out in regulations.

The section would allow the under-occupation scheme to be applied nationwide, though *subsection (7)* makes clear that no local authority would be obliged to take part in the scheme. However, the intention is to pilot the scheme in three local authorities; therefore *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. Section 83(8) would allow different provision in different areas.

Subsection (9) provides that the under-occupation scheme payments should be administered under the rules and powers for Housing Benefit (which are set out in the Administration Act)—but allows for exceptions to be specified.

Among the HB rules is the procedure for the DSS to reimburse local authorities for the money they pay in benefits. Normally this happens through a subsidy system; the subsidy rules mean that an authority may not always receive the full amount it pays out. However, *subsection (8)* provides the power to prescribe a different claims and payments mechanism. The intention is that, under the scheme, authorities should be reimbursed *in full* for the lump-sum payments they make.

Section 80: Supply of information for child support purposes

This provision allows the Inland Revenue, on a discretionary basis, to supply tax information it holds in respect of self-employed non-resident parents to the Child Support Agency (CSA). This is intended to enable the CSA to build up a financial picture of non-resident parents whose earnings either are not known or need to be verified.

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 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.

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 tax information relating to 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.

Commentary

The section inserts a *new paragraph 1A* into Schedule 2 to the Child Support Act 1991.

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) 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, as a general rule, any tax information disclosed to the CSA under this power from being disclosed further.

For example, this overrides 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 with 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.

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 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.

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).